

STATE OF WISCONSIN
PHYSICIAN ASSISTANT AFFILIATED CREDENTIALING BOARD

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| IN THE MATTER OF RULEMAKING | : | NOTICE OF TIME PERIOD |
| PROCEEDINGS BEFORE THE | : | FOR COMMENTS FOR THE |
| PHYSICIAN ASSISTANT AFFILIATED | : | ECONOMIC IMPACT ANALYSIS |
| CREDENTIALING BOARD | : | |

NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Physician Assistant Affiliated Credentialing Board creating PA 1 to 4, relating to Physician Assistants, 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:

Nilajah Hardin, Administrative Rules Coordinator
Division of Policy Development
Department of Safety and Professional Services
PO Box 8366
Madison, WI 53708-8935
DSPSAdminRules@wisconsin.gov

The deadline for submitting economic impact comments is August 4, 2022.

PROPOSED ORDER

An order of the Physician Assistant Affiliated Credentialing Board to create PA 1 to 4, relating to Physician Assistants.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 448.973 (1), Stats.

Statutory authority: ss. 15.085 (5) (b) and 448.973 (1), Stats.

Explanation of agency authority:

Section 15.085 (5) (b) states that “[each affiliated credentialing board] shall promulgate rules for its own guidance and for the guidance of the trader or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 448.973 (1) states that: “

- (a) The board shall promulgate rules implementing s. 448.9785.
- (b) The board shall promulgate rules establishing continuing education requirements for physician assistants.
- (c) The board may promulgate other rules to carry out the purposes of this subchapter, including any of the following
 - 1. Rules defining what constitutes unprofessional conduct for physician assistants for purposes of s. 448.978 (2) (d).
 - 2. Rules under s. 448.977 (2).”

Related statute or rule: None.

Plain language analysis:

The objective of the proposed rules is to implement the statutory changes from 2021 Wisconsin Act 23.

Summary of, and comparison with, existing or proposed federal regulation: None.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule: None.

Comparison with rules in adjacent states:

Illinois: Physician Assistants in Illinois are licensed through the Illinois Department of Financial and Professional Regulation. The Physician Assistant Practice Act of 1987 governs the practice of physician assistants in Illinois and includes statutes on licensure, collaboration, prescribing, continuing education, and grounds for disciplinary action. Physician Assistants in Illinois are required to complete 50 hours of continuing education per 2-year license renewal cycle [225 Illinois Compiled Statutes 95].

Part 1350 of the Illinois Administrative Code further details rules for physician assistants in the areas of licensure, collaboration, and prescribing. These sections also detail scope and function, employment, approved programs, and unprofessional conduct [Illinois Administrative Code s. 1350].

Iowa: Physician Assistants in Iowa are licensed through the Iowa Department of Public Health and the Board of Physician Assistants. Chapter 148C of the Iowa Code governs the practice of physician assistants in Iowa and includes statutes on licensure and grants administrative rulemaking authority to their Board [Iowa Code ch. 148C].

Chapters 326 through 329 of the Professional Licensure Division Section 645 of the Iowa Administrative Code further details rules for physician assistants in the areas of licensure, practice, continuing education, and discipline. Each licensee is required to complete at least 100 hours of continuing education approved by the board per biennium. [645 Iowa Administrative Code chs. 326 to 329].

Michigan: Physician Assistants in Michigan are licensed through the Michigan Department of Licensing and Regulatory Affairs. Part 170 of The Public Health Code Act 368 governs the practice of physician assistants in Michigan. This section of the Michigan Compiled Laws includes requirements for physician assistants on licensure, practice, informed consent, continuing education, and delegation of care. The Michigan Board of Medicine is also responsible for the regulation of Physician Assistants in Michigan. The board may require each licensee to provide evidence of completion of at least 150 hours within the three years immediately preceding the application for renewal [Michigan Compiled Laws ss. 333.17001 to 333.17084].

Minnesota: Physician Assistants in Minnesota are licensed through the Minnesota Board of Medical Practice. Chapter 147A of the Minnesota Statutes includes requirements for licensure, scope of practice, grounds for disciplinary action, accountability, prescribing drugs, continuing education and responding to disaster situations. Physician Assistants in Minnesota must either meet the standards for continuing education through current certification by the National Commission on Certification of Physician Assistants or provide evidence of completion of at least 50 hours of continuing education within the two years preceding renewal [Minnesota Statutes ch. 147A].

The Minnesota Board of Medical Practice has administrative rules which also include requirements for physician assistants including licensure and registration, continuing education, emeritus registrations, professional corporation rules, hearings before the board, and fee splitting [Minnesota Administrative Rules chs. 5600, 5605, 5606, 5610, 5615, and 5620].

Summary of factual data and analytical methodologies:

The Board reviewed the statutory changes from 2021 Wisconsin Act 23 and promulgated rules as needed for the profession. While promulgating these rules, the Board referenced Wisconsin Administrative Code ss. Med 8, 10, 13, and 24, among other sources.

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.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis will be attached upon completion.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8306; telephone 608-267-7139; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing, held on a date to be determined, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1 Chapters PA 1 to 4 are created to read:

CHAPTER PA 1
AUTHORITY AND DEFINITIONS

PA 1.01 Authority. The rules in chapters PA 1 to 4 are adopted by the Physician Assistant Affiliated Credentialing Board pursuant to the authority delegated by ss. 15.085 (5) (b) and 448.973 (1), stats.

PA 1.02 Definitions. As used in chapters PA 1 to 4:

- (1) “Alternate Collaborator” means a physician or physician assistant who is designated temporary duties of collaboration by the collaborating physician when the collaborating physician is temporarily unavailable.
- (2) “Board” means the Physician Assistant Affiliated Credentialing Board.
- (3) “DEA” means the United States Drug Enforcement Administration.
- (4) “Department” means the Department of Safety and Professional Services
- (5) “Educational Program” means a program for educating and preparing physician assistants which is approved by the board.
- (6) “Physician” has the meaning given in s. 448.01 (5), stats.
- (7) “Physician Assistant” means a person licensed under s. 448.974, stats.
- (8) “Physician Associate” is analogous to and has the same meaning as “physician assistant”.
- (9) “Podiatrist” has the meaning given in s. 448.60 (3), stats.
- (10) “Podiatry” or “Podiatric Medicine and Surgery” has the meaning given in s. 448.60 (4), stats.

CHAPTER PA 2
LICENSE TO PRACTICE AS A PHYSICIAN ASSISTANT

PA 2.01 Initial Licensure. Except as provided under sub. (3), the board shall grant an initial license to practice as a physician assistant to any applicant who has been found qualified by three-fourths of the members of the Board and satisfies all of the following requirements, as determined by the board:

- (1) The applicant shall submit all of the following:
 - (a) A completed application form.
Note: Application forms are available from the department of safety and professional services' website at <http://dsps.wi.gov>.
 - (b) The fee determined by the Department under s. 448.07 (2), stats.
 - (c) Verified evidence of graduation from an educational program approved under PA 2.02.
 - (d) Evidence of having successfully passed the National Commission on Certification of Physician Assistants (NCCPA) Certification Examination or an equivalent national examination approved by the board.
 - (e) A listing of all employers, practice settings, internships, residencies, fellowships, and other employment for the past 7 years.
- (2) Subject to ss. 111.321, 111.322, and 111.335, stats., the applicant does not have an arrest or conviction record.
- (3) Subsection (1) (c) of this section does not apply to an applicant who provides evidence that the applicant is a licensed physician assistant or physician associate in another state, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States and the board determines that the requirements for obtaining the license in that state or territory are substantially equivalent to the requirements under sub. (1) (c) of this section.
- (4) The board may require an applicant to complete a personal appearance for purposes of an interview, or review of credentials, or both. An applicant's performance at a personal appearance is satisfactory if the applicant establishes to the board's satisfaction that the applicant has met requirements for licensure and is minimally competent to practice as a physician assistant.
- (5) Notwithstanding sub. (1) of this section, an individual who, as of April 1, 2022, was licensed by the medical examining board as a physician assistant under subchapter II of chapter 448, 2017 stats., shall be considered to have been licensed as a physician assistant for the purposes of these rules, and, upon the license's expiration, shall renew in accordance with the provisions of PA 2.04.

- (6) If any of the documents required under this chapter are in a language other than English, the applicant shall also submit a verified English translation and the cost of that translation shall be borne by the applicant.
- (7) An applicant who fails to receive a passing score on the examination required under subsection (1) (d) may reapply by payment of the fee specified in subsection (1) (b). An applicant may reapply twice at not less than 4-month intervals. If an applicant fails the examination 3 times, he or she may not be admitted to an examination unless the applicant submits proof of having completed further professional training or education as the board may prescribe.

PA 2.02 Education Program Approval. The board shall approve only education programs for physician assistants or physician associates that are accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor, or, prior to 2001, by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs. If the applicant does not satisfy this requirement, the applicant may show that, prior to January 1, 1986, the applicant successfully passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants.

PA 2.03 Oral Interviews and Personal Appearances. (1) Each applicant shall complete an oral interview or personal appearance before the board, if any of the following circumstances apply:

- (a) Has a medical condition which in any way impairs or limits the applicant's ability to practice as a physician assistant with reasonable skill and safety.
- (b) Uses chemical substances that impair in any way the applicant's ability to practice as a physician assistant with reasonable skill and safety.
- (c) Has been disciplined or had certification denied by a licensing or regulatory authority in Wisconsin or another jurisdiction.
- (d) Has been convicted of a crime, the circumstances of which substantially relate to the practice of physician assistants.
- (e) Has not practiced as a physician assistant for a period of 3 years prior to application, unless the applicant has graduated from an approved educational program in the last 3 years under PA 2.02.
- (f) Has been found to have been negligent in the practice as a physician assistant or has been a party in a lawsuit in which it was alleged that the applicant has been negligent in the practice of medicine.
- (g) Has been diagnosed with any condition that may create a risk of harm to a patient or the public.
- (h) Has within the last 2 years engaged in the illegal use of controlled substances.

- (i) Has been subject to adverse formal action during the course of physician assistant education, postgraduate training, hospital practice, or other physician assistant employment.
- (2) An application filed under this chapter shall be reviewed by an application review panel, designated by the chairperson of the board, to determine whether an applicant is required to complete an oral interview or a personal appearance or both under sub. (1) of this section. If the application review panel is not able to reach unanimous agreement on whether an applicant is eligible for licensure without completing an oral interview or a personal appearance or both, the application shall be referred to the board for a final determination.
- (3) The board shall notify each applicant requiring an oral interview or appearance of the time and place scheduled for that applicant's interview or appearance.
- (4) Otherwise qualified applicants with disabilities, as defined by the Americans with Disabilities Act, shall be provided with reasonable accommodations.

PA 2.04 License Renewal and Continuing Medical Education. (1) Each licensee shall renew their license biennially. The renewal date and fee are specified by s. 440.08 (2) (a) and s. 440.03 (9) (a), Stats.

(2) Every even-numbered year, each licensee shall complete a renewal application and return it with the required fee prior to March 1 of that year.

Note: Instructions for renewal applications can be found on the department of safety and professional services' website at <http://dsps.wi.gov>.

(3) Except as provided under subsection (4), during the two-year period immediately following the renewal date under s. 440.08 (2) (a), stats., each licensee shall attest to the completion of the following:

- (a) At least 30 hours of continuing medical education;
- (b) Of the required 30 hours of continuing medical education, at least 2 hours are on the topic of responsible controlled substances prescribing;

(4) This Subsection does not apply to the first renewal following the date a license is issued.

(5) Licensees shall retain certificates of continuing medical education attendance for a minimum of four years to be provided to the Board upon request.

(6) Licensees may submit evidence of active certification from the NCCPA or a board approved successor organization and the Board shall accept such certification as meeting the requirements under subsection (3) (a).

PA 2.05 Reinstatement. (1) A licensee who fails for any reason to be licensed as required under this chapter shall not exercise the rights or privileges conferred by any license granted by the board.

(2) Failure to renew a license as specified in PA 2.04. shall cause the license to lapse. A licensee who allows the license to lapse may apply for reinstatement of the license by the board, subject to 440.08 (4), Stats., as follows:

- (a) If the licensee applies for renewal of the license less than five years after its expiration, the license shall be renewed upon payment of the renewal fee
 - (b) If the licensee applies for renewal of the license more than five years after its expiration, the board shall make an inquiry to determine whether the applicant is competent to practice under the license in this state and shall impose any reasonable conditions on the renewal of the license. This paragraph does not apply to licensees who have unmet disciplinary requirements or whose licenses have been surrendered or revoked.
- (3)** A licensee who has unmet disciplinary requirements and failed to renew a license within five years of the renewal date or whose license has been surrendered or revoked may apply to have a license reinstated if the applicant provides all of the following:
- (a) Evidence of completion of requirements under PA 2.05 (2) (b) if the licensee has not held an active Wisconsin license in the last five years.
 - (b) Evidence of completion of disciplinary requirements, if applicable.
 - (c) Evidence of rehabilitation or a change in circumstances, warranting reinstatement of the license.

PA 2.06 Reciprocal Credentials for Service Members, Former Service Members, and their Spouses. A reciprocal license shall be granted to a service member, former service member, or the spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09 (2), Stats. subject to s. 440.09 (2m), Stats. The board may request verification necessary to make a determination under this section.

PA 2.07 Title Protection. No person may designate himself or herself as a “physician assistant” or “physician associate” or use or assume the title “physician assistant” or “physician associate” or append to the person’s name the words or letters “physician assistant”, “physician associate” or “P.A.” or any other titles, letters, or designation which represents or may tend to represent that person as a physician assistant or physician associate unless that person is a physician assistant licensed by the board or a federally credentialed physician assistant or physician associate.

CHAPTER PA 3 COLLABORATION AND PRACTICE

PA 3.01 Practice Standards. (1) Regardless of employment status, a physician assistant shall practice pursuant to one of the following:

- (a) In accordance with s. 448.975 (2) (a) 1. a., Stats. the physician assistant practices pursuant to an employment arrangement. Under this option, a physician assistant is not required under this rule to enter into a written collaborative agreement with a physician. This provision shall not prevent an employer from requiring a written collaborative or practice agreement;

or

- (b) The physician assistant enters into a written collaborative agreement with a physician pursuant to s. 448.975 (2) (a) 1. b., Stats.:
 - 1. If a physician assistant practices pursuant to a written collaborative agreement under sub. (1) (b) of this section, the agreement must be kept on file at the practice site. The agreement must include, at a minimum:
 - a. A statement that the collaborating physician shall remain reasonably available to the physician assistant for consultation via telecommunications or other electronic means and that consultation shall occur within a medically appropriate time;
 - b. A statement that the collaborating physician may designate an alternate collaborator to be consulted when the collaborating physician is temporarily unavailable.
 - c. A statement that if the patient requests a physician consultation, arrangements must be made for such a consult within a medically appropriate time;
 - d. A clause specifying that either party may terminate the collaborative agreement by providing written notice at least 30 days prior to the date of termination, or in a manner otherwise specified by the collaborating physician and the physician assistant; and
 - e. The signature of both the collaborating physician and the physician assistant.

(2) A physician is not required under this rule to be physically present at the location where the physician assistant practices or renders care.

PA 3.02 Practice of Podiatry. A physician assistant may practice with the supervision and direction of a podiatrist pursuant to s. 448.975 (1) (b) 2., stats. and the rules promulgated under s. 448.695 (4) (b), Stats.

PA 3.03 Emergency, Disaster, and Volunteer Practice. (1) A physician assistant licensed under s. PA 2 may perform any of the following:

- (a) Render such emergency medical care that they are able to provide at the scene of an accident or emergency situation, not to be defined as an emergency situation that occurs in the place of one's employment, in the absence of an employment or collaborative agreement entered into under PA 3.01 (1).

- (b) Render such medical care that they are able to provide during a declared state of emergency or other disaster, notwithstanding an employment or collaborative agreement entered into under PA 3.01 (1).
 - (c) Provide volunteer medical care at camps or sporting events, notwithstanding an employment or collaborative agreement entered into under PA 3.01 (1).
- (2) Pursuant to ss. 448.975 (5) (a) b 1. and 257.03 (3) Physician assistants who voluntarily and gratuitously render emergency, disaster, or volunteer care pursuant to sub. (1) of this section shall not be liable for civil damages for any personal injuries that result from acts or omissions which may constitute ordinary negligence. The immunity granted by this section shall not apply to acts or omissions constituting reckless, wanton, or intentional misconduct.

PA 3.04 Practice During Interruption in Collaboration. If a physician assistant's collaborating physician under PA 3.01 (1) (b) is unable to collaborate as specified in that section due to an interruption in licensed practice, a leave of absence of 30 days or longer such that the physician is unreachable, change in employment, change in license or privileges, or death:

- (1) When the interruption is temporary, and an alternate has not been identified in the current agreement, or is otherwise not available, a new alternate physician may provide temporary collaboration to the physician assistant. An interim collaborative agreement shall be documented within and maintained at the site of practice in accordance with s. PA 3.01 (1) (b).
- (2) If the collaborating physician will be unavailable for more than 90 business days due to an interruption in licensure or privileges, employment, extended leave of absence or death, the physician assistant shall secure a new collaborating physician and document the agreement in accordance with s. PA 3.01 (1) (b).
- (3) If no physician is available to collaborate with the physician assistant, either:
 - (a) A Physician Assistant possessing at least 2,080 hours of practice experience in the same specialty or concentration shall notify the board within 3 business days of the collaborating physician's absence and attestation to active search for replacement. The physician assistant may continue to practice under the current terms of the physician assistant's collaboration agreement without physician collaboration for up to 90 business days, at which time the physician assistant may petition the board to extend practice under the same terms. The board shall consider the practice setting, experience, and qualifications of the physician assistant, and potential availability of collaborating physicians when reviewing requests to extend practice under this subsection; or

(b) A Physician Assistant possessing less than 2,080 hours of practice experience in the same specialty or concentration shall enter into a written interim collaborative agreement with a physician assistant possessing at least 10,000 hours of practice experience in the same specialty or concentration; and shall notify the board within 3 business days of the collaborating physician's absence, provide a copy of the interim written collaborative agreement and, an attestation to active search for replacement of the collaborating physician. The physician assistant may continue to practice under the current terms of the physician assistant's interim collaboration agreement with physician assistant collaboration for up to 30 business days, at which time the physician assistant may petition the board to extend practice under the same terms. The board shall consider the practice setting, experience, and qualifications of the physician assistant, the collaborating physician assistant and potential availability of collaborating physicians when reviewing requests to extend practice under this subsection. This interim collaborative agreement may not exceed 180 consecutive days or 180 days in any calendar year.

(4) The board may audit and review the practice of a physician assistant temporarily practicing without a collaborating physician under sub. (3) of this section at any time during or after the collaborating physician's absence.

(5) Physician assistants temporarily practicing without a collaborating physician under sub. (3) of this section shall not practice outside of their education, training, and experience and shall refer patients to another provider when appropriate to the patient's condition and the standard of care.

PA 3.05 Minimum Standards for Patient Health Care Records. (1) When patient healthcare records are not maintained by a separate entity, a physician assistant shall ensure patient health care records are maintained on every patient for a period of not less than 5 years after the date of the last entry, or for a longer period as may be otherwise required by law.

(2) A patient health care record shall contain all of the following clinical health care information which applies to the patient's medical condition:

- (a) Pertinent patient history.
- (b) Pertinent objective findings related to examination and test results.
- (c) Assessment or diagnosis.
- (d) Plan of treatment for the patient.

(3) Each patient health care record entry shall be dated, shall identify the physician assistant, and shall be sufficiently legible to allow interpretation by other health care practitioners.

PA 3.06 Standards for Dispensing and Prescribing Drugs. (1) PRESCRIPTIVE AUTHORITY.

- (a) A physician assistant may order, prescribe, procure, dispense, and administer prescription drugs, medical devices, services, and supplies.

- (b) A physician assistant practicing under the supervision and direction of a podiatrist may issue a prescription order for a drug or device in accordance with guidelines established by the supervising podiatrist and the physician assistant.
- (2) PACKAGING. A prescription drug dispensed by a physician assistant shall be dispensed in a child-resistant container if it is a substance requiring special packaging under 16 CFR 1700.14 (1982) of the federal regulations for the federal poison packaging act of 1970.
- (3) LABELING. A prescription drug dispensed by a physician assistant shall contain a legible label affixed to the immediate container disclosing all of the following:
 - (a) The name and address of the facility from which the prescribed drug is dispensed.
 - (b) The date on which the prescription is dispensed.
 - (c) The name of the physician assistant who prescribed the drug.
 - (d) The full name of the patient.
 - (e) The generic name and strength of the prescription drug dispensed unless the prescribing physician assistant requests omission of the name and strength of the drug dispensed.
 - (f) Directions for the use of the prescribed drug and cautionary statements, if any, contained in the prescription or required by law.
- (4) RECORDKEEPING. A physician assistant shall maintain complete and accurate records of each prescription drug received, dispensed, or disposed of in any other manner.
 - (a) Records required by the federal controlled substances act and ch. 961, Stats., shall be maintained at the location where the drug is received, distributed, or dispensed and be available for inspection by authorized persons for at least 5 years from the date of the record.
 - (b) Controlled substances dispensed by a physician assistant shall be recorded on a separate log, in a separate bound logbook in which each schedule of controlled substances dispensed is recorded separately and in chronological order with the following information:
 - 1. The name of the substance.
 - 2. Dosage form and strength of the substance.
 - 3. Name and address of the person for whom dispensed.
 - 4. Date of dispensing
 - 5. Quantity dispensed.
 - 6. Name or initials of physician assistant who dispensed the substance.

PA 3.07 Informed Consent. (1) Pursuant to s. 448.9785, Stats., a physician assistant shall communicate alternate modes of treatment to a patient.

- (2) Any physician assistant who treats a patient shall inform the patient about the availability of reasonable alternative modes of treatment and about the benefits and risks of these treatments. The reasonable physician assistant standard is the standard for informing a patient under this section. The reasonable physician assistant standard requires disclosure only of information

that a reasonable physician assistant in the same or a similar medical specialty would know and disclose under the circumstances.

(3) The physician assistant's duty to inform the patient under this section does not require disclosure of any of the following:

- (a) Detailed technical information that in all probability a patient would not understand.
- (b) Risks apparent or known to the patient.
- (c) Extremely remote possibilities that might falsely or detrimentally alarm the patient.
- (d) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.
- (e) Information in cases where the patient is incapable of consenting.
- (f) Information about alternate modes of treatment for any condition the physician assistant has not included in the physician assistant's diagnosis at the time the physician assistant informs the patient.

(4) A physician assistant's record shall include documentation that alternate modes of treatment have been communicated to the patient and informed consent has been obtained from the patient.

PA 3.08 Telemedicine and Telehealth Practice. (1) In this subsection:

- (a) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention will result in serious jeopardy to patient health, serious impairment of bodily functions, or serious dysfunction of a body organ or part.
- (b) "Telehealth" has the meaning given in s. 440.01 (1) (hm), stats.
- (c) "Telemedicine" is analogous to and has the same meaning as Telehealth.

(2) The rules in this subsection do not prohibit any of the following:

- (a) Consultations between physician assistants, or between physician assistants and other medical professionals, or the transmission and review of digital images, pathology specimens, test results, or other medical data by physician assistants related to the care of patients in this state.
- (b) Patient care in consultations with another healthcare provider who has an established provider-patient relationship with the patient.
- (c) Patient care in on-call or cross-coverage situations in which the physician assistant has access to patient records.
- (d) Treating a patient with an emergency medical condition.

(3) A physician assistant-patient relationship may be established via telehealth.

(4) A physician assistant who uses telemedicine in the diagnosis and treatment of a patient located in this state shall be licensed to practice as a physician assistant by the Physician Assistant Affiliated Credentialing Board.

(5) A physician assistant licensed under these rules shall be held to the same standards of practice and conduct including patient confidentiality and recordkeeping, regardless of whether health care services are provided in person or by telemedicine.

- (6) A physician assistant licensed under these rules who provides health care services by telehealth is responsible for the quality and safe use of equipment and technology that is integral to patient diagnosis and treatment.
- (7) The equipment and technology used by a physician assistant to provide health care services by telehealth shall provide, at a minimum, information that will enable the physician assistant to meet or exceed the standard of minimally competent physician assistant practice.
- (8) Pursuant to ss. 448.05 (2) or 448.980, Stats. and subject to the limitations in s. 448.975 (2) (a) (3), Stats., a physician assistant who provides health care services by telehealth shall collaborate with a physician who is appropriately licensed to treat patients in the state of Wisconsin via telehealth.

CHAPTER PA 4
UNPROFESSIONAL CONDUCT

PA 4.01 Unprofessional Conduct. “Unprofessional conduct” includes, but is not limited to the following, or aiding or abetting the same:

- (1) **DISHONESTY AND CHARACTER.** (a) Violating or attempting to violate any provision or term of subch. VIII of ch. 448, Stats., or of any valid rule of the board.
 - (b) Violating or attempting to violate any term, provision, or condition of any order of the board.
 - (c) Knowingly engaging in fraud or misrepresentation or dishonesty in applying, for or procuring a physician assistant license, or in connection with applying for or procuring periodic renewal of a physician assistant license, or in otherwise maintaining such licensure.
 - (d) Knowingly giving false, fraudulent, or deceptive testimony while serving as an expert witness.
 - (e) Employing illegal or unethical business practices.
 - (f) Knowingly, negligently, or recklessly making any false statement, written or oral, as a physician assistant which creates an unacceptable risk of harm to a patient, the public, or both.
 - (g) Engaging in any act of fraud, deceit, or misrepresentation, including acts of omission to the board or any person acting on the board’s behalf.
 - (h) Obtaining any fee by fraud, deceit or misrepresentation.
 - (i) Directly or indirectly giving or receiving any fee, commission, rebate, or other compensation for professional services not actually and personally rendered, unless allowed by law. This prohibition does not preclude the legal functioning of lawful professional partnerships, corporations, or associations.

- (j) Engaging in uninvited in-person solicitation of actual or potential patients who, because of their circumstances, may be vulnerable to undue influence.
- (k) Engaging in false, misleading, or deceptive advertising.
- (L) Offering, undertaking, or agreeing to treat or cure a disease or condition by a secret means, method, device, or instrumentality; or refusing to divulge to the board upon demand the means, method, device, or instrumentality used in the treatment of a disease or condition.

(2) DIRECT PATIENT CARE VIOLATIONS. (a) Practicing or attempting to practice under any license when unable to do so with reasonable skill and safety. A certified copy of an order issued by a court of competent jurisdiction finding that a person is mentally incompetent is conclusive evidence that the physician assistant was, for any period covered by the order, unable to practice with reasonable skill and safety.

- (b) Departing from or failing to conform to the standard of minimally competent practice which creates an unacceptable risk of harm to a patient or the public whether or not the act or omission resulted in actual harm to any person.
- (c) Prescribing, ordering, dispensing, administering, supplying, selling, giving, or obtaining any prescription medication in any manner that is inconsistent with the standard of minimal competence.
- (d) Performing or attempting to perform any procedure on the wrong patient, or at the wrong anatomical site, or performing the wrong procedure on any patient.
- (e) Administering, dispensing, prescribing, supplying, or obtaining controlled substances as defined in s. 961.01 (4), Stats., other than in the course of legitimate professional practice, or as otherwise prohibited by law.
 - 1. Except as otherwise provided by law, a certified copy of a relevant finding, order, or judgement by a state or federal court or agency charged with making legal determinations shall be conclusive evidence of its findings of fact and conclusions of law.
 - 2. A certificate copy of a finding, order, or judgement demonstrating that entry of a guilty plea, nolo contendere plea or deferred adjudication, with or without expungement, of a crime substantially related to the practice of a physician assistant is conclusive evidence of a violation of this paragraph.

- (f) Engaging in sexually explicit conduct, sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient, a patient's immediate family, or a person responsible for the patient's welfare.
 - 1. Sexual motivation may be determined from the totality of the circumstances and shall be presumed when the physician assistant has contact with a patient's intimate parts without legitimate medical justification for doing so.
 - 2. For the purpose of this paragraph, an adult receiving treatment shall be considered a patient for 2 years after the termination of professional services.
 - 3. If the person receiving treatment is a child, the person shall be considered a patient for the purposes of this paragraph for 2 years after termination of services or for 2 years after the patient reaches the age of majority, whichever is longer.
- (g) Engaging in any sexual conduct with or in the presence of a patient or former patient who lacks the ability to consent for any reason, including medication or psychological or cognitive disability.
- (h) Engaging in repeated or significant disruptive behavior or interaction with physician assistants, hospital personnel, patients, family members, or others that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered.
- (i) Knowingly, recklessly, or negligently divulging a privileged communication or other confidential patient health care information except as required or permitted by state or federal law.
- (j) Performing physician assistant services without required informed consent under s. 448.9785, Stats. or PA 3.07.
- (k) Aiding or abetting the practice of an unlicensed, incompetent, or impaired person or allowing another person or organization to use his or her license to practice as a physician assistant. This provision does not prohibit a Wisconsin licensed physician assistant from providing outpatient services ordered by a physician licensed in another state, if the physician who wrote the order saw the patient in the state in which the physician is licensed and the physician who wrote the order remains responsible for the patient.
- (L) Prescribing a controlled substance to oneself as described in s. 961.38 (5), Stats.

- (m) Practicing as a physician assistant in another state or jurisdiction without appropriate licensure. A physician assistant has not violated this paragraph if, after issuing an order for services that complies with the laws of Wisconsin, their patient requests that the services ordered be provided in another state or jurisdiction.
- (n) Patient abandonment occurs when a physician assistant without reasonable justification unilaterally withdraws from a physician assistant-patient relationship by discontinuing a patient's treatment regimen when further treatment is medically indicated and any of the following occur:
 1. The physician assistant fails to give the patient at least 30 days' notice in advance of the date on which the physician assistant's withdrawal becomes effective.
 2. The physician assistant fails to allow for patient access to or transfer of the patient's health record as required by law.
 3. The physician assistant fails to provide for continuity of prescription medications between the notice of intent to withdraw from the physician assistant-patient relationship and the date on which the physician assistant-patient relationship ends, if the prescription medications are necessary to avoid unacceptable risk of harm.
 4. The physician assistant fails to provide for continuity of care during the period between the notice of intent to withdraw from the physician assistant-patient relationship and the date on which the physician assistant-patient relationship ends. Nothing in this section shall be interpreted to impose upon the physician assistant a greater duty to provide continuity care to a patient than otherwise required by law.
- (3) LAW VIOLATIONS, ADVERSE ACTION, AND REQUIRED REPORTS TO THE BOARD.**
 - (a) Failing, within 30 days to report to the board any final adverse action taken against the licensee's authority to practice by another licensing jurisdiction.
 - (b) Failing, within 30 days, to report the board any adverse action taken by the Drug Enforcement Administration against the licensee's authority to prescribe controlled substances.
 - (c) Failing to comply with state and federal laws regarding access to patient health care records.
 - (d) Failure by a licensee to establish and maintain patient health care records consistent with the requirements of ss. PA 3.05 and 3.06 (4), or as otherwise required by law.
 - (e) Violating the duty to report under s. 448.9795, Stats.

- (f) After a request by the board, failing to cooperate in a timely manner with the board's investigation of a complaint filed against a licensee. There is a rebuttable presumption that a licensee who takes longer than 30 days to respond to a request of the board has not acted within a timely manner.
- (g) Failing, within 48 hours of the entry of judgement of conviction of any crime, to provide notice to the department of safety and professional services required under s. SPS 4.09 (2), or failing within 30 days of conviction of any crime, to provide the board with certified copies of the criminal complaint and judgement of conviction.
- (h) Except as provided under (i), a violation or conviction of any laws or rules of this state, or of any other state, or any federal law or regulation that is substantially related to the practice of a physician assistant.
 - 1. Except as otherwise provided by law, a certified copy of a relevant decision by a state or federal court or agency charged with determining whether a person has violated a law or rule relevant to this paragraph is conclusive evidence of findings of facts and conclusions of law therein.
 - 2. The department of safety and professional services has the burden of proving that the circumstances of the crime are substantially related to the practice of a physician assistant.
- (i) Violating or being convicted of any the conduct listed under in Table PA 4.01, any successor statute criminalizing the same conduct, or if in another jurisdiction, any act which, if committed in Wisconsin would constitute a violation of any statute listed in Table PA 4.01:

**Table PA 4.01
Violations or Convictions Cited by Statute**

| Statute Section | Description of Violation or Conviction |
|------------------------------|---|
| 940.01 | First degree intentional homicide |
| 940.02 | First degree reckless homicide |
| 940.03 | Felony murder |
| 940.05 | Second degree intentional homicide |
| 940.12 | Assisting suicide |
| 940.19 (2), (4), (5), or (6) | Battery, substantial battery, or aggravated battery |
| 940.22 (2) or 3 | Sexual exploitation by therapist, duty to report |
| 940.225 (1), (2), or (3) | First, second, or third degree sexual assault |
| 940.285 (2) | Abuse of individuals at risk |
| 940.29 | Abuse of residents at penal facilities |
| 940.295 | Abuse and neglect of patients and residents |
| 948.02 (1) or (2) | First and second degree sexual assault of a child |
| 948.03 (2) | Physical abuse of a child, intentional causation of bodily harm |
| 948.05 | Sexual exploitation of a child |
| 948.051 | Trafficking of a child |
| 948.055 | Causing a child to view or listen to sexual activity |
| 948.06 | Incest with a child |
| 948.07 | Child enticement |
| 948.08 | Soliciting a child for prostitution |
| 948.085 | Sexual assault of a child placed in substitute care |

PA 4.02 Discipline. (1) The board may conduct investigations and hearings to determine whether a licensee has violated PA 4.01 or has violated any state or federal law or any other jurisdiction that substantially relates to the practice of a physician assistant.

(2) The board may reprimand a physician assistant or deny, limit, suspend, or revoke a physician assistant’s license if the physician assistant has violated PA 4.01.

SECTION 2 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)
