

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	NOTICE OF TIME PERIOD
PROCEEDINGS BEFORE THE	:	FOR COMMENTS FOR THE
MEDICAL EXAMINING BOARD	:	ECONOMIC IMPACT ANALYSIS
	:	

NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Medical Examining Board relating to Physical Examinations, including how this proposed rule may affect businesses, local government units and individuals. The comments will be considered when the Department of Safety and Professional Services prepares the Economic Impact Analysis pursuant to § 227.137. Written comments may be submitted to:

Jameson Whitney, Attorney
Division of Policy Development
Department of Safety and Professional Services
PO Box 8366
Madison, WI 53708-8935 jameson.whitney@wisconsin.gov

The deadline for submitting economic impact comments is September 14, 2022.

PROPOSED ORDER

An order of the Medical Examining Board to create Med 10.02 (2m) and 10.03 (2)(f)4, relating to performance of physical examinations.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 448.015 (4) (am) 1., Stats.

Statutory authority:

Section 15.08 (5) (b) and 448.40 (1), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides each examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 448.40 (1), Stats., provides that “[t]he board may promulgate rules to carry out the purposes of this subchapter, including rules requiring the completion of continuing education, professional development, and maintenance of certification or performance improvement or continuing medical education programs for renewal of a license to practice medicine and surgery.”

Related statute or rule:

Chapter Med 21 provides minimum standards for patient health care records.

Plain language analysis:

The proposed rule expands unprofessional conduct to require that physicians either follow the policies established by their employers for the use of chaperones during physical examinations, or that physicians establish policies and follow them. Physicians will also be required to make their policy regarding the use of chaperones accessible to all patients. “Chaperone” is defined to mean an appropriately trained third person who has received basic training in the responsibility to protect patient privacy, the confidentiality of health information, and the requirements of clinical practice in the setting where the examination or inspection takes place. “Observer” is defined to mean an individual chosen by the patient to be present during an examination, and is presumed to include an adult family member, legal guardian, or legal custodian if the patient is twelve years of age or under.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation establish standards of conduct for physicians licensed in Illinois [68 Ill. Adm. Code 1285.110]. The rules do not require the use of chaperones during physical examinations.

Iowa:

Rules of the Iowa Board of Medicine provide the Board with authority to impose disciplinary sanctions for certain acts and offenses (653 IAC 23.1). The rules do not require the use of chaperones during physical examinations.

Michigan:

The Michigan Public Health Code establishes grounds for discipline of licensees and registrants (MCL 333.16221). The Code does not require the use of chaperones during physical examinations.

Minnesota:

The Minnesota Statutes provide the grounds for disciplinary action against a physician (2020 Minnesota Statutes, Section 147.091). These provisions do not require the use of chaperones during physical examinations.

Summary of factual data and analytical methodologies:

The proposed rules were developed by obtaining input and feedback from the Medical Examining Board.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals.

Effect on small business:

The proposed rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals.

Agency contact person:

Jameson R. Whitney, Attorney, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-266-8098; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. Med 10.02 (2m) and (4m) are created to read:

Med 10.02 (2m) “Chaperone” means an individual whom a physician provides to be present during an examination or inspection that exposes the breasts, genitals, or rectal area. This may include any person who has received basic training in the responsibility to protect patient privacy, the confidentiality of health information, and the requirements of clinical practice in the setting where the examination or inspection takes place. This training may be in-person, remote, or recorded, and need not be of any specific duration. Clinic staff, medical students or other allied health professional students, residents, or fellows are presumed to be appropriately trained to serve as chaperones.

(4m) “Observer” means an individual chosen by the patient to be present during an examination or inspection that exposes the breasts, genitals, or rectal area. A patient’s adult family member, legal guardian, or legal custodian is presumed to be able to act as an observer if the patient is twelve years of age or under.

SECTION 2. Med 10.03 (2)(f)4 is created to read:

Med 10.03 (2)(f)4 A physician who practices in a hospital or works for any other employer shall comply with the rules established by their hospital or employer regarding chaperones or other observers in patient examinations. Physicians who are self-employed or in other practice settings that do not involve hospitals or employers shall establish written procedures for the use of chaperones or other observers in patient examinations and shall comply with these procedures once established. A copy of the rules and

procedures regarding the physician's use of chaperones or other observers shall be made available and accessible to all patients and the rules and procedures shall be posted in at least one location reasonably likely to be seen by all affected patients.

SECTION 3. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated 8/25/2022



Board Chairperson or Secretary

DRAFT