

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULE-MAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	MEDICAL EXAMINING
MEDICAL EXAMINING BOARD	:	BOARD
	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 12- 005)

PROPOSED ORDER

The Wisconsin Medical Examining Board proposes an order to repeal Med 8.08; to renumber Med 8.01; to amend Med 8.05 (2) (b) 7., 8.05 (2) (c), 8.07 (1), 8.07 (2) (a) and (e), 8.07 (2) (i); to repeal and recreate Med 8.10; to create Med 8.01 (2), 8.05 (2) (e) and 8.07 (3), relating to physician assistant employment requirements and supervising physician responsibilities.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 448.21 (2) and (3), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 448.05 (5), 448.20 (3) (a), 448.40 (2) (f), Stats.

Explanation of agency authority:

The legislature, via Wis. Stats. §§ 15.08 (5) (b), and 227.11 (2) (a), conferred upon the Medical Examining Board general powers to promulgate rules for the guidance of the profession and to interpret the provisions of statutes it enforces. Section 448.05 (5), Stats. authorizes the Board to promulgate rules that establish licensing and practice standards for physician assistants. Therefore, the Medical Examining Board is both generally and specifically authorized to promulgate these proposed rules.

Section 448.20(3)(a), Stats. confers upon the Council on Physician Assistants the authority to advise the Medical Examining Board on revisions of standards in licensing, practice, education and training of physician assistants.

Related statute or rule:

Sections 448.01 (6), 448.20 (3), Stats., Wis. Admin. Code §MED 10.02(2) (t)

Plain language analysis:

Physician assistants practice as part of a physician-led team with physicians supervising the health care services they provide. Currently, one physician may supervise no more than two physician assistants at one time without permission from the Medical Examining Board (Board). A physician requesting an increase in the numbers of physician assistants to be supervised must submit a written plan for the Board's review. The Board may, in an exercise of its discretion; grant the request if the Board is satisfied that the increased number of physician assistants will not compromise patient safety. The proposed rule purports to change the current regulation by increasing the maximum number of physician assistants a physician may concurrently supervise from 2 to 4. This increase is in line with recent trends in the profession due to widespread physician shortages.

Current law also provides that applicants for licensure as physician assistants may be required to submit to an oral examination. The existing term is outdated and does not reflect that during a personal appearance the Board may also require an applicant to submit to an interview, or a review of credentials, or both. The proposed rule clarifies that the Board may require, as a prerequisite to licensure, successful completion of an oral examination or a personal appearance or both. The proposed rule eliminates other references to outdated terms such as, "substitute supervising physician" found in s. Med 8.10 (2).

SECTION 1. renumbers and amends Med 8.01

SECTION 2. creates a statement of intent and adds it to the authority and purpose provision.

SECTION 3. amends Med 8.05 (2) (b) 7. to remove outdated references to particular mental health disorders.

SECTION 4. amends Med 8.05 (2) (c) to allow a personal appearance as well as an oral examination if required by the application review panel.

SECTION 5. creates Med 8.05 (2) (e) a provision regarding the components of a satisfactory personal appearance.

SECTION 6. amends Med 8.07 (1) by clarifying that a physician assistant's practice may be supervised by one or more supervising physicians.

SECTION 7. amends Med 8.07 (2) (a) and (e) by striking repetitive and ambiguous language.

SECTION 8. adds a provision regarding annual review of physician assistant prescriptive practices.

SECTION 9. creates a provision regarding identifying a physician assistant's supervising physician.

SECTION 10. repeals Med 8.08

SECTION 11. repeals and recreates Med 8.10 by increasing the number of physician assistants a physician may supervise from 2 to 4.

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

There is no comparative existing or proposed federal rule.

Comparison with rules in adjacent states:

Illinois: The state of Illinois limits the physician assistant to physician ratio to 2:1; unless the supervising physician designates an alternate supervising physician. An alternate supervising physician may supervise more than two physician assistants at the same time when the supervising physician is unable to fulfill the duties. 225 ILL. COMP. STAT. 95/7

Iowa: The state of Iowa limits the physician assistant to physician ratio to 2:1. 645 IAC 326.8 (3) (148 C)

Michigan: The state of Michigan allows a physician assistant to physician ratio of 4:1 when the supervising physician is a solo practitioner who practices in a group of physicians and treats patients on an outpatient basis. Physicians who have privileges at a health facility or agency or a state correctional facility may supervise more than four physician assistants; but the physician assistant to physician ratio is 2:1 if the physician supervises a physician assistant at more than one location. MCLS § 333.17048

Minnesota: The state of Minnesota allows a physician to supervise five physician assistants simultaneously. In the case of an emergency a physician may supervise more than five physician assistants at any given time. MINN. STAT. §147A.01

Summary of factual data and analytical methodologies:

In recognition of physician work-force shortages and at the request of the Council on Physician Assistants, the Medical Examining Board created a work group to research and advise the board on whether or not to increase the supervision ratio of physician assistants to physicians, and if so under what circumstances. The work group consisted of members of the Medical Examining Board, who are licensed physicians, the chairperson of the Council on Physician Assistants and consultation from the State Medical Society, the Wisconsin Council of Physician Assistants and the Wisconsin Hospital Association. Members of the work group examined the statutes and regulations of other states as well as recommendations of the Federation of State Medical Boards, the

American Medical Association, the American Association of Family Practitioners and the American Academy of Physician Assistants.

The national trend, as recognized by the Federation of State Medical Boards and the American Academy of Physician Assistants, is to increase the number of physician assistants a physician may supervise. Both organizations have, as a national model, recommended that regulatory bodies refrain from specifying a particular number of physician assistants a physician may concurrently supervise. Rather, the recommendation is that supervising physicians make the determination based on prevailing standards for competent medical practice, day-to-day realities, and the nature of the physician's actual practice.

The work group presented its findings to the Medical Examining Board with a recommendation that the board increase the physician to physician assistant ratio to 1:5. The board considered several factors including practice setting in which physician and physician assistants carry out their duties and patient care issues such as a growing shortage of health care practitioners in underserved communities. The board emphasized the need for adequate physician supervision of physician assistant's practice and adopted the work group's recommendation to increase the ratio of physician assistants a physician may supervise. However, after extensive discussion, the board decided to authorize a physician to physician assistant supervision ratio of 1:4.

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

The department finds that this rule will have no effect on small business as small business is defined in 227.114 (1), Stats.

Anticipated costs incurred by the private sector:

The department finds that this rule will incur no additional cost to the private sector.

Fiscal Estimate and Economic Impact Analysis:

The proposed rule is not anticipated to have any fiscal impact on businesses, public utility rate payers, local government units or the state's economy as a whole. The proposed rule was posted on the department's website for 14 days. Comments were solicited. The department did not receive any comments regarding an economic impact from local government units, specific business sectors or public utility rate payers. Therefore, the department finds the proposed rule will have no economic impact.

Effect on small business:

The department finds that this rule will have no effect on small business as small business is defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted at Greg.Gasper@wisconsin.gov or by calling (608) 266-8608.

Agency contact person:

Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.L Leatherwood@wisconsin.gov.

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

Comments may be submitted to Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received on or before February 15, 2012, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Med. 8.01 is renumbered Med 8.01 (1):

SECTION 2. Med 8.01 (2) is created to read:

Med 8.01 (2) Physician assistants provide health care services as part of physician-led teams, the objectives of which include safe, efficient and economical health care. The realities of the modern practice of medicine and surgery require supervising physicians and physician assistants to use discretion in delivering health care services, typically at the level of general supervision. The constant physical presence of a supervising physician is often unnecessary. The supervising physician and the physician assistant are jointly responsible for employing more intensive supervision when circumstances require direct observation or hands-on assistance from the supervising physician.

SECTION 3. Med 8.05 (2) (b) 7. is amended to read:

Med 8.05 (2) (b) 7. ~~Has been diagnosed as suffering from pedophilia, exhibitionism or voyeurism.~~ with any condition that may create a risk of harm to a patient or the public.

SECTION 4. Med 8.05 (2) (c) is amended to read:

Med 8.05 (2) (c) An application filed under this chapter shall be reviewed by an application review panel of at least 2 council members designated by the chairperson of the board to determine whether an applicant is required to complete an oral examination or a personal appearance or both under par. ~~(a)~~ (b). If the application review panel is not able to reach unanimous agreement on whether an applicant is eligible for licensure

without completing an oral examination or a personal appearance or both, the application shall be referred to the board for a final determination.

SECTION 5. Med 8.05 (2) (e) is created to read:

Med 8.05 (2) (e) The board may require an applicant to complete a personal appearance for purposes of interview or review of credentials or both. An applicant's performance at a personal appearance is satisfactory if the applicant establishes to the board's satisfaction that the applicant has met requirements for licensure and is minimally competent to practice as a physician assistant.

SECTION 6. Med 8.07 (1) is amended to read:

Med 8.07 Practice. (1) SCOPE AND LIMITATIONS. In providing medical care, the entire practice of any physician assistant shall be under the supervision of one or more a licensed physicians or physicians exempt from licensure requirements pursuant to s. 448.03 (2) (b), Stats.. The scope of practice is limited to providing medical care as specified in sub. (2). A physician assistant's practice may not exceed his or her educational training or experience and may not exceed the scope of practice of the ~~supervising~~ physician providing supervision. A medical care task assigned by the supervising physician to a physician assistant may not be delegated by the physician assistant to another person.

SECTION 7. Med 8.07 (2) (a) and (e) are amended to read:

Med 8.07 (2) (a) Attending initially a patient of any age in any setting to obtain a personal medical history, perform an appropriate physical examination, and record and present pertinent data concerning the patient ~~in a manner meaningful to the supervising physician~~.

Med 8.07 (2) (e) Assisting the supervising physician in a hospital or facility, as defined in s. 50.01 (1m), Stats., by assisting in surgery, making patient rounds, recording patient progress notes, compiling and recording detailed narrative case summaries and accurately writing or executing orders ~~under the supervision of a licensed physician~~.

SECTION 8. Med 8.07 (2) (i) is amended to read:

Med 8.07 (2) (i) Issuing written prescription orders for drugs ~~under the supervision of a licensed physician and in accordance with procedures specified in s. Med 8.08 (2)~~ provided the physician assistant has had an initial and at least annual thereafter, review of the physician assistant's prescriptive practices by a physician providing supervision. Such reviews shall be documented in writing, signed by the reviewing physician and physician assistant and made available to the Board for inspection upon reasonable request.

SECTION 9. 8.07 (3) is created to read:

Med 8.07 (3) IDENTIFYING SUPERVISING PHYSICIAN. The physician providing supervision must be readily identifiable by the physician assistant through procedures commonly employed in the physician assistant's practice.

SECTION 10. Med 8.08 is repealed.

SECTION 11. Med 8.10 is repealed and recreated to read:

Med 8.10 Physician to physician assistant ratio. (1) No physician may supervise more than 4 on duty physician assistants at any time unless a written plan to do so has been submitted to and approved by the board. Nothing herein shall limit the number of physician assistants for whom a physician may provide supervision over time. A physician assistant may be supervised by more than one physician while on duty.

(2) A supervising physician shall be available to the physician assistant at all times for consultation either in person or within 15 minutes of contact by telecommunication or other means.

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)

Dated _____

Agency _____

Chairperson
Medical Examining Board