

Report From Agency

**STATE OF WISCONSIN
PODIATRISTS AFFILIATED CREDENTIALING BOARD**

IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : **REPORT TO THE LEGISLATURE**
: **CR 15-076**
PODIATRISTS AFFILIATED :
CREDENTIALING BOARD :

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS:

N/A

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:

The duty of certain health care professionals, other than physicians, to obtain informed consent from their patients before conducting treatment had not been codified as a statutory duty prior to the passage of 2013 Wisconsin Act 345. Act 345 sets forth the podiatrists' duty to obtain informed consent from their patients and institutes the reasonable podiatrist standard as the standard for informing patients regarding their treatment options. The reasonable podiatrist standard requires disclosure only of the information that a reasonable podiatrist would know and disclose under the circumstances. The proposed rule will incorporate the new standard into the current rules governing podiatric practice and make any additional changes necessary to create consistency with the newly enacted legislation. The proposed rule will also provide clarity to the process of renewing a license after 5 years by updating provisions regarding licensure reinstatement.

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

The Podiatrists Affiliated Credentialing Board held a public hearing on February 9, 2016. The Board did not receive any written or verbal comments.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 2.b: In s. Pod 4.03 (2) (b), the phrase “Except as provided in s. Pod 4.04,” should be inserted before the newly added sentence, to account for the cross-reference to s. Pod 4.03 (2) (b) that is contained in the first subunit of s. Pod 4.04.

Response: The Board rejected this comment, as it wants to make a clear distinction between licensees 1) who have not renewed a license within 5 years of the renewal date and either do not have disciplinary requirements or have met all disciplinary requirements and 2) who have not renewed a license within 5 years of the renewal date and have unmet disciplinary requirements or whose license has been surrendered or revoked.

Comment 2.d: The introductory material in s. Pod 4.04, read in combination with the third subunit of that section, states that a licensee may apply to have a license reinstated in accordance with evidence of rehabilitation or a change of circumstances warranting reinstatement of the license. It appears that this provision should be rewritten to clarify that an individual may apply for reinstatement and must provide certain information to the board, for the board to then make the determination as to whether the information provided is sufficient to warrant reinstatement.

Response: The Board has discretion to approve reinstatement of a license based upon the rules it promulgates. Conversely, the Board has discretion to deny reinstatement as long as it is not done in an arbitrary or capricious manner. It is within the authority of the Board to determine if the evidence of an applicant’s rehabilitation or change in circumstances is sufficient to warrant reinstatement of a license.

Comment 5.b: The rule should provide an explanation for how the board will determine whether an applicant has provided sufficient evidence of rehabilitation or change in circumstances to warrant reinstatement of a license. The rule should also provide a process by which an applicant may appeal a determination by the board that the applicant has not provided sufficient evidence to warrant reinstatement.

Response: See response to Comment 2.d.

Comment 5.c: The introductory material in s. Pod 4.04 refers to a person whose license has been surrendered or revoked as a “licensee”. This is in conflict with s. Pod 1.02 (4), which defines a “licensee” as “any person validly possessing any license granted and issued to that person by the board”. The board should consider revising the terminology used in s. Pod 4.04. For example, the board could consider creating definitions for phrases such as a “lapsed licensee”, “disciplined licensee”, or “former licensee”.

Response: Section 440.08 (3), Stats., addresses late renewal and refers to the individual as “the holder of a credential who fails to renew” indicating the person still holds the credential even if it is expired. A person with an expired credential may not enjoy the rights, privileges and authority of the credential because it is expired, however, the person is still holding a credential albeit an expired credential. The use of the term “licensee” is consistent with the language in s. 440.06(3).

Comment 5.e: There is an inherent contradiction in the rule that should be corrected. Specifically, the introductory material in s. Pod 4.04, when read along with the second subunit of that section, states that a licensee with **unmet** disciplinary requirements may

apply to have a license reinstated if the applicant provides evidence of **completion** of disciplinary requirements.

Response: See response to Comment 2.b.

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:

N/A