



**VIRTUAL/TELECONFERENCE
BOARD OF NURSING
Virtual, 4822 Madison Yards Way, Madison
Contact: Christine Poleski (608) 266-2112
October 8, 2020**

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions of the Board.

AGENDA

8:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Adoption of Agenda (1-5)

B. Approval of Minutes of September 10, 2020 (Virtual/Teleconference) (6-13)

C. Administrative Matters

- 1) Department, Staff and Board Updates
- 2) Appointment of Liaisons and Alternates: Screening Panel Assignments 2021 **(14)**
- 3) Board Members – Term Expiration Dates
 - a. Rosemary P. Dolatowski – 7/1/2022
 - b. Jennifer L. Eklof – 7/1/2021
 - c. Elizabeth Smith Houskamp – 7/1/2020
 - d. Peter J. Kallio – 7/1/2022
 - e. Lisa D. Pisney – 7/1/2023
 - f. Christian Saldivar – 7/1/2023
 - g. Luann Skarlupka – 7/1/2021
 - h. Robert Weinman – 7/1/2023
 - i. Emily Zentz – 7/1/2023

D. Wisconsin Center for Nursing – Discussion and Consideration (15)

- 1) APPEARANCE – Dr. Linda Young, PhD, RN, CNE, CFLE: 2018-2019 Education and Faculty Survey Report **(16-50)**
- 2) APPEARANCE – Dr. Barbara Nichols, PhD, (Hon) MS, RN, FAAN: Action to be Taken Regarding Projected Nursing Shortages in Wisconsin

E. National Council on State Boards of Nursing (NCSBN) Guidelines for Complaints Involving Marijuana – Discussion and Consideration (51-73)

F. Report and Action Resulting from the Legislation and Rules Committee – Discussion and Consideration

- 1) Proposals for N 1 to 8, Emergency and Permanent Rules, Relating to Requirements in

- Emergency Situations
- 2) Scope Statement Development: N 2, Relating to Temporary Permits
- 3) Proposals for N 4, Permanent Rule, Relating to Licensure of Nurse-Midwives, If Time Permits
- 4) Scope Statement Development: N 8, Relating to APNP Collaboration with Other Health Care Providers
- 5) Other Possible Items Under N 8

G. Administrative Rule Matters – Discussion and Consideration (74)

- 1) Emergency Rule Draft – N 1 to 8 – Requirements in Emergency Situations **(75-82)**
- 2) Preliminary Permanent Rule Draft – N 1 to 8 – Requirements in Emergency Situations **(83-96)**
- 3) Preliminary Permanent Rule Draft – N 4 – Licensure of Nurse-Midwives **(97-101)**
- 4) Scope Statement Development – N 8 – Advanced Practice Nurse Prescribers **(101-104)**
- 5) Scope Statement Development – N 2 – Temporary Permits **(105-113)**
- 6) Administrative Rules Reporting Requirement Under 2017 Wisconsin Act 108 **(114-116)**
 - a. Review of 2019 Report
 - b. Proposals for 2021 Report
- 7) Pending or Possible Rulemaking Projects
 - a. N 8, Relating to APNP Prescribing Limitations **(117)**
 - b. Reciprocal Credentials for Service Members, Former Service Members, and Their Spouses **(118-121)**

H. COVID-19 – Discussion and Consideration

I. Newsletter Planning – Discussion and Consideration (122)

J. Nurse Licensure Compact (NLC) Update – Discussion and Consideration

K. Board of Nursing Liaison Reports – Discussion and Consideration

L. Discussion and Consideration of Items Added After Preparation of Agenda:

- 1) Introductions, Announcements and Recognition
- 2) Administrative Matters
- 3) Election of Officers
- 4) Appointment of Liaisons and Alternates
- 5) Delegation of Authorities
- 6) Education and Examination Matters
- 7) Credentialing Matters
- 8) Practice Matters
- 9) Legislative and Policy Matters
- 10) Administrative Rule Matters
- 11) Liaison Reports
- 12) Board Liaison Training and Appointment of Mentors
- 13) Informational Items
- 14) Division of Legal Services and Compliance (DLSC) Matters
- 15) Presentations of Petitions for Summary Suspension
- 16) Petitions for Designation of Hearing Examiner

- 17) Presentation of Stipulations, Final Decisions and Orders
- 18) Presentation of Proposed Final Decisions and Orders
- 19) Presentation of Interim Orders
- 20) Petitions for Re-Hearing
- 21) Petitions for Assessments
- 22) Petitions to Vacate Orders
- 23) Requests for Disciplinary Proceeding Presentations
- 24) Motions
- 25) Petitions
- 26) Appearances from Requests Received or Renewed
- 27) Speaking Engagements, Travel, or Public Relation Requests, and Reports

M. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85(1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85(1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.).

N. Deliberation on Division of Legal Services and Compliance Matters

- 1) **Administrative Warnings**
 - a. 18 NUR 425 – D.L.M. **(123-124)**
 - b. 20 NUR 276 – L.N.H. **(125-126)**
- 2) **Case Closings**
 - a. 18 NUR 122 – A.P.W. **(127-138)**
 - b. 18 NUR 273 – V.F.C. **(139-177)**
 - c. 18 NUR 337 – A.M.Z. **(178-181)**
 - d. 18 NUR 483 – P.J.F. **(182-189)**
 - e. 18 NUR 562 – L.K.S. **(190-195)**
 - f. 18 NUR 582 – E.H.W. **(196-200)**
 - g. 18 NUR 638 – J.L.C. **(201-206)**
 - h. 18 NUR 722 – D.E.L.L. **(207-201)**
 - i. 19 NUR 010 – R.L.P. **(211-222)**
 - j. 19 NUR 067 – M.B., P.C., M.E., J.E., & A.T. **(223-234)**
 - k. 19 NUR 101 – S.P.B. **(235-238)**
 - l. 19 NUR 268 – K.M.W. **(239-247)**
 - m. 19 NUR 400 – D.S.M. **(248-252)**
 - n. 19 NUR 588 – C.M.B. **(253-259)**
 - o. 20 NUR 074 – A.U. **(260-262)**
- 3) **Proposed Stipulations, Final Decisions, and Orders**
 - a. 18 NUR 298 & 18 NUR 498 – Samantha S. Schmittinger, R.N. **(263-274)**
 - b. 18 NUR 652 – Lana K. Hammerly, L.P.N. **(275-286)**
 - c. 18 NUR 657 – Andrew C. Surita, R.N. **(287-297)**
 - d. 18 NUR 681 – Jean M. Kirkeby, L.P.N. **(298-304)**
 - e. 19 NUR 033 – Sharon M. Slaney, R.N. **(305-311)**
 - f. 19 NUR 137 – Robin E. Herlache, L.P.N., R.N. **(312-317)**

- g. 19 NUR 167 – Nichole M. Dorn, L.P.N. **(318-323)**
 - h. 19 NUR 280 – Laura J. Pospychala, R.N. **(324-330)**
 - i. 19 NUR 719 – Tracy Ann Eilts, R.N. **(331-336)**
 - j. 20 NUR 118 – Julie M. Johnston, R.N. **(337-342)**
 - k. 20 NUR 227 – Stephanie L. Tibbits, R.N. **(343-348)**
 - l. 20 NUR 387 – Rachel J. Kamnetz, R.N. **(349-359)**
- 4) **Monitoring Matters (360-361)**
- a. Monitor Cha
 - 1. Christina Brockhaus, R.N. – Requesting Termination of Direct Supervision, Reduction in Screens and Reduction in AA/NA Meetings **(362-387)**
 - 2. Hedy Klinger, R.N. – Requesting Reinstatement of Full Licensure **(388-419)**
 - b. Monitor Hardin
 - 1. Ross Huber, R.N. – Requesting Full Licensure **(420-452)**
- O. Deliberation of Items Added After Preparation of the Agenda
- 1) Education and Examination Matters
 - 2) Credentialing Matters
 - 3) DLSC Matters
 - 4) Monitoring Matters
 - 5) Professional Assistance Procedure (PAP) Matters
 - 6) Petitions for Summary Suspensions
 - 7) Petitions for Designation of Hearing Examiner
 - 8) Proposed Stipulations, Final Decisions and Order
 - 9) Proposed Interim Orders
 - 10) Administrative Warnings
 - 11) Review of Administrative Warnings
 - 12) Proposed Final Decisions and Orders
 - 13) Matters Relating to Costs/Orders Fixing Costs
 - 14) Case Closings
 - 15) Board Liaison Training
 - 16) Petitions for Assessments and Evaluations
 - 17) Petitions to Vacate Orders
 - 18) Remedial Education Cases
 - 19) Motions
 - 20) Petitions for Re-Hearing
 - 21) Appearances from Requests Received or Renewed
- P. Consulting with Legal Counsel
- 1) Planned Parenthood of Wisconsin, Inc. v. Wisconsin Board of Nursing, Et Al; USDC, Western District of Wisconsin

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

- Q. Vote on Items Considered or Deliberated Upon in Closed Session if Voting is Appropriate
- R. Open Session Items Noticed Above Not Completed in the Initial Open Session

- S. Board Meeting Process (Time Allocation, Agenda Items) – Discussion and Consideration
- T. Board Strategic Planning and its Mission, Vision and Values – Discussion and Consideration

ADJOURNMENT

NEXT MEETING: NOVEMBER 12, 2020

MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 4822 Madison Yards Way, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board’s agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Requests for interpreters for the deaf or hard of hearing, or other accommodations, are considered upon request by contacting the Affirmative Action Officer, 608-266-2112, or the Meeting Staff at 608-266-5439.

**VIRTUAL/TELECONFERENCE
BOARD OF NURSING
MEETING MINUTES
SEPTEMBER 10, 2020**

PRESENT: Rosemary Dolatowski, Jennifer Eklof, Elizabeth Smith Houskamp, Peter Kallio, Lisa Pisney, Christian Saldivar Frias, Luann Skarlupka, Emily Zentz, Robert Weinman

STAFF: Christine Poleski, Executive Director; Jameson Whitney, Legal Counsel; Dale Kleven, Administrative Rules Coordinator; Kimberly Wood, Program Assistant Supervisor-Advanced; Daniel Betekhtin, Bureau Assistant; and other DSPS Staff

CALL TO ORDER

Peter Kallio, Chairperson, called the meeting to order at 8:02 a.m. A quorum was confirmed with eight (8) members present.

ADOPTION OF THE AGENDA

Amendments to the Agenda

- Closed Session: under item “T. Deliberation on Division of Legal Services and Compliance Matters; 2) Case Closings”
 - REMOVE: b) 18 NUR 586 – L.B.

MOTION: Luann Skarlupka moved, seconded by Lisa Pisney, to adopt the Agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES OF AUGUST 13, 2020

MOTION: Rosemary Dolatowski moved, seconded by Luann Skarlupka, to approve the Minutes of August 13, 2020 as published. Motion carried unanimously.

(Elizabeth Smith Houskamp’s connection was confirmed at 8:09 a.m.)

EDUCATION AND EXAMINATION MATTERS

Herzing University-Brookfield: Nursing School Request for Approval

MOTION: Emily Zentz moved, seconded by Robert Weinman, to acknowledge and thank Dr. Deborah Ziebarth, PhD, MSN, RN-BC, Dina Hewett, Stephen McEvoy, Herzing University-Brookfield for their remote appearance before the Board. Motion carried unanimously.

MOTION: Emily Zentz moved, seconded by Robert Weinman, to approve the request of Herzing University-Brookfield for nursing school approval. Motion carried unanimously.

Lakeland University: Faculty Staffing Report – 2020 Quarter 4

MOTION: Luann Skarlupka moved, seconded by Christian Saldivar Frias, to acknowledge receipt of the 2020 Quarter 4 Faculty Staffing Report provided by Lakeland University. Motion carried unanimously.

Mount Mary University: Authorization to Admit Students

MOTION: Luann Skarlupka moved, seconded by Elizabeth Smith Houskamp, to acknowledge and thank Dr. Kara Groom, PhD, MSN, RN, of Mount Mary University for her remote appearance before the Board. Motion carried unanimously.

MOTION: Luann Skarlupka moved, seconded by Elizabeth Smith Houskamp, to approve the request of Mount Mary University for authorization to admit students to its nursing school. Motion carried unanimously.

CREDENTIALING MATTERS

Nurse Licensure Renewal Process and Nurse Workforce Survey - Action as Deemed Necessary

MOTION: Luann Skarlupka moved, seconded by Jennifer Eklof, that the Board of Nursing acknowledges that DSPS Credentialing staff and Department of Workforce Development (DWD) staff failed to appear at the Board's September meeting as requested by the Board on July 9, 2020. The Board renews their request to have DSPS Credentialing staff and DWD staff appear at the October Board meeting to explain and demonstrate the upcoming LPN renewal and survey processes, including process and system changes since February 2020. Additionally, the Board directs the Executive Director for the Board to communicate this motion and request to the Secretaries of DSPS and DWD and other appropriate staff. Motion carried unanimously.

2020 BOARD OF NURSING REPORT ON OPIOID ABUSE

MOTION: Rosemary Dolatowski moved, seconded by Lisa Pisney, to approve the Board's 2020 report on opioid abuse for submission to the Legislature and Governor's Office as required under 2017 Wisconsin Act 262. Motion carried unanimously.

PDMP UPDATE

MOTION: Luann Skarlupka moved, seconded by Emily Zentz, to acknowledge and thank Christian Albouras, Executive Director, and Marjorie Liu, Program and Policy Analyst - PDMP, for their remote appearance before the Board. Motion carried unanimously.

CLOSED SESSION

MOTION: Emily Zentz moved, seconded by Luann Skarlupka, to convene to Closed Session to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigation with administrative warnings (ss. 19.85(1)(b), Stats. and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85(1)(f), Stats.); and, to confer with legal counsel (s. 19.85(1)(g), Stats.). Peter Kallio, Chairperson, read the language of the motion. The vote of each member was ascertained by voice vote. Roll Call Vote: Rosemary Dolatowski-yes; Jennifer Eklof-yes; Elizabeth Smith Houskamp-yes; Peter Kallio-yes; Lisa Pisney-yes; Christian Saldivar Frias-yes; Luann Skarlupka-yes; Robert Weinman-yes; and Emily Zentz-yes. Motion carried unanimously.

The Board convened into Closed Session at 9:57 a.m.

CREDENTIALING MATTERS

Application Reviews

Natasha Bubolz

MOTION: Jennifer Eklof moved, seconded by Peter Kallio, to approve the Licensed Practical Nurse Renewal application of Natasha Bubolz, once all requirements are met. Motion carried unanimously.

Ashley O'Leary

MOTION: Peter Kallio moved, seconded by Lisa Pisney, to take no further action on the Registered Nurse Renewal application of Ashley O'Leary. Motion carried unanimously.

DIVISION OF LEGAL SERVICES AND COMPLIANCE MATTERS

Administrative Warnings

MOTION: Emily Zentz moved, seconded by Rosemary Dolatowski, to issue an Administrative Warnings in the matter of the following cases:

1. 19 NUR 134 – R.R.D.
2. 19 NUR 186 – J.J.D.
3. 20 NUR 228 – L.L.F.
4. 20 NUR 278 – A.E.P.
5. 20 NUR 302 – C.M.B.

Motion carried unanimously.

Case Closings

MOTION: Jennifer Eklof moved, seconded by Emily Zentz, to close the following DLSC Cases for the reasons outlined below:

1. 18 NUR 524 – U. – Insufficient Evidence
2. 18 NUR 614 – V.J.H. – Insufficient Evidence
3. 18 NUR 662 – A.M.M. – No Violation
4. 18 NUR 770 – T.H.H. – No Violation
5. 19 NUR 103 – B.J.M. – Prosecutorial Discretion (P3)
6. 19 NUR 187 – C.G. – No Violation
7. 19 NUR 756 – A.T. – Insufficient Evidence
8. 20 NUR 095 – T.A.B. – Insufficient Evidence
9. 20 NUR 219 – M.W.T. – No Violation

Motion carried unanimously.

Proposed Stipulations and Final Decisions and Orders

MOTION: Rosemary Dolatowski moved, seconded by Robert Weinman, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings of the following cases:

1. 18 NUR 160, 18 NUR 502, 18 NUR 515, & 19 NUR 038 – Bonnie S. Cabrera, R.N.
2. 18 NUR 208 – Carrie A. Harpe, L.P.N.
3. 18 NUR 210 – Demetria S. Rogers, L.P.N.
4. 18 NUR 417 – Ann M. Davis, R.N., A.P.N.P.
5. 18 NUR 472 – Jessica L. Baptist, R.N.
6. 18 NUR 552 – Jessie M. Burns, R.N.
7. 18 NUR 613 – Karen L. Wall, L.P.N.
8. 18 NUR 639 & 19 NUR 750 – Jackie M. Anderson, R.N.
9. 18 NUR 659 – Valerie D. Stremkowski, R.N.
10. 19 NUR 108 – Sarah M. Stock, R.N.
11. 19 NUR 148 – Sherri M. Hanaway, R.N.
12. 19 NUR 248 – Kathleen J. Jensen, R.N.
13. 19 NUR 466 – Jennifer M. Amble, R.N., A.P.N.P.
14. 20 NUR 122 – Christa J. Morris, R.N.

Motion carried unanimously.

19 NUR 086 & 19 NUR 209 – Heidi J. Koeller, R.N.

MOTION: Rosemary Dolatowski moved, seconded by Robert Weinman, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Heidi J. Koeller, R.N., DLSC Case Numbers 19 NUR 086 & 19 NUR 209. Motion carried.

(Elizabeth Smith Houskamp recused herself and left the meeting for deliberation and voting in the matter concerning Heidi J. Koeller, R.N., DLSC Case Numbers 19 NUR 086 & 19 NUR 209.)

Proposed Interim Orders

20 NUR 121 – Michelle M. Plautz, R.N.

MOTION: Peter Kallio moved, seconded by Lisa Pisney, to adopt the Findings of Fact, Conclusions of Law, and Interim Order in the matter of disciplinary proceedings against Michelle M. Plautz, R.N., DLSC Case Number 20 NUR 121. Motion carried unanimously.

Monitoring Matters

Lisa Anderson, R.N.

Requesting Review of AODA Assessment and Fit for Practice Evaluation

MOTION: Peter Kallio moved, seconded by Rosemary Dolatowski, pursuant to paragraph 6.f. of the April 9, 2020 order and the results of the AODA and Fitness-to-Practice Assessment, to limit the license of Lisa Anderson, R.N., to require no fewer than 49 drug tests per year plus one (1) annual hair test, to restrict the Applicant from access to controlled substances, and to require quarterly work reports. Applicant may petition for modifications of this order after continuous and successful compliance for no less than one year and may petition for reinstatement of full licensure after continuous and successful compliance for no less than two years. Motion carried unanimously.

Jennifer Jondreau, R.N.

Requesting Termination of Suspension

MOTION: Peter Kallio moved, seconded by Luann Skarlupka, to grant the request of Jennifer Jondreau, R.N., for termination of suspension contingent upon the licensee securing a Board Approved Treater within 30 days of the Board Order date, and initiating treatment and supervision with quarterly reporting as recommended by the Fitness-to-Practice Assessment within 60 days of the Board Order date. Motion carried unanimously.

Jessica Placek, R.N.

Requesting Full Licensure

MOTION: Rosemary Dolatowski moved, seconded by Emily Zentz, to grant the request of Jessica Placek, R.N., for full licensure. Motion carried unanimously.

Tiffany Blunt, L.P.N.
Requesting an Extension of Costs Deadline

MOTION: Emily Zentz moved, seconded by Lisa Pisney, to deny the request of Tiffany Blunt, L.P.N., for an extension of deadline to pay costs, but to authorize the DSPS Monitor and Monitoring Liaison to work with Ms. Blunt to set-up a payment schedule. Motion carried unanimously.

Nicholas Derkowski, L.P.N., R.N.
Requesting Full Licensure

MOTION: Luann Skarlupka moved, seconded by Lisa Pisney, to deny the request of Nicholas Derkowski, L.P.N., R.N., for full licensure. **Reason for Denial:** Failure to demonstrate continuous and successful compliance under the terms of the Board Order (8/29/2018). Motion carried unanimously.

Anthony Gunderson, R.N.
Requesting Full Licensure

MOTION: Rosemary Dolatowski moved, seconded by Emily Zentz, to grant the request of Anthony Gunderson, R.N., for a full licensure. Motion carried unanimously.

DELIBERATION ON PROPOSED FINAL DECISIONS AND ORDERS

Kristin L. Frea, R.N.

MOTION: Rosemary Dolatowski moved, seconded by Jennifer Eklof, to adopt the Findings of Fact, Conclusions of Law, and Proposed Final Decision and Order in the matter of disciplinary proceedings against Kristin L. Frea, R.N., Respondent – DHA Case Number SPS-20-0010/ DLSC Case Number 18 NUR 238. Motion carried unanimously.

Laurel J. Lynch, R.N.

MOTION: Lisa Pisney moved, seconded by Peter Kallio, to adopt the Findings of Fact, Conclusions of Law, and Proposed Final Decision and Order in the matter of disciplinary proceedings against Laurel J. Lynch, R.N., Respondent – DHA Case Number SPS-20-0008/ DLSC Case Number 17 NUR 589. Motion carried.

(Rosemary Dolatowski recused herself and left the meeting for deliberation and voting in the matter concerning Laurel J. Lynch, R.N., Respondent – DHA Case Number SPS-20-0008/ DLSC Case Number 17 NUR 589.)

Jill D. Raymer, R.N.

MOTION: Luann Skarlupka moved, seconded by Jennifer Eklof, to adopt the Findings of Fact, Conclusions of Law, and Proposed Final Decision and Order in the matter of disciplinary proceedings against Jill D. Raymer, R.N., Respondent – DHA Case Number SPS-20-0011/ DLSC Case Number 18 NUR 240. Motion carried.

(Peter Kallio recused himself and left the meeting for deliberation and voting in the matter concerning Jill D. Raymer, R.N., Respondent – DHA Case Number SPS-20-0011/ DLSC Case Number 18 NUR 240. Lisa Pisney, Vice Chairperson, presided for the duration of deliberation and voting.)

Christina A. Johnson, R.N.

MOTION: Lisa Pisney moved, seconded by Jennifer Eklof, to adopt the Findings of Fact, Conclusions of Law, and Proposed Final Decision and Order in the matter of disciplinary proceedings against Christina A. Johnson, R.N., Respondent – DHA Case Number SPS-20-0012/ DLSC Case Number 18 NUR 589. Motion carried.

(Elizabeth Smith Houskamp recused herself and left the meeting for deliberation and voting in the matter concerning Christina A. Johnson, R.N., Respondent – DHA Case Number SPS-20-0012/ DLSC Case Number 18 NUR 589.)

RECONVENE TO OPEN SESSION

MOTION: Robert Weinman moved, seconded by Emily Zentz, to reconvene into Open Session. Motion carried unanimously.

The Board reconvened into Open Session at 11:32 a.m.

VOTING ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Jennifer Eklof moved, seconded by Robert Weinman, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

(Be advised that any recusals or abstentions reflected in the Closed Session motions stand for the purposes of the affirmation vote.)

(Christian Saldivar's connection to open session was confirmed at 11:39 a.m.)

BOARD MEETING PROCESS (TIME ALLOCATION, AGENDA ITEMS)

SCREENING PANEL APPOINTMENTS	
October 2020-December 2020	Jennifer Eklof, Rosemary Dolatowski, Robert Weinman

ADJOURNMENT

MOTION: Jennifer Eklof moved, seconded by Robert Weinman, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 11:44 a.m.

DRAFT

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Kimberly Wood, Program Assistant Supervisor-Adv.		2) Date when request submitted: 9/24/2020 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Board of Nursing			
4) Meeting Date: 10/8/2020	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? Appointment of Liaisons and Alternates: Screening Panel Rotation 2021	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: The Chair will review 2020 Screening Panel assignments and appointment members to the 2021 Screening Panel rotation. Screening Panel Rotation 2020: <ul style="list-style-type: none"> • January – March: Smith Houskamp, Zentz • April – June: Kallio, Skarlupka • July – September: Pisney, Saldivar Frias, Weinman • October – December: Dolatowski, Eklof, Weinman 			
11) Authorization			
<i>Kimberly Wood</i>		<i>9/24/2020</i>	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Kimberly Wood, Program Assistant Supervisor-Adv. on behalf of Christine Poleski, Executive Director		2) Date when request submitted: 9/29/2020 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Board of Nursing			
4) Meeting Date: 9/29/2020	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Wisconsin Center for Nursing – Discussion and Consideration 1. APPEARANCE – Dr. Linda Young, PhD, RN, CNE, CFLE: 2018-2019 Education and Faculty Survey Report 2. APPEARANCE – Barbara Nichols, PhD, (Hon) MS, RN, FAAN: Action to be Taken Regarding Projected Nursing Shortages in Wisconsin	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input checked="" type="checkbox"/> Yes Dr. Young & Dr. Nichols <input type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: Wisconsin Center for Nursing will be addressing the Board regarding matters as outlined below: 1. APPEARANCE – Dr. Linda Young, PhD, RN, CNE, CFLE: 2018-2019 Education and Faculty Survey Report Dr. Linda Young will present to the Board regarding the 2018-2019 Education and Faculty Survey Report. Following the presentation, the Board should discuss the presentation and/or ask questions regarding the subject content 2. APPEARANCE – Dr. Barbara Nichols, PhD, (Hon) MS, RN, FAAN: Action to be Taken Regarding Projected Nursing Shortages in Wisconsin Dr. Nichols is appearing per the Board’s request, to discuss options for addressing projected nursing shortages in WI. The Board should act as it deems necessary following discussion.			
11) Authorization			
<i>Kimberly Wood</i>		9/29/2020	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			



WCN 2018-2019 Nursing Education and Nursing Faculty Workforce Survey Report

Linda K. Young, PhD, RN, CNE, CFLE
Dean and Professor
College of Nursing and Health Sciences
University of Wisconsin-Eau Claire



Overview of the Workforce Survey and Analysis



1. Began in 2010. Data received from the leadership of each university, college or technical school program



2. Has had participation issues over time



3. Last survey administered 2015



4. Now based at UW-Eau Claire College of Nursing and Health Sciences



5. Issues with the consistency of survey response



6. The survey will be administered and analyzed every two years



7. Survey work supported financially by WCN and ANEW

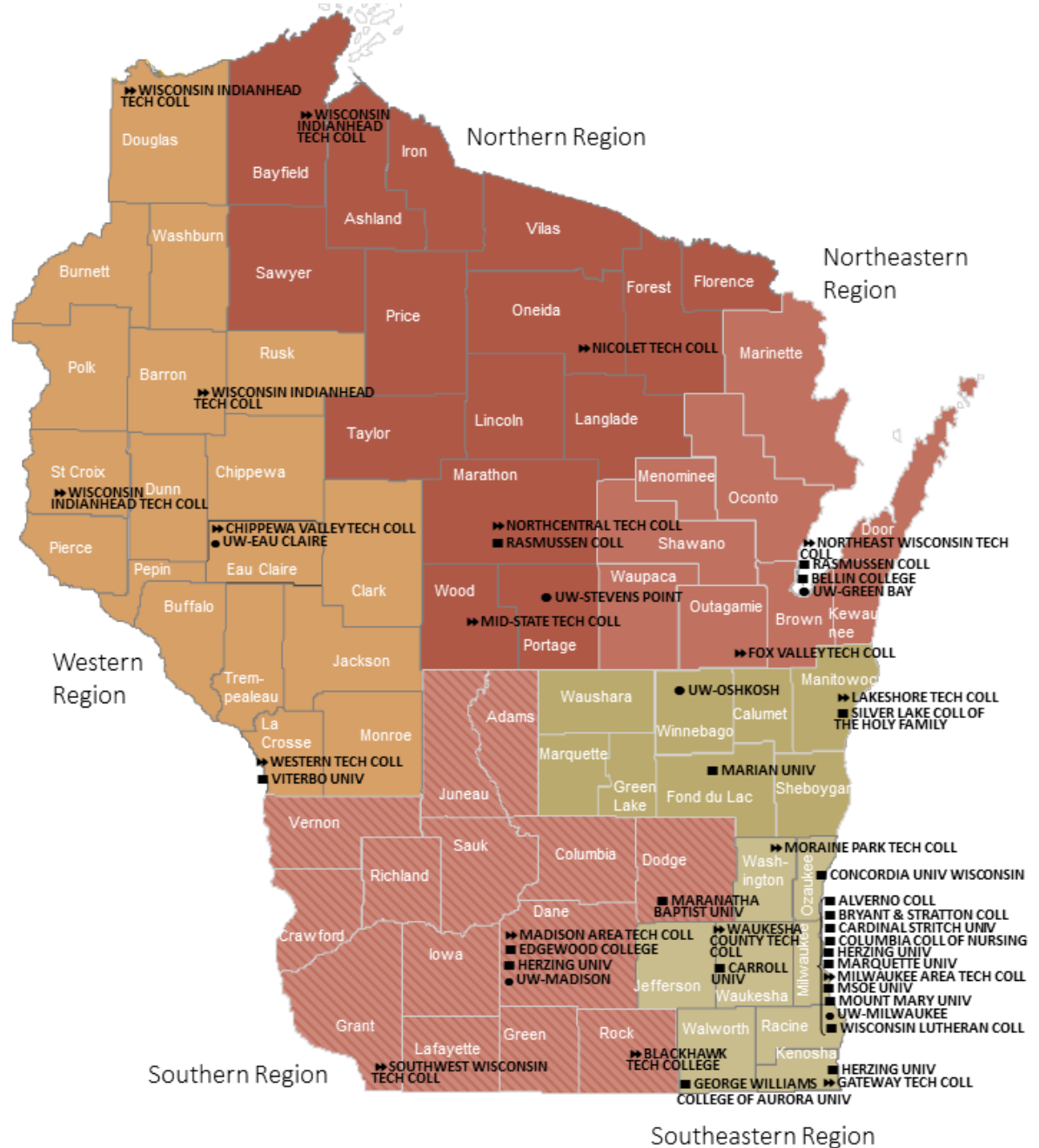
Data

Collected in the Study

1. Program data
2. Faculty data
3. Student data

Program Data Summary

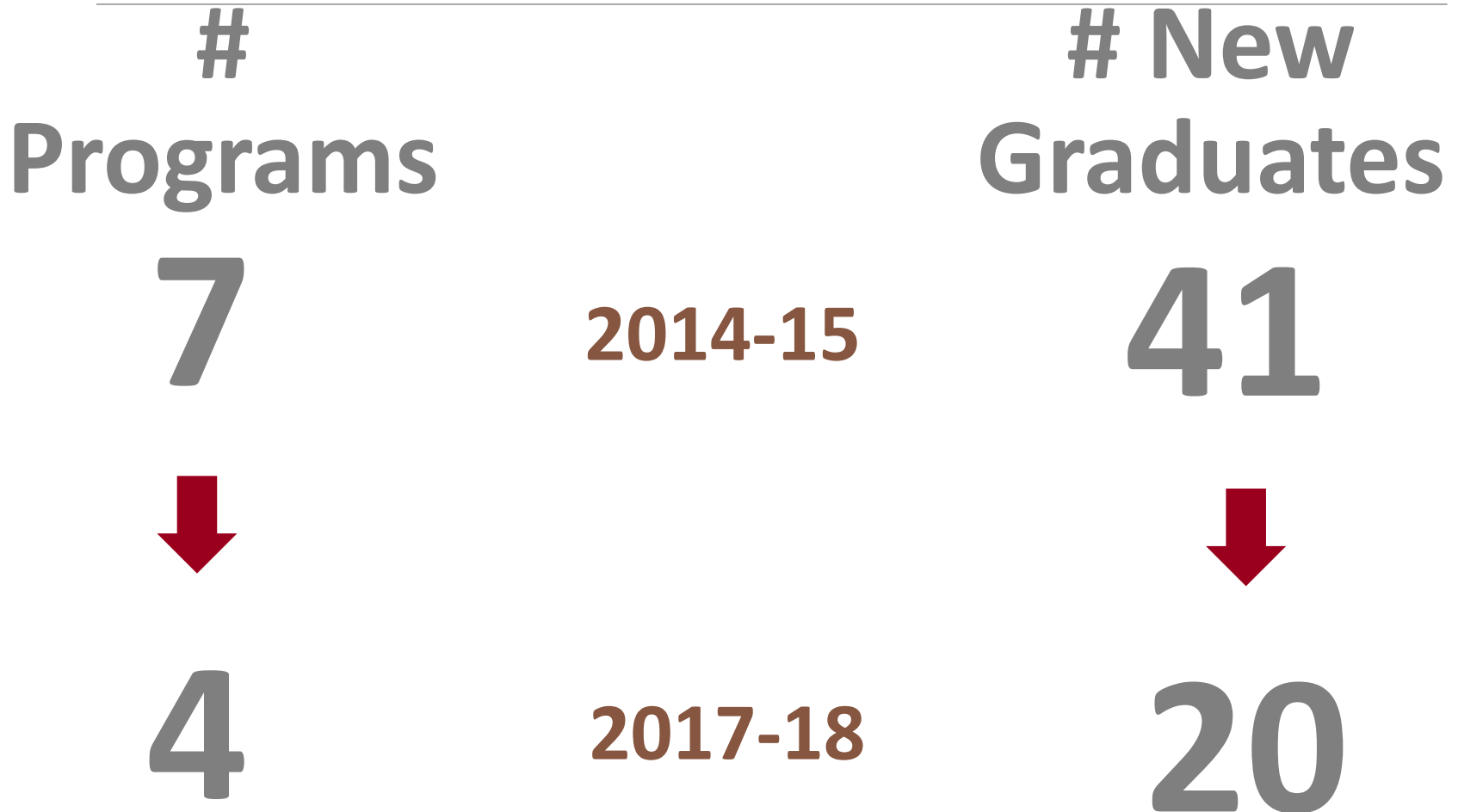
Nursing Programs by DHS Region



Wisconsin Nursing Programs

	# of programs		# of students enrolled		# of new graduates	
	2014-15	2017-18	2014-15	2017-18	2014-15	2017-18
Program Trends						
LPN Programs	2	4	185	298	58	136
ADN Programs	15	15	3,238	2,968	1,458	1,134
Pre-licensure BSN Programs	23	22	5,052	5,924	1,621	1,834
Pre-licensure MSN Programs	3	3	209	325	60	93
RN-BSN	15	15	1,460	1,109	490	476
Clinical Track MSN Program	8	8	1,178	495	256	249
Non-Clinical Track MSN Programs	8	10	165	159	52	20
DNP	8	9	528	541	123	148
PhD	3	3	142	123	24	26

Nurse Educator Program Trends



Pre-licensure Master of Science in Nursing (MSN) Trends

Enrolled in Program

209



325

2014-15

2017-18

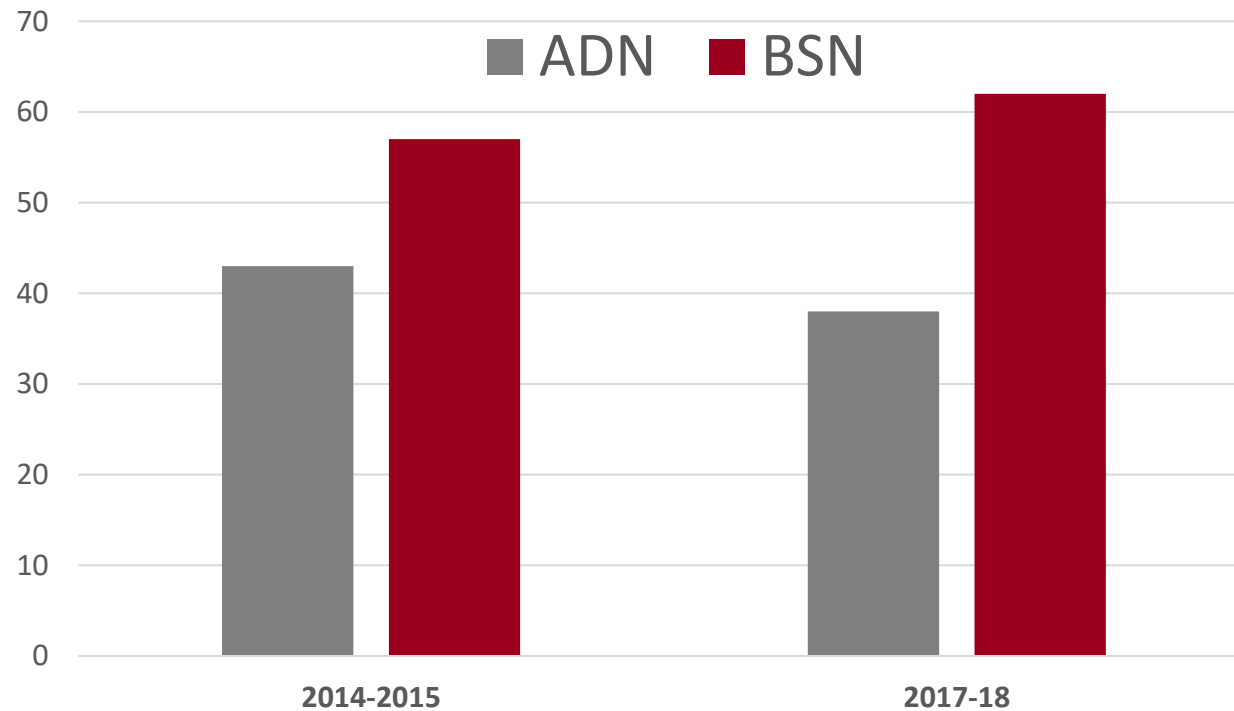
New Graduates

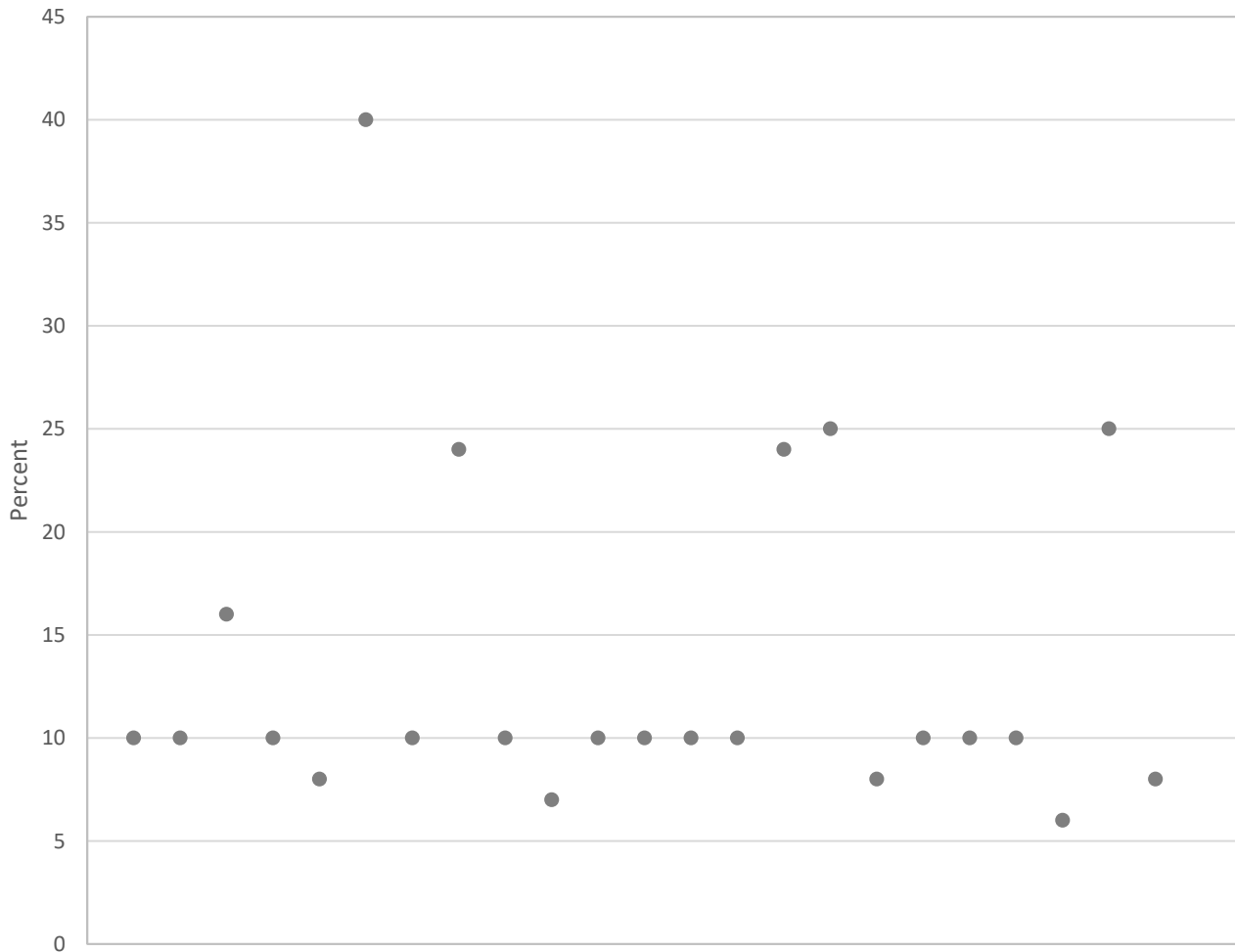
60



93

Percentage Pre-licensure RN Graduates





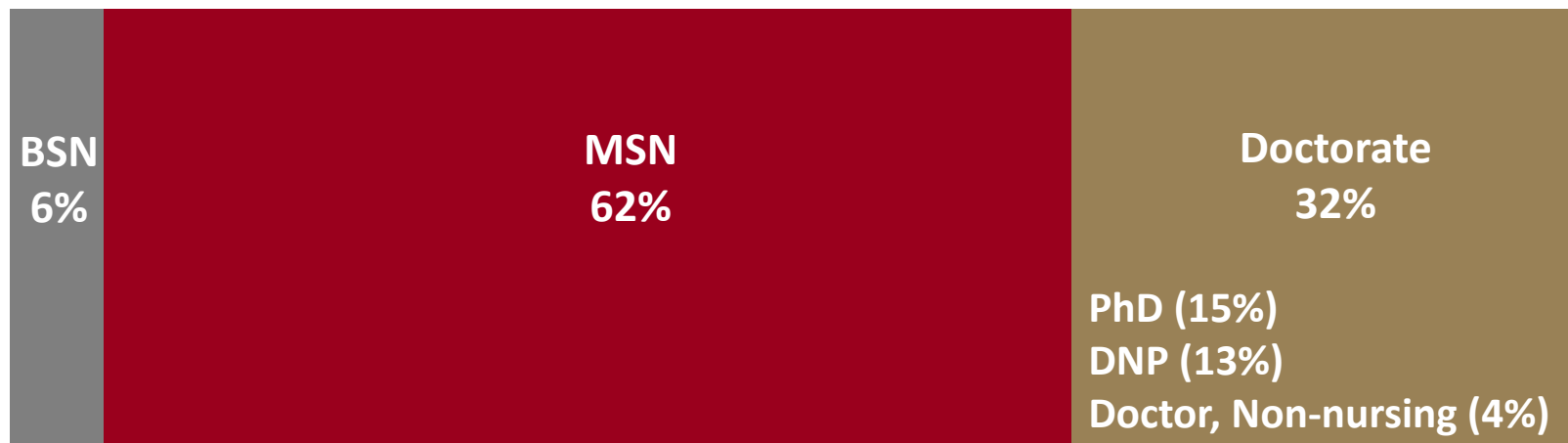
- **Nursing program**

40% 1 program
 15-25% 5 programs
 10% 17 programs
 0% 14 programs

Percent of Clinical Hours Replaced with Simulation Experiences

Faculty Data Summary

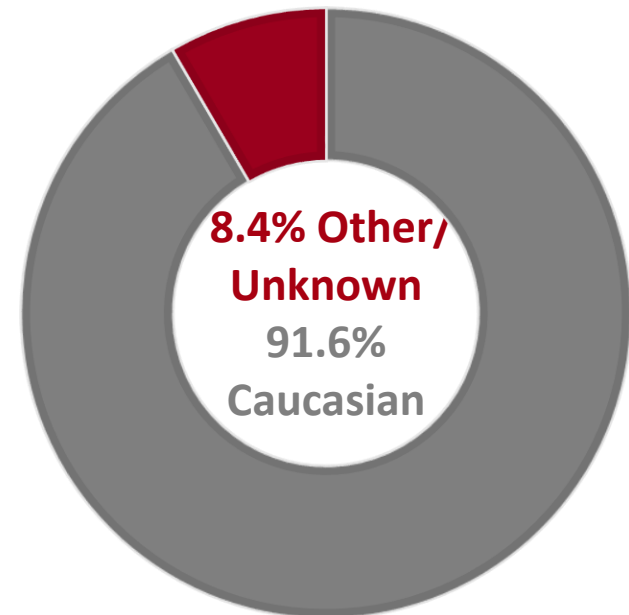
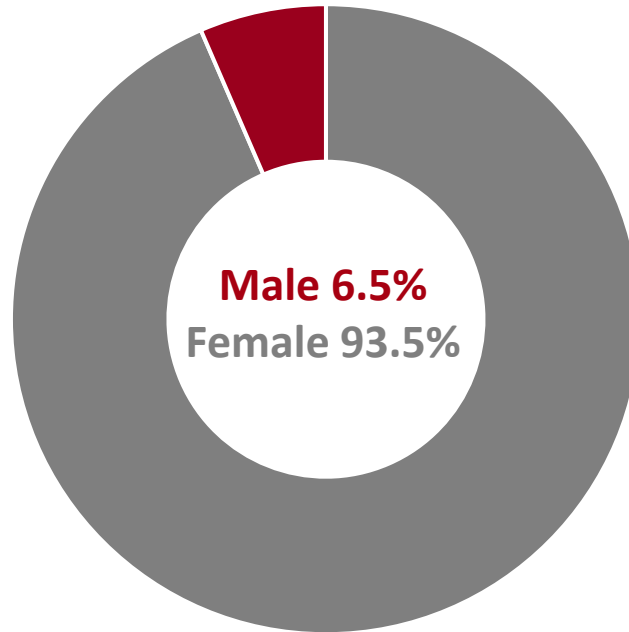
Nursing Faculty: Highest Nursing Degree Earned



Who are the Nursing Faculty in Wisconsin



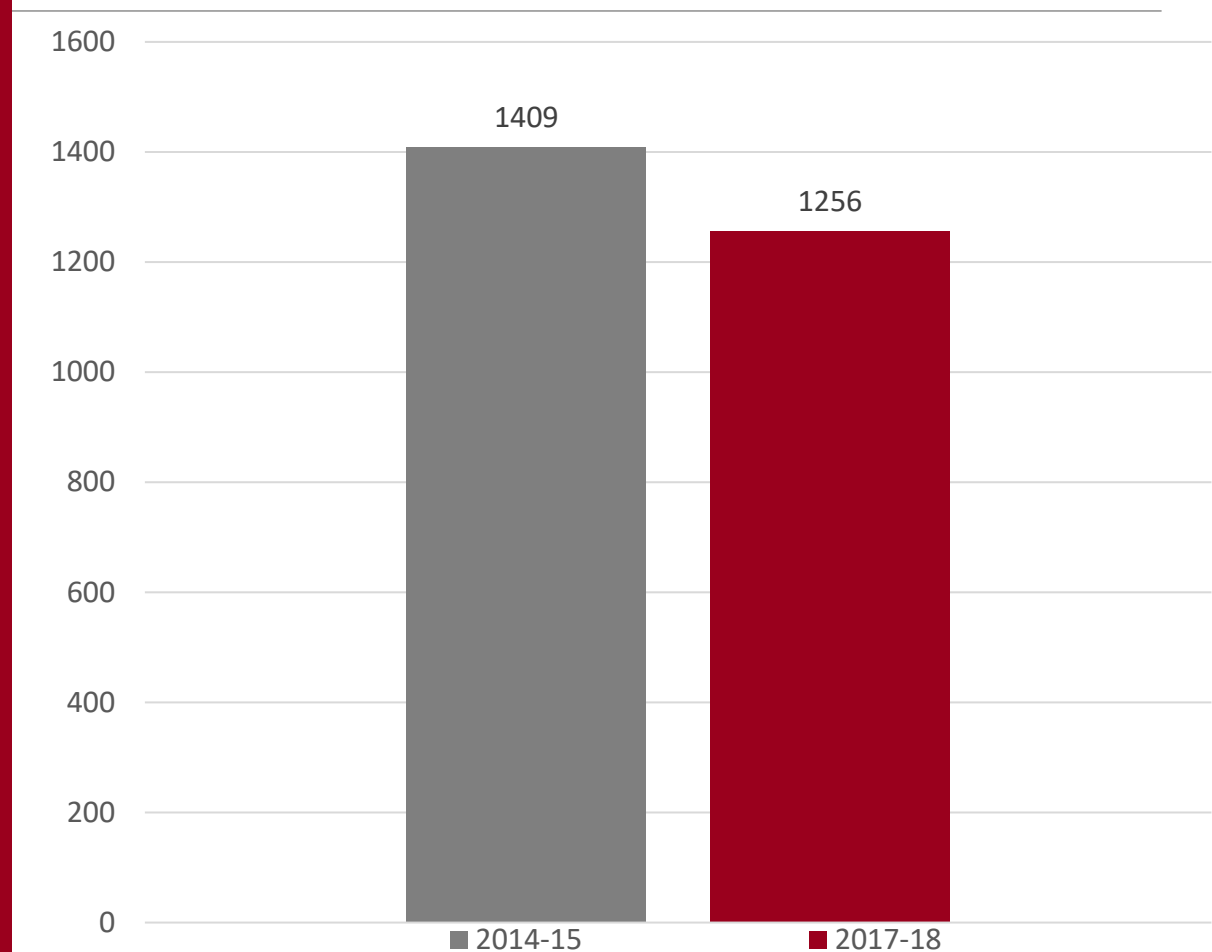
808 Full-Time 448 Part-Time



How Many Nursing Faculty in Wisconsin



Filled Nurse Educator Positions



Nursing Faculty: Mean Age



**Mean age of all
nursing faculty =
50.6 years**

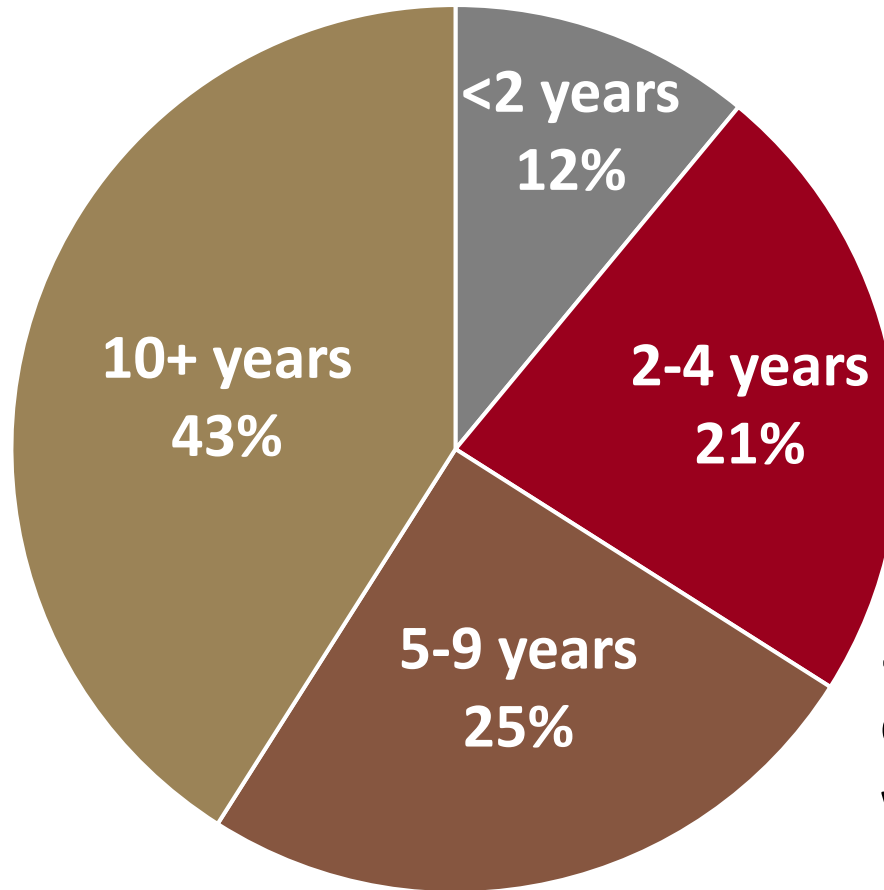


**Mean age for
faculty prepared at
the doctoral level=
54.6 years**

48% of Full-time Faculty are 51 Years and Older



Nursing Faculty: Intent to Leave Current Employment



**58% planning to leave
current employment
within 9 years**

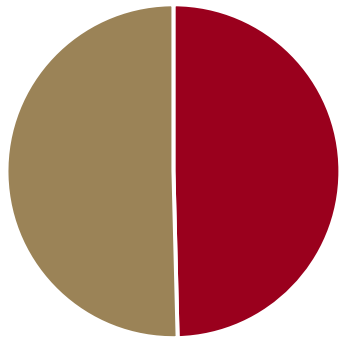
Anticipated Faculty Retirements



230 Educators
within
5 Years

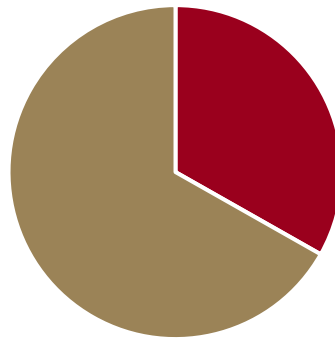
Barriers to Pursuing Further Education

**Cost of Tuition
and Fees**



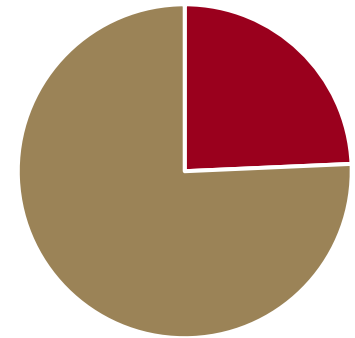
49.6%

**Family/personal
Reasons**



33.2%

**Lost Work Time
and Benefits**



24.3%

Nursing Faculty Work Force Shortage Factor

A majority of Wisconsin nursing programs report that faculty positions are not being filled due to a

lack

of qualified applicants
(followed closely by low salaries)

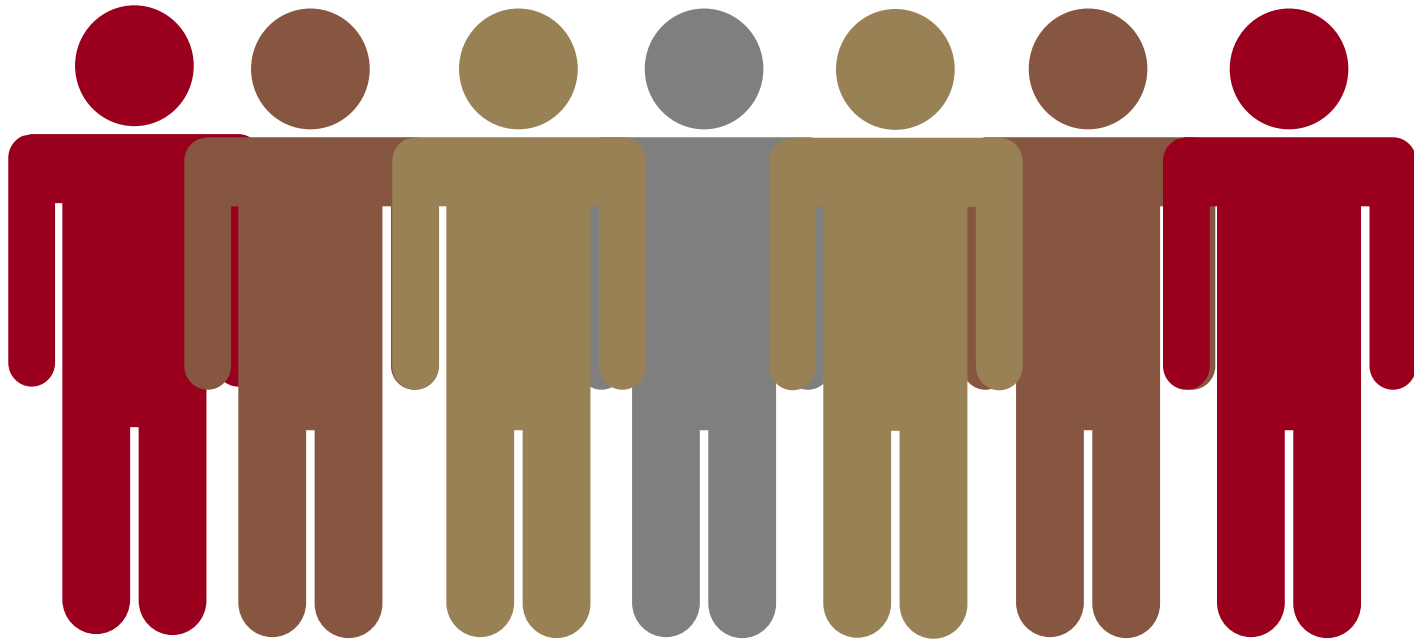
Student Data Summary

Wisconsin Graduates Approximately 3000 ADN and BSN Nurses a Year

Over 500 qualified applicants to traditional baccalaureate nursing programs were denied admission.

(2017-18)

Greatest Student Diversity Reported in LPN, ADN and DNP Programs



DNP Program Trends

Students
Enrolled

142



123

2014-15

2017-18

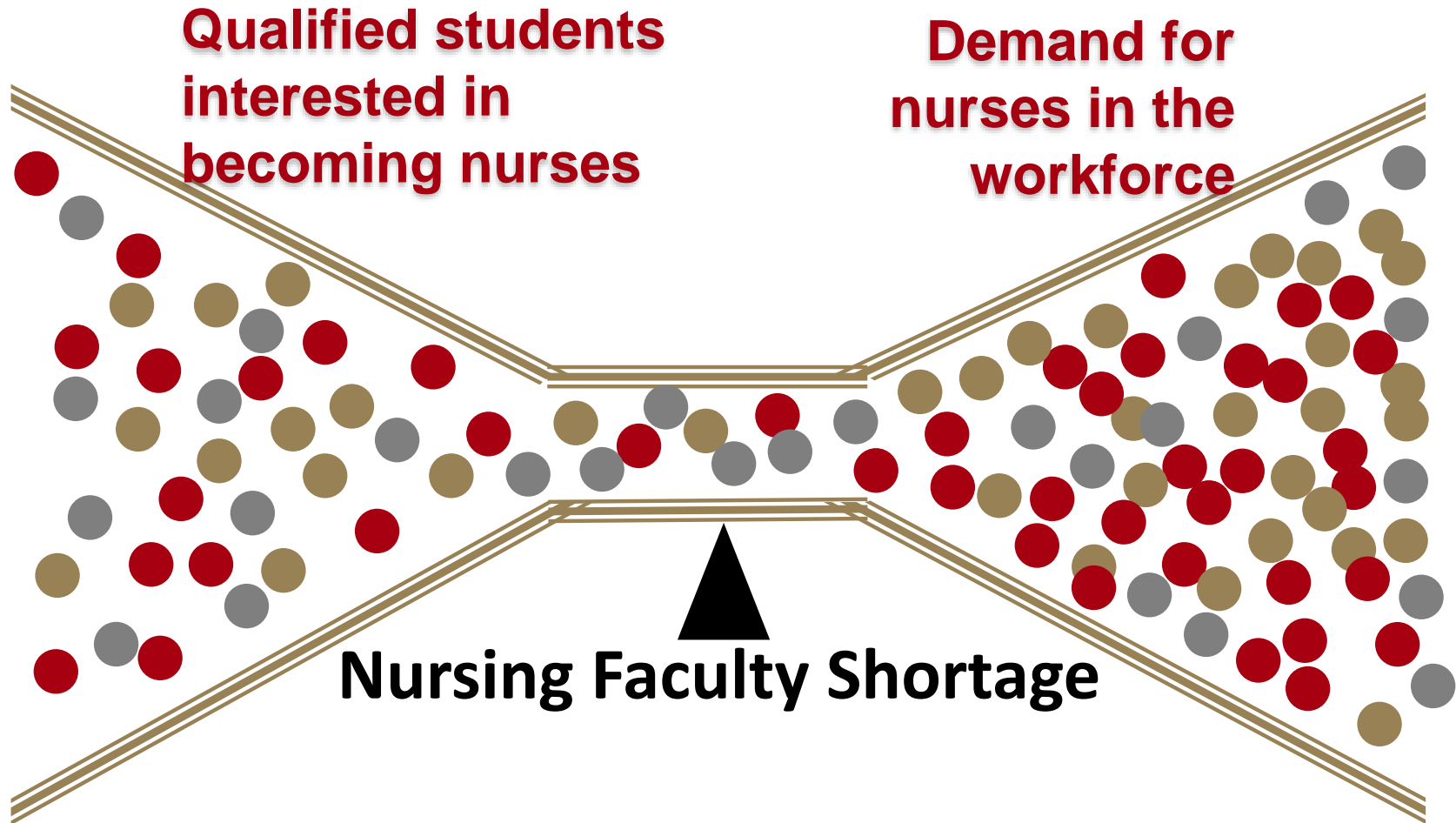
New
Graduates

24



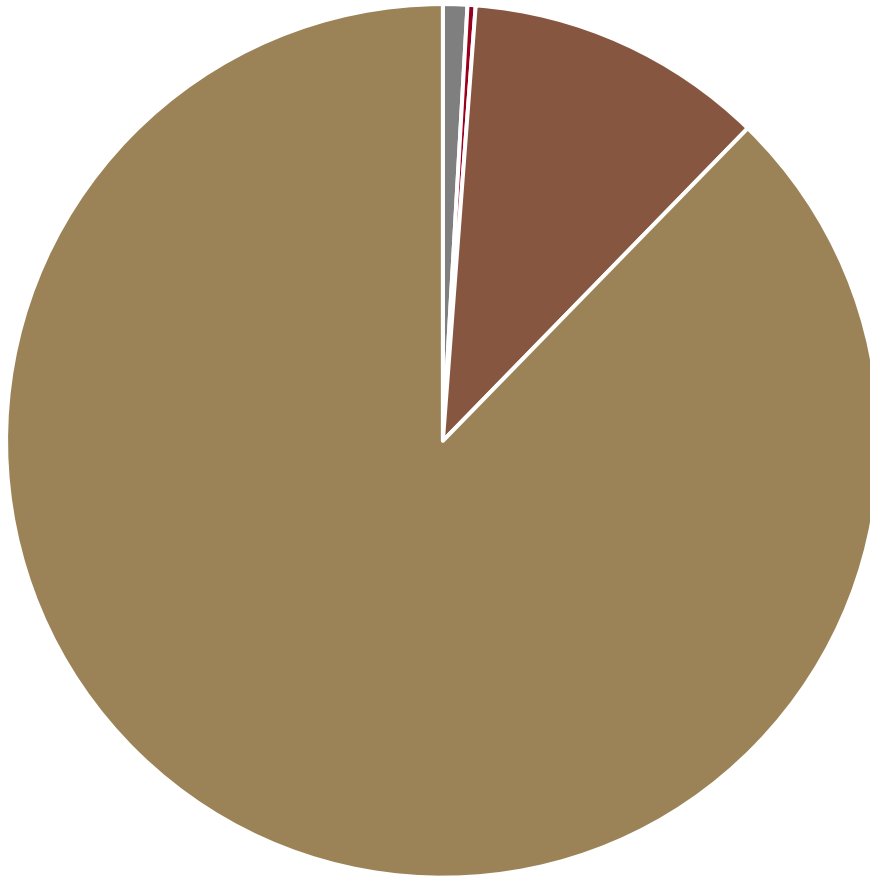
26

Unblocking the Education Bottleneck: Meeting the Demand



Questions?

Graduate Degrees Held in Nursing



Master of Science in Nursing (MSN)

2018 – 8,811 (11%)

2016 – 7,873 (10%)

Doctorate of Nursing Practice (DNP)

2018 – 720 (0.9%)

2016 – 422 (0.5%)

PhD in Nursing

2018 – 259 (0.3%)

2016 – 251 (0.3%)

Current Vacant Positions for Full- and Part-time Faculty



Full-time DNP/PhD



Full-time Masters



Part-time DNP/PhD



Part-time Masters



Support a 10 Million Dollar Initiative

Funded through

- Tax surplus dollars, or**
- 2021-2022 budget request**

10 Million to:



- **Grow our own faculty with funding for nurses to return to school for graduate degrees in nursing**
 - Master's prepared nurses needed to teach in associate and baccalaureate degree nursing programs
 - PhD/DNP prepared nurses needed to teach in baccalaureate and graduate degree nursing programs

- **Encourage faculty from out-of-state to come to teach in Wisconsin by offering a student loan forgiveness program**

**ALL WITH A 3-YEAR REQUIREMENT
TO TEACH IN WISCONSIN**

National Vacant Faculty Positions

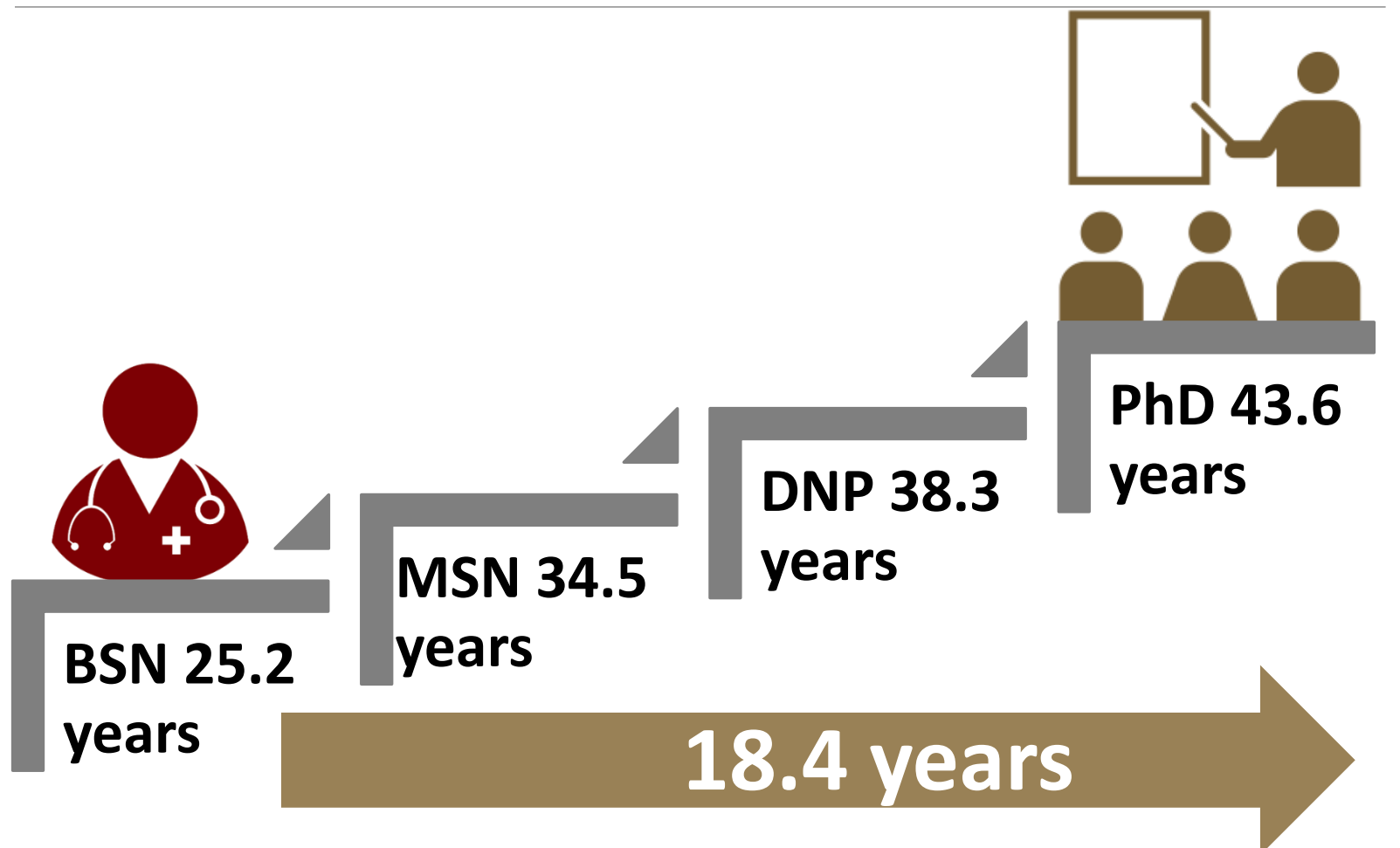
1,715

**Full-time
faculty vacancies**

91%

**are faculty positions
which require or prefer
a doctoral degree**

Mean Age of BSN in Nursing and subsequent nursing degrees earned (if any)

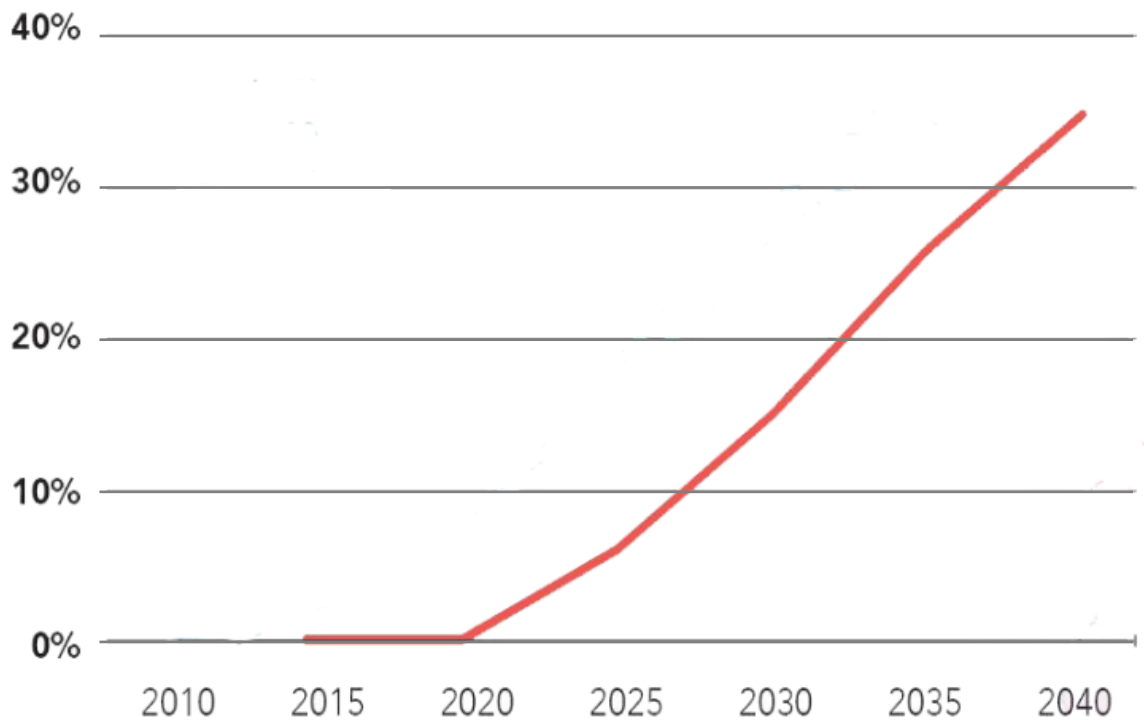


Wisconsin Nursing Supply Will Not Meet Demand

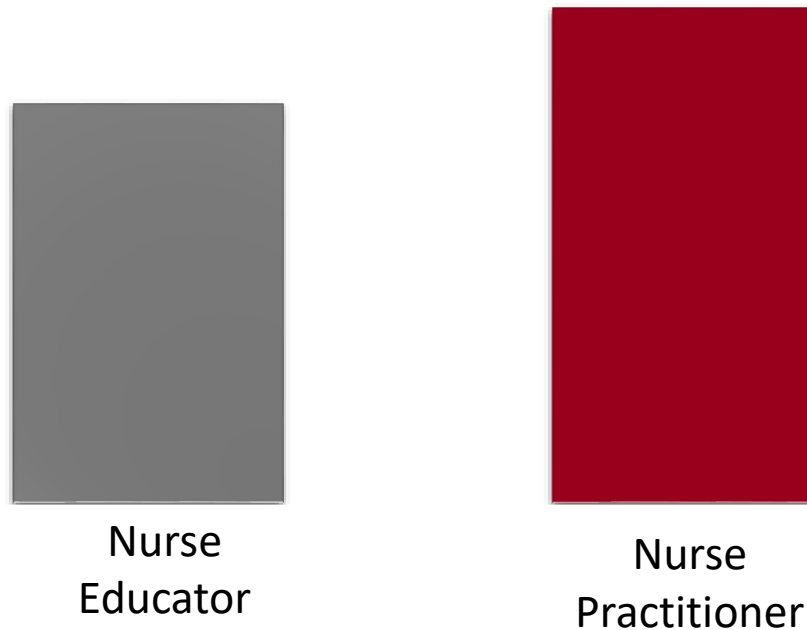
Estimated Number of Nursing Graduates Needed Annually to Meet Projected Demand

2025	9,800
2030	16,700
2035	23,000
2040	27,700

Projected Nursing Workforce Gap 2010-2040



Wisconsin Nurse Educators Earn **20%** Less



Your Handout



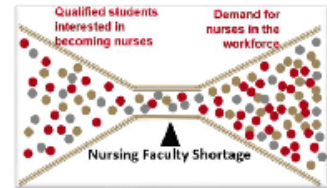
Addressing the Nursing Faculty Shortage

1. The RN supply to demand gap is predicted to be 27,700 nurses by 2040.
2. Without an increase in nursing enrollment we will not meet projected demand for nurses in Wisconsin.
 - o Wisconsin Schools graduate approximately 1000 ADN and BSN nurses a year.
3. Without an increase in the number of nurse educators we will not be able to increase the enrollment of nursing students.
 - o Over 500 of qualified applicants to traditional baccalaureate nursing programs were denied admission (2017-2018).



WISCONSIN NURSING EDUCATION TRENDS

- The number of reported nurse faculty declined between 2016 and 2018. Nursing programs reported 1256 faculty in 2016 (-153) and individual RNs identifying themselves as nurse faculty declined by 53.
- Nursing programs employ 808 full-time and 448 part-time nurse educators.
 - o 55% full-time faculty are 51 or older
 - o 53% intended to leave current employment within 9 years
- 110 educator vacancies were identified, based on a recent survey.
 - o 34 full-time DNP/PhD openings and 31 full-time and 45 part-time Master's degree openings
 - o Nursing programs anticipate that 230 faculty will retire within the next five years
- A majority of Wisconsin nursing programs report that faculty positions are not filled due to lack of qualified applicants, followed closely by low salaries.
- Salaries of faculty are approximately 20% less than those of Advanced Practice Nurses. Healthcare organizations can offer much higher salaries to nurses with comparable academic preparation.
- Most frequently reported barrier to pursuing additional education were tuition and fee costs.



A SOLUTION FOR THE NURSING FACULTY WORKFORCE

- Wisconsin's demand for RNs is widespread and will only grow. To meet this demand, actions to increase the number of nursing faculty must be taken.
- Grow our own faculty with funding for nurses to become educators.
 - o Master's prepared nurses are needed to teach
 - o PhD/DNP prepared nurses are needed to teach in advanced programs
 - Encourage faculty from out-of-state to live and teach in Wisconsin through a forgiveness program.

3-year requirement to teach in Wisconsin!

Support our 10 Million Dollar ASK to help ensure a strong nurse workforce.

Document prepared February, 2020 by Linda K. Young PhD, RN, CNE, CFLE, Dean and Professor, College of Nursing and Health Sciences, University of Wisconsin-Eau Claire, younglk@uwec.edu
 For sources, please contact College of Nursing and Health Sciences Resource Center Coordinator, Jan Adams, adamsj@uwec.edu.



**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Kimberly Wood, Program Assistant Supervisor-Adv. on behalf of Christine Poleski, Executive Director		2) Date when request submitted: 10/1/2020 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting																
3) Name of Board, Committee, Council, Sections: Board of Nursing																		
4) Meeting Date: 10/1/2020	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? National Council on State Boards of Nursing (NCSBN) Guidelines for Complaints Involving Marijuana																
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session		8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A															
10) Describe the issue and action that should be addressed: Review the attached document and discuss the Board's stance on how to move forward with cases involving marijuana use.																		
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">11)</td> <td style="width: 60%; text-align: center;">Authorization</td> <td style="width: 30%;"></td> </tr> <tr> <td></td> <td style="text-align: center;"><i>Kimberly Wood</i></td> <td style="text-align: center;"><i>10/1/2020</i></td> </tr> <tr> <td></td> <td style="text-align: center;">Signature of person making this request</td> <td style="text-align: center;">Date</td> </tr> <tr> <td></td> <td style="text-align: center;">Supervisor (if required)</td> <td style="text-align: center;">Date</td> </tr> <tr> <td></td> <td style="text-align: center;">Executive Director signature (indicates approval to add post agenda deadline item to agenda)</td> <td style="text-align: center;">Date</td> </tr> </table>				11)	Authorization			<i>Kimberly Wood</i>	<i>10/1/2020</i>		Signature of person making this request	Date		Supervisor (if required)	Date		Executive Director signature (indicates approval to add post agenda deadline item to agenda)	Date
11)	Authorization																	
	<i>Kimberly Wood</i>	<i>10/1/2020</i>																
	Signature of person making this request	Date																
	Supervisor (if required)	Date																
	Executive Director signature (indicates approval to add post agenda deadline item to agenda)	Date																
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.																		

NCSBN **GUIDELINES** FOR THE **BOARDS OF NURSING** for Complaints Involving Marijuana



NCSBN
Leading Regulatory Excellence



Mission Statement

The National Council of State Boards of Nursing (NCSBN®) provides education, service and research through collaborative leadership to promote evidenced-based regulatory excellence for patient safety and public protection.

Copyright ©2018 National Council of State Boards of Nursing, Inc. (NCSBN®)

All rights reserved. NCSBN®, NCLEX®, NCLEX-RN®, NCLEX-PN®, NNAAP®, MACE®, Nursys® and TERCAP® are registered trademarks of NCSBN and this document may not be used, reproduced or disseminated to any third party without written permission from NCSBN.

Permission is granted to boards of nursing to use or reproduce all or parts of this document for licensure related purposes only. Nonprofit education programs have permission to use or reproduce all or parts of this document for educational purposes only. Use or reproduction of this document for commercial or for-profit use is strictly prohibited. Any authorized reproduction of this document shall display the notice: "Copyright by the National Council of State Boards of Nursing, Inc. All rights reserved." Or, if a portion of the document is reproduced or incorporated in other materials, such written materials shall include the following credit: "Portions copyrighted by the National Council of State Boards of Nursing, Inc. All rights reserved."

Address inquiries in writing to NCSBN Permissions, 111 E. Wacker Drive, Suite 2900, Chicago, IL 60601-4277.

Guidelines for the Board of Nursing Regarding Licensees and Marijuana

Background

Currently, 33 jurisdictions (including the District of Columbia), Guam, Puerto Rico, and all provinces/territories of Canada allow for the medical use of cannabis. An increasing number of jurisdictions allow for various forms of legal or decriminalized recreational use of cannabis. There are evolving public health, nursing practice, science, legal, educational, ethical and social issues involving the use of either medical or recreational cannabis. Of significance, there is a contradiction between the federal law classifying cannabis as a Schedule I Controlled Substance, while various jurisdictions have legalized its use medically or recreationally or both.

The federal and state governments' divergent laws and perspectives cause complicated regulatory issues for boards of nursing (BONs). The NCSBN Board of Directors, in 2016, created a committee to develop guidelines to assist BONs in managing the many regulatory issues resulting from medical and recreational cannabis. Since various stakeholders require differing guidelines, five separate sets of guidelines were developed after a thorough review of the literature. The guidelines for licensees and educators are included in the NCSBN National Nursing Guidelines for Medical Marijuana published in the *Journal of Nursing Regulation* July 2018 Supplement (NCSBN, 2018).

The information in this document serves to inform BONs of the current evidence related to cannabis and provides guidelines for BON assessment and decision making for complaints involving cannabis. Specifically, these guidelines address the following issues:

- A. A licensee who tests positive for Tetrahydrocannabinol (THC) or its metabolite
- B. An APRN licensee's improper certifying of a Medical Marijuana Program qualifying condition
- C. A licensee's administration of cannabis to a patient outside of designated caregiver provisions of the Medical Marijuana Program

Introduction

Prior to 1936, cannabis was sold over the counter and used for a variety of illnesses in the United States (Marijuana Policy Project, 2014). By 1936, every state had passed a law to restrict possession of cannabis, thus eliminating its availability as an over-the-counter drug. Then in 1970, the Comprehensive Drug Abuse Prevention and Control Act (1970) provided a classification of controlled substances; cannabis was included in the list of Schedule I Controlled Substances, thereby continuing the restriction of the use of cannabis by prohibiting health care practitioners from prescribing cannabis. This federal classification also limits the scope and type of research on Schedule I Controlled Substances; effectively preventing open and unlimited research on cannabis.

Use of cannabis remained restricted until the first legalization of medical cannabis was approved by voters in California in 1996, effective in 2000 (Marijuana Policy Project, 2014). Since then, an increasing cultural acceptance of cannabis has prompted many jurisdictions to pass legislation legalizing medical cannabis and an increasing proportion of jurisdictions have also decriminalized and legalized recreational cannabis use.

Federal and State Legislation through 2018

Over the past few decades, the federal government and individual states have instituted varying legal approaches regarding the availability of cannabis for medical purposes.

Federal Legislation

The U.S. federal government, through Title 21 United States Code (Comprehensive Drug Abuse Prevention and Control Act, 1970) (hereinafter referred to as Act), has the authority to evaluate drugs and other substances. This Act created a classification, or schedule, of substances. Those that are classified as Schedule I Controlled Substances are considered to have no accepted medical value and present a high potential for abuse. Cannabis and its derivatives have been classified as Schedule I Controlled Substances since the Act's genesis despite some moderate- to high-quality evidence that indicates effectiveness for certain conditions. Limited research has been completed on cannabis effectiveness as the Act's classification as Schedule I not only prohibits practitioners from prescribing cannabis; it also prohibits most research using cannabis except under rigorous oversight from the government's National Institute on Drug Abuse. The process for obtaining cannabis for federally funded research purposes is cumbersome and unlike other medical research.

The federal government's position on prosecuting the use of cannabis that is legal under the law of the applicable state jurisdiction has been set out in U.S. Department of Justice (DOJ) position papers. In 2009, the U.S. Attorney General took a position that discouraged federal attorneys from prosecuting people who distribute or use cannabis for medical purposes in compliance under the law of the applicable jurisdiction (U.S. Department of Justice [DOJ], 2009); additional guidance was given in 2011, 2013, and 2014 (DOJ, 2011, 2013, 2014). In January 2018, the U.S. Office of the Attorney General rescinded the previous nationwide guidance specific to marijuana enforcement (DOJ, 2018). The 2018 memorandum provides that federal prosecutors follow the well-established principles in deciding which cases to prosecute, namely, the prosecution is to weigh all relevant considerations, including priorities set by the attorneys general, seriousness of the crime, deterrent effect of criminal prosecution, and cumulative impact of particular crimes on the community (DOJ, 2018).

Although the use of cannabis pursuant to authorized Medical Marijuana Programs (MMPs) conflicts with federal law and regulations, at present there is no controlling case law holding that Congress intended to preempt the field of regulation of cannabis use under its supremacy powers (*Beek v. City of Wyoming*, 2014; Mikos, 2012).

State Legislation

Each jurisdiction's MMP has unique characteristics. The statutes governing MMPs are most easily located through the jurisdiction's Department of Health and MMP website; useful links to locate statutes are provided by the National Council of State Legislatures (NCSL, 2018).

MMPs include various provisions for procuring a medical cannabis certification, the amount of cannabis distributed to an individual, and legal protections extended to patients, designated caregivers, and health care providers. Each jurisdiction has statutes that list the qualifying conditions that can be used for certification (NCSL, 2018). This legislation includes qualifying conditions based on the best available scientific information, as well as conditions that have limited research. Again, the Act's restriction on cannabis research severely limits necessary cannabis research.

Some MMPs require a bona fide health care provider–patient relationship in order to certify a patient's qualifying condition. Other MMPs require health care providers to have a preexisting and ongoing relationship, while some note that the relationship may not be limited to issuing a written certification for the patient or a consultation simply for that purpose. Additionally, a few MMPs specify that an advanced practice registered nurse can certify a qualifying condition (NCSL, 2018).

Patients with a certification of a qualifying condition must register with the local MMP. A registered patient can obtain cannabis from an authorized cannabis dispensary. Procurement and administration of cannabis for medical purposes are limited to the patient and/or the patient's designated caregiver.

The MMP will specify whether designated caregivers are allowed by statute and will outline the process for registering a designated caregiver (NCSL, 2018). In some jurisdictions, the MMP allows an employee (of a hospice provider, nursing facility, or medical facility), a visiting nurse, personal care attendant, or home health aide to act as a designated caregiver for a particular patient (NCSL, 2018). These designated caregivers must meet specific qualifications and be registered with the MMP.

A nurse shall not administer cannabis to a patient unless specifically authorized by jurisdiction law. An exception to this rule is any administration of FDA approved cannabinoid products (dronabinol, nabilone, and Epidiolex) to a patient as per facility formulary and policy.

Registered designated caregivers can only administer medical cannabis to the specific patient that they have been designated (NCSL, 2018). In addition, some MMPs limit the number of patients for which an individual may act as designated caregiver. Health care facility policies may override designated caregiver provisions regarding medical cannabis administration. Specifically, caregiver provisions for administration of medical cannabis do not apply within a federal facility or to federal employees.

Table 1 displays the differences in jurisdictional legislation regarding cannabis. Legislation is an ever-evolving process. This summary is current as of October 2018.

Table 1. Cannabis Legislation

Type of Provision	Jurisdictions
Medical Marijuana Program	AK, AR, AZ, CA, CO, CT, DC, DE, FL, HI, IL, LA*, MA, MD, ME, MI, MN, MO, MT, ND, NH, NJ, NM, NV, NY, OH, OR, PA, RI, UT, VT, WA, WV
MMP allows an APRN to certify a qualifying condition	HI, ME, MA, MN, NH, NM, NY, VT, WA
MMPs which extend protections for healthcare practitioners or facilities caring for one or more patients authorized for medical cannabis (must review provisions for specifics).	CA, IL, MA, MN, MT, NH, NJ, OR, RI
Allow cannabidiol (CBD) products (often for intractable seizures and often the use is restricted to clinical studies)	AL, GA, IA, IN, KY, MO, MS, NC, OK, SC, TN, TX, UT, VA, WI, WY
Recreational use of cannabis	AK, CA, CO, DC, MA, ME, MI, NV, OR, VT, WA
No cannabis statutes	ID, KS, NE, SD

* Louisiana lacks the necessary infrastructure to enact its MMP and the state’s previous statutory language failed to grant necessary protections to physicians and users. Legislators have yet to decide who will be the legal cultivators for the state and how to regulate pharmacies that will distribute medical cannabis.

Guidelines for the Nursing Care of Patients using Medical Marijuana

Research on the efficacy of marijuana for treatment of certain medical conditions is limited and lacking when compared to the expanding list of therapeutic claims. This limited research has therefore impeded the education of nurses regarding the medical use of marijuana. The committee convened by the NCSBN Board of Directors assessed the educational gap and performed an integrative literature review. This evidence base provided the foundation for the NCSBN National Nursing Guidelines for Medical Marijuana (NCSBN, 2018) which provide direction for licensees and educators:

- Medical Marijuana Education in Pre-Licensure Nursing Programs
- Nursing Care of the Patient Using Medical Marijuana
- Medical Marijuana Education in Advanced Practice Nursing Programs
- APRNs Certifying a Medical Marijuana Qualifying Condition.

Standards and Limitations of Current Laboratory Testing Related to Cannabis Use

Tetrahydrocannabinol (THC) is the primary major psychoactive component of the cannabis plant and is the primary substance responsible for cognitive impairments associated with cannabis. THC ingestion “transiently impairs cognitive function on a number of levels—from basic motor coordination to more complex tasks, such as the ability to plan, organize, solve problems, make decisions, remember, and control emotions and behavior” (Crean, Crane, & Mason, 2011).

A 2017 report to Congress entitled “Marijuana-Impaired Driving” (hereinafter referred to as the Congressional Report) summarizes what is known about marijuana use and driving. The Congressional Report compares current knowledge about alcohol-impaired driving to marijuana-impaired driving. The physiological basis for alcohol-impairment is described by the “pharmacokinetics (the absorption, distribution and elimination of a drug from the body) and pharmacodynamics (how a drug affects physiological process and behaviors)” (NHTSA, 2017). The Congressional Report outlines how the pharmacokinetics and pharmacodynamics differ for alcohol and marijuana.

Alcohol is a relatively simple, water-soluble substance “whose absorption, distribution and elimination from the body along with the behavioral and cognitive effects are fairly well documented”(NHTSA, 2017). It is proven that impairment from alcohol increases with rising alcohol concentration and declines with dropping alcohol concentration (NHTSA, 2017). Alcohol and marijuana differ in their metabolic rate; marijuana is a fat-soluble substance and is not metabolized at a steady rate (NHTSA, 2017). This means that THC, stored in fatty tissues, can be released back into the blood long after ingestion. The slow release of THC does not correlate to prolonged or resurgent impairment as “the acute psychoactive effects of marijuana ingestion last for mere hours, not days or weeks” (NHTSA, 2017).

There are a limited number of studies on THC blood levels and the degree of impairment, but research consistently indicates that “the level of THC in the blood and the degree of impairment do not appear to be closely related. Peak impairment does not occur when THC concentration in the blood is at or near peak levels. Peak THC level can occur when low impairment is measured, and high impairment can be measured when THC level is low” (NHTSA, 2017).

Therefore, a laboratory test for THC examines the biological specimen only for the presence or absence of THC or THC metabolites. Current laboratory tests cannot indicate when the individual ingested cannabis, nor can they establish a level of THC that can determine impairment. Based on the evidence, the Congressional Report concluded that current laboratory tests cannot provide any objective threshold that establishes impairment based on a specific level of THC or THC metabolite concentration.

Right Touch Regulation

Regulatory oversight in complaints involving cannabis should receive the same due process and principles of good regulation used with other complaints to the BON. Right Touch Regulation recommends that minimum regulatory force be used to achieve the desired result. In the context of the BONs mission to protect the public, Right Touch Regulation requires consideration of the risk the BON is trying to regulate, as well as proportionate, consistent, targeted, transparent, accountable, and agile discipline as warranted (Professional Standards Authority, 2015).

Since the regulatory body’s decisions affect the safety of the public, a delicate balance must be maintained between mitigating the risk of harm and applying discipline in a fair and consistent manner (Professional Standards Authority, 2015). Using all necessary background information and an evaluation of the mitigating and aggravating factors, the disciplinary decision should be appropriate to the circumstances, have a minimal effect on the nurse’s practice beyond what is necessary, and be justifiable under scrutiny.

Guidance for the BONs Regarding Licensees and Cannabis

Three types of complaints to the BON involving licensees and cannabis are addressed in the *NCSBN Guidelines for the Board of Nursing: Complaints Involving a Licensee and Cannabis* included at the end of this document:

- A. A licensee who tests positive for THC or its metabolite
- B. An APRN licensee's improper certifying of a Medical Marijuana Program qualifying condition
- C. A licensee's administration of cannabis to a patient outside of designated caregiver provisions of the Medical Marijuana Program

Each of these complaints requires knowledge of the current state of legalization of medical and recreational cannabis use in the jurisdiction, as well as right touch regulation. Other important information may include the following based on the type of complaint:

- Knowledge of standards and limitations of current laboratory testing related to cannabis use
- NCSBN National Nursing Guidelines for Medical Marijuana - APRN Certifying a Medical Marijuana Qualifying Condition (NCSBN, 2018)
- NCSBN National Nursing Guidelines for Medical Marijuana - Nursing Care of the Patient Using Medical Marijuana (NCSBN, 2018)
- Knowledge of the jurisdiction's MMP's designated caregiver provisions

The *NCSBN Guidelines for the Board of Nursing: Complaints Involving a Licensee and Cannabis*, found on page 11, utilizes the current evidence regarding state and federal legislation, scientific literature regarding cannabis, standards and limitations of THC testing, as well as right touch regulation. This evidence base is necessary when reviewing and determining nursing regulatory actions for complaints involving licensees and cannabis.

References

- Beek v. City of Wyoming. (February 6, 2014) (Findlaw, Dist. 145816). Retrieved from <http://caselaw.findlaw.com/mi-supreme-court/1656759.html>
- Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. § 801 – 904 (1970).
- Crean, R.D., Crane, N.A., Mason, B.J. (March 2011). *An Evidence-Based Review of Acute and Long-Term Effects of Cannabis Use on Executive Cognitive Functions*. *Journal of Addiction Medicine*: Volume 5 - Issue 1 - p 1-8.
- Federal Drug Administration (FDA). (May 2006). *Cesamet (Nabilone) Capsules*. Retrieved from https://www.accessdata.fda.gov/drugsatfda_docs/label/2006/018677s011lbl.pdf
- Federal Drug Administration (FDA). (August 2017). *Marinol (Dronabinol) Capsules*. Retrieved from https://www.accessdata.fda.gov/drugsatfda_docs/label/2017/018651s029lbl.pdf
- Garner, B. A., & Black, H. C. (2014). *Blacks law dictionary*. St. Paul, MN: Thompson Reuters.
- Mackie K. *Cannabinoid receptors: where they are and what they do*. *J Neuroendocrinol* 2008; 20 Suppl 1: 10-4. Retrieved from <http://onlinelibrary.wiley.com/doi/10.1111/j.1365-2826.2008.01671.x/full>
- Marijuana Policy Project. (2014). *Timeline of marijuana reform in the United States*. Retrieved from <https://www.mpp.org/policy/federal/>
- Mikos, R.A. (December 12, 2012). *On the Limits of Federal Supremacy: When States Relax (or Abandon) Marijuana Bans*. Cato Institute. Policy Analysis, No. 714. Retrieved from <https://object.cato.org/sites/cato.org/files/pubs/pdf/PA714.pdf>
- National Council of State Boards of Nursing (NCSBN). (2018). *The NCSBN National Nursing Guidelines for Medical Marijuana*. *Journal of Nursing Regulation*, 2018: 9(2S).
- National Conference of State Legislatures (NCSL). (2018). *State Medical Marijuana Laws*. Retrieved from <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>.
- NHTSA. (2017). *Marijuana-Impaired Driving A Report to Congress*. Retrieved from <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf>
- Professional Standards Authority. (2015). *Right-touch Regulation revised*. Retrieved from https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015.pdf?sfvrsn=eaf77f20_18
- U.S. Department of Justice, Office of Public Affairs (DOJ). (October 19, 2009). *Attorney General Announces Formal Medical Marijuana Guidelines*. Retrieved October 4, 2017 from <https://www.justice.gov/opa/pr/attorney-general-announces-formal-medical-marijuana-guidelines>
- U.S. Department of Justice, Office of Deputy Attorney General (DOJ). (June 29, 2011). *Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use*. Retrieved from <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/dag-guidance-2011-for-medical-marijuana-use.pdf>

- U.S. Department of Justice, Office of Deputy Attorney General (DOJ). (August 29, 2013). *Guidance Regarding Marijuana Enforcement*. Retrieved from <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>
- U.S. Department of Justice, Office of Deputy Attorney General (DOJ). (February 14, 2014). *Guidance Regarding Marijuana Related Financial Crimes*. Retrieved from <https://www.dfi.wa.gov/documents/banks/dept-of-justice-memo.pdf>
- U.S. Department of Justice, Office of the Attorney General. (October 28, 2014). *Policy Statement Regarding Marijuana Issues in Indian Country*. Retrieved from <https://www.justice.gov/sites/default/files/tribal/pages/attachments/2014/12/11/policystatementregardingmarijuanaissuesinindiancountry2.pdf>
- U.S. Department of Justice, Office of the Attorney General. (January 4, 2018). *Marijuana Enforcement*. Retrieved from <https://www.justice.gov/opa/press-release/file/1022196/download>
- U.S. Department of Transportation, National Highway Traffic Safety Administration. (2017). *Marijuana-impaired driving: A report to Congress*. Retrieved from <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf>

NCSBN Guidelines for the Board of Nursing: Complaints Involving a Licensee and Marijuana

Purpose of the Guidelines

Over 33 jurisdictions (including the District of Columbia), Guam and Puerto Rico passed legislation legalizing cannabis for medical use. Each Medical Marijuana Program has unique characteristics. In the U.S., cannabis is a Schedule I Controlled Substance. Therefore, cannabis use medically is unlike most other therapeutics, in that providers cannot prescribe cannabis, nor can pharmacies dispense cannabis. However, applicable jurisdiction statutes and rules provide for the manufacture, distribution and use of cannabis for medical or recreational use.

These guidelines provide necessary information for BONs regarding matters involving licensees and cannabis, specifically including complaints to the board of nursing involving:

- A. A licensee who tests positive for THC or its metabolite
- B. An APRN licensee's improper certifying of a Medical Marijuana Program qualifying condition
- C. A licensee's administration of cannabis to a patient outside of designated caregiver provisions of the Medical Marijuana Program

Definitions

Cannabis. Any raw preparation of the leaves or flowers from the plant genus, *Cannabis*. This report uses "cannabis" as a shorthand that also includes cannabinoids.

Cannabidiol (CBD). A major cannabinoid that indirectly antagonizes cannabinoid receptors, which may attenuate the psychoactive effects of tetrahydrocannabinol.

Cannabinoid. Any chemical compound that acts on cannabinoid receptors. These include endogenous and exogenous cannabinoids.

Cannabinol (CBN). A cannabinoid more commonly found in aged cannabis as a metabolite of other cannabinoids. It is non-psychoactive.

Certify. The act of confirming that a patient has a qualifying condition. Many jurisdictions use alternative phrases such as 'attest' or 'authorize;' however, 13 of 29 jurisdictions use 'certify' language in their statutes.

Clinical research. An activity that involves studies that experimentally assign randomized human participants to one or more drug interventions to evaluate the effects on health outcomes.

Designated Caregiver. An individual who is selected by the Medical Marijuana Program qualifying patient and authorized by the Medical Marijuana Program to purchase and/or administer cannabis on their behalf. Also sometimes referred to as an "alternate caregiver."

Dronabinol. The generic name for synthetic THC. It is the active ingredient in the FDA approved drug, Marinol®.

Endocannabinoid System. A system that consists of endocannabinoids, cannabinoid receptors and the enzymes responsible for synthesis and degradation of endocannabinoids.

Epidiolex®. First in a new class of antiepileptic drugs that contains highly-purified cannabidiol (CBD); indicated for the treatment of seizures associated with Lennox-Gastaut syndrome or Dravet syndrome in patients 2 years of age and older. Epidiolex® is a Schedule V controlled substance and has a low potential for abuse.

Marijuana. Marijuana refers to a cultivated cannabis plant, whether for recreational or medicinal use. The words marijuana and cannabis are often used interchangeably in various lay and scientific literature. These guidelines will primarily use the word "cannabis." When referring to Medical Marijuana Program, the guidelines will use the word "marijuana," as it is often used within program references.

Medical Marijuana Program (MMP). The official jurisdictional resource for the use of cannabis for medical purposes. Search the jurisdiction's website or Department of Health for "medical cannabis program" or "medical marijuana program."¹

Nabilone. The generic name for a synthetic cannabinoid similar to THC. It is the active ingredient in the FDA-approved drug, Cesamet™.

Per se violation. Makes a certain act a violation without needing proof of any surrounding circumstances.²

Right-touch Regulation. Suggests the minimum regulatory force required to achieve the desired result. In the context of the BONs mission to protect the public, right-touch regulation requires consideration of proportionate, consistent, targeted, transparent, accountable, and agile regulatory discipline.³

Schedule I Controlled Substance. Defined in the federal Controlled Substances Act⁴ as those substances that have a high potential for abuse; no currently accepted medical use in treatment in the U.S.; lack of accepted

safety for use of the substance under medical supervision.

Tetrahydrocannabinol (THC). One of many cannabinoids found in cannabis; THC is believed to be responsible for most of the characteristic psychoactive effects of cannabis.⁵

Recommendations

A. Guidelines for the evaluation of a complaint regarding a licensee who tests positive for THC or its metabolite

1. The BON should have a working knowledge of the current state of legalization of medical and recreational cannabis use for the jurisdiction.
 - *The Drug Enforcement Agency (DEA) classifies cannabis as a Schedule I Controlled Substance. This classification not only prohibits practitioners from prescribing cannabis, it also prohibits most research using cannabis, except under rigorous oversight from the government.*⁶
 - *Over 33 jurisdictions (including the District of Columbia), Guam and Puerto Rico passed legislation legalizing cannabis for medical purposes. In these laws, the jurisdiction has adopted exemptions legalizing the use of cannabis for medical purposes. Although the use of marijuana pursuant to authorized MMPs conflicts with federal law and regulations, at present, there is no controlling case law holding that Congress intended to preempt the field of regulation of cannabis use under its supremacy powers.*⁷
 - *The federal government's position on prosecuting the use of cannabis that is legal under applicable jurisdiction law has been set out U.S. Department of Justice position papers. In 2009, the U.S. Attorney General took a position that discourages federal prosecutors from prosecuting people who distribute or use cannabis for medical purposes in compliance with applicable jurisdiction law; further similar guidance was given in 2011, 2013 and 2014.*⁸

In January 2018, the U.S. Office of the Attorney General rescinded the previous nationwide guidance specific to marijuana enforcement. The 2018 memorandum⁹ provides that federal prosecutors follow the well-established principles in deciding which cases to prosecute, namely the prosecution is to weigh all relevant considerations including priorities set by the attorneys general, seriousness of the crime, deterrent effect of criminal prosecution and cumulative impact of particular crimes on the community.

- MMPs are defined and described within the statute and rules of the specific jurisdiction. These statutes include specific conditions that qualify an individual to participate in a jurisdiction's MMP, as well as the process to become qualified. The relevant statute is most easily located through the jurisdiction's Department of Health and MMP.¹⁰ The law of the jurisdiction's MMP will specify the qualifying conditions, certification process, and length of time certification is valid.
 - An increasing proportion of jurisdictions have also decriminalized or legalized recreational cannabis use.¹¹
2. The BON should have a working knowledge of the standards for, and limitations of, current laboratory testing related to cannabis use and impairment.
- THC is the primary psychoactive component of the cannabis plant and is believed to be primarily responsible for the cognitive effects of cannabis. THC ingestion "transiently impairs cognitive function on a number of levels—from basic motor coordination to more complex tasks, such as the ability to plan, organize, solve problems, make decisions, remember, and control emotions and behavior."¹²
 - A 2017 report to Congress entitled "Marijuana-Impaired Driving"¹³ concluded that current laboratory tests cannot provide any objective threshold that establishes impairment based on a specific level of THC or THC metabolite concentration.
 - o A laboratory test for THC examines the biological specimen for the presence or absence of THC or THC metabolite.
 - o A screening test is completed first to determine if there is detectable presence of THC or its metabolite; if positive, a second test using a gas chromatograph with mass spectrometry (GC/MS) is necessary to determine the precise concentration of THC or its metabolite.¹⁴
 - o Current laboratory tests can positively indicate whether there is THC or its metabolite in the specimen, but can only indicate concentration according to the equipment's capability or threshold.¹⁵
 - o Current laboratory tests cannot indicate when the individual ingested cannabis.¹⁶
 - Unlike alcohol, a water-soluble substance with steady metabolism, THC is a fat-soluble substance that is not metabolized at a steady rate and therefore can be detected in the blood long after ingestion.¹⁷
 - Current laboratory tests cannot provide any objective threshold that establishes impairment based on THC or THC metabolite concentration.¹⁸
 - Peak impairment does not occur when THC concentration in the blood is at or near peak levels. Peak THC levels can occur when low impairment is measured, and high impairment can be measured when THC levels are low.¹⁹ The level of THC in the blood and the degree of impairment do not appear to be closely related.²⁰
 - The acute psychoactive effects of cannabis ingestion last for hours and do not closely correlate to the concentration of THC in the blood.²¹
 - Peak and duration of psychoactive effects of THC vary with concentration and method of ingestion. For example, the psychoactive

effects of smoked cannabis are experienced within minutes after smoking, with peak levels occurring after approximately 30 minutes. THC concentration declines rapidly over 1-3 hours. With oral ingestion, peak concentrations occur over 1–3 hours.²²

- Despite the lack of scientific evidence for an objective threshold which establishes impairment based on THC concentration, some jurisdictions have adopted a *per se* limit while performing specific activities. *Per se* laws are not necessarily based on scientific evidence of impairment, instead they are based on laboratory threshold or cut-off values. These laboratory cut-offs are based on analytical capability of current equipment and are irrespective of impairment.²³
 - o For example, *per se* laws make it a criminal offense for an individual to have a specific drug or the drug's metabolite in his/her body while performing specific activities. Some jurisdictions have a *per se* law which specifies that it is illegal to drive with any or more than a specific concentration of a specific drug(s) in blood or urine.²⁴ This type of test is evidence based. A *per se* law regarding THC is not evidence-based at this time.
3. The BON should have a working knowledge of right touch regulation.
- Right touch regulation suggests the minimum regulatory force be used to achieve the desired result. In the context of the BONs mission to protect the public, right-touch regulation requires consideration of the risk the BON is trying to regulate, as well as proportionate, consistent, targeted, transparent, accountable, and agile discipline as warranted.²⁵
 - When a regulatory body's decisions affect the safety of the public, a delicate balance must be maintained between mitigating the risk of harm and applying discipline in a fair and consistent

manner.²⁶ After evaluation of the mitigating and aggravating factors, the disciplinary decision should be appropriate to the circumstances, have a minimal effect on the nurse's practice beyond what is necessary, and be justifiable under scrutiny.

4. Case Examples

Case A

- ✓ A licensee tests positive for THC or its metabolite
- ✓ Allegations of impairment or lack of fitness to practice while working

The BON should follow established board processes for evaluation of impairment/lack of fitness to practice at the workplace.

- Nursing, by its nature requires adequate cognitive ability for critical decision making that is typical for assessments, diagnosis of patients, interventions, reassessments and other appropriate or necessary actions, sometimes occurring in stressful situations.²⁷ Accordingly, there is a direct and immediate nexus between the nurse's job duties and a significant safety risk.²⁸ A nurse impaired on-the-job carries a risk of causing a significant incident affecting the health or safety of the public.
- Legal use notwithstanding, the ingestion of cannabis can be a violation of nurse practice act or rules where on-the-job impairment creates an actual or potential impairment of the ability to practice nursing with reasonable skill and safety to patients by reason of the use of alcohol, drugs, chemicals, or any other material.²⁹
- Evaluations of workplace impairment/fitness to practice can confirm actual or potential inability to practice nursing with reasonable skill and safety.

Case B

- ✓ A licensee tests positive for THC or its metabolite
- ✓ Licensee used cannabis in a state where use is LEGAL (legal use in state of licensure or proof of travel to a state where legal)
- *NO allegations of impairment or lack of fitness to practice while working*

The BON should use right touch regulation in the resolution of the complaint considering the following:

- *Current laboratory tests cannot indicate time of ingestion.*
- *THC, stored in fatty tissues, can be released back into the blood long after ingestion.*
- *Current laboratory tests cannot provide any objective threshold that establishes impairment based on THC or THC metabolite concentration.³⁰*
- *A per se law regarding THC is not evidence-based at this time.*
- *All aggravating and mitigating factors.*
- *Absent impairment, principles of public protection may not be served by a per se violation requiring a substance use evaluation/fitness to practice evaluation for the legal use of marijuana. A per se violation may subject the nurse to burdensome licensure requirements without enhancing public protection.*
- *Instances without aggravating factors may not require any consequences by the BON.*

Case C

- ✓ A licensee tests positive for THC or its metabolite
- ✓ Licensee used cannabis in a state where use is NOT legal
- *NO allegations of impairment or lack of fitness to practice while working*

The BON should use right touch regulation in the resolution of the complaint considering the following:

- *Current laboratory tests cannot indicate time of ingestion.*
- *THC, stored in fatty tissues, can be released back into the blood long after ingestion.*
- *Current laboratory tests cannot provide any objective threshold that establishes impairment based on THC or THC metabolite concentration.³¹*
- *A per se law regarding THC is not evidence-based at this time.*
- *Absent impairment, principles of public protection may not be served by a per se violation requiring a substance use evaluation/fitness to practice evaluation for the legal use of marijuana. A per se violation may subject the nurse to burdensome licensure requirements without enhancing public protection.*
- *All aggravating and mitigating factors.*
 - *Use of cannabis in a jurisdiction where NOT legal is an aggravating factor*
- *Instances with aggravating factors may require action by the BON.*
 - *A non-disciplinary letter of concern and/or administrative fine may serve to warn the licensee of the BON's concern regarding use of cannabis in a state where not legal.*
 - *The non-disciplinary letter of concern should include specific warnings regarding that future positive THC testing may result in a substance use evaluation or BON discipline.*

B. Guidelines for the Evaluation of a Complaint Regarding APRN Certification of a Medical Marijuana Program Qualifying Condition

1. The BON should have a working knowledge of the current state of legalization of medical and recreational cannabis use.
 - *The Drug Enforcement Agency (DEA) classifies cannabis as a Schedule I Controlled Substance.*

This classification not only prohibits practitioners from prescribing cannabis, it also prohibits most research using cannabis, except under rigorous oversight from the government.³²

- The process for obtaining cannabis for federally funded research purposes is a cumbersome process and unlike any other drug research. The DEA sets a quota for cannabis that can be grown for research studies.³³ Applications to use cannabis must be made to the U.S. Food and Drug Association (FDA), DEA and National Institute on Drug Abuse.³⁴*
- Over 33 jurisdictions including the District of Columbia, Guam and Puerto Rico passed legislation legalizing cannabis for medical purposes. In these laws, the jurisdiction has adopted exemptions legalizing the use of cannabis for medical purposes. Although the use of marijuana pursuant to authorized MMPs conflicts with federal law and regulations, at present, there is no controlling case law holding that Congress intended to preempt the field of regulation of cannabis use under its supremacy powers.³⁵*
- The federal government's position on prosecuting the use of cannabis that is legal under applicable jurisdiction law has been set out U.S. Department of Justice position papers. In 2009, the U.S. Attorney General took a position that discourages federal prosecutors from prosecuting people who distribute or use cannabis for medical purposes in compliance with applicable jurisdiction law; further similar guidance was given in 2011, 2013 and 2014.³⁶ In January 2018, the U.S. Office of the Attorney General rescinded the previous nationwide guidance specific to marijuana enforcement. The 2018 memorandum³⁷ provides that federal prosecutors follow the well-established principles in deciding which cases to prosecute, namely the prosecution is to weigh all relevant considerations including priorities set by the attorneys general, seriousness of the crime,*

deterrent effect of criminal prosecution and cumulative impact of particular crimes on the community.

- 2. The BON should have a working knowledge of the jurisdiction's MMP.*
 - MMPs are defined and described within the statute and rules of the specific jurisdiction. The relevant statute or rules are most easily located through the jurisdiction's Department of Health and MMP.³⁸ Laws and rules regarding MMPs are an evolving process. Always confirm use of the most recent versions.*
 - A health care provider does not prescribe cannabis.*
 - The MMP will specify the qualifying conditions and the certifying process, as well as the type of health care provider who can certify a qualifying condition.³⁹*
 - The MMP will specify whether an APRN can certify a qualifying condition and whether a specific course or training is required in order to participate in certifying a MMP qualifying condition.⁴⁰*
 - After the qualifying condition is certified, the patient registers with the MMP. Once registered, the patient can obtain cannabis from a jurisdiction authorized cannabis dispensary.⁴¹*
 - Specific MMP statutes define the bona fide health care provider-patient relationship necessary required for authorization to certify a patient as having a qualifying condition. Some statutes require a pre-existing and ongoing relationship with the patient at as a treating health care provider; others note that the relationship may not be limited to issuing a written certification for the patient or a consultation simply for that purpose. Verification of the existence of the required provider-patient relationship and documentation of the certification within the jurisdiction's MMP is essential.*
 - Procurement and administration of cannabis for*

medical purposes is limited to the patient and/or the patient's designated caregiver. The MMPs will specify whether designated caregivers are permissible, as well as the applicable process for registration as a designated caregiver.⁴²

- In some jurisdictions, the MMP allows an employee of a hospice provider, nursing, or medical facility or a visiting nurse, personal care attendant, or home health aide to act as a designated caregiver for the administration of medical cannabis.⁴³
3. The BON should be aware of the NCSBN National Nursing Guidelines for Medical Marijuana - APRN Certifying a Medical Marijuana Qualifying Condition when evaluating whether the APRN violated the nurse practice act or the jurisdiction's MMP.
- The NCSBN National Nursing Guidelines for Medical Marijuana - APRN Certifying a Medical Marijuana Qualifying Condition⁴⁴ include information on the following:
 - o Essential knowledge
 - o Clinical encounter and identification of a qualifying condition
 - o Informed and shared decision making
 - o Documentation and communication
 - o Ethical considerations
 - o Special considerations
4. The BON should have a working knowledge of right touch regulation.
- Right touch regulation suggests the minimum regulatory force be used to achieve the desired result. In the context of the BONs mission to protect the public, right-touch regulation requires consideration of the risk the BON is trying to regulate, as well as proportionate, consistent, targeted, transparent, accountable, and agile discipline as warranted.⁴⁵
 - When a regulatory body's decisions affect the safety of the public, a delicate balance must be maintained between mitigating the risk of harm and applying discipline in a fair and consistent

manner.⁴⁶ After evaluation of the mitigating and aggravating factors, the disciplinary decision should be appropriate to the circumstances, have a minimal effect on the nurse's practice beyond what is necessary, and be justifiable under scrutiny.

5. The BON should consider an APRN's certification of a qualifying condition for medical cannabis outside of the provisions of the MMP in the context of the nurse practice act
- Certification of a qualifying condition for medical cannabis outside of the provisions of the MMP exceeds the nurse's scope of practice and does not conform to prevailing standards of safe nursing care.

C. Guidelines for the Evaluation of a Complaint Regarding a Licensee's Administration of Cannabis to a Patient Outside of Medical Marijuana Program Designated Caregiver

1. The BON should have a working knowledge of the current state of legalization of medical and recreational cannabis use.
- The Drug Enforcement Agency (DEA) classifies cannabis as a Schedule I Controlled Substance. This classification not only prohibits practitioners from prescribing cannabis, it also prohibits most research using cannabis, except under rigorous oversight from the government.⁴⁷
 - Over 33 jurisdictions (including the District of Columbia), Guam and Puerto Rico passed legislation legalizing cannabis for medical purposes. In these laws, the jurisdiction has adopted exemptions legalizing the use of cannabis for medical purposes. Although the use of marijuana pursuant to authorized MMPs conflicts with federal law and regulations, at present, there is no controlling case law holding that Congress intended to preempt the field of regulation of cannabis use under its supremacy powers.⁴⁸

- *An increasing proportion of jurisdictions have also decriminalized or legalized recreational cannabis use.⁴⁹*
 - *The federal government’s position on prosecuting the use of cannabis that is legal under applicable jurisdiction law has been set out U.S. Department of Justice position papers. In 2009, the U.S. Attorney General took a position that discourages federal prosecutors from prosecuting people who distribute or use cannabis for medical purposes in compliance with applicable jurisdiction law; further similar guidance was given in 2011, 2013 and 2014.⁵⁰ In January 2018, the U.S. Office of the Attorney General rescinded the previous nationwide guidance specific to marijuana enforcement. The 2018 memorandum⁵¹ provides that federal prosecutors follow the well-established principles in deciding which cases to prosecute, namely the prosecution is to weigh all relevant considerations including priorities set by the attorneys general, seriousness of the crime, deterrent effect of criminal prosecution and cumulative impact of particular crimes on the community.*
2. The BON should have a working knowledge of the jurisdiction’s MMP, specifically related to administration of marijuana.
 - *MMPs are defined and described within the statute and rules of the specific jurisdiction. These statutes include lists of conditions that qualify an individual to participate in a jurisdiction’s MMP, as well as the process to become qualified. The relevant statute is most easily located through the jurisdiction’s Department of Health and MMP.⁵²*
 - *A nurse shall not administer cannabis to a patient unless specifically authorized by jurisdiction law.⁵³*
 - *Instances where the nurse may administer cannabis or synthetic THC to a patient.*
 - o *Administration of FDA approved THC drugs (dronabinol, nabilone or Epidiolex) as per facility formulary and policy*
 - o *As a registered MMP designated caregiver*
 3. The BON should be aware of the NCSBN National Nursing Guidelines for Medical Marijuana - Nursing Care of the Patient Using Medical Marijuana
 - *The majority of jurisdictions allow a designated caregiver to assist a patient with the medical use of cannabis.*
 - *These designated caregivers must meet specific qualifications and be registered with the MMP and must not practice outside of the limits of the caregiving statute.⁵⁴*
 - *Some jurisdictions allow an employee of a hospice provider, nursing, or medical facility or a visiting nurse, to assist in the administration of medical cannabis.⁵⁵*
 - *Check the most current MMP statute or rules.⁵⁶*
 - *Facility policies may exist regarding medical cannabis administration. Caregiver provisions for administration of medical cannabis do not apply within a federal facility or to federal employees.*
 4. The BON should have a working knowledge of right touch regulation.
 - *The NCSBN National Nursing Guidelines for Medical Marijuana - Nursing Care of the Patient Using Medical Marijuana⁵⁷ include the following:*
 - o *A working knowledge of the current state of legalization of medical and recreational cannabis use*
 - o *General knowledge of the principles of a MMP*
 - o *Specific knowledge of the MMP designated caregiver provisions*

*trying to regulate, as well as proportionate, consistent, targeted, transparent, accountable, and agile discipline as warranted.*⁵⁸

- *When a regulatory body's decisions affect the safety of the public, a delicate balance must be maintained between mitigating the risk of harm and applying discipline in a fair and consistent manner.*⁵⁹ *After evaluation of the mitigating and aggravating factors, the disciplinary decision should be appropriate to the circumstances, have a minimal effect on the nurse's practice beyond what is necessary, and be justifiable under scrutiny.*

5. The BON should consider the administration of cannabis outside of the designated caregiver provision of the MMP in the context of the nurse practice act.
 - *Administration of cannabis without a designated caregiver registration exceeds the nurse's scope of practice and does not conform to prevailing standards of safe nursing care.*
 - *Administration of cannabis beyond the designated caregiver provisions exceeds the nurse's scope of practice and does not conform to prevailing standards of safe nursing care.*

References

- 1 National Conference of State Legislatures (NCSL). (2018). State Medical Marijuana Laws. Retrieved from <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>
- 2 Yoo, E. (2015). THC Driving Limits: A Shot in the Dark. Retrieved from <https://druglawandpolicy.wordpress.com/2015/04/04/thc-driving-limits-a-shot-in-the-dark/>
- 3 Professional Standards Authority. (2015). Right-touch regulation (revised). Retrieved from <https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015.pdf>
- 4 Comprehensive Drug Abuse Prevention and Control Act. (1970). 21 U.S.C. § 801 – 904.
- 5 U.S. Department of Transportation. National Highway Traffic Safety Administration (NHTSA). (2017). Marijuana-Impaired Driving A Report to Congress. Retrieved from <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf>
- 6 Comprehensive Drug Abuse Prevention and Control Act. (1970). 21 U.S.C. § 801 – 904.
- 7 Mikos, R.A. (December 12, 2012). On the Limits of Federal Supremacy: When States Relax (or Abandon) Marijuana Bans. Cato Institute. Policy Analysis, No. 714. Retrieved from <https://object.cato.org/sites/cato.org/files/pubs/pdf/PA714.pdf>; *Beek v. City of Wyoming*. (February 6, 2014) (Findlaw, Dist. 145816). Retrieved from <https://caselaw.findlaw.com/mi-supreme-court/1656759.html>
- 8 U.S. Department of Justice, Office of Public Affairs (DOJ). (October 19, 2009). Attorney General Announces Formal Medical Marijuana Guidelines. Retrieved from <https://www.justice.gov/opa/pr/attorney-general-announces-formal-medical-marijuana-guidelines>; DOJ. (June 29, 2011). Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use. Retrieved from <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/dag-guidance-2011-for-medical-marijuana-use.pdf>; DOJ. (August 29, 2013). Guidance Regarding Marijuana Enforcement. Retrieved from <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>; DOJ. (February 14, 2014). Guidance Regarding Marijuana Related Financial Crimes. Retrieved from <https://www.dfi.wa.gov/documents/banks/dept-of-justice-memo.pdf>; DOJ. (October 28, 2014). Policy Statement Regarding Marijuana Issues in Indian Country. Retrieved from <https://www.justice.gov/sites/default/files/tribal/pages/attachments/2014/12/11/policystatementregardingmarijuanaissuesinindiancountry2.pdf>
- 9 DOJ. (January 4, 2018). Marijuana Enforcement. Retrieved from <https://www.justice.gov/opa/press-release/file/1022196/download>
- 10 NCSL. (2018). State Medical Marijuana Laws. Retrieved from <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>
- 11 Ibid.
- 12 Crean, R.D., Crane, N.A., Mason, B.J. (March 2011). An Evidence-Based Review of Acute and Long-Term Effects of Cannabis Use on Executive Cognitive Functions. *Journal of Addiction Medicine: Volume 5 - Issue 1 - p 1-8.*
- 13 NHTSA. (2017). Marijuana-Impaired Driving A Report to Congress. Retrieved from <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf>
- 14 Ibid.
- 15 Ibid.
- 16 Ibid.
- 17 Ibid.
- 18 Ibid.

- 19 Ibid.
- 20 Ibid.
- 21 Ibid.
- 22 Ibid.
- 23 Synergy Health. (April 2014). Laboratory Technical Specifications Manual.
- 24 NHTSA. (2017). Marijuana-Impaired Driving A Report to Congress. Retrieved from <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf>
- 25 Professional Standards Authority. (2015). Right-touch Regulation revised. Retrieved from https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015.pdf?sfvrsn=eaf77f20_18
- 26 Ibid.
- 27 Wyoming State Board of Nursing. (2014). Checklist for Substance Abuse Evaluations.
- 28 Rand, C.A. (2014). Safety-Sensitive Positions and Random Drug Testing by Private Employers in New Jersey. Retrieved from <https://www.njlawblog.com/2014/08/articles/employment/safety-sensitive-positions-and-random-drug-testing-by-private-employers-in-new-jersey/>
- 29 National Council of State Boards of Nursing. (2012). NCSBN Model Act. Retrieved from https://www.ncsbn.org/14_Model_Act_0914.pdf
- 30 NHTSA. (2017). Marijuana-Impaired Driving A Report to Congress. Retrieved from <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf>
- 31 Ibid.
- 32 Comprehensive Drug Abuse Prevention and Control Act. (1970). 21 U.S.C. § 801 – 904.
- 33 Drug Enforcement Administration (DEA). (November 8, 2017). Established Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2018. 82 FR 51873. Retrieved from <https://www.federalregister.gov/documents/2017/11/08/2017-24306/established-aggregate-production-quotas-for-schedule-i-and-ii-controlled-substances-and-assessment>
- 34 National Institute on Drug Abuse (NIDA). (April 2018). NIDA's Role in Providing Marijuana for Research. Retrieved from <https://www.drugabuse.gov/drugs-abuse/marijuana/nidas-role-in-providing-marijuana-research>
- 35 Mikos. R.A. (December 12, 2012). On the Limits of Federal Supremacy: When States Relax (or Abandon) Marijuana Bans. Cato Institute. Policy Analysis, No. 714. Retrieved from <https://object.cato.org/sites/cato.org/files/pubs/pdf/PA714.pdf>
- 36 DOJ. (October 19, 2009). Attorney General Announces Formal Medical Marijuana Guidelines. Retrieved from <https://www.justice.gov/opa/pr/attorney-general-announces-formal-medical-marijuana-guidelines>; DOJ. (June 29, 2011). Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use. Retrieved from <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/dag-guidance-2011-for-medical-marijuana-use.pdf>; DOJ. (August 29, 2013). Guidance Regarding Marijuana Enforcement. Retrieved from <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>; DOJ. (February 14, 2014). Guidance Regarding Marijuana Related Financial Crimes. Retrieved from <https://www.dfi.wa.gov/documents/banks/dept-of-justice-memo.pdf>; DOJ. (October 28, 2014). Policy Statement Regarding Marijuana Issues in Indian Country. Retrieved from <https://www.justice.gov/sites/default/files/tribal/pages/attachments/2014/12/11/policystatementregardingmarijuanaissuesinindiancountry2.pdf>
- 37 DOJ. (January 4, 2018). Marijuana Enforcement. Retrieved from <https://www.justice.gov/opa/press-release/file/1022196/download>
- 38 NCSL. (2018). State Medical Marijuana Laws. Retrieved from <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>
- 39 Ibid.
- 40 Ibid.
- 41 Ibid.
- 42 Ibid.
- 43 Ibid.
- 44 National Council of State Boards of Nursing (NCSBN). (2018). The NCSBN National Nursing Guidelines for Medical Marijuana. *Journal of Nursing Regulation*, 2018: 9(2S), S39-S45.
- 45 Professional Standards Authority. (2015). Right-touch Regulation revised. Retrieved from https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015.pdf?sfvrsn=eaf77f20_18.pdf?sfvrsn=eaf77f20_18
- 46 Ibid.
- 47 Comprehensive Drug Abuse Prevention and Control Act. (1970). 21 U.S.C. § 801 – 904

- 48 Mikos. R.A. (December 12, 2012). On the Limits of Federal Supremacy: When States Relax (or Abandon) Marijuana Bans. Cato Institute. Policy Analysis, No. 714. Retrieved from <https://object.cato.org/sites/cato.org/files/pubs/pdf/PA714.pdf>; *Beek v. City of Wyoming*. (February 6, 2014) (Findlaw, Dist. 145816). Retrieved from <https://caselaw.findlaw.com/mi-supreme-court/1656759.html>
- 49 NCSL. (2018). State Medical Marijuana Laws. Retrieved from <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>
- 50 DOJ. (October 19, 2009). Attorney General Announces Formal Medical Marijuana Guidelines. Retrieved from <https://www.justice.gov/opa/pr/attorney-general-announces-formal-medical-marijuana-guidelines>; DOJ. (June 29, 2011). Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use. Retrieved from <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/dag-guidance-2011-for-medical-marijuana-use.pdf>; DOJ. (August 29, 2013). Guidance Regarding Marijuana Enforcement. Retrieved from <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>; DOJ. (February 14, 2014). Guidance Regarding Marijuana Related Financial Crimes. Retrieved from <https://www.dfi.wa.gov/documents/banks/dept-of-justice-memo.pdf>; DOJ. (October 28, 2014). Policy Statement Regarding Marijuana Issues in Indian Country. Retrieved from <https://www.justice.gov/sites/default/files/tribal/pages/attachments/2014/12/11/policystatementregardingmarijuanaissuesinindiancountry2.pdf>
- 51 DOJ. (January 4, 2018). Marijuana Enforcement. Retrieved from <https://www.justice.gov/opa/press-release/file/1022196/download>
- 52 NCSL. (2018). State Medical Marijuana Laws. Retrieved from <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>
- 53 Ibid.
- 54 Ibid.
- 55 Ibid.
- 56 Ibid.
- 57 National Council of State Boards of Nursing (NCSBN). (2018). The NCSBN National Nursing Guidelines for Medical Marijuana. *Journal of Nursing Regulation*, 2018: 9(2S), S23-S27.
- 58 Professional Standards Authority. (2015). Right-touch Regulation revised. Retrieved from https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015.pdf?sfvrsn=eaf77f20_18
- 59 Ibid.



NCSBN
Leading Regulatory Excellence

111 E. Wacker Drive, Ste. 2900
Chicago, IL 60601 | www.ncsbn.org

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Dale Kleven Administrative Rules Coordinator		2) Date When Request Submitted: 9/28/20 Items will be considered late if submitted after 12:00 p.m. on the deadline date: ▪ 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Board of Nursing			
4) Meeting Date: 10/8/20	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Administrative Rule Matters – Discussion and Consideration 1. Emergency Rule Draft – N 1 to 8 – Requirements in Emergency Situations 2. Preliminary Permanent Rule Draft – N 1 to 8 – Requirements in Emergency Situations 3. Preliminary Permanent Rule Draft – N 4 – Licensure of Nurse-Midwives 4. Scope Statement Development – N 8 – Advanced Practice Nurse Prescribers 5. Scope Statement Development – N 2 – Temporary Permits 6. Administrative Rules Reporting Requirement Under 2017 Wisconsin Act 108 a. Review of 2019 Report b. Proposals for 2021 Report 7. Pending or Possible Rulemaking Projects a. N 8, Relating to APNP Prescribing Limitations b. Reciprocal Credentials for Service Members, Former Service Members, and Their Spouses	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both		8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:
10) Describe the issue and action that should be addressed:			
11) Authorization			
Signature of person making this request <i>Dale Kleven</i>		Date <i>September 28, 2020</i>	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BOARD OF NURSING
BOARD OF NURSING : ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 014-20, was approved by the Governor on March 27, 2020, published in Register 771B on March 30, 2020, and approved by the Board of Nursing on April 9, 2020.

This emergency rule was approved by the Governor on *

PROPOSED ORDER

An order of the Board of Nursing to renumber and amend N 2.34; to amend N 1.08 (5m) (b), 2.31 (3), 2.33 (1), 2.35 (2), and 2.40 (3) (d) (intro.); and to create N 1.08 (5m) (c), 2.33 (3), 2.34 (2), 2.40 (3) (e), and 8.10 (8), relating to requirements in emergency situations.

Analysis prepared by the Department of Safety and Professional Services.

FINDING OF EMERGENCY

The continued spread of COVID-19 and its potential for an emergency surge of cases in the near future necessitates having the help of as many skilled nurses and other health care providers as possible. There are, however, requirements in current rules that would make response to an emergency surge of COVID-19 more difficult. An expeditious promulgation of the proposed rule is in the best interest of public welfare, as it will help ensure Wisconsin's nursing workforce is in the best possible position to respond to COVID-19.

ANALYSIS

Statutes interpreted: Subchapter I of ch. 441, Stats.

Statutory authority: Sections 15.08 (5) (b), 441.01 (3), 441.16 (3), and 441.08, Stats.

Explanation of agency authority:

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

Section 441.01 (3), Stats., provides “[t]he board may establish minimum standards for schools for professional nurses and schools for licensed practical nurses, including all related clinical units and facilities, and make and provide periodic surveys and consultations to such schools. It may also establish rules to prevent unauthorized persons from practicing professional nursing. It shall approve all rules for the administration of this chapter in accordance with ch. 227.”

Section 441.16 (3), Stats., requires the Board to promulgate rules necessary to administer the prescription privileges of nurses, including defining the scope of practice within which an advanced practice nurse may issue prescription orders.

Section 441.08, Stats., provides “[t]he board may promulgate rules limiting the use and duration of temporary permits and providing for revocation of temporary permits.”

Related statute or rule:

Subchapter I of ch. 441, Stats.

Plain language analysis:

The proposed emergency rule will allow the Board to grant a waiver from or variance to the following requirements on a case-by-case basis, if a request for a waiver or variance is made on the basis of hardship or emergency circumstances recognized by the Board:

- The requirement under s. N 1.08 (5m) (b) that simulation be utilized for no more than 50% of the time designated for meeting clinical learning requirements.
- The requirement under s. N 2.31 (3) that an application for a temporary permit include an official transcript of nursing education.
- The requirement under s. N 2.33 (1) that the holder of a temporary permit practice only under the direct supervision of a registered nurse.
- The requirement under s. N 2.34 that practice under temporary permits, including renewals, may not exceed 6 months total duration.
- The requirement under s. N 2.40 (3) (d) that a person renewing a nursing credential after 5 years provide documentation of employment requiring a nursing license within the last 5 years or evidence of completion of a board approved nursing refresher course or education equivalent to a nursing refresher course.

The rule will also allow the Board to grant a temporary waiver of the requirement under s. N 8.10 (2) and (7) that an advanced practice nurse prescriber work in a collaborative relationship with at least one physician or dentist and document that relationship. The board may grant a waiver if the board determines a natural disaster or other disaster or emergency exists or has occurred that necessitates granting a waiver, and that granting a waiver is necessary to protect the public health, safety, and welfare. A waiver must be for a stated term not to exceed 90 days; however, the board may extend the waiver if it determines an extension is necessary to protect the public health, safety, or welfare.

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

None.

Summary of public comments and feedback on the statement of scope and the Board’s responses:

The Board held a public comment period and conducted a public hearing on April 9, 2020. The Board received testimony in support of the statement of scope from Gina Dennik-Champion on behalf of the Wisconsin Nurses Association. The Board also received written comments in support of the statement of scope from the Wisconsin Association of Nurse Anesthetists.

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation regulate the profession of nursing in Illinois (68 Ill. Adm. Code Part 1300). The Secretary of the Department may grant variances from the rules in individual cases when it is determined that:

- the provision from which the variance is granted is not statutorily mandated;
- no party will be injured by the granting of the variance; and
- the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

The Secretary is required to notify the Illinois Board of Nursing of the granting of the variance, and the reason for granting the variance, at the next meeting of the Board (68 Ill. Adm. Code s. 1300.60).

Iowa:

Rules of the Iowa Board of Nursing regulate the profession of nursing in Illinois (655 IAC chs. 1 to 20). In response to a petition for waiver, the Board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the Board finds, based on clear and convincing evidence, all of the following:

- The application of the rule would impose an undue hardship on the person for whom the waiver is requested.
- The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person.
- The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law.
- Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested (655 IAC 15.4).

Michigan:

Rules of the Michigan Department of Licensing and Regulatory Affairs regulate the profession of nursing in Michigan (Mich Admin Code, R 338.10101 to R 338.10705). The Michigan Board of Nursing may waive the requirement to provide evidence of attendance at educational programs as a condition to license renewal if, upon written application, the Board finds the failure of the licensee to attend was due to the licensee's disability, military service, absence from the continental United States, or a circumstance beyond the control of the licensee which the Board considers good and sufficient (Mich Admin Code, R 338.10601).

Minnesota:

Rules of the Minnesota Board of Nursing regulate the profession of nursing in Minnesota (Minnesota Rules, chs. 6301 to 6321). The Board must waive the requirement for licensure of graduation from an approved nursing program if:

- an applicant has been licensed by another jurisdiction based on requirements equivalent to the qualifications required in Minnesota at the time of the applicant’s original licensure; or
- an applicant for licensed practical nurse licensure has been licensed by another jurisdiction and passed an acceptable examination as specified in subpart 12 and has had at least 4,000 clock hours of employment as a licensed practical nurse in the five years prior to application for licensure in Minnesota (Minnesota Rules, part 6305.0500, subpart 6).

In addition, on presentation of convincing evidence by a registration or reregistration applicant, the Board must grant a variance from the following requirements:

- For a receipt deadline, on presentation of convincing evidence of mail delay.
- For a fee, on presentation of convincing evidence of financial hardship.
- For document submission, on presentation of convincing evidence of loss of records through fire or other disaster.
- For the required number of continuing education contact hours, on presentation of convincing evidence of unexpected illness or personal tragedy (Minnesota Rules, part 6310.2800, subpart 9).

Summary of factual data and analytical methodologies:

In consultation with staff from the Department of Safety and Professional Services, the Board developed a proposed emergency rule that gives it the ability to provide a waiver from or variance to certain requirements in the event of a natural disaster, public health crisis, or other emergency circumstances.

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

These proposed emergency rules do not impose any new requirements. The purpose of the rules is to give the Board the ability to provide a waiver from or variance to certain requirements in the event of a natural disaster, public health crisis, or other emergency circumstances, including an emergency surge of COVID-19.

Fiscal estimate:

These proposed emergency rules will not have a fiscal impact.

Effect on small business:

These proposed emergency 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:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be submitted by the date and time at which the public hearing on these emergency rules is conducted. Information as to the place, date, and time of the public hearing will be published on the Legislature's website and in the Wisconsin Administrative Register.

TEXT OF RULE

SECTION 1. N 1.08 (5m) (b) is amended to read:

N 1.08 (5m) (b) ~~Simulation~~ Except as provided under par. (c), simulation may not be utilized for more than 50% of the time designated for meeting clinical learning requirements.

SECTION 2. N 1.08 (5m) (c) is created to read:

N 1.08 (5m) (c) The board may temporarily allow simulation to be utilized for up to 100% of the time designated for meeting clinical learning requirements, if requested by a school of nursing due to emergency circumstances recognized by the board. The board shall consider each request under this paragraph individually on its merits, and the board may grant additional utilization of simulation for a period of time deemed necessary by the board to address the emergency circumstances.

SECTION 3. N 2.31 (3) is amended to read:

N 2.31 (3) An official transcript of nursing education submitted by the school of professional nursing or practical nursing directly to the department. The board may waive the requirement under this subsection, if requested by an applicant due to emergency circumstances recognized by the board. The board shall consider each request under this subsection individually on its merits, and the board may grant a waiver as deemed appropriate.

SECTION 4. N 2.33 (1) is amended to read:

N 2.33 (1) Except as provided ~~in sub.~~ under subs. (2) and (3), the holder of a temporary permit shall practice only under the direct supervision of a registered nurse.

SECTION 5. N 2.33 (3) is created to read:

N 2.33 (3) The board may grant a temporary waiver of the requirement under sub. (1) if requested by an applicant for or holder of a temporary permit and the employer of the applicant or permit holder due to emergency circumstances recognized by the board. The board shall consider each request under this subsection individually on its merits, and the board may grant a waiver for a period of time deemed necessary by the board to address the emergency circumstances.

SECTION 6. N 2.34 is renumbered N 2.34 (1) and amended to read:

N 2.34 (1) The temporary permit is valid for a period of 3 months or until the holder receives notification of failing the NCLEX, whichever occurs first. ~~Practice~~ Except as provided under sub. (2), practice under temporary permits, including renewals under s. N 2.35, may not exceed 6 months total duration.

SECTION 7. N 2.34 (2) is created to read:

N 2.34 (2) The holder of a temporary permit renewed under s. N 2.35 (2) may practice for the duration of the renewal period established by the board.

SECTION 8. N 2.35 (2) is amended to read:

N 2.35 (2) Subsequent renewals may be granted in hardship cases or emergency circumstances recognized by the board including illness, family illness or death, accident, natural disaster, or delay of verification from another state. The board shall consider each application for renewal under this subsection individually on its merits, and the board may grant a renewal as for a renewal period deemed appropriate necessary by the board to address the hardship or emergency circumstances.

SECTION 9. N 2.40 (3) (d) (intro.) is amended to read:

N 2.40 (3) (d) (intro.) ~~Meet~~ Except as provided under par. (e), meet one of the following requirements:

SECTION 10. N 2.40 (3) (e) is created to read:

N 2.40 (3) (e) If requested by an applicant due to emergency circumstances recognized by the board, the board may waive the requirements under par. (d) based on evidence satisfactory to the board that granting renewal of the license would adequately protect public health, safety, and welfare.

SECTION 11. N 8.10 (8) is created to read:

N 8.10 (8) The board may grant a temporary waiver of the requirements under subs. (2) and (7) if the board determines a natural disaster or other disaster or emergency exists or has occurred that necessitates granting a waiver, and that granting a waiver is necessary to protect the public health, safety, and welfare. A waiver granted under this subsection shall be for a stated term not to exceed 90 days, except that the board may extend the waiver if it determines that an extension is necessary to protect the public health, safety, or welfare.

SECTION 12. EFFECTIVE DATE. The rules adopted in this order shall take effect upon publication in the official state newspaper, pursuant to s. 227.22 (2) (c), Stats.

(END OF TEXT OF RULE)

The following draft changes are based on recommendations made by the Legislation and Rules Committee at its August 21, 2020 meeting.

N 1.08 (5m) SIMULATION.

(a) Simulation used to meet clinical requirements shall adhere to all of the following:

1. Nursing faculty with documented education and training in the use of simulation shall develop, implement, and evaluate the simulation experience.
2. Prebriefing and debriefing are conducted by nursing faculty with subject matter expertise and training in simulation using evidence-based techniques.
3. The simulation provides an opportunity for each student to participate while in the role of the nurse.

(b) Simulation Except as provided under par. (c), simulation may not be utilized for more than 50% of the time designated for meeting clinical learning requirements.

(c) The board may temporarily allow simulation to be utilized for up to 100% of the time designated for meeting clinical learning requirements, if requested by a school of nursing due to emergency circumstances recognized by the board. The board shall consider each request under this paragraph individually on its merits, and the board may grant additional utilization of simulation for a period of time deemed necessary by the board to address the emergency circumstances.

N 2.31 Application. A nurse who has graduated from a board-approved school or comparable school or granted a certificate of completion by a board-approved school may be granted a temporary permit. An applicant shall submit a completed application and pay the applicable fee. The application shall include any of the following:

- (1) Verification from a board-approved school via the electronic application process that the applicant has graduated or received a certificate of completion.
- (2) A certification of graduation or completion from a board-approved school.
- (3) An official transcript of nursing education submitted by the school of professional nursing or practical nursing directly to the department. The board may waive the requirement under this subsection, if requested by an applicant due to emergency circumstances recognized by the board. The board shall consider each request under this subsection individually on its merits, and the board may grant a waiver as deemed appropriate.

Note: A temporary permit does not grant multistate licensure privileges.

N 2.33 Supervision.

- (1) Except as provided ~~in sub. under subs. (2) and (3)~~, the holder of a temporary permit shall practice only under the direct supervision of a registered nurse.
- (2) A holder of a temporary permit who is currently licensed as a registered nurse or practical nurse in another jurisdiction may practice without the direct supervision of a registered nurse.
- (3) The board may grant a temporary waiver of the requirement under sub. (1) if requested by an applicant for or holder of a temporary permit and the employer of the applicant or permit holder due to emergency circumstances recognized by the board. The board shall consider each request under this subsection individually on its merits, and the board may grant a temporary waiver for a period of time deemed necessary by the board to address the emergency circumstances.

N 2.34 Duration. (1) The temporary permit is valid for a period of 3 months or until the holder receives notification of failing the NCLEX, whichever occurs first. Practice Except as provided under sub. (2), practice under temporary permits, including renewals under s. N 2.35, may not exceed 6 months total duration.

(2) The holder of a temporary permit renewed under s. N 2.35 (2) may practice for the duration of the renewal period established by the board.

N 2.35 Renewal.

- (1) A temporary permit for a registered nurse or practical nurse may be renewed once by completing an application and paying applicable fees.

- (2) Subsequent renewals may be granted in hardship cases or emergency circumstances recognized by the board, including illness, family illness or death, accident, natural disaster or delay of verification from another state. The board shall consider each application for renewal under this subsection individually on its merits, and the board may grant a renewal as for a renewal period deemed appropriate necessary by the board to address the hardship or emergency circumstances.

N 2.40 (3) RENEWAL AFTER 5 YEARS. This subsection does not apply to credential holders who have unmet disciplinary requirements or whose credential has been surrendered or revoked. A person renewing the credential after 5 years shall do all of the following:

- (a) Pay the renewal fee as determined by the department under s. 440.03 (9) (a), Stats., and the late renewal fee.
- (b) Pay a nursing workforce survey fee.
- (c) Complete the nursing workforce survey to the satisfaction of the board.
- (d) ~~Meet~~ Except as provided under par. (e), meet one of the following requirements:

- 1. Documentation of employment requiring a nursing license within the last five years.
- 2. Completion of a board approved nursing refresher course or education equivalent to a nursing refresher course. A nursing refresher course requires a limited license for the purpose of completing the clinical component of the course.

Note: The licensee may request the Board grant a limited license for the sole purpose of completing a nurse refresher course.

- (e) If requested by an applicant due to emergency circumstances recognized by the board, the board may waive the requirements under par. (d) based on evidence satisfactory to the board that granting renewal of the license would adequately protect public health, safety, and welfare.

N 8.10 Care management and collaboration with other health care professionals.

- (1) Advanced practice nurse prescribers shall communicate with patients through the use of modern communication techniques.
- (2) Advanced practice nurse prescribers shall facilitate collaboration with other health care professionals, at least 1 of whom shall be a physician or dentist, through the use of modern communication techniques.
- (3) Advanced practice nurse prescribers shall facilitate referral of patient health care records to other health care professionals and shall notify patients of their right to have their health care records referred to other health care professionals.
- (4) Advanced practice nurse prescribers shall provide a summary of a patient's health care records, including diagnosis, surgeries, allergies and current medications to other health care providers as a means of facilitating care management and improved collaboration.
- (5) The board shall promote communication and collaboration among advanced practice nurse prescribers, physicians, dentists and other health care professionals.
- (6) The advanced practice nurse prescriber may order treatment, therapeutics, and testing, appropriate to his or her area of competence as established by his or her education, training, or experience, to provide care management.
- (7) Advanced practice nurse prescribers shall work in a collaborative relationship with a physician or dentist. The collaborative relationship is a process in which an advanced practice nurse prescriber is working with a physician or dentist, in each other's presence when necessary, to deliver health care services within the scope of the practitioner's training, education, and experience. The advanced practice nurse prescriber shall document this relationship.
- (8) The board may grant a temporary waiver of the requirements under subs. (2) and (7) if the board determines a natural disaster or other disaster or emergency exists or has occurred that necessitates granting a waiver, and that granting a waiver is necessary to protect the public health, safety, and welfare. A waiver granted under this subsection shall be for a stated term not to exceed 90 days, except that the board may extend the waiver if it determines that an extension is necessary to protect the public health, safety, or welfare.

STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF RULE-MAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	BOARD OF NURSING
BOARD OF NURSING	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Board of Nursing to renumber and amend N 2.34; to amend N 1.08 (5m) (b), 2.31 (3), 2.33 (1), 2.35 (2), and 2.40 (3) (d) (intro.); and to create N 1.08 (5m) (c), 2.33 (3), 2.34 (2), 2.40 (3) (e), and 8.10 (8), relating to requirements in emergency situations.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Subchapter I of ch. 441, Stats.

Statutory authority: Sections 15.08 (5) (b), 441.01 (3), 441.16 (3), and 441.08, Stats.

Explanation of agency authority:

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

Section 441.01 (3), Stats., provides “[t]he board may establish minimum standards for schools for professional nurses and schools for licensed practical nurses, including all related clinical units and facilities, and make and provide periodic surveys and consultations to such schools. It may also establish rules to prevent unauthorized persons from practicing professional nursing. It shall approve all rules for the administration of this chapter in accordance with ch. 227.”

Section 441.16 (3), Stats., requires the Board to promulgate rules necessary to administer the prescription privileges of nurses, including defining the scope of practice within which an advanced practice nurse may issue prescription orders.

Section 441.08, Stats., provides “[t]he board may promulgate rules limiting the use and duration of temporary permits and providing for revocation of temporary permits.”

Related statute or rule:

Subchapter I of ch. 441, Stats.

Plain language analysis:

The proposed rule will allow the Board to grant a waiver from or variance to the following requirements on a case-by-case basis, if a request for a waiver or variance is made on the basis of hardship or emergency circumstances recognized by the Board:

- The requirement under s. N 1.08 (5m) (b) that simulation be utilized for no more than 50% of the time designated for meeting clinical learning requirements.

- The requirement under s. N 2.31 (3) that an application for a temporary permit include an official transcript of nursing education.
- The requirement under s. N 2.33 (1) that the holder of a temporary permit practice only under the direct supervision of a registered nurse.
- The requirement under s. N 2.34 that practice under temporary permits, including renewals, may not exceed 6 months total duration.
- The requirement under s. N 2.40 (3) (d) that a person renewing a nursing credential after 5 years provide documentation of employment requiring a nursing license within the last 5 years or evidence of completion of a board approved nursing refresher course or education equivalent to a nursing refresher course.

The rule will also allow the Board to grant a temporary waiver of the requirement under s. N 8.10 (2) and (7) that an advanced practice nurse prescriber work in a collaborative relationship with at least one physician or dentist and document that relationship. The board may grant a waiver if the board determines a natural disaster or other disaster or emergency exists or has occurred that necessitates granting a waiver, and that granting a waiver is necessary to protect the public health, safety, and welfare. A waiver must be for a stated term not to exceed 90 days; however, the board may extend the waiver if it determines an extension is necessary to protect the public health, safety, or welfare.

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

None.

Summary of public comments and feedback on the statement of scope and the Board’s responses:

The Board held a public comment period and conducted a public hearing on April 9, 2020. The Board received testimony in support of the statement of scope from Gina Dennik-Champion on behalf of the Wisconsin Nurses Association. The Board also received written comments in support of the statement of scope from the Wisconsin Association of Nurse Anesthetists.

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation regulate the profession of nursing in Illinois (68 Ill. Adm. Code Part 1300). The Secretary of the Department may grant variances from the rules in individual cases when it is determined that:

- the provision from which the variance is granted is not statutorily mandated;
- no party will be injured by the granting of the variance; and
- the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

The Secretary is required to notify the Illinois Board of Nursing of the granting of the variance, and the reason for granting the variance, at the next meeting of the Board (68 Ill. Adm. Code s. 1300.60).

Iowa:

Rules of the Iowa Board of Nursing regulate the profession of nursing in Illinois (655 IAC chs. 1 to 20). In response to a petition for waiver, the Board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the Board finds, based on clear and convincing evidence, all of the following:

- The application of the rule would impose an undue hardship on the person for whom the waiver is requested.
- The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person.
- The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law.
- Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested (655 IAC 15.4).

Michigan:

Rules of the Michigan Department of Licensing and Regulatory Affairs regulate the profession of nursing in Michigan (Mich Admin Code, R 338.10101 to R 338.10705). The Michigan Board of Nursing may waive the requirement to provide evidence of attendance at educational programs as a condition to license renewal if, upon written application, the Board finds the failure of the licensee to attend was due to the licensee's disability, military service, absence from the continental United States, or a circumstance beyond the control of the licensee which the Board considers good and sufficient (Mich Admin Code, R 338.10601).

Minnesota:

Rules of the Minnesota Board of Nursing regulate the profession of nursing in Minnesota (Minnesota Rules, chs. 6301 to 6321). The Board must waive the requirement for licensure of graduation from an approved nursing program if:

- an applicant has been licensed by another jurisdiction based on requirements equivalent to the qualifications required in Minnesota at the time of the applicant's original licensure; or
- an applicant for licensed practical nurse licensure has been licensed by another jurisdiction and passed an acceptable examination as specified in subpart 12 and has had at least 4,000 clock hours of employment as a licensed practical nurse in the five years prior to application for licensure in Minnesota (Minnesota Rules, part 6305.0500, subpart 6).

In addition, on presentation of convincing evidence by a registration or reregistration applicant, the Board must grant a variance from the following requirements:

- For a receipt deadline, on presentation of convincing evidence of mail delay.
- For a fee, on presentation of convincing evidence of financial hardship.
- For document submission, on presentation of convincing evidence of loss of records through fire or other disaster.

- For the required number of continuing education contact hours, on presentation of convincing evidence of unexpected illness or personal tragedy (Minnesota Rules, part 6310.2800, subpart 9).

Summary of factual data and analytical methodologies:

In consultation with staff from the Department of Safety and Professional Services, the Board developed a proposed rule that gives it the ability to provide a waiver from or variance to certain requirements in the event of a natural disaster, public health crisis, or other emergency circumstances.

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:

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:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. N 1.08 (5m) (b) is amended to read:

N 1.08 (5m) (b) ~~Simulation~~ Except as provided under par. (c), simulation may not be utilized for more than 50% of the time designated for meeting clinical learning requirements.

SECTION 2. N 1.08 (5m) (c) is created to read:

N 1.08 (5m) (c) The board may temporarily allow simulation to be utilized for up to 100% of the time designated for meeting clinical learning requirements, if requested by a school of nursing due to emergency circumstances recognized by the board. The board shall consider each request under this paragraph individually on its merits, and the board may grant additional utilization of simulation for a period of time deemed necessary by the board to address the emergency circumstances.

SECTION 3. N 2.31 (3) is amended to read:

N 2.31 (3) An official transcript of nursing education submitted by the school of professional nursing or practical nursing directly to the department. The board may waive the requirement under this subsection, if requested by an applicant due to emergency circumstances recognized by the board. The board shall consider each request under this subsection individually on its merits, and the board may grant a waiver as deemed appropriate.

SECTION 4. N 2.33 (1) is amended to read:

N 2.33 (1) Except as provided ~~in sub.~~ under subs. (2) and (3), the holder of a temporary permit shall practice only under the direct supervision of a registered nurse.

SECTION 5. N 2.33 (3) is created to read:

N 2.33 (3) The board may grant a temporary waiver of the requirement under sub. (1) if requested by an applicant for or holder of a temporary permit and the employer of the applicant or permit holder due to emergency circumstances recognized by the board. The board shall consider each request under this subsection individually on its merits, and the board may grant a waiver for a period of time deemed necessary by the board to address the emergency circumstances.

SECTION 6. N 2.34 is renumbered N 2.34 (1) and amended to read:

N 2.34 (1) The temporary permit is valid for a period of 3 months or until the holder receives notification of failing the NCLEX, whichever occurs first. ~~Practice~~ Except as provided under sub. (2), practice under temporary permits, including renewals under s. N 2.35, may not exceed 6 months total duration.

SECTION 7. N 2.34 (2) is created to read:

N 2.34 (2) The holder of a temporary permit renewed under s. N 2.35 (2) may practice for the duration of the renewal period established by the board.

SECTION 8. N 2.35 (2) is amended to read:

N 2.35 (2) Subsequent renewals may be granted in hardship cases or emergency circumstances recognized by the board including illness, family illness or death, accident, natural disaster, or delay of verification from another state. The board shall consider each application for renewal under this subsection individually on its merits, and the board may grant a renewal as for a renewal period deemed appropriate necessary by the board to address the hardship or emergency circumstances.

SECTION 9. N 2.40 (3) (d) (intro.) is amended to read:

N 2.40 (3) (d) (intro.) ~~Meet~~ Except as provided under par. (e), meet one of the following requirements:

SECTION 10. N 2.40 (3) (e) is created to read:

N 2.40 (3) (e) If requested by an applicant due to emergency circumstances recognized by the board, the board may waive the requirements under par. (d) based on evidence satisfactory to the board that granting renewal of the license would adequately protect public health, safety, and welfare.

SECTION 11. N 8.10 (8) is created to read:

N 8.10 (8) The board may grant a temporary waiver of the requirements under subs. (2) and (7) if the board determines a natural disaster or other disaster or emergency exists or has occurred that necessitates granting a waiver, and that granting a waiver is necessary to protect the public health, safety, and welfare. A waiver granted under this subsection shall be for a stated term not to exceed 90 days, except that the board may extend the waiver if it determines that an extension is necessary to protect the public health, safety, or welfare.

SECTION 12. 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)

STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF RULE-MAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	BOARD OF NURSING
BOARD OF NURSING	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Board of Nursing to **repeal** N 4.02 (2) and (6), 4.04 (2) to (4), 4.05 (6), and 4.10 (3) and (3) (Note); to **renumber and amend** N 4.01 (2), 4.04 (1) (intro.) and (a) to (d), 4.05 (1) and (4), and 4.08; to **amend** N 4.01 (1), 4.02 (2m) and (4), 4.03 (1) to (3), 4.04 (title), 4.05 (2), (3), and (7) (intro.), (a), and (b), 4.06 (1) to (4), 4.07 (1) to (4), and 4.10 (1) (intro.) and (2) (a) and (b); to **repeal and recreate** N 4.05 (5); and to **create** N 4.01 (2) (a) to (d), 4.025 (4), 4.04 (5), 4.043, 4.05 (1) (a) to (c), (6m), and (7) (d), 4.07 (2m), and 4.10 (2) (d) and (e), relating to licensure of nurse-midwives.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 441.15, Stats.

Statutory authority: Sections 15.08 (5) (b) and 441.15 (3) (c), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides that each examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade 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 441.15 (3) (c), Stats., provides that “[t]he board shall promulgate rules necessary to administer this section, including the establishment of appropriate limitations on the scope of the practice of nurse-midwifery, the facilities in which such practice may occur and the granting of temporary permits to practice nurse-midwifery pending qualification for certification.”

Related statute or rule:

Chapter N 7 provides rules of conduct for licensees, including licensed nurse-midwives.

Plain language analysis:

The Board conducted a comprehensive review of ch. N 4 to ensure its provisions are statutorily compliant and current with professional standards and practices. As a result of this review, the following changes have been made:

- A definition of “bureau” and associated references to the Bureau of Health Service Professions within the Department of Safety and Professional Services are removed, as the Bureau no longer exists.

- A definition of “written agreement” is removed, as it contains substantive and self-evident criteria for the required written agreement under which a nurse-midwife works in collaboration with a physician.
- Sections N 4.03 and 4.05 are updated to reflect that the current accrediting body of educational programs in nurse-midwifery is the Accreditation Commission for Midwifery Education, and that the American Midwifery Certification Board is the current national certifying body.
- Section N 4.04 is revised to remove an obsolete requirement that an application be notarized.
- Section N 4.043 is created to specify the requirements for renewal of a license to practice nurse-midwifery.
- Section N 4.10, relating to malpractice insurance, is revised to be consistent with the exceptions to the malpractice insurance coverage requirements enumerated in s. 441.15 (5) (a), Stats.
- Provisions concerning licensure and temporary permits have been reorganized for connectivity and clarity.
- Other revisions throughout ch. N 4 have been made to provide clarity and comply with current drafting standards.

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 address the practice of midwifery in Illinois (68 Ill. Adm. Code 1300). This includes requirements for licensure as an advanced practice registered nurse with certification as a nurse-midwife (68 Ill. Adm. Code 1300.400), the scope of practice of advanced practice registered nursing by certified nurse-midwives (68 Ill. Adm. Code 1300.440), requirements for written collaborative agreements (68 Ill. Adm. Code 1300.410), and requirements for late renewal and restoration of a license (68 Ill. Adm. Code 1300.50).

Iowa:

Rules of the Iowa Board of Nursing address the practice of midwifery in Iowa (655 IAC). This includes requirements for licensure as an advanced practice registered nurse with certification as a nurse-midwife (655 IAC 7.2), the scope and standards of advanced nursing practice by certified nurse-midwives (655 IAC 7.4 to 7.6), and requirements for late renewal and reactivation of a license (655 IAC 7.3). Advanced practice registered nurses practicing in Iowa are not required to enter into a collaborative agreement.

Michigan:

Rules of the Michigan Board of Nursing address the practice of midwifery in Michigan (Mich Admin Code, R 338). This includes requirements for licensure as a registered professional nurse with specialty certification as a nurse-midwife (Mich Admin Code, R 338.10203 to R 338.10205

and R 338.10404a), a definition of the practice of a nurse-midwife within the scope of practice of registered professional nursing (Mich Admin Code, R 338.10401), and requirements for late renewal and reregistration of a nurse-midwife specialty certification (Mich Admin Code, R 338.10405a). Registered professional nurses with specialty certification, including specialty certification as a nurse-midwife, practicing in Michigan are not required to enter into a collaborative agreement.

Minnesota:

Rules of the Minnesota Board of Nursing and the Minnesota Statutes address the practice of midwifery in Minnesota (Minnesota Rules, Parts 6305.0100 to 6305.0800 and 2019 Minnesota Statutes, Sections 148.171 to 148.285). This includes requirements for licensure as an advanced practice registered nurse with certification as a nurse-midwife (Minnesota Rules, Part 6305.0410), a definition of nurse-midwife practice (2019 Minnesota Statutes, Section 148.171, Subd. 10), and requirements for late registration and reregistration of a license (2019 Minnesota Statutes, Section 148.231). Advanced practice registered nurses with certification as a nurse-midwife practicing in Minnesota are not required to enter into a collaborative management agreement.

Summary of factual data and analytical methodologies:

The Board conducted a comprehensive review and update of ch. N 4 to ensure the chapter is statutorily compliant and current with professional standards and practices. This included a review of the accreditation criteria established by the Accreditation Commission for Midwifery Education and the *Standards for the Practice of Midwifery* issued by the American College of Nurse-Midwives.

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:

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:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. N 4.01 (1) is amended to read:

N 4.01 (1) The rules in this chapter are adopted pursuant to authority of ss. 15.08 (5), ~~227.11 (b)~~ and 441.15 (3) (c), Stats., and interpret s. 441.15, Stats.

SECTION 2. N 4.01 (2) is renumbered N 4.01 (2) (intro.) and amended to read:

N 4.01 (2) (intro.) The intent of the board of nursing in adopting rules in this chapter, interpreting s. 441.15, Stats., is to specify the requirements for obtaining licensure as a nurse-midwife; the scope of practice of nurse-midwifery; the types of facilities in which such practice may occur; and malpractice insurance requirements for nurse-midwives. all of the following:

SECTION 3. N 4.01 (2) (a) to (d) are created to read:

N 4.01 (2) (a) Requirements for licensure as a nurse-midwife and renewal of a license to practice nurse-midwifery.

(b) The scope of practice of nurse-midwifery.

(c) Requirements for health care facilities where the practice of nurse-midwifery may occur.

(d) Malpractice insurance requirements for nurse-midwives.

SECTION 4. N 4.02 (2) is repealed.

SECTION 5. N 4.02 (2m) and (4) are amended to read:

N 4.02 (2m) "Collaboration" has the meaning ~~specified~~ given in s. 441.15 (1) (a), Stats.

(4) "Complications" means ~~those conditions which jeopardized~~ specified in a written agreement under s. N 4.06 (2) as being conditions that jeopardize the health or life of the a patient and which deviate from normal as defined in the written agreement consistent with the standards of practice of the American College of Nurse-Midwives.

SECTION 6. N 4.02 (6) is repealed.

SECTION 7. N 4.025 (4) is created to read:

N 4.025 (4) A license to practice nurse-midwifery shall be issued separately from a license to practice professional nursing.

SECTION 8. N 4.03 (1) to (3) are amended to read:

N 4.03 (1) Has completed an educational program in nurse-midwifery accredited by the ~~American College of Nurse-Midwives~~ Accreditation Commission for Midwifery Education, or another accrediting body approved by the board.

(2) Holds a certificate issued by the ~~American College of Nurse-Midwives or the American College of Nurse-Midwives Certification Council~~ American Midwifery Certification Board, or another national certifying body approved by the board.

(3) Is currently licensed to practice as a professional nurse in ~~Wisconsin, this state~~ or is currently licensed has the privilege to practice professional nursing in another state ~~which that~~ has adopted the nurse licensure compact.

SECTION 9. N 4.04 (title) is amended to read:

N 4.04 (title) **Application procedures for licensure.**

SECTION 10. N 4.04 (1) (intro.) and (a) to (d) are renumbered N 4.04 (intro.) and (1m) to (4m) and amended to read:

N 4.04 (intro.) An applicant for licensure a license to practice as a nurse-midwife nurse-midwifery shall file a completed, ~~notarized~~ application on a form provided by the ~~bureau~~ board. The application shall include all of the following:

(1m) Signature The signature of the applicant.

(2m) Fee The fee specified under s. 440.05 (1), Stats.

(3m) Evidence of completion of an educational program in nurse-midwifery approved by the ~~American College of Nurse-Midwives and evidence of certification as a nurse-midwife from the American College of Nurse-Midwives or the American College of Nurse-Midwives Certification Council~~ Accreditation Commission for Midwifery Education, or another accrediting body approved by the board.

(4m) Identification Evidence of current licensure as a professional nurse in ~~Wisconsin~~ this state or of current licensure privilege to practice professional nursing in another state ~~which that~~ has adopted the nurse licensure compact, including the license number and renewal information.

SECTION 11. N 4.04 (2) to (4) are repealed.

SECTION 12. N 4.04 (5) is created to read:

N 4.04 (5) Evidence of certification as a nurse-midwife from the American Midwifery Certification Board, or another national certifying body approved by the board.

SECTION 13. N 4.043 is created to read:

N 4.043 License renewal. An individual holding a license to practice nurse-midwifery may renew the license by doing all of the following:

(1) Pay the renewal fee as determined by the department under s. 440.03 (9) (a), Stats., the workforce survey fee, and any applicable late renewal fee.

(2) Complete the nursing workforce survey to the satisfaction of the board.

(3) Provide evidence of current certification as a nurse-midwife by the American Midwifery Certification Board, or another national certifying body approved by the board.

(4) If applicable, provide evidence to the board that the applicant maintains in effect malpractice insurance meeting the requirements under s. N 4.10 (1).

SECTION 14. N 4.05 (1) is renumbered N 4.05 (1) (intro.) and amended to read:

N 4.05 (1) (intro.) ~~ELIGIBILITY APPLICATION.~~ An applicant for licensure ~~as a nurse-midwife~~ a license to practice nurse-midwifery ~~who has completed an educational program in nurse-midwifery approved by the American college of nurse-midwives, who is currently licensed to practice as a professional nurse in Wisconsin and who has paid the fee specified in s. 440.05 (6), Stats.,~~ may be eligible for granted a temporary permit to practice nurse-midwifery. An application for a temporary permit to practice nurse-midwifery shall include all of the following:

SECTION 15. N 4.05 (1) (a) to (c) are created to read:

N 4.05 (1) (a) Verification the applicant has completed an educational program in nurse midwifery accredited by the Accreditation Commission for Midwifery Education, or another accrediting body approved by the board.

(b) Verification the applicant is currently licensed to practice as a professional nurse in this state or currently has the privilege to practice professional nursing in another state that has adopted the nurse licensure compact.

(c) The fee specified in s. 440.05 (1), Stats.

SECTION 16. N 4.05 (2) and (3) are amended to read:

N 4.05 (2) ISSUING A TEMPORARY PERMIT. ~~The bureau of health service professions board~~ shall issue a temporary permit to an eligible applicant within one week of the determination of eligibility.

(3) SUPERVISION REQUIRED. The holder of a temporary permit shall practice under the direct supervision of a nurse-midwife ~~certified~~ licensed under s. 441.15, Stats., or a physician. The holder may not practice beyond the scope of practice of a nurse-midwife as set forth in s. N 4.06.

SECTION 17. N 4.05 (4) is renumbered N 4.025 (3) and amended to read:

N 4.025 (3) The holder of a valid temporary permit under ~~this section~~ s. N 4.05 may use the title "graduate nurse-midwife" or the letters "G.N.M.".

SECTION 18. N 4.05 (5) is repealed and recreated to read:

N 4.05 (5) DURATION. **(a)** Except as provided under par. (b), a temporary permit is valid for a period of 6 months or until the permit holder receives notification of failing the examination required for certification under s. N 4.03 (2), whichever occurs first.

(b) If the holder of a temporary permit has also been granted a temporary permit to practice as a registered nurse under s. N 2.31, the temporary permit is valid for the period that coincides with the duration of the temporary permit under s. N 2.34 or until the permit holder receives notification of failing the examination required for certification under s. N 4.03 (2), whichever occurs first.

(c) Practice under a temporary permit, including renewals under sub. (6m), may not exceed 12 months.

SECTION 19. N 4.05 (6) is repealed.

SECTION 20. N 4.05 (6m) is created to read:

N 4.05 (6m) RENEWALS. A temporary permit may be renewed twice for a period of 3 months for each renewal. A second renewal under this subsection may only be granted if the holder of the temporary permit is awaiting examination results or an affidavit is filed with the board identifying a hardship. As used in this subsection, "hardship" includes the inability to take or complete a scheduled examination because of illness, family illness or death, accident, or natural disaster.

SECTION 21. N 4.05 (7) (intro.), (a), and (b) are amended to read:

N 4.05 (7) (intro.) ~~REVOCATION DENIAL OR REVOCATION.~~ A temporary permit may, ~~after notice and hearing,~~ be denied or revoked by the board for any of the following reasons:

(a) Violation of any of the rules of conduct for registered nurses in ch. N 7 or for violation of the rules governing nurse-midwives under ~~ch. N 4~~ this chapter.

(b) Failure to pay ~~the required fees~~ a fee required under s. 440.05 ~~(6)~~ (1), Stats.

SECTION 22. N 4.05 (7) (d) is created to read:

N 4.05 (7) (d) Misrepresentation of being a nurse-midwife or a graduate nurse-midwife when applying for a temporary permit under this section.

SECTION 23. N 4.06 (1) to (4) are amended to read:

N 4.06 (1) The scope of practice of nurse-midwifery is the overall management of women's health care, pregnancy, childbirth, postpartum care for newborns, family planning, and gynecological services consistent with the standards of practice of the American College of Nurse-Midwives and the education, training, and experience of the nurse-midwife.

(2) ~~The~~ A nurse-midwife shall collaborate with a physician with postgraduate training in obstetrics pursuant to a written agreement with that physician.

(3) ~~The~~ A nurse-midwife shall consult with the ~~consulting~~ collaborating physician regarding any complications discovered by the nurse-midwife; or refer the patient pursuant to the written agreement under sub. (2).

(4) Upon referral under sub. (3), ~~the~~ a nurse-midwife may independently manage that part of the care ~~of the~~ for a patient which that is appropriate to consistent with the knowledge and skills education, training, and experience of the nurse-midwife.

SECTION 24. N 4.07 (1) and (2) are amended to read:

N 4.07 (1) ~~The~~ A nurse-midwife ~~shall~~ may not independently manage those complications that require referral pursuant to the written agreement under s. N 4.06 (2).

(2) ~~The~~ A nurse-midwife may not perform deliveries by forceps or Caesarean section. ~~The nurse-midwife may use vacuum extractors only in emergency delivery situations.~~

SECTION 25. N 4.07 (2m) is created to read:

N 4.07 (2m) A nurse-midwife may use vacuum extractors only in emergency delivery situations.

SECTION 26. N 4.07 (3) and (4) are amended to read:

N 4.07 (3) ~~The~~ A nurse-midwife may not assume any responsibilities, ~~either by physician delegation or otherwise, which he or she is not competent to perform by that are~~ inconsistent with the education, training, ~~or~~ and experience of the nurse-midwife.

(4) Following notification of a physician as required by s. 441.15 (4), Stats., a nurse-midwife may continue to manage ~~the~~ a delivery ~~when complications occur~~ if emergency measures are required and the physician has not yet arrived.

SECTION 27. N 4.08 is renumbered N 4.025 and amended to read:

N 4.025 ~~Licensure and exception~~ exceptions.

(1) ~~No~~ Except as provided under subs. (2) and (3), unless licensed under this chapter no person may practice or attempt to practice nurse-midwifery or use the title or letters "Certified Nurse-Midwife", or "C.N.M.", "Nurse-Midwife", or "N.M.", or anything else any other title or letters to indicate that he or she person is a nurse-midwife unless he or she is licensed under this chapter.

(2) ~~Nothing in this chapter shall be construed either to prohibit or to require a license under this chapter for any~~ Any person lawfully practicing professional nursing within the scope of a license granted under ch. 441, Stats., is not required to be licensed under this chapter.

SECTION 28. N 4.10 (1) (intro.) and (2) (a) and (b) are amended to read:

N 4.10 (1) (intro.) ~~Nurse-midwives~~ A nurse-midwife shall maintain have in effect malpractice insurance evidenced by one of the following:

(2) (a) A nurse-midwife who practices nurse-midwifery within the scope of employment as a federal, state, county, city, village, or town employee ~~who practices nurse-midwifery within the scope of his or her employment.~~

(b) A nurse-midwife who practices nurse-midwifery as an employee of the federal public health service under 42 USC 233 (g).

SECTION 29. N 4.10 (2) (d) and (e) are created to read:

N 4.10 (2) (d) A nurse-midwife whose employer has in effect malpractice liability insurance that provides coverage for the nurse-midwife in an amount equal to or greater than the amounts specified in sub. (1) (a) or (b).

(e) A nurse-midwife providing nurse-midwifery services under s. 257.03, Stats.

SECTION 30. N 4.10 (3) and (3) (Note) are repealed.

SECTION 31. 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)

Chapter N 4

LICENSURE OF NURSE-MIDWIVES

N 4.01 Authority and intent.

- (1) The rules in this chapter are adopted pursuant to authority of ss. 15.08 (5), ~~227.14 (b)~~ and 441.15 (3) (c), Stats., and interpret s. 441.15, Stats.
- (2) The intent of the board of nursing in adopting rules in this chapter, ~~interpreting s. 441.15, Stats.~~, is to specify the requirements for obtaining licensure as a nurse-midwife; the scope of practice of nurse-midwifery; the types of facilities in which such practice may occur; and malpractice insurance requirements for nurse-midwives. all of the following:
 - (a) Requirements for licensure as a nurse-midwife and renewal of a license to practice nurse-midwifery.
 - (b) The scope of practice of nurse-midwifery.
 - (c) Requirements for health care facilities where the practice of nurse-midwifery may occur.
 - (d) Malpractice insurance requirements for nurse-midwives.

N 4.02 Definitions. As used in this chapter:

- (1) "Board" means board of nursing.
- ~~(2) "Bureau" means bureau of health service professions within the department of safety and professional services, located at 1400 East Washington Avenue, Madison, Wisconsin.~~
- (2m) "Collaboration" has the meaning specified given in s. 441.15 (1) (a), Stats.
- (4) "Complications" means ~~those~~ conditions ~~which jeopardized~~ specified in a written agreement under s. N 4.06 (2) as being conditions that jeopardize the health or life of ~~the a~~ patient and ~~which~~ deviate from normal ~~as defined in the written agreement consistent with the standards of practice of the American College of Nurse-Midwives.~~
- (5) "Direct supervision" means immediate availability to continually coordinate, direct, and inspect at first hand the practice of another.
- (5m) "Nurse-midwife" means a nurse-midwife licensed by the board.
- ~~(6) "Written agreement" means an agreement between the collaborating physician and the nurse-midwife which is permanently recorded, dated and signed by both parties, is available for inspection upon reasonable request, and consists of at least the following: framework of mutually approved guidelines including conditions of collaboration and referral.~~

N 4.025 Licensure and ~~exception~~ exceptions.

- (1) ~~No~~ Except as provided under subs. (2) and (3), unless licensed under this chapter no person may practice or attempt to practice nurse-midwifery or use the title or letters "Certified Nurse-Midwife", or "C.N.M.", "Nurse-Midwife", or "N.M.", or anything else any other title or letters to indicate that he or she person is a nurse-midwife unless he or she is licensed under this chapter.
- (2) Nothing in this chapter shall be construed either to prohibit or to require a license under this chapter for any Any person lawfully practicing professional nursing within the scope of a license granted under ch. 441, Stats., is not required to be licensed under this chapter.
- (3) The holder of a valid temporary permit under ~~this section~~ s. N 4.05 may use the title "graduate nurse-midwife" or the letters "G.N.M.".
- (4) A license to practice nurse-midwifery shall be issued separately from a license to practice professional nursing.

N 4.03 Qualifications for licensure. An applicant for licensure as a nurse-midwife shall be granted licensure by the board, provided that the applicant meets all of the following:

- (1) Has completed an educational program in nurse-midwifery accredited by the ~~American College of Nurse-Midwives Accreditation Commission for Midwifery Education, or another accrediting body approved by the board.~~
- (2) Holds a certificate issued by the ~~American College of Nurse-Midwives or the American College of Nurse-Midwives Certification Council~~ American Midwifery Certification Board, or another national certifying body approved by the board.
- (3) Is currently licensed to practice as a professional nurse in ~~Wisconsin, this state~~ or is currently ~~licensed~~ has the privilege to practice professional nursing in another state ~~which that~~ has adopted the nurse licensure compact.

N 4.04 Application ~~procedures~~ for licensure.

(4) An applicant for ~~licensure~~ a license to practice ~~as a nurse-midwife~~ nurse-midwifery shall file a completed, ~~notarized~~ application on a form provided by the ~~bureau~~ board. The application shall include all of the following:

(a) ~~(1m)~~ Signature ~~The signature~~ of the applicant.

(b) ~~(2m)~~ Fee ~~The fee~~ specified under s. 440.05 (1), Stats.

(c) ~~(3m)~~ Evidence of completion of an educational program in nurse-midwifery approved by the ~~American College of Nurse-Midwives and evidence of certification as a nurse-midwife from the American College of Nurse-Midwives or the American College of Nurse-Midwives Certification Council~~ Accreditation Commission for Midwifery Education, or another accrediting body approved by the board.

~~(d)~~ ~~(4m)~~ Identification Evidence of current licensure as a professional nurse in ~~Wisconsin this state~~ or of current licensure privilege to practice professional nursing in another state ~~which that~~ has adopted the nurse licensure compact, including the license number and renewal information.

(5) Evidence of certification as a nurse-midwife from the American Midwifery Certification Board, or another national certifying body approved by the board.

~~(2) A separate license shall be issued by the board for the practice of nurse-midwifery.~~

~~(3) Renewal of a license to practice nurse-midwifery shall be conducted as a separate procedure from the renewal of the nurse's license as a professional nurse.~~

~~(4) The applicant for renewal shall inform the board whether the certificate issued to him or her by the American College of Nurse-Midwives or the American College of Nurse-Midwives Certification Council has been revoked or suspended.~~

N 4.043 License renewal. An individual holding a license to practice nurse-midwifery may renew the license by doing all of the following:

(1) Pay the renewal fee as determined by the department under s. 440.03 (9) (a), Stats., the workforce survey fee, and any applicable late renewal fee.

(2) Complete the nursing workforce survey to the satisfaction of the board.

(3) Provide evidence of current certification as a nurse-midwife by the American Midwifery Certification Board, or another national certifying body approved by the board.

(4) If applicable, provide evidence to the board that the applicant maintains in effect malpractice insurance meeting the requirements under s. N 4.10 (1).

N 4.05 Temporary permits.

- (1) ~~ELIGIBILITY APPLICATION.~~ An applicant for ~~licensure as a nurse-midwife~~ a license to practice nurse-midwifery who has completed an educational program in nurse-midwifery approved by the American college of nurse-midwives, who is currently licensed to practice as a professional nurse in Wisconsin and who has paid the fee specified in s. 440.05 (6), Stats., may be eligible for granted a temporary permit to practice nurse-midwifery. An application for a temporary permit to practice nurse-midwifery shall include all of the following:
- (a) Verification the applicant has completed an educational program in nurse-midwifery accredited by the Accreditation Commission for Midwifery Education, or another accrediting body approved by the board.
 - (b) Verification the applicant is currently licensed to practice as a professional nurse in this state or currently has the privilege to practice professional nursing in another state that has adopted the nurse licensure compact.
 - (c) The fee specified in s. 440.05 (1), Stats.
- (2) ~~ISSUING A TEMPORARY PERMIT.~~ The ~~bureau of health service professions board~~ shall issue a temporary permit to an eligible applicant within one week of the determination of eligibility.
- (3) ~~SUPERVISION REQUIRED.~~ The holder of a temporary permit shall practice under the direct supervision of a nurse-midwife ~~certified~~ licensed under s. 441.15, Stats., or a physician. The holder may not practice beyond the scope of practice of a nurse-midwife as set forth in s. N 4.06.
- ~~(4) TITLE.~~ The holder of a valid temporary permit under this section may use the title "graduate nurse-midwife" or the letters "G.N.M.".
- ~~(5) DURATION.~~
- (a) ~~Except as provided in pars. (b) to (e), the duration of a temporary permit granted by the board is:~~
 1. ~~For applicants who have been granted a temporary permit to practice as a registered nurse, the period which coincides with the registered nurse temporary permit.~~
 2. ~~For other applicants, 6 months.~~
 - (b) ~~The temporary permit of a candidate who is unsuccessful on the examination administered by the American College of Nurse-Midwives Certification Council is void upon receipt of the examination results by the holder and shall be returned by the holder to the board immediately. Failure to return the permit promptly shall, without further notice or process, result in a board order to revoke the permit.~~
 - (c) ~~A temporary permit may be renewed once for a period of 3 months.~~
 - (d) ~~A second renewal for a 3-month period may be granted in hardship cases if an affidavit is filed with the board identifying the hardship. "Hardship cases", as used in this paragraph, includes the inability to take or complete a scheduled examination because of illness, family illness or death, accident or natural disaster or because the person is awaiting examination results.~~
 - (e) ~~Practice under temporary permits, including renewals under pars. (c) and (d), may not exceed 12 months total duration.~~
- (5) DURATION.
- (a) Except as provided under par. (b), a temporary permit is valid for a period of 6 months or until the permit holder receives notification of failing the examination required for certification under s. N 4.03 (2), whichever occurs first.
 - (b) If the holder of a temporary permit has also been granted a temporary permit to practice as a registered nurse under s. N 2.31, the temporary permit is valid for the period that coincides with the duration of the temporary permit under s. N 2.34 or until the permit holder receives notification of failing the examination required for certification under s. N 4.03 (2), whichever occurs first.
 - (c) Practice under a temporary permit, including renewals under sub. (6m), may not exceed 12 months.

~~(6) DENIAL. A temporary permit may be denied an applicant for any of the reasons in sub. (7) for which the board may revoke a temporary permit or for the misrepresentation of being a nurse-midwife or a graduate nurse-midwife before the granting of a permit under this section.~~

(6m) RENEWALS. A temporary permit may be renewed twice for a period of 3 months for each renewal. A second renewal under this subsection may only be granted if the holder of the temporary permit is awaiting examination results or an affidavit is filed with the board identifying a hardship. As used in this subsection, "hardship" includes the inability to take or complete a scheduled examination because of illness, family illness or death, accident, or natural disaster.

(7) REVOCATION DENIAL OR REVOCATION. A temporary permit may, ~~after notice and hearing,~~ be denied or revoked by the board for any of the following reasons:

(a) Violation of any of the rules of conduct for registered nurses in ch. N 7 or for violation of the rules governing nurse-midwives under ~~ch. N 4~~ this chapter.

(b) Failure to pay ~~the required fees a fee required~~ under s. 440.05 ~~(6) (1)~~, Stats.

(c) Provision of fraudulent information on an application for licensure.

~~(d) Misrepresentation of being a nurse-midwife or a graduate nurse-midwife when applying for a temporary permit under this section.~~

N 4.06 Scope of practice.

(1) The scope of practice of nurse-midwifery is the overall management of women's health care, pregnancy, childbirth, postpartum care for newborns, family planning, and gynecological services consistent with the standards of practice of the American College of Nurse-Midwives and the education, training, and experience of the nurse-midwife.

(2) ~~The~~ A nurse-midwife shall collaborate with a physician with postgraduate training in obstetrics pursuant to a written agreement with that physician.

(3) ~~The~~ A nurse-midwife shall consult with ~~the consulting collaborating~~ physician regarding any complications discovered by the nurse-midwife; or refer the patient pursuant to the written agreement under sub. (2).

(4) Upon referral under sub. (3), ~~the a~~ nurse-midwife may independently manage that part of the care ~~of the~~ for a patient which that is appropriate to consistent with the ~~knowledge and skills~~ education, training, and experience of the nurse-midwife.

N 4.07 Limitations on the scope of practice.

(1) ~~The~~ A nurse-midwife ~~shall may~~ not independently manage ~~those~~ complications that require referral pursuant to the written agreement under s. N 4.06 (2).

(2) ~~The~~ A nurse-midwife may not perform deliveries by forceps or Caesarean section. ~~The nurse-midwife may use vacuum extractors only in emergency delivery situations.~~

(2m) A nurse-midwife may use vacuum extractors only in emergency delivery situations.

(3) ~~The~~ A nurse-midwife may not assume any responsibilities, ~~either by physician delegation or otherwise, which he or she is not competent to perform by that are inconsistent with the~~ education, training, ~~or and~~ experience of the nurse-midwife.

(4) Following notification of a physician as required by s. 441.15 (4), Stats., a nurse-midwife may continue to manage ~~the a~~ delivery ~~when complications occur~~ if emergency measures are required and the physician has not yet arrived.

~~N 4.08 — Licensure and exception.~~

~~(1) No person may practice or attempt to practice nurse-midwifery or use the title or letters "Certified Nurse-Midwife" or "C.N.M.," "Nurse-Midwife" or "N.M.," or anything else to indicate that he or she is a nurse-midwife unless he or she is licensed under this chapter.~~

~~(2) Nothing in this chapter shall be construed either to prohibit or to require a license under this chapter for any person lawfully practicing professional nursing within the scope of a license granted under ch. 441, Stats.~~

N 4.09 Health care facilities where practice shall occur. A health care facility where the practice of nurse-midwifery may occur is one that has adequate equipment and personnel for conducting and monitoring the normal scope of practice and that has available methods for referral to or communication with a higher level care facility if the need arises.

- (2) Deliveries may be arranged for only in a facility which has adequate sanitation, thermal regulation, staffing, communication systems and medical back-up.
- (3) The above limitations do not apply to care given in emergency circumstances.

N 4.10 Malpractice insurance coverage.

(1) ~~Nurse-midwives~~ A nurse-midwife shall ~~maintain~~ have in effect malpractice insurance evidenced by one of the following:

- (a) Personal liability coverage in the amounts specified in s. 655.23 (4), Stats.
- (b) Coverage under a group liability policy providing individual coverage for the nurse-midwife in the amounts set forth in s. 655.23 (4), Stats.

(2) Notwithstanding sub. (1), malpractice insurance is not required for any of the following:

(a) A nurse-midwife who practices nurse-midwifery within the scope of employment as a federal, state, county, city, village, or town employee ~~who practices nurse-midwifery within the scope of his or her employment.~~

(b) A nurse-midwife who practices nurse-midwifery as an employee of the federal public health service under 42 USC 233 (g).

(c) A nurse-midwife who does not provide care for patients.

~~(d) A nurse-midwife whose employer has in effect malpractice liability insurance that provides coverage for the person in an amount equal to or greater than the amounts specified in sub. (1) (a) or (b).~~

~~(e) A nurse-midwife providing nurse-midwifery services under s. 257.03, Stats.~~

~~(3) A nurse-midwife shall submit to the board satisfactory evidence that he or she has in effect malpractice insurance required by sub. (1) at the time established for credential renewal under s. 440.08 (2) (a) 50., Stats.~~

~~Note: Forms are available from the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.~~

Scope Statement Development – N 8 – Advanced Practice Nurse Prescribers

The following revised scope statement has been prepared based on recommendations made by the Legislation and Rules Committee at its September 18, 2020 meeting.

STATEMENT OF SCOPE

BOARD OF NURSING

Rule No.: N 8

Relating to: APNP Collaboration with Other Health Care Professionals

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The Board will conduct a comprehensive review of the collaboration requirements in ch. N 8 and, as a result of this review, may propose changes to the requirements. In addition, as collaboration is relevant to ch. N 8 as a whole, the review and any resulting proposed changes may evolve to include other provisions throughout the chapter.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

As part of Emergency Order 16, issued by Governor Evers in response to the COVID-19 public health emergency, s. N 8.10 (2) and (7) concerning collaboration with other health care professionals were temporarily suspended. The success these measures had in helping meet the increased need for public access to health care without compromising patient safety has led the Board to the concern that the current collaboration requirements in ch. N 8 may be outdated, particularly the documentation requirement under s. N 8.10 (7).

The Board believes the alternative of not conducting the comprehensive review identified above would be less beneficial to affected entities. As the Board recognizes the critical role that collaboration between advanced practice nurse prescribers, physicians, and other health care professionals plays in providing quality health care, the Board will encourage and take into consideration input from the affected entities identified below.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

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

Section 441.16 (3) (b), Stats., provides the Board shall promulgate rules for “[d]efining the scope of practice within which an advanced practice nurse may issue prescription orders.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

120 hours

6. List with description of all entities that may be affected by the proposed rule:

Advanced practice nurse prescribers, other health care professionals, entities that employ advanced practice nurse prescribers and other health care professionals, and individuals accessing health care services.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule is anticipated to have minimal to no economic impact on small businesses and the state's economy as a whole.

Contact Person: Dale Kleven, (608) 261-2377, DSPSAdminRules@wisconsin.gov

Authorized Signature

Date Submitted

Scope Statement Development – N 2 – Temporary Permits

The following scope statement was drafted based on a request from the Board at its June 11, 2020 meeting. The applicable motions from that meeting are as follows:

MOTION: Pamela White moved, seconded by Elizabeth Smith Houskamp, to delegate Peter Kallio and Luann Skarlupka to work with Department Staff to analyze the Wisconsin Hospital Association’s rulemaking proposal dated June 10, 2020 and make a recommendation to the Board. Motion carried unanimously.

MOTION: Rosemary Dolatowski moved, seconded by Lisa Pisney, to request DSPS staff draft a Scope Statement regarding the Wisconsin Hospital Association’s rulemaking proposal relating to temporary permits and telehealth, and to designate Peter Kallio and Luann Skarlupka to advise DSPS staff. Motion carried unanimously.

MOTION: Pamela White moved, seconded by Jennifer Eklof, to authorize the Chairperson to approve the Scope Statement regarding the Wisconsin Hospital Association’s rulemaking proposal relating to temporary permits and telehealth, for submission to the Department of Administration and Governor’s Office and for publication. Additionally, the Board authorizes the Chairperson to approve the Scope Statement for implementation no less than 10 days after publication. Motion carried unanimously.

The scope statement was presented to the Committee at its July 30, 2020 meeting, and to the Board at its August 13, 2020 meeting. The Board did not take formal action on the scope statement at that time.

STATEMENT OF SCOPE

BOARD OF NURSING

Rule No.: N 2

Relating to: Temporary Permits

Rule Type: Emergency and Permanent

1. Finding/nature of emergency (Emergency Rule only):

Administrative rules provide that a nurse who has graduated from an approved school or comparable school or granted a certificate of completion by an approved school may be granted a temporary permit to practice nursing. A temporary permit may not exceed 6 months duration, and the holder of the permit must practice under the direct supervision of a registered nurse. The spread of COVID-19 and the resulting closures and safety precautions have resulted in the postponement of NCLEX exams at Wisconsin testing sites. As a result, some graduate nurses currently practicing under a temporary permit may be unable to schedule their examination prior to the permit's expiration. In addition, the current supervision requirement would make response to an emergency surge of COVID-19 more difficult. An expeditious promulgation of the proposed rule is in the best interest of public welfare, as it will help ensure Wisconsin's nursing workforce is in the best possible position to respond to COVID-19.

2. Detailed description of the objective of the proposed rule:

The Board's primary objective is to promulgate an emergency rule that will allow an extension of the duration of temporary permits, and establish criteria under which the holder of a temporary permit may practice without direct supervision.

The Board will also evaluate the requirements for temporary permits in light of the potential need to respond to a future public health crisis or other emergency and may, as a result of this evaluation, promulgate a permanent rule to allow the Board to grant a waiver of or variance to the requirements in emergency situations.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Chapter N 2 contains the requirements for temporary permits, including the duration of a permit and supervision of a permit holder. If the rules are not updated to allow an extension of the duration of temporary permits and establish criteria under which the holder of a temporary permit may practice without direct supervision, Wisconsin's nursing workforce will not be in the best possible position to respond to the spread of COVID-19. The Board will also determine if allowing a waiver or variance to the requirements on an ongoing basis is appropriate, given the potential need to respond to future emergency situations.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

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

Section 227.24 (1) (a), Stats., provides “[a]n agency may, except as provided in s. 227.136 (1), promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements under this chapter if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.”

Section 441.08, Stats., provides that “[a] nurse who has graduated from a school approved by the board or that the board has authorized to admit students pending approval but who is not licensed in this state may be granted a temporary permit upon payment of the fee specified in s. 440.05 (6) by the board to practice for compensation until the nurse can qualify for licensure. The temporary permit may be renewed once. Further renewals may be granted in hardship cases. The board may promulgate rules limiting the use and duration of temporary permits and providing for revocation of temporary permits.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

80 hours

6. List with description of all entities that may be affected by the proposed rule:

Graduate nursing students applying for or working under a temporary permit, and entities who are hiring these students or currently have these students in their employment.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule will have minimal to no economic impact on small businesses and the state’s economy as a whole.

Contact Person: Dale Kleven, (608) 261-2377, DSPSAdminRules@wisconsin.gov

Authorized Signature

Date Submitted



ADVOCATE. ADVANCE. LEAD.

5510 Research Park Drive
P.O. Box 259038
Madison, WI 53725-9038
608.274.1820 | FAX 608.274.8554 | www.wha.org

June 10, 2020

Peter J. Kallio, RN CRNA
Chair, Wisconsin Board of Nursing
Pamela K. White, DNP RN
Vice Chair, Wisconsin Board of Nursing
Department of Safety and Professional Services
PO Box 8366
Madison, WI 53708-8366

Dear Chair Kallio, Vice Chair White, and Members of the Wisconsin Board of Nursing:

The Wisconsin Hospital Association (WHA) and our members thank the Board of Nursing for their foresight in publishing a Statement of Scope to review Chapters N1 through N8 for requirements that may be needed in Emergency Situations.

The scope statement describes the objective of “establishing waivers and alternate requirements that the Board may utilize to respond to emergency situations”, including “temporary licensure for graduate nurses and graduate practical nurses”.

WHA has been in contact with our members regarding the postponement of NCLEX exams at Wisconsin testing sites during the COVID-19 outbreak. In fact, members are reporting their new hire graduate nurses are unable to schedule their NCLEX exam prior to September. This means some graduate nurses will exhaust the timeframe currently available under N 2.34 if NCLEX exam slots do not become available.

WHA has also heard concerns from our members regarding the need to quickly enable nurses and other health care providers to practice across borders, whether due to localized emergency surge need or enable telemedicine, in response to COVID.

Both of these issues had been addressed through rule suspensions addressed in Emergency Order 16. However, these issues have reemerged because Emergency Order 16 has now expired. WHA requests that the board consider utilizing the emergency and permanent rulemaking process to readdress these two issues. We have attached draft rulemaking language for the Board to consider.

As always, WHA looks forward to continuing to work with the Board on our mutual objectives.

Sincerely,

Ann Zenk
/s/
Vice President Workforce and Clinical Practice
Wisconsin Hospital Association

Matthew Stanford
/s/
General Counsel
Wisconsin Hospital Association

Cc: Valerie Payne
Executive Director Board of Nursing

Dan Hereth
Assistant Deputy Secretary
Wisconsin Department of Safety and Professional Services

SUGGESTED EMERGENCY AND PERMANENT RULEMAKING:

Special Temporary Licensure Due to Limited NCLEX Testing Due to Disaster or Emergency

Proposal in plain language

Continue the rule suspension provided in Emergency Order 16 authorizing the Board of Nursing to issue temporary licenses until NCLEX testing is again regularly available.

This would enable new graduates to practice until NCLEX testing is again regularly available.

Statutory Authority

441.08 Temporary permit. A nurse who has graduated from a school approved by the board or that the board has authorized to admit students pending approval but who is not licensed in this state may be granted a temporary permit upon payment of the fee specified in s. [440.05 \(6\)](#) by the board to practice for compensation until the nurse can qualify for licensure. The temporary permit may be renewed once. Further renewals may be granted in hardship cases. The board may promulgate rules limiting the use and duration of temporary permits and providing for revocation of temporary permits.

DRAFT Proposed Administrative Rule Amendment (changes in [red](#))

N 2.30 Definitions. In this subchapter:

- (1) "G.N." means graduate nurse.
- (2) "G.P.N." means graduate practical nurse.

N 2.31 Application. A nurse who has graduated from a board-approved school or comparable school or granted a certificate of completion by a board-approved school may be granted a temporary permit. An applicant shall submit a completed application and pay the applicable fee. The application shall include any of the following:

- (1) Verification from a board-approved school via the electronic application process that the applicant has graduated or received a certificate of completion.
- (2) A certification of graduation or completion from a board-approved school.
- (3) An official transcript of nursing education submitted by the school of professional nursing or practical nursing directly to the department.

Note: A temporary permit does not grant multistate licensure privileges.

N 2.32 Title.

- (1) A registered nurse applicant for licensure by exam who is granted a temporary permit may use the title "graduate nurse" or the letters "G.N."
- (2) A practical nurse applicant for licensure by exam who is granted a temporary permit may use the title "graduate practical nurse" or the letters "G.P.N."
- (3) A registered nurse or practical nurse for licensure by endorsement who is granted a temporary permit may use the title "registered nurse" or "licensed practical nurse."

N 2.33 Supervision.

- (1) Except as provided in sub. (2), the holder of a temporary permit shall practice only under the direct supervision of a registered nurse.
- (2) (a) A holder of a temporary permit who is currently licensed as a registered nurse or practical nurse in another jurisdiction may practice without the direct supervision of a registered nurse.
(b) The board may authorize a holder of or applicant for a temporary permit granted under N.2.34(b) to practice as a registered nurse in a licensed hospital or nursing home without direct supervision of a registered nurse if all of the following conditions are met:
 1. The individual meets the qualifications for the applicable license under N 2.10(1) or (1m) except for NCLEX passage because the applicant has been unable to take the NCLEX due to limited NCLEX testing in Wisconsin due to disaster or other emergency recognized by the board;
 2. The individual and his or her employing hospital or nursing home is requesting that the holder be permitted to practice as a registered nurse without the direct supervision of a registered nurse; and
 3. The individual meets any additional individual qualifications or requirements determined by the board.

N 2.34 Duration.

- (a) The temporary permit is valid for a period of 3 months or until the holder receives notification of failing the NCLEX, whichever occurs first. Practice under temporary permits, including renewals under s. N 2.35, may not exceed 6 months total duration.
- (b) Notwithstanding sub. (a), if an applicant has not taken the NCLEX and if the board has determined that NCLEX testing is limited in Wisconsin due to disaster or other emergency recognized by the board, the board may grant temporary permits with a duration of up to 6 months following the resumption of normal NCLEX testing capacity in Wisconsin.

N 2.35 Renewal.

- (1) A temporary permit for a registered nurse or practical nurse may be renewed once by completing an application, completing a nursing workforce survey and payment of applicable fees.
- (2) Subsequent renewals may be granted in hardship cases including illness, family illness or death, accident, natural disaster or delay of verification from another state. The board shall consider each application for renewal under this subsection individually on its merits, and the board may grant a renewal as deemed appropriate.

N 2.36 Denial or revocation. A temporary permit may be denied or revoked for the following:

- (1) Providing fraudulent information on an application for licensure.
- (2) Misrepresentation of being an R.N., G.N., L.P.N. or G.P.N. without holding a valid temporary permit.
- (3) Violation of any of the rules of conduct set forth in ch. N 7.

SUGGESTED EMERGENCY AND PERMANENT RULEMAKING:

Special Temporary Non-Compact Licensure

Proposal in plain language

Continue the rule suspension provided in Emergency Order 16 enabling nurses and other health care professionals with a valid out-of-state license to temporarily practice in Wisconsin pending the completion of the regular licensure application process.

With additional employer review and attestation safeguards in place, this proposal would enable RNs and APNPs with licenses in good standing to immediately begin practice in Wisconsin pending completion of the full licensure/certification process by the Board of Nursing. The Board of Nursing could revoke a temporary license/certification for good cause at any time.

Statutory Authority:

441.06 (1m) The holder of a license as a registered nurse under the laws of another state or territory or province of Canada may be granted a license as a registered nurse in this state without examination if the holder's credentials of general and professional educational qualifications and other qualifications are comparable to those required in this state during the same period and if the board is satisfied from the holder's employment and professional record that the holder is currently competent to practice the profession. The board shall evaluate the credentials and determine the equivalency and competency in each case. The application for licensure without examination shall be accompanied by the fee prescribed in s. 440.05 (2).

DRAFT Proposed Administrative Rule Amendment

Create new N 2.22:

N 2.22 Temporary non-compact license.

- (1) The holder of a license as a registered nurse or certification as an advanced practice nurse with prescription privileges under the laws of another state or territory or province of Canada shall be granted a temporary non-compact license to practice as a registered nurse or certification as an advanced practice nurse prescriber in Wisconsin if all of the following are submitted to the Department of Safety and Professional Services on a form developed by the board:
 - (a) Evidence that the nurse is currently licensed as a registered nurse or certified to issue prescription orders in Minnesota, Michigan, Illinois, or any other state whose general and professional educational qualifications or other qualifications are comparable to Wisconsin.
 - (b) A signed and dated attestation from the nurse stating the following:
 1. That he or she will apply for a regular, non-temporary Wisconsin nursing license or prescriber certification within 30 days of submission of the information prescribed in this subsection.

2. That he or she is not currently under investigation and does not currently have any restrictions or limitations placed on his or her license by any state or other jurisdiction.
 3. That he or she will only be providing nursing services in Wisconsin while under the employment of the entity making the attestation in sub. (c).
- (c) A signed and dated attestation from the entity that will employ the nurse while providing nursing services in Wisconsin stating the following:
1. The employer has reviewed the nurse's credentials and past employment history and has reasonable belief that the nurse is currently competent to practice nursing, and if applicable, issue prescription orders.
 2. To the best of the employer's knowledge and with a reasonable degree of certainty, the nurse is not currently under investigation and does not currently have any restrictions or limitations placed on his or her license by any other U.S. state or territory or province of Canada.
- (2) The duration of temporary license or prescriber certification under this section N 2.22 shall be from the date of the attestation by the nurse applicable or the employer, whichever is later, until the nurse's regular, non-temporary Wisconsin license or certification is granted or the board withdraws the nurse's authority to temporarily practice as a registered nurse or prescribe in Wisconsin for good cause as determined by the board, whichever is earlier.
- (3) The department shall provide each form received by the Department of Safety and Professional Services under sub. (1) to the board within 45 days. The board shall review each form received and may withdraw the nurse's authority to temporarily practice as a registered nurse or prescribe in Wisconsin for good cause as determined by the board.

Peter Kallio
Chairperson

Pamela White
Vice Chairperson

Luann Skarlupka
Secretary

BOARD OF NURSING



4822 Madison Yards Way
PO Box 8366
Madison WI 53708-8366

Email: dsps@wisconsin.gov
Voice: 608-266-2112
FAX: 608-251-3032

March 22, 2019

Senator Stephen Nass, Senate Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 10 South, State Capitol
Madison, WI 53702

Representative Joan Ballweg, Assembly Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 210 North, State Capitol
Madison, WI 53702

RE: Report Submitted in Compliance with s. 227.29 (1), Stats.

Dear Senator Nass and Representative Ballweg:

This report has been prepared and submitted in compliance with s. 227.29 (1), Stats.

I. Unauthorized rules, as defined in s. 227.26 (4) (a):

After careful review of the Board's administrative rules, the Board has determined that no promulgated rules are unauthorized.

II. Rules for which the authority to promulgate has been restricted:

After careful review of the Board's administrative rules, the Board has determined that no promulgated rules have restricted authority.

III. Rules that are obsolete or that have been rendered unnecessary:

Rule	Description of why the rule is obsolete or has been rendered unnecessary.	Action taken to address or reason for not taking an action
N 4.02(2)	The Bureau of Health Services no longer exists and the address for the Department of Safety and Professional Services is incorrect.	A Scope has been submitted to update ch. N 4.

IV. Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction:

After careful review of the Board's administrative rules, the Board has determined that no promulgated rules are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction.

V. Rules that are economically burdensome:

Rule		Action taken to address or reason for not taking an action
N 4.04(1)	It is economically burdensome to require the application be notarized.	A Scope has been submitted to update ch. N 4

Thank you.

Cordially,

Peter Kallio
Chairperson

on which the petition and proposed rule were submitted to the committee.

3. Following receipt of the petition and proposed rule submitted by the legislative council staff under subd. 2., the joint committee for review of administrative rules shall review the petition and proposed rule and may do any of the following:

a. Approve the agency's petition if the committee determines that the proposed rule would repeal an unauthorized rule.

b. Deny the agency's petition.

c. Request that the agency make changes to the proposed rule and resubmit the petition and proposed rule under subd. 1.

4. The committee shall inform the agency in writing of its decision as to the petition.

(c) If the joint committee for review of administrative rules approves a petition to repeal an unauthorized rule as provided in par. (b) 3. a., the agency shall promulgate the proposed rule by filing a certified copy of the rule with the legislative reference bureau under s. 227.20, together with a copy of the committee's decision.

SECTION 7. 227.29 of the statutes is created to read:

227.29 Agency review of rules and enactments. (1)

By March 31 of each odd-numbered year, each agency with any rules published in the code shall submit a report to the joint committee for review of administrative rules listing all of the following rules promulgated or otherwise administered by that agency:

(a) Unauthorized rules, as defined in s. 227.26 (4) (a), together with a description of the legislation that eliminated the agency's authority to promulgate any such rule.

(b) Rules for which the authority to promulgate has been restricted, together with a description of the legislation that restricted that authority.

(c) Rules that are obsolete or that have been rendered unnecessary, together with a description of why those rules are obsolete or have been rendered unnecessary.

(d) Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction, together with a citation to or the text of any such statute, regulation, or ruling.

(e) Rules that the agency determines are economically burdensome.

(2) The report under sub. (1) shall also include all of the following:

(a) A description of the agency's actions, if any, to address each rule listed in the report. If the agency has not taken any action to address a rule listed in the report, the agency shall include an explanation for not taking action.

(b) A description of the status of each rule listed in the previous year's report not otherwise listed.

(c) If the agency determines that there is no rule as described under sub. (1) (a), (b), (c), (d), or (e), a statement of that determination.

(3) If an agency identifies an unauthorized rule under sub. (1) (a) and is not otherwise in the process of promulgating a rule that repeals the unauthorized rule, the agency shall, within 30 days after the agency submits the report, submit a petition to the legislative council staff under s. 227.26 (4) (b) 1. to repeal the unauthorized rule if the agency has not previously done so.

(4) (a) In this subsection, "enactment" means an act or a portion of an act that is required to be published under s. 35.095 (3) (a).

(b) Each agency shall review enactments to determine whether any part of an enactment does any of the following:

1. Eliminates or restricts the agency's authority to promulgate any rules promulgated or otherwise administered by that agency.

2. Renders any rules promulgated or otherwise administered by that agency obsolete or unnecessary.

3. Renders, for any reason, any rules promulgated or otherwise administered by that agency not in conformity with or superseded by a state statute, including due to statutory numbering or terminology changes in the enactment.

4. Requires or otherwise necessitates rule making by the agency.

(c) If an agency determines that any consequence specified in par. (b) 1. to 4. results from an enactment or part of an enactment, within 6 months after the applicable effective date for the enactment or part of the enactment, the agency shall do one or more of the following, as applicable, to address the consequence identified by the agency and notify the joint committee for review of administrative rules of its action:

1. Submit a statement of the scope of a proposed rule under s. 227.135 (2), unless the enactment requires otherwise or unless the agency submits a notice to the committee explaining why it is unable to submit the statement of scope within that time period and an estimate of when the agency plans to submit the statement of scope.

2. In the case of an affected rule that the agency determines is an unauthorized rule, as defined in s. 227.26 (4) (a), submit a petition to the legislative council staff under s. 227.26 (4) (b) 1.

3. In the case of a consequence specified under par. (b) 3. that can be addressed by the legislative reference bureau using its authority under s. 13.92 (4) (b), submit a request to the legislative reference bureau to use that authority.

SECTION 8. Initial applicability.

(1) The treatment of section 227.29 (4) of the statutes first applies to enactments published by the legislative

From: [Sybell, Debra - DSPS](#)
To: [Wood, Kimberly - DSPS](#)
Subject: FW: Nurse Practitioner Prescribing Regulation N8.06
Date: Friday, June 07, 2019 11:15:12 AM

Deb Sybell
Executive Director
Division of Policy Development
Wisconsin Department of Safety and Professional Services
Debra.Sybell@wisconsin.gov
(608) 267-7223

-----Original Message-----

From: Theresa Reedy Strous <trs48@icloud.com>
Sent: Wednesday, June 05, 2019 9:23 AM
To: Sybell, Debra - DSPS <debra.sybell@wisconsin.gov>
Subject: Nurse Practitioner Prescribing Regulation N8.06

Dear Ms Sybell: I am writing to find out if N8.06 can be amended. This regulation deals with NP's ability to prescribe stimulant medications. It states stimulants can be prescribed for narcolepsy. I have worked as an NP in a sleep center for over 20 years, retired last week. During that time I cared for many individuals with narcolepsy and a variant condition referred to as idiopathic hypersomnia. A sleep study followed by a napping study is used to diagnose narcolepsy. To meet criteria for narcolepsy the sleep study must be negative for any pathology and the napping study (MSLT) must show over at least four naps a very short onset to sleep and REM sleep to be present in at least 2 of the naps. The problem arises as the MSLT is not a perfect test. Many individuals for various reasons with true narcolepsy will not REM during an MSLT-highest estimate I have seen is up to 20%. Other individuals do not have true narcolepsy but a variant, idiopathic hypersomnia. Both conditions are treated with stimulant therapy keeping the individual and public safe especially with activities such as driving. It was recently brought to my attention N8.06 states only narcolepsy. I was unaware of this statute, queried 10 sleep centers and 2 were aware. I have worked with hundreds of pharmacists over the years and never been questioned on prescribing practices. I recently spoke with a lawyer who reviewed the information and felt an addendum to the statute would clarify the issue. I have multiple references I would be happy to share with you or the appropriate person regarding diagnosis and treatment of these two very similar disorders. NP's provide great continuity of care, inability to prescribe in these situations disrupts patient care. My question is what is the process to get N8.06 amended? I would be happy to come to Madison and talk with you or share additional references-Up to Date has a great article summarizing diagnosis and treatment for the conditions. Thank you for your time-hope to hear from you soon.

Theresa Reedy Strous APNP
1095 Zacher Drive
Oshkosh Wi 54901
920-235-3659

trs48@icloud.com

Reciprocal Credentials for Service Members, Former Service Members, and Their Spouses:

Under prior law, the spouse of a service member could obtain a temporary reciprocal credential granted by DSPS or a board attached to DSPS. 2019 Wisconsin Act 143 expanded the availability of a reciprocal credential to include service members, former service members, and the spouses of former service members. The Act also provides that a reciprocal credential granted to a service member, former service member, or the spouse of a service member or former service member expires on the same renewal date as the credential that corresponds to the reciprocal credential, and that the reciprocal credential may be renewed by paying the applicable fee and satisfying the requirements that apply to renewing the corresponding credential. Also, under the Act, DSPS or a board attached to DSPS may promulgate rules necessary to implement the Act.

State of Wisconsin



2019 Assembly Bill 731

Date of enactment: **March 3, 2020**
Date of publication*: **March 4, 2020**

2019 WISCONSIN ACT 143

AN ACT to *repeal* 89.073 (2) (e) and 440.09 (2) (e); to *renumber and amend* 89.073 (1), 89.073 (3), 440.09 (1) and 440.09 (3); to *amend* 89.073 (title), 89.073 (2) (intro.), 89.073 (2) (a), 89.073 (2) (b), 440.09 (title) and 440.09 (2) (b); and to *create* 89.073 (1) (a), 89.073 (1) (c), 89.073 (2) (f), 89.073 (2m), 89.073 (3) (b), 89.073 (4), 89.073 (5), 440.09 (1) (a), 440.09 (1) (c), 440.09 (2) (f), 440.09 (2m), 440.09 (3) (b), 440.09 (4) and 440.09 (5) of the statutes; **relating to:** reciprocal credentials for service members, former service members, and their spouses and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 89.073 (title) of the statutes is amended to read:

89.073 (title) ~~Temporary reciprocal Reciprocal credentials for the spouses of service members, former service members, and their spouses.~~

SECTION 2. 89.073 (1) of the statutes is renumbered 89.073 (1) (intro.) and amended to read:

89.073 (1) (intro.) In this section, ~~“service member”;~~
(b) “Service member” means a member of the U.S. armed forces, a reserve unit of the U.S. armed forces, or the national guard of any state.

SECTION 3. 89.073 (1) (a) of the statutes is created to read:

89.073 (1) (a) “Former service member” means a person who was discharged from the U.S. armed forces under conditions other than dishonorable within 4 years of the date on which the service member or the spouse of the service member applies for a license, certification, or permit under this section.

SECTION 3m. 89.073 (1) (c) of the statutes is created to read:

89.073 (1) (c) “Spouse” includes the spouse of a person who died while in service in the U.S. armed forces or in forces incorporated as part of the U.S. armed forces.

SECTION 4. 89.073 (2) (intro.) of the statutes is amended to read:

89.073 (2) (intro.) The examining board shall grant a temporary license, certification, or permit specified under s. 89.06 to an individual who the examining board determines meets all of the following requirements:

SECTION 5. 89.073 (2) (a) of the statutes is amended to read:

89.073 (2) (a) The individual applies for a temporary credential under this section on a form prescribed by the examining board.

SECTION 6. 89.073 (2) (b) of the statutes is amended to read:

89.073 (2) (b) The individual is a service member, a former service member, or the spouse of a service member or former service member and ~~the spouse and service member temporarily reside~~ resides in this state as a result of the service member’s service in the U.S. armed forces, a reserve unit of the U.S. armed forces, or the national guard of any state.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”

SECTION 7. 89.073 (2) (e) of the statutes is repealed.

SECTION 8. 89.073 (2) (f) of the statutes is created to read:

89.073 (2) (f) The individual is in good standing with the governmental authorities in every jurisdiction outside this state that have granted the individual a credential that qualifies the individual to perform acts authorized under the appropriate credential specified under s. 89.06.

SECTION 9e. 89.073 (2m) of the statutes is created to read:

89.073 (2m) If an individual is unable to provide documentation that the individual is a service member, former service member, or the spouse of a service member or former service member, the individual may submit an affidavit to the examining board stating that the individual is a service member, former service member, or the spouse of a service member or former service member.

SECTION 9m. 89.073 (3) of the statutes is renumbered 89.073 (3) (a) and amended to read:

89.073 (3) (a) A ~~temporary~~ credential granted under this section expires ~~180 days after the date the examining board issues it unless, upon application by the holder of the credential, the examining board extends the credential on the renewal date specified in s. 89.062 (1), except that if the first renewal date specified in s. 89.062 (1) after the date on which the credential is granted is within 180 days of the date on which the credential is granted, the credential expires on the 2nd renewal date specified in s. 89.062 (1) after the date on which the credential is granted.~~

SECTION 9s. 89.073 (3) (b) of the statutes is created to read:

89.073 (3) (b) The examining board shall grant a renewed license, certification, or permit specified under s. 89.06 to an applicant who pays the renewal fee specified under s. 89.063 and satisfies the renewal requirements under s. 89.062.

SECTION 10. 89.073 (4) of the statutes is created to read:

89.073 (4) The examining board shall expedite the issuance of a license, certification, or permit granted under this section.

SECTION 11. 89.073 (5) of the statutes is created to read:

89.073 (5) The examining board may promulgate rules necessary to implement this section.

SECTION 12. 440.09 (title) of the statutes is amended to read:

440.09 (title) Reciprocal credentials for the spouses of service members, former service members, and their spouses.

SECTION 13. 440.09 (1) of the statutes is renumbered 440.09 (1) (intro.) and amended to read:

440.09 (1) (intro.) In this section, “service member”;

(b) “Service member” means a member of the U.S. armed forces, a reserve unit of the U.S. armed forces, or the national guard of any state.

SECTION 14. 440.09 (1) (a) of the statutes is created to read:

440.09 (1) (a) “Former service member” means a person who was discharged from the U.S. armed forces under conditions other than dishonorable within 4 years of the date on which the service member or the spouse of the service member applies for a reciprocal credential under this section.

SECTION 14m. 440.09 (1) (c) of the statutes is created to read:

440.09 (1) (c) “Spouse” includes the spouse of a person who died while in service in the U.S. armed forces or in forces incorporated as part of the U.S. armed forces.

SECTION 15. 440.09 (2) (b) of the statutes is amended to read:

440.09 (2) (b) The individual is a service member, a former service member, or the spouse of a service member, or former service member and the spouse and service member temporarily reside resides in this state as a result of the service member’s service in the U.S. armed forces, a reserve unit of the U.S. armed forces, or the national guard of any state.

SECTION 16. 440.09 (2) (e) of the statutes is repealed.

SECTION 17. 440.09 (2) (f) of the statutes is created to read:

440.09 (2) (f) The individual is in good standing with the governmental authorities in every jurisdiction outside this state that have granted the individual a license, certification, registration, or permit that qualifies the individual to perform acts authorized under the appropriate credential granted by the department or credentialing board.

SECTION 18e. 440.09 (2m) of the statutes is created to read:

440.09 (2m) If an individual is unable to provide documentation that the individual is a service member, former service member, or the spouse of a service member or former service member, the individual may submit an affidavit to the department or credentialing board, as appropriate, stating that the individual is a service member, former service member, or the spouse of a service member or former service member.

SECTION 18m. 440.09 (3) of the statutes is renumbered 440.09 (3) (a) and amended to read:

440.09 (3) (a) A reciprocal credential granted under this section expires ~~180 days after the date the department or credentialing board issues the reciprocal credential unless, upon application by the holder of the reciprocal credential, the department or credentialing board extends the reciprocal credential on the applicable renewal date specified in s. 440.08 (2) (a), except that if the first renewal date specified in s. 440.08 (2) (a) after the date~~

on which the credential is granted is within 180 days of the date on which the credential is granted, the credential expires on the 2nd renewal date specified in s. 440.08 (2) (a) after the date on which the credential is granted.

SECTION 18s. 440.09 (3) (b) of the statutes is created to read:

440.09 (3) (b) The department or credentialing board, as appropriate, shall grant a renewed reciprocal credential to an applicant who pays the renewal fee specified under s. 440.05 (2) and satisfies the requirements that apply for renewing that credential.

SECTION 19. 440.09 (4) of the statutes is created to read:

440.09 (4) The department or credentialing board, as appropriate, shall expedite the issuance of a reciprocal credential granted under this section.

SECTION 20. 440.09 (5) of the statutes is created to read:

440.09 (5) The department or credentialing board, as appropriate, may promulgate rules necessary to implement this section.

SECTION 21. Initial applicability.

(1) APPLICATIONS FOR VETERINARY RECIPROCAL CREDENTIALS. The treatment of s. 89.073 (2) (b), (e), and (f) first applies to an application for a license, certification, or permit specified in s. 89.06 received by the veterinary examining board on the effective date of this subsection.

(2) EXPIRATION OF VETERINARY RECIPROCAL CREDENTIALS. The treatment of s. 89.073 (3) first applies to a license, certification, or permit granted under s. 89.073 that is valid on the effective date of this subsection.

(3) APPLICATIONS FOR RECIPROCAL CREDENTIALS. The treatment of s. 440.09 (2) (b), (e), and (f) first applies to an application for a reciprocal credential, as defined in s. 440.01 (2) (d), received by the department of safety and professional services on the effective date of this subsection.

(4) EXPIRATION OF RECIPROCAL CREDENTIALS. The treatment of s. 440.09 (3) first applies to a reciprocal credential, as defined in s. 440.01 (2) (d), that is valid on the effective date of this subsection.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Kimberly Wood, Program Assistant Supervisor-Adv.		2) Date when request submitted: 9/29/2020 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Board of Nursing			
4) Meeting Date: 9/29/2020	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? Newsletter Planning	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: The Board aims to send out the next newsletter in February 2021. The deadline for article submission will be January 25, 2021. Potential Article Topics: <ul style="list-style-type: none"> • Chairs Corner – By Peter Kallio • Elizabeth Smith Houskamp Receives Nurse Executive of the Year Award Recipient – Wisconsin Organization of Nurse Leaders (Determine Author) • WCN Article – By Barbara Nichols, Wisconsin Center for Nursing • IntNSA Article (Once received) • New Member Introductory Articles (Bios) <ul style="list-style-type: none"> ○ Christian Saldivar Frias (Public Member) ○ Robert Weinman (Registered Nurse Member) ○ Nominated: Janice Edelstein (Registered Nurse Member) 			
11) Authorization			
<i>Kimberly Wood</i>		<i>9/29/2020</i>	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: <ol style="list-style-type: none"> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. 			