

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 02-055)

ORDER

An order of the Medical Examining Board to create Med 10.02 (2) (zd), relating to defining sexual contact with a patient as unprofessional conduct.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1), Wis. Stats.

Statutes interpreted: s. 448.015 (4), Wis. Stats.

The Medical Examining Board has for many years prosecuted cases involving inappropriate sexual contact between physicians and their patients under s. Med 10.02 (2) (h), Wis. Admin. Code. That section reads as follows:

Med 10.02 Definitions. . . . (2) The term “unprofessional conduct” is defined to mean and include but not be limited to the following, or aiding or abetting the same:

(h) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

In a recent circuit court case, the board’s finding of a violation of the cited section, arising from a respondent having engaged in a sexual relationship with a patient over a period of approximately eight months, was appealed based in part on the argument that the cited section was vague in terms of what it permitted and prohibited. The court agreed, reversing the board’s decision and remanding the case to the board “for either further evidentiary proceedings or for particularly specific findings as to how the danger to patient rule was violated or caused, rather, in this case by improper medical treatment.”

Based upon this challenge to the board’s interpretation of the so-called “danger rule,” it is deemed appropriate to join most of the other health care boards in specifically prohibiting inappropriate sexual contact or behavior with a patient. Also consistent with similar rules promulgated by other affected boards, the patient’s status as a patient is extended for two years beyond actual termination of services in order to obviate the possible problem of a licensee

summarily suspended terminating treatment immediately upon commencement of improper personal contact with a patient.

TEXT OF RULE

SECTION 1. Med 10.02 (2) (zd) is created to read:

Med 10.02 (2) (zd) Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient. For the purposes of this subsection, an adult receiving treatment shall continue to be a patient for 2 years after the termination of professional services. If the person receiving treatment is a minor, the person shall continue to be a patient for the purposes of this subsection for 2 years after termination of services, or for 2 years after the patient reaches the age of majority, whichever is longer.

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.

Dated _____

Agency _____

Darrold Treffert, M.D., Chairperson
Medical Examining Board