



**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 1995 ASSEMBLY BILL 790**

March 18, 1996 - Offered by JOINT COMMITTEE ON FINANCE.

1 **AN ACT to amend** 227.53 (1) (a) 3., 227.54 and 448.09 (2); and **to create** 448.02
2 (8), 448.02 (9), 448.09 (1m) and 448.14 of the statutes; **relating to:** disciplinary
3 actions against physicians, requiring a report on disciplinary actions against
4 physicians, granting rule-making authority and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 227.53 (1) (a) 3. of the statutes is amended to read:
6 227.53 (1) (a) 3. If the petitioner is a resident, the proceedings shall be held in
7 the circuit court for the county where the petitioner resides, except that if the
8 petitioner is an agency, the proceedings shall be in the circuit court for the county
9 where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6)
10 and, 182.71 (5) (g) and 448.02 (8) (a). The proceedings shall be in the circuit court
11 for Dane county if the petitioner is a nonresident. If all parties stipulate and the
12 court to which the parties desire to transfer the proceedings agrees, the proceedings
13 may be held in the county designated by the parties. If 2 or more petitions for review
14 of the same decision are filed in different counties, the circuit judge for the county

1 in which a petition for review of the decision was first filed shall determine the venue
2 for judicial review of the decision, and shall order transfer or consolidation where
3 appropriate.

4 **SECTION 2.** 227.54 of the statutes is amended to read:

5 **227.54 Stay of proceedings.** The institution of the proceeding for review
6 shall not stay enforcement of the agency decision. The reviewing court may order a
7 stay upon such terms as it deems proper, except as otherwise provided in ss. 196.43,
8 448.02 (8) (b) and 551.62.

9 **SECTION 3.** 448.02 (8) of the statutes is created to read:

10 448.02 (8) JUDICIAL REVIEW. (a) A proceeding to review the board's decision to
11 discipline a physician under sub. (3) (c) or to suspend a physician's license under sub.
12 (4) may be held in any circuit court except the circuit court for the county in which
13 the physician resides or the circuit court for the county in which the physician's
14 professional practice is located.

15 (b) No injunction, temporary injunction, stay, restraining order or other order
16 may be issued by a court in any proceeding for review that suspends or stays an order
17 of the board to discipline a physician under sub. (3) (c) or to suspend a physician's
18 license under sub. (4), except upon application to the court under par. (a) and a
19 determination by the court that all of the following conditions are met:

20 1. The board has received notice of the application and has had an opportunity
21 for a hearing on the application.

22 2. There is a substantial likelihood that the applicant will prevail in the
23 proceeding for review.

24 3. The applicant will suffer irreparable harm if the order is not suspended or
25 stayed.

1 4. There is no likelihood of harm to patients of the applicant if the board's order
2 is suspended or stayed.

3 **SECTION 4.** 448.02 (9) of the statutes is created to read:

4 448.02 (9) ADMINISTRATIVE WARNINGS. If, after the board determines that there
5 is substantial evidence of misconduct by the holder of a license, certificate or limited
6 permit, but determines that a disciplinary proceeding should not be commenced
7 against the holder of the license, certificate or limited permit, then the board may
8 close the investigation by the issuance of an administrative warning. If an
9 administrative warning is issued, the holder of the license, certificate or limited
10 permit may obtain a review of the administrative warning through a personal
11 appearance before the board. An administrative warning issued under this
12 subsection shall be private and confidential, does not constitute an adjudication of
13 guilt or the imposition of discipline and may not be used as evidence that the holder
14 of the license, certificate or limited permit is guilty of the alleged misconduct.
15 However, if a subsequent allegation of misconduct by the holder of the license,
16 certificate or limited permit is received by the board, the matter relating to the
17 issuance of the administrative warning may be reopened and disciplinary
18 proceedings may be commenced on the matter, or the administrative warning may
19 be used in any subsequent disciplinary proceeding as evidence that the holder of the
20 license, certificate or limited permit had actual knowledge that certain practices
21 were contrary to law. The board shall promulgate rules establishing a procedure for
22 the issuance and use of administrative warnings. The rules shall include a definition
23 of "substantial evidence of misconduct" for purposes of this subsection.

24 **SECTION 5.** 448.09 (1m) of the statutes is created to read:

1 448.09 (1m) FORFEITURE FOR CERTAIN CONDUCT. In addition to the sanctions
2 specified in s. 448.02 (3) (c) and the penalties specified in sub. (1), a physician may
3 be required to forfeit not more than \$25,000 if he or she has been found by a court
4 to have been negligent in treating a patient or if he or she has been found by the board
5 to have engaged in unprofessional conduct or negligence in treatment.

6 **SECTION 6.** 448.09 (2) of the statutes is amended to read:

7 448.09 (2) APPEAL. Any person aggrieved by any action taken under this
8 chapter by the board, its officers or its agents may apply for judicial review as
9 provided in ch. 227 and s. 448.02 (8), and shall file notice of such the appeal with the
10 secretary of the board within 30 days. No court of this state may enter an ex parte
11 stay of any action taken by the board under this chapter.

12 **SECTION 7.** 448.14 of the statutes is created to read:

13 **448.14 Annual report.** By March 1 of each year, the board shall submit to the
14 chief clerk of each house of the legislature for distribution to the appropriate
15 standing committees under s. 13.172 (3) a report that identifies the average length
16 of time to process a disciplinary case against a physician during the preceding year
17 and the number of disciplinary cases involving physicians pending before the board
18 on December 31 of the preceding year.

19 **SECTION 8. Nonstatutory provisions.**

20 (1) STAFF FOR MEDICAL EXAMINING BOARD. The authorized FTE positions for the
21 department of regulation and licensing are increased by 1.5 PR program assistant
22 positions and 1.5 PR legal assistant positions on July 1, 1996, to be funded from the
23 appropriation under section 20.165 (1) (g) of the statutes, for the purpose of providing
24 staff only to the medical examining board.

