

**STATE OF WISCONSIN
MEDICAL EXAMINING BOARD**

IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : **REPORT TO THE LEGISLATURE**
: **CR 14-040**
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I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS:

None.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

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

2013 Wisconsin Act 111 amended Wis. Stats. §448.30 and set forth new standards with regards to physicians advising patients of their treatment options and obtaining informed consent. Before Act 111, physicians had a duty to inform their patients of all alternate, viable medical modes of treatment and about the benefits and risks of those treatments. Physicians were held to the reasonable patient standard in carrying out this duty. The reasonable patient standard required physicians to inform patients of information necessary for a reasonable person to make an intelligent decision with regard to treatment.

Act 111 changed the standard for informing a patient from the reasonable patient standard to the reasonable physician standard. The reasonable physician standard requires doctors to disclose information that a reasonable physician in the same or similar medical specialty would know and disclose under the circumstances. This new standard requires doctors to advise their patients of reasonable alternate medical modes of treatment and the benefits and risks of those treatments before obtaining informed consent. The proposed rule adopts the new standard set forth in 2013 Wisconsin Act 111 by incorporating the reasonable physician standard into Wis. Admin. Code ch. Med 18.

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 August 20, 2014. The following people either testified at the hearing, or submitted written comments:

Mark Grapentine, Wisconsin Medical Society

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

Mark Grapentine testified in favor of the rule. He concurred with the recommendations made in the Clearinghouse Report.

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

The Board made no modification as a result of public comments.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

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

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

None.