

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 02-103)

ORDER

An order of the Department of Regulation and Licensing to create s. RL 2.20 relating to extension of disciplinary action time limits.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 448.02 (3) (cm), Wis. Stats.

Statutes interpreted: s. 448.02 (3) (cm), Wis. Stats.

Section 448.02 (3) (cm), Wis. Stats., establishes time limits for the Medical Examining Board (Board) to initiate disciplinary action against a physician. The Board may initiate disciplinary action against a physician no later than one year after initiating an investigation of an allegation involving the death of a patient and no later than 3 years after initiating an investigation of any other allegation, unless the Board shows to the satisfaction of the Secretary of the Department of Regulation and Licensing that a specified extension of time is necessary for the Board to determine whether a physician is guilty of unprofessional conduct or negligence in treatment.

Under the rule, the Board may request the Secretary of the Department of Regulation and Licensing (Secretary) to grant an extension to the statutory time limits. This rule describes how time is computed in applying the time limits in the statute, how a request for an extension is made and the factors to be considered in determining whether to grant an extension.

The rule includes a subsection describing how the statutory time periods are computed. The date of initiating an investigation is established as the date of the decision to commence an investigation of an informal complaint following the screening of the informal complaint, except that if the decision to commence an investigation of an informal complaint is made more than 45 days after the date of receipt of the informal complaint, or if no screening of the informal complaint is conducted, the time for initiating an investigation is set at 45 days after the date of receipt of the informal complaint. The date that the Board initiates a disciplinary action is established as the date that a disciplinary proceeding is commenced by the filing of a notice of hearing.

A request for an extension must be made in writing and include the nature and date of the conduct or negligence, and the reasons why the Board has not made a decision within the time specified.

Section RL 2.20 (3) summarizes the information needed for a request. Under sec. 2.20 (4), in determining whether to grant an extension of time the Secretary shall take into consideration certain factors: the nature and complexity of the investigation, whether delays were caused by lack of timely response to requests for records or other evidence, whether civil or criminal litigation relating to the matter investigated caused any delay, the quality and complexity of evidence available, the extent to which the physician will be prejudiced by an extension of time, and the potential harm to the public if the investigation is terminated.

TEXT OF RULE

SECTION 1. RL 2.20 is created to read:

RL 2.20 Extension of time limits in disciplinary actions against physicians. (1) **AUTHORITY AND PURPOSE.** The rules in this section are adopted under the authority of ss. 15.08 (5) (b), 227.11 (2) and 448.02 (3) (cm), Stats., to govern the extension of time limits in disciplinary actions against physicians.

(2) **COMPUTING TIME LIMITS.** In computing time limits under s. 448.02 (3) (cm), Stats., the date of initiating an investigation shall be the date of the decision to commence an investigation of an informal complaint following the screening of the informal complaint under s. RL 2.035, except that if the decision to commence an investigation of an informal complaint is made more than 45 days after the date of receipt of the informal complaint in the division, or if no screening of the informal complaint is conducted, the time for initiating an investigation shall commence 45 days after the date of receipt of the informal complaint in the division. The date that the medical examining board initiates a disciplinary action shall be the date that a disciplinary proceeding is commenced under s. RL 2.04.

(3) **PROCEDURE FOR REQUESTING AN EXTENSION OF TIME.** The medical examining board or the division on behalf of the medical examining board shall make a written request for an extension of time under s. 448.02 (3) (cm), Stats., to the secretary of the department of regulation and licensing and shall state all of the following:

(a) The nature of the investigation and the date of initiating the investigation.

(b) The number of days the medical examining board requires as an extension in order to determine whether a physician is guilty of unprofessional conduct or negligence in treatment and to initiate disciplinary action.

(c) The reasons why the medical examining board has not made a decision within the time specified under s. 448.02 (3) (cm), Stats.

(4) **FACTORS TO BE CONSIDERED.** In deciding whether to grant or deny a specified extension of time for the medical examining board to determine whether a physician is guilty of unprofessional conduct or negligence in treatment, the secretary of the department of regulation and licensing shall consider the information set forth in the request and at least the following factors:

(a) The nature and complexity of the investigation including the cause of any delays encountered during the investigation.

(b) Whether delays encountered during the screening of the complaint or the complaint handling process were caused in whole or part by the fact that record custodians, witnesses, or persons investigated did not make a timely response to requests for records or other evidence.

(c) Whether civil or criminal litigation relating to the matter investigated caused any delay in the investigation.

(d) The quality and complexity of evidence available to the medical examining board.

(e) The extent to which the physician will be prejudiced by an extension of time.

(f) The potential harm to the public if the investigation is terminated without a determination of whether the physician complained about is guilty of unprofessional conduct or negligence in treatment.

(5) **APPROVE OR DENY AN EXTENSION.** The secretary of the department of regulation and licensing shall approve or deny a request for an extension within 20 days of receipt. A request not approved within 20 days shall be deemed denied.

(END OF TEXT OF RULE)

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.), Wis. Stats.

Dated _____

Agency _____

Secretary Donsia Strong Hill
Department of Regulation and Licensing

FISCAL ESTIMATE

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Wis. Stat.

RL 2.20 CR02-103 (Timelines physician discipline) Final 1-13-04