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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

**STATE OF WISCONSIN
MEDICAL EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 09-006)**

TO: Senator Jim Holperin, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 409 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the MEDICAL EXAMINING BOARD is submitting in final draft form rules relating to prescribing limitations for physician assistants.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

Thank you.

**STATE OF WISCONSIN
MEDICAL EXAMINING BOARD**

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : **REPORT TO THE LEGISLATURE**
MEDICAL EXAMINING BOARD : **ON CLEARINGHOUSE RULE 09-006**
: **(s. 227.19 (3), Stats.)**

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

The Department of Regulation and Licensing estimates that this rule will require staff time in the Office of Legal Counsel. The total one-time salary and fringe costs are estimated at \$4,300. The total on-going salary and fringe costs are estimated at \$2,400. The department finds that this rule has no significant fiscal effect on the private sector.

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

The Wisconsin Council on Physician Assistants initiated this rule-making by a request to the Medical Examining Board. The board's attorney drafted the rule in accordance with instructions from the Council. Council members sought the collaborative support of several groups and individuals interested in the rules governing prescribing by physician assistants and discussed the rule thoroughly at Council meetings. The Council examined the experience of other states, particularly that of Minnesota.

This proposed rule-making will change the countersignature requirement of the physician assistant prescribing rule which currently provides that the supervising physician must countersign the prescription or patient record within 72 hours or one week, depending on the practice site. Based on the advances in physician assistants' licensure and prescriptive authority, including a record of safe prescribing, co-signature of every prescription is no longer needed. The proposed rule will allow for more flexibility between the physician and physician assistant by allowing the supervising physician to determine the method and frequency of the review based upon the prescriptive practice, the experience of the physician assistant and the patients' needs. In addition, the proposed rule re-conceptualizes the required written guidelines for prescribing to include

the categories of drugs for which prescriptive authority has been authorized and the technological advancement in electronic communications and recordkeeping.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on March 18, 2009.

The following individuals appeared at the public hearing and spoke in favor of the proposed rules:

Richard L. Faust, PA-C, Mauston, WI, Member, Physician Assistant Council (also submitted written comments)
Lou Falligant, PA-C, Stoughton, WI, Executive Vice President, Wisconsin Academy of Physician Assistants, Kimberly, WI (also submitted written comments)
Mark Grapentine, Wisconsin Medical Society, Madison, WI
Anne Hletko, PA-C, Neenah, WI, Chair, Wisconsin Physician Assistant Council
Eric Ostermann, Kimberly, WI, Wisconsin Academy of Physician Assistants

Written comments, all in support of the proposed rule-making, were received from the following individuals:

R. Aedstadt, West Bend Clinic, Froedtert & Community Health, West Bend, WI
Shahryar Ahmad, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Edward R. Ahrens, M.D., Madison Area Renal Specialists, Madison, WI
Muhammad Ali, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Paul Anderson, M.D., Associate Professor, UW Hospital and Clinics, Department of Orthopedics and Rehabilitation, Madison, WI
Kelsey Angell, PA-C, Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
David E. Augustine, M.D., Holy Family Hospital, Lakeshore Family Medicine & Walk-In Care at Harbor Town, Manitowoc, WI
Mark P. Behar, PA-C, Waukesha, WI
Troy L. Berg, M.D., Sports Medicine & Arthroscopy, Eau Claire, WI
Heather L. Billington, PA-C, Musculoskeletal Oncology, Department of Orthopaedic Surgery, Medical College of Wisconsin, Milwaukee, WI
Jonathan Bohman, P.A.C., Group Health Cooperative of South Central Wisconsin, Hatchery Hill Clinic, Fitchburg, WI
Roderick Brodhead, FACEP, Medical Director, Howard Young Medical Center, Ministry Health Care, Woodruff, WI
Lisa Cervantes, PA-C, Division of Gastroenterology and Hepatology, University of Wisconsin Hospital and Clinics, Madison, WI
The Children's Specialty Group Division of Pediatric Surgery at the Medical College of Wisconsin/Children's Hospital of Wisconsin, Milwaukee, WI

Ann Davis, PA-C, Director, State Government Affairs, American Academy of Physician Assistants, Alexandria, VA
Steven Denson, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Mary Kathleen Dominski, M.D., Neurology, Dean Health System, Madison, WI
Anil Doppalapudi, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
John P. Drawbert, M.D., Sports Medicine & Arthroscopy, Eau Claire, WI
Michelle Dubis, MS, PA-C, Physician Assistant, Hand & UE Surgery, Dean Health System, Madison, WI
Christoph H. Eggert, M.D., Madison Area Renal Specialists, Madison, WI
Virginia Evans, PA-C, University of Wisconsin Hospital and Clinics, Madison, WI
Robert Gage, M.D., U.W. Health – DeForest, DeForest, WI
Kristofer Galvan, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Donald A. Hackbarth, Jr., M.D., Professor, Clinical Orthopaedic Surgery and Musculoskeletal Oncology, Medical College of Wisconsin Physicians, Froedtert East Clinics, Milwaukee, WI
Kurt Helmrick, PA-C, MPAS, Ellsworth Medical Clinic, Ellsworth, WI
Charles Heyka, M.D., Bellin Health Family Medical Center, Green Bay, WI
Lori Hollingsworth-Burds, PA-C, Medical College of Wisconsin, Milwaukee, WI
Jolene R. Huber, PA-C, Occupational Medicine, Sun Prairie, WI, and Mark C. Moore, M.D., Occupational Medicine, Dean Medical Center, Madison, WI
Mark Muth, M.D.
Michael Jacobs, PA-C
Heather James, PA-C, Holy Family Memorial Lakeshore Family Medicine & Walk-In Care at Harbor Town, Manitowoc, WI
J. Johnson, PA-C, Medical College of Wisconsin, Milwaukee, WI
Courtney K. Johnson, PA-C, Gary R. Seabrook, M.D., Kellie R. Brown, M.D., Brian D. Lewis, M.D., James B. Gosset, M.D., Division of Vascular Surgery, Froedtert & Medical College of Wisconsin, Milwaukee, WI
Reshmi Joseph, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Nicole Josi, PA-C, Neurology, Dean Health System, Madison, WI
Pollyanna Kabara, PA-C, Pediatric Emergency Medicine, Medical College of Wisconsin/Children's Hospital, Milwaukee, WI
Bruce A. Kaufman, M.D., Chief and Professor of Pediatric Neurosurgery, and Sean Lew, M.D., Assistant Professor of Neurosurgery, Department of Pediatric Neurosurgery, Children's Hospital of Wisconsin, Milwaukee, WI
David M. King, M.D., Musculoskeletal Oncology, Department of Orthopaedic Surgery, Medical College of Wisconsin, Milwaukee, WI
Jason Knuffman, M.D.
Nilay Kumar, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
James W. Leonard, D.O., Associate Professor and Chair, Rehabilitation Medicine Division, Department of Orthopedics and Rehabilitation; Chair, Madison United

Credentials Committee; Chair, University Hospital Credentials Committee; Physician Representative, University Hospital Physician Assistant Credentials Committee, University of Wisconsin Hospitals and Clinics, Madison, WI
James P. Long, M.D., FAAFP, DABFP, Group Health Cooperative, Madison, WI
Deborah A. Loomis, PA-C, Madison Area Renal Specialists, Madison, WI
Michael R. Lucey, M.D., Professor and Vice Chair, Department of Medicine; Chief, Section of Gastroenterology and Hepatology, University of Wisconsin School of Medicine and Public Health, Madison, WI
Stephanie Ludtke, PA-C, Department of Orthopaedic Surgery, Medical College Physicians, Froedtert East Clinics, Milwaukee, WI
Leena Varkey Maramattom, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Richard M. Marks, M.D., FACS, Professor, Orthopaedic Surgery; Director, Division of Foot/Ankle Surgery, Medical College of Wisconsin, Department of Orthopaedic Surgery, Milwaukee, WI
Jennifer McKeand, PA-C, Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Tomaz Miaskowski, M.D., Bellin Medical Group, Bonduel, WI
L. M. Naser, PA-C, Stillwater Medical Group, Somerset, WI
Edward M. Nelsen-Freund, M.D., Assistant Professor, Department of Orthopaedic Surgery, Medical College Physicians, Milwaukee, WI
Cheryl Nigl, PA-C, Gundersen Lutheran Medical Center, La Crosse, WI
Mark B. Olinger, M.D.
Max Ots, M.D., BayCare Clinic, Neurological Surgeons, Green Bay, WI
Kim Ownby, PA-C
Kiran Padala, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Michael Papp, D.O., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Chris Petersen, PA-C, Galesville Clinic, Franciscan Skemp Healthcare, Galesville, WI
Peter Pickhardt, M.D., U.W. Health-DeForest, DeForest, WI
Danelle Plennes, PA-C, Orthopaedic Surgery, Medical College of Wisconsin, Milwaukee, WI
Rachel Quarberg, PA-C, Marshfield Clinic, Eau Claire Center, Eau Claire, WI
Laura Radke, M.D., Employee Health and Wellness, Prohealth Care, Waukesha, WI
Michael Radzienda, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Vipulkumar Rana, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
David Ringdahl, M.D., UW Health – DeForest, DeForest, WI
Laura Ripple, PA-C, Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Gerald Ryan, M.D., University of Health Services, University of Wisconsin-Madison, Madison, WI
Debra Sanfilippo, PA-C, Advanced Care Providers, Medical Staffing Solutions
Greg Schmeling, M.D., Medical College of Wisconsin, Milwaukee, WI

Ann Schoper, PA-C, Delafield, WI
Glenn Schoper, M.D., Delafield, WI
William See, M.D., Chairman, Jay Sandlow, M.D., Vice Chairman, Carley Davis, M.D., Robert Donnell, M.D., Michael Guralnick, M.D., Margarita Kressin, M.D., Peter Langenstroer, M.D., R. Corey O'Connor, M.D., Robert Pendergast, M.D., Aaron Sulman, M.D., James Matthews, PA-C, Jessica Motl, PA-C, Erica Schellhaas, PA-C, Department of Urology, Medical College of Wisconsin, Froedtert Memorial Lutheran Hospital, Milwaukee, WI
Ankur Segon, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Shamila Senanayake, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Stuti Shankar, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Kim Shefchik, PA-C, Dr. Clark Stevens, Jr., Supervising Physician, Obstetrics & Gynecology Associates of Green Bay, Ltd, Green Bay, WI
Deb Sheno, M.D., Group Health Cooperative
J. L. Sikkink, M.D., Stillwater Medical Group, Somerset, WI
Jamie Silkey, PA-C, Medical College of Wisconsin, Milwaukee, WI
Siddhartha Singh, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Jennifer Sorenson, PA-C, University of Wisconsin-Stevens Point, University Health Service, Stevens Point, WI
Pam Sprecher, PAC, Group Health Cooperative
Nathaniel J. Stewart, M.D., Orthopedics and Sports Medicine, Adult Reconstruction and General Orthopedics, Eau Claire, WI
Jean Stransky, PAC, Mile Bluff, Delton Family Medical Center, Wisconsin Dells, WI
Dale Sturm, PA-C, Department of Orthopedic Surgery, Marshfield Clinic-Weston Center, Weston, WI
Amy Tibbits, PAC and Gordon J. Grieshaber, M.D.
Robyn Titel, M.D., U.W. Health – DeForest, DeForest, WI
Mike Tonne, PA-C, Advanced Care Providers, Minocqua, WI
Heather Toth, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Clifford Tribus, M.D., Associate Professor, Department of Orthopedics and Rehabilitation, UW Hospital and Clinics, Spine Center, Madison, WI
Sarah Van Orman, M.D., Executive Director, University Health Services, University of Wisconsin-Madison, Madison, WI
Jane Njeri Wainaina, M.D., Section of Hospital Medicine, The Medical College of Wisconsin Clinical Cancer Center, Milwaukee, WI
Victoria Wattiaux, PA-C, Ted Kubiak, PA-C, Amy Lasch, PA-C, Elizabeth Wolter PA-C, Tom McDonald, PA-C, Carrie Bach, PA-C, and Steve Tyska, M.D., Urgent Care Medical Director, University of Wisconsin Medical Foundation Urgent Care, Madison, WI
Stephanie A. Weiss, PA-C, West Bend Clinic, Froedtert & Community Health, West Bend, WI
Brad Wozney, M.D., Medical Director, Bellin Health Fast Care, Green Bay, WI

Elizabeth Yahr, PA-C, Section of Hospital Medicine, The Medical College of Wisconsin
Clinical Cancer Center, Milwaukee, WI
Jason Yelk, D.O., Medical Director, Meriter Hospitalist Program, and Joanna Hebgan,
PA-C, Meriter Hospital, Madison, WI
Tom Zdeblick, M.D., Associate Professor and Chair, Department of Orthopedics and
Rehabilitation, UW Hospitals and Clinics, Spine Center, Madison, WI
Thomas M. Zenner, M.D., Bellin Health Family Medical Center, Kewaunee, WI
A. Brechen, West Bend Clinic, West Bend, WI
Mark R., M.D., Division of Gastroenterology and Hepatology, University of Wisconsin
Hospital and Clinics, Madison, WI
Medical College of Wisconsin, Milwaukee, WI
Dennis O., M.D.
Scott, M.D., West Bend Clinic, Froedtert & Community Health, West Bend, WI

Pharmacy Examining Board - A question was raised by the Pharmacy Examining Board at their April 8, 2009 board meeting, after the end of the comment period. The question was whether the revised language in s. Med 8.08 conferred dispensing authority to physician assistants where it had not existed before. The department staff researched the issue of the dispensing authority and presented its findings to the Medical Examining Board and the Pharmacy Examining Board. The findings included a review of the first sentence in s. Med 8.08 which states that a physician assistant may not dispense any drug independently; however, the reference to dispensing has been in the rule since the original enactment of the rule in 1984. The proposed language to be added to s. Med 8.08 (1) does not create dispensing authority; the language only modifies the authority to prescribe and dispense pursuant to guidelines for supervised practice.

In addition to the history of the rule, the department located a legal opinion dated June 14, 2002, prepared by legal counsel for the Medical Examining Board, which specifically addressed the issue of dispensing by physician assistants. The opinion stated that a pharmacy in a rural hospital had taken the position that physician assistants may not dispense medication to patients pursuant to written guidelines established between the physician assistant and his or her supervising physician under s. Med 8.08 (2) (a). The opinion stated that the pharmacist was in error. The opinion cited various statutory references, in addition to s. Med 8.08, which listed physician assistants in the category of health care providers authorized to prescribe and dispense drugs. The legal opinion concluded that this is a clear indication that the legislature anticipated dispensing to be within the scope of physician assistants' supervised practice. With respect to the specific language in s. Med 8.08 setting forth prescribing limitations for physician assistants, the letter of opinion stated that "had the intent been to entirely forbid dispensing by a physician assistant, the provision would obviously have been drafted to express that intent."

The Medical Examining Board considered the concerns of the Pharmacy Examining Board in regard to the proposed rule and determined that it did not create dispensing authority for physician assistants; that it had been in longstanding existence prior to the proposed revisions to the text of the rule.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 2.a. In s. Med 8.08 (1), consideration might be given to adding, at the end of the first underscored sentence: “, prepared by the supervising physician”.

Response: The Medical Examining Board received testimony from several interested parties in opposition to the recommendation of the Clearinghouse to include the phrase “*prepared by the supervising physician*” in s. Med 8.08 (1). The basis for the opposition was that requiring the supervising physician to personally prepare the written guidelines is impractical in the practice settings for most physician assistants. It was stated that in the majority of health care settings where physician assistants are employed, there is a need for consistency and uniformity in job descriptions and practice protocols. Written prescribing guidelines are typically created by a committee and submitted to the supervising physicians, physician assistants, and administration for review and approval. Inserting the requirement that the supervising physician personally prepare the guidelines would be contrary to the practical needs of physician assistants and supervising physicians. The board found the opposition to Clearinghouse Comment 2.a. persuasive, and rejected the proposal to add the suggested wording.

Comment 2.d. In subs. 1. and 2. of s. Med 8.08 (3) (a), should “representative sample” be substituted for “selection”; compare the use of “representative sample” in s. Med 8.08 (3) (b). Further, in subd. 3. of s. Med 8.08 (3) (a), should reference be made to a “representative sample” of the patient records or prescription orders?

Response: The Clearinghouse suggestion regarding the use of the term “representative sample” in s. Med 8.08 (3) (a) was discussed during the public hearing. Testimony was received from several interested parties in opposition to the use of the term. It was stated that the replacement of the term “selection” with the term “representative sample” would result in a substantive change contrary to the intent of the joint subcommittee which drafted the proposed rule. Those in opposition also stated that because the term “representative sample” has a specific definition based on a statistical quantity, it may result in the exclusion of atypical, potentially serious, or unusual prescriptive orders or patient records which should be reviewed by the supervising physician. The replacement of the term “selection” with the term “representative sample” may have the unintended consequence of limiting the physician’s discretion and imposing a requirement that only prescriptive orders or patient records which constitute a “representative sample” are to be reviewed. Accordingly, the board found the basis for the opposition to the Clearinghouse Comment persuasive and rejected the proposal to use the term “representative sample” in the rule text whatsoever. The term has been stricken from the proposed rule text and the term “selection” has been retained where it appears in s. Med 8.08 (3) (a) 1. and 2. The term “representative sample” has been replaced with the term “selection” where it had appeared in the proposed rule revision text for s. Med 8.08 (3) (b).

All of the other recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Med 8.08 CR09-006 (Physician assistant prescribing limitations) Report to Leg 5-4-09

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 09-006)

PROPOSED ORDER

An order of the Medical Examining Board to repeal Med 8.08 (2) (e); to amend Med 8.08 (1) and (2) (a), and 8.10 (3); and to create Med 8.08 (3), relating to prescribing limitations for physician assistants.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 448.21 (3), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2), 448.05 (5) and 448.40, Stats.

Explanation of agency authority:

The Medical Examining Board is granted the authority under s. 448.40, Stats., to promulgate rules establishing licensing and practice standards for physician assistants for the purpose of protecting the public health, safety and welfare.

Related statutes or rules:

Sections 448.04 (1) (f) and 448.05 (5) (a), Stats., and ch. Med 8.

Plain language analysis:

This proposed rule-making will change the countersignature requirement of the physician assistant prescribing rule which currently provides that the supervising physician must countersign the prescription or patient record within 72 hours or one week, depending on the practice site. Based on the advances in physician assistants' licensure and prescriptive authority, including a record of safe prescribing, co-signature of every prescription is no longer needed. The proposed rule will allow for more flexibility between the physician and physician assistant by allowing the supervising physician to determine the method and frequency of the review based upon the prescriptive practice,

the experience of the physician assistant and the patients' needs. In addition, the proposed rule re-conceptualizes the required written guidelines for prescribing to include the categories of drugs for which prescriptive authority has been authorized and the technological advancement in electronic communications and recordkeeping.

SECTION 1 amends rules to reflect the prescribing or dispensing of a drug pursuant to written guidelines for supervised prescriptive practice.

SECTION 2 repeals rules which currently provide that the supervising physician must countersign the prescription or patient record within 72 hours or one week, based on the advances in physician assistant licensure and prescriptive authority.

SECTION 3 creates rules to allow for more flexibility between the physician and physician assistant by allowing the supervising physician to determine the method and frequency of the review based upon prescriptive practice, experience of the physician assistant, and patient needs.

SECTION 4 amends rules to incorporate the technological advancement in electronic communications.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Iowa:

Physician assistants may prescribe non-controlled and controlled substances (except schedule II depressants). They may dispense under certain conditions. Physician assistants who prescribe controlled medications must register with the DEA.

Supervision: A physician need not be physically present, but must be readily available by telecommunication.

Illinois:

A physician may delegate prescriptive authority for non-controlled and schedules III-V medications to physician assistants, with periodic review by the supervising physician. A physician must file notice of delegation of prescriptive authority to the physician assistant with the Department of Professional Regulation. The physician and physician assistant adopt written guidelines for prescribing. Physician assistants who prescribe controlled substances must register with state controlled substance authority and the DEA.

Supervision: Physical presence of a physician is not required. The physician must be able to consult by radio, telephone, or telecommunications. The supervising physician

may designate an alternate supervising physician in accordance with statutes. Physicians within a practice group of the supervising physician may supervise the physician assistant with respect to their patients without being deemed an alternate supervising physician.

Michigan:

Physician assistants may prescribe non-controlled and schedules III-V medications as delegated by a supervising physician. Physician assistants may prescribe a 7-day supply of schedule II drugs as discharge medications. Supervising physicians' and physician assistants' names must be indicated on the prescription. Physician assistant prescribers of controlled medications must register with the DEA.

Supervision: A physician must be continuously available for direct communication in person or by radio, telephone, or telecommunication and must regularly review the physician assistant's performance and patient records, consult, and educate.

Minnesota:

Physician assistants may prescribe controlled (schedules II-V) and non-controlled drugs. The physician reviews prescribing by the physician assistant weekly. Physician assistants authorized to prescribe controlled medications must register with the DEA.

Supervision: Physical presence of a physician is not required. The physician assistant and supervising physician must be able to be in touch via telecommunication.

Summary of factual data and analytical methodologies:

The Wisconsin Council on Physician Assistants initiated this rule by a request to the Medical Examining Board. The board's attorney drafted the rule in accordance with instructions from the Council. Council members sought the collaborative support of several groups and individuals interested in the rules governing prescribing by physician assistants and discussed the rule thoroughly at Council meetings. The Council examined the experience of other states, particularly that of Minnesota.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

It is anticipated that the impact on small businesses will be positive because of the additional flexibility built into the supervisory relationship. The guidelines, which govern the relationship between the physician and the physician assistant, remain in place though the form will change slightly to include a section outlining the categories of drugs the physician assistant may prescribe.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council.

The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that this rule will require staff time in the Office of Legal Counsel. The total one-time salary and fringe costs are estimated at \$4,300. The total on-going salary and fringe costs are estimated at \$2,400.

Effect on small business:

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at larry.martin@wisconsin.gov, or by calling 608-266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-0495; email at pamela.haack@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708, email at pamela.haack@wisconsin.gov. Comments must be received on or before February 20, 2009, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Med 8.08 (1) and (2) (a) are amended to read:

Med 8.08 Prescribing limitations. (1) A physician assistant may not prescribe or dispense any drug independently. A physician assistant may only prescribe or dispense a drug pursuant to written guidelines for supervised prescriptive practice. The guidelines shall be kept on file at the practice site and made available to the board upon request.

(2) (a) The physician assistant issues the prescription order only in patient situations specified and described in established written guidelines, including the

categories of drugs for which prescribing authority has been authorized. The guidelines shall be reviewed at least annually by the physician assistant and his or her supervising physician.

SECTION 2. Med 8.08 (2) (e) is repealed.

SECTION 3. Med 8.08 (3) is created to read:

Med 8.08 (3) (a) A physician who supervises the prescribing practice of a physician assistant shall conduct a periodic review of the prescription orders prepared by the physician assistant to ensure quality of care. In conducting the periodic review of the prescriptive practice of a physician assistant, the supervising physician shall do at least one of the following:

1. Review a selection of the prescription orders prepared by the physician assistant.
2. Review a selection of the patient records prepared by the physician assistant practicing in the office of the supervising physician or at a facility or a hospital in which the supervising physician has staff privileges.
3. Review by telecommunications or other electronic means the patient record or prescription orders prepared by the physician assistant who practices in an office facility other than the supervising physician's main office of a facility or hospital in which the supervising physician has staff privileges.

(b) The supervising physician shall determine the method and frequency of the periodic review based upon the nature of the prescriptive practice, the experience of the physician assistant, and the welfare of the patients. The process and schedule for review shall indicate the minimum frequency of review and identify the selection of prescriptive orders or patient records to be reviewed.

SECTION 4. Med 8.10 (3) is amended to read:

Med 8.10 (3) The supervising physician or substitute supervising physician shall be available to the physician assistant at all times for consultation either in person or within 15 minutes of contact by ~~telephone or by 2-way radio or television communication~~ telecommunications or other electronic means.

(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.), Stats.

Dated _____

Agency _____

Chairperson
Medical Examining Board

Med 8.08 CR09-006 (Physician assistant prescribing limitations) Draft to Leg 5-4-09



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 09-006

AN ORDER to repeal Med 8.08 (2) (e) 1., 2., and 3.; to amend Med 8.08 (1) and (2) (a) and 8.10 (3); and to create Med 8.08 (3), relating to prescribing limitations for physician assistants.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

01-22-2009 RECEIVED BY LEGISLATIVE COUNCIL.

02-12-2009 REPORT SENT TO AGENCY.

RNS:DD



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 09-006

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. In s. Med 8.08 (1), consideration might be given to adding, at the end of the first underscored sentence: “, prepared by the supervising physician”.

b. The treatment clause of SECTION 2 can simply state: “Med 8.08 (2) (e) is repealed.”

c. It is suggested that the clause preceding the colon in s. Med 8.08 (3) (a) (intro.) be revised to read: “In conducting the periodic review of the prescriptive practice of a physician assistant, the supervising physician shall do at least one of the following:”. In subds. 2. and 3., a period should replace “, or”.

d. In subds. 1. and 2. of s. Med 8.08 (3) (a), should “representative sample” be substituted for “selection”; compare the use of “representative sample” in s. Med 8.08 (3) (b). Further, in subd. 3. of s. Med 8.08 (3) (a), should reference be made to a “representative sample” of the patient records or prescription orders?

e. In s. Med 8.10 (3), “assistant” should be inserted after the third “physician”, in order to reflect the current text of the rule.