

Report From Agency

**STATE OF WISCONSIN
MEDICAL EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
MEDICAL EXAMINING BOARD : CR 13-008
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I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, are attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA are attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The Medical Examining Board has undertaken a comprehensive review of Wis. Admin. Code ch. Med 10 pursuant to s. 448.40, Stats. The rationale behind the comprehensive review is that the current rules are out of date with practice within the profession. The rules have outdated terminology and fail to address recent trends within the profession. The proposed rules advance the statutory mandate by modernizing ch. Med 10 and bringing the rules in line with day-to-day practice within the profession.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Board held a public hearing on March 20, 2013. Written comments were accepted until March 20, 2013. The following people either testified at the hearing, submitted written comments, or both:

Mark Grapentine, Wisconsin Medical Society, Madison, WI

Judy Warmuth, Wisconsin Hospital Association, Madison, WI

Laura Leitch, Wisconsin Hospital Association, Madison, WI

The Board summarizes the comments received either by hearing testimony or by written submission as follows:

Mark Grapentine. Mr. Grapentine spoke in support of the rule with recommendations. He also submitted written comments. Most of Mr. Grapentine's recommendations were consistent with recommendations made by the Clearinghouse such as: deleting from the rule various definitions involving supervision that were not discussed in the rule, removing an incorrect reference to statutory language and replacing it with s. 655.42, Stats., and removing the phrase, "making relevant legal determinations" with "determining whether a physician has been negligent in the course of practicing medicine" found in s. Med 10.03 (2) (a) 2. of the proposed rule. Mr. Grapentine also asserted that the Board's definition of patient abandonment raised "significant complications". He suggested an alternate version of patient abandonment for the Board's review. Lastly, Mr. Grapentine opposed the inclusion of wrong site surgery in the rules, arguing since the Board has the authority to make an unprofessional conduct finding based on negligence; inclusion of a wrong site surgery provision was, "superfluous".

Judy Warmuth. Ms. Warmuth spoke in general support of the rule and submitted written comments. Ms. Warmuth echoed many of the same concerns identified by Mr. Grapentine and the Wisconsin Medical Society. She agreed that, "Med 10 should not include four definitions of different levels of supervision because those terms are not used in the rule". Ms. Warmuth opposed the use of the term "credentialing jurisdiction" used in the definition of license. She argued that the term "credentialing jurisdiction" as used was unclear and potentially rendered the definition of license overly broad. Ms. Warmuth agreed with Mr. Grapentine that wrong site surgery should not be included in the rules because it was duplicative. Finally, Ms. Warmuth asserted that the patient abandonment provision should be removed from the proposed rule because it created an unclear standard.

The Board explains modifications to its rule-making proposal prompted by public comments as follows:

Due to public comments, the Board deleted the terms "adequate supervision", "direct, immediate, one-to-one supervision," "direct on premises supervision" and "general supervision". The Clearinghouse report suggested removing all of the supervision provisions because none of the definitions were further discussed in the rule. However, the Board decided practitioners needed some guidance regarding supervision. Therefore, the Board crafted its own definitions, namely adequate supervision.

In response to public comments, the Board decided to amend rather than delete the patient abandonment provision. The Board drafted language that clarified what actions by a physician triggers patient abandonment and captured the various acts by a physician that indicate a physician has abandoned a patient. Despite public comments, the Board did not remove the wrong site surgery provision from the rule.

The Board also removed an incorrect reference to statutory language in s. Med 10.03 (2) (a) and replaced it with a reference to s. 655.42, Stats.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment: 4 e. In s. Med 10.03 (2) (L), the reference to “as set forth in s. BC 2.03” is unclear. Are the practice standards under s. BC 2.03 intended to apply to the medical director or physician, or to a non-physician? If intended to apply to a medical director or physician, “practice standards under s. BC 2.03 should replace “standard of minimal competence”, and “as set forth in s. BC 2.03” should be deleted. If intended to apply to non-physician, “who must meet the practice standards under” should replace “as set forth in”.

Response: The reference to s. BC 2.03 is intended to apply to a medical director or a physician. The Clearinghouse recommendation was adopted.

Comment: 4 i. It appears that the defined words “adequate supervision”, “direct, immediate, one-to-one supervision”, “direct, on-premises supervision”, and “general supervision” are not used in the proposed rule. If these words are not used in the proposed rule, it is not necessary to define them. In addition, consider whether a definition should be created for a “standard of minimally competent medical practice” or “standard of minimal competence”, as that standard is referred to in the proposed rule but appears to be undefined.

Response: The aforementioned terms regarding supervision have been deleted. A new term, “adequate supervision” has replaced the deleted terminology. The Board does not wish to define the term “standard of minimal competence” at this time.

Comment: 4 hh. In s. Med 10.03 (3) (c), “federal” should be inserted before “agency or authority”, and “within the federal government” should be deleted. Also, what does “become subject to adverse action” mean? Does that mean only an adverse determination or does it include investigation?

Response: The language is intended to cover the broad range of what would be considered an adverse action. It encompasses final determinations and some investigations depending on the situation.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

None.