



## Legislative Fiscal Bureau

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April 30, 2009

Joint Committee on Finance

Paper #671

### **Medical Examining Board Regulation (Regulation and Licensing)**

[LFB 2009-11 Budget Summary: Page 548, #3]

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#### **CURRENT LAW**

As established under 2007 Wisconsin Act 25, beginning with license applications for the 2009-11 biennium, the Department of Regulation and Licensing (DRL) must set initial and renewal credential fees for occupational and professional credentials administratively, rather than by statute. These rules are subject to review by the Joint Committee on Finance.

The Department must determine the fee level of each initial credential for which no examination is required, for reciprocal credentials, and for all credential renewals, based on the administrative costs of the Department that are attributable to the regulation of each occupation or business regulated by the agency. The Department is required to complete this recalculation by January 31, in each odd-numbered year. Current statutes specify that the fees currently set in statute will be deleted, effective July 1, 2009.

The Department must send a report to the Co-chairs of Joint Committee on Finance, within 14 days of completing the proposed fee adjustments. The Committee has 14 working days after the submission of the report to notify the Secretary that the Committee has scheduled a meeting for review the proposed adjustments. If notification is not provided, within 14 days of receiving the report, the proposed fee changes will be approved. Once the fees are approved, the Department must post the fee adjustments on the DRL Internet web site and in credential renewal notices sent to affected credential holders.

The Department (and certain other program-revenue funded agencies) is required to credit 10% of the revenue generated from initial and credential renewal fees, from examinations fees and background investigations to the general fund as GPR-earned. Consequently, the fees must be set at a level sufficient to fund the agency's administrative and enforcement costs, net of the

revenue allocations to the general fund.

The Medical Examining Board (MEB) and its attached affiliated boards are located within DRL. The Medical Examining Board consists of the following members serving staggered four-year terms: (a) nine licensed doctors of medicine; (b) one doctor of osteopathy; and (c) three public members.

There are five affiliated credentialing boards attached to the Medical Examining Board, including an affiliated board for each of the following: (a) physical therapists; (b) dietitians; (c) podiatrists; (d) athletic trainers; and (e) occupational therapists. Table 1 lists the professions regulated by each board or affiliated board.

**TABLE 1**

**Professions Regulated by the Medical Examining Board**

<u>Board or Affiliated Board</u>	<u>Profession</u>
Athletic Trainers Affiliated Credentialing Board	Athletic Trainer
Dietitians Affiliated Credentialing Board	Certified Dietitian
Medical Examining Board	Perfusionist
Medical Examining Board	Physician
Medical Examining Board	Doctor of Osteopathy
Medical Examining Board	Physician Assistant
Medical Examining Board	Respiratory Care Practitioner
Occupational Therapists Affiliated Credentialing Board	Occupational Therapist
Occupational Therapists Affiliated Credentialing Board	Occupational Therapy Assistant
Physical Therapists Affiliated Credentialing Board	Physical Therapist
Physical Therapists Affiliated Credentialing Board	Physical Therapist Assistant
Podiatrists Affiliated Credentialing Board	Podiatric Medicine and Surgery

In general, individuals may not practice, or assume the title of, professions under the auspices of the Medical Examining Board or the attached affiliated boards without obtaining a credential. The Medical Examining Board and the attached affiliated boards may grant credentials for the practice of the professions listed above. The boards must investigate allegations of unprofessional conduct and negligence in the treatment by persons holding a credential issued by a board. Each board is responsible for holding hearings to review misconduct cases and to discipline individuals who are shown to have committed misconduct, including warnings and reprimands, and limits, suspensions and revocation of credentials.

The Department may seek judicial review of any final disciplinary action of the Medical Examining Board or an affiliated credentialing board that is attached to MEB. The Attorney General or other special counsel may be assigned to this case and paid from the Department's

general program operations.

Most professions regulated by the Department have to renew their license every two years. The dates are generally staggered so the Department will receive various renewal applications on different dates and workload is relatively constant. Table 2 identifies the biennial renewal dates for MEB regulated professions.

**TABLE 2**

**Biennial Renewal Dates for Medical Examining Board Professions**

Athletic Trainer	July 1, Even-Numbered Years
Certified Dietitian	November 1, Even-Numbered Years
Perfusionist	November 1, Odd-Numbered Years
Physician	November 1, Odd-Numbered Years
Doctor of Osteopathy	November 1, Odd-Numbered Years
Physician Assistant	November 1, Odd-Numbered Years
Respiratory Care Practitioner	November 1, Odd-Numbered Years
Occupational Therapist	November 1, Odd-Numbered Years
Occupational Therapy Assistant	November 1, Odd-Numbered Years
Physical Therapist	November 1, Odd-Numbered Years
Physical Therapist Assistant	November 1, Odd-Numbered Years
Podiatric Medicine and Surgery	November 1, Odd-Numbered Years

**AGENCY FEE REQUEST, 2009-11**

On January 31, 2009, the Department of Regulation and Licensing submitted a proposal for fees assessed for all occupational and business credentials, to the Joint Committee on Finance. There was an objection raised and the proposed fees will be considered by the Committee before they can take effect.

Table 3 shows the biennial renewal fee levels for the MEB professions as proposed by DRL in January, 2009. The January proposal would also establish all initial credential fees at \$75 per biennium, an increase of \$22 over the current fee.

**TABLE 3****January, 2009 Fee Proposal  
(Credential Renewals)**

	<u>Current</u>	<u>Proposed</u>	<u>Change</u>
Athletic Trainer	\$53	\$133	\$80
Certified Dietitian	56	85	29
Perfusionist	56	170	114
Physician	106	170	64
Doctor of Osteopathy	106	170	64
Physician Assistant	72	170	93
Respiratory Care Practitioner	65	170	105
Occupational Therapist	59	82	23
Occupational Therapy Assistant	62	82	20
Physical Therapist	62	82	20
Physical Therapist Assistant	44	82	38
Podiatric Medicine and Surgery	150	170	20

As shown in Table 4, it is estimated that the proposed MEB fees would generate \$5,094,600 PR-Rev biennially that could be used for administration and regulation costs of MEB professions and \$566,100 of GPR-Earned from the current law requirement that 10% of credential fees be deposited into the general fund.

**TABLE 4****Department of Regulation and Licensing Proposal of January, 2009  
Medical Examining Board**

	<u>Initial Fee</u>	<u>Initial Revenue</u>	<u>Renewal Fee</u>	<u>Renewal Revenue</u>	<u>Total Revenue</u>
Athletic Trainer	\$75	\$13,125	\$133	\$88,711	\$101,836
Certified Dietitian	75	12,450	85	123,505	135,955
Perfusionist	75	675	170	14,280	14,955
Medicine and Surgery, MD	75	167,700	170	3,351,890	3,519,590
Medicine and Surgery, DO	75	13,950	170	185,470	199,420
Physician Assistant	75	21,975	170	259,080	281,055
Respiratory Care Practitioner	75	24,900	170	442,680	467,580
Occupational Therapist	75	14,850	82	256,250	271,100
Occupational Therapy Assistant	75	9,975	82	93,644	103,619
Physical Therapist Assistant	75	12,825	82	102,008	114,833
Physical Therapist	75	28,425	82	362,276	390,701
Podiatric Medicine and Surgery	75	<u>1,950</u>	170	<u>58,140</u>	<u>60,090</u>
Total		\$322,800		\$5,337,934	\$5,660,734
10% Administrative Fee (GPR-Earned)					\$566,073
Amounts Available for Medical Examining Board Operations					\$5,094,661

## **GOVERNOR**

Provide a total of \$3,087,100 PR annually for the program operations of MEB. Provide \$2,293,400 and 13.0 permanent and 2.0 project positions annually for increased support of MEB. Transfer \$793,700 and 8.93 permanent positions annually from the Department's general program operations to the program operations of MEB.

Create a biennial appropriation for the licensing, rule-making, and regulatory functions of MEB and any attached affiliated credentialing board. Specify that preparing, administering and grading examinations for these professions would not be funded under this appropriation. Specify that 90% of revenues for initial and renewal credentials of professions regulated under Chapter 448 ("Medical Professions") would be deposited into the new appropriation.

Specify that the fees paid for judicial review of disciplinary decisions related to the Board or an affiliated credentialing board that is attached to MEB would be paid from the new appropriation rather than the Department's general program operations.

Specify that the Secretary of the Department would be required to form a dedicated work unit within the Department to support the work of the medical examining board or an affiliated credentialing board that is attached to MEB. This unit would be required to perform all aspects of credential processing, examination, and complaint investigation for any credential issued under Chapter 448 of the statutes.

## **DISCUSSION POINTS**

The Department provided the Joint Committee on Finance with a revised fee schedule (including non-MEB professions) in January, 2009, which was objected to and will be scheduled for a full meeting of the Joint Committee on Finance. This paper discusses the Governor's recommendation for increased expenditure authority related to the regulation of the Medical Examining Board and the attached affiliated credentialing boards. Since the current law funding levels are insufficient to cover the costs of the Governor's proposal, this paper will also discuss the credential fee levels for these professions.

### **Fee Setting**

1. The Department is funded entirely from program revenues, collected primarily from examination, initial credential and renewal fees, and background checks. Ten percent of the fees collected must be deposited into the general fund and the remaining 90% is credited to agency appropriations. The largest appropriation is the general program operations, in which 90% of initial and renewal fees are deposited. In addition, the Department maintains separate appropriations for 90% of revenues received from examinations and background checks.

2. Prior to 2007 Wisconsin Act 20, the Department was required to submit, as part of each biennial budget request, a reestimate of the administrative costs (including enforcement) that

were attributable to the regulation of each credential and a recommendation for fee changes related to those costs. Under 2007 Act 20, DRL is now required to determine the fee level of each initial credential for which no examination is required, for reciprocal credentials, and for all credential renewals, based on the administrative costs of the Department that are attributable to the regulation of each occupation or business regulated by the agency.

3. The Department was required to complete this recalculation by January 31, 2009, (and recalculate those figures in each odd-numbered year, for the succeeding fiscal biennia). Current statutes specify that the fees currently set in statute will be deleted, effective July 1, 2009. Currently, all credential fees are deposited into the same general program operations appropriation and the regulation costs of DRL are paid from this appropriation.

**Fee Estimates**

4. Currently, the initial fee for most professions and all of the MEB professions is \$53. The initial license is good through the statutorily set renewal date shown in Table 2. Under the DRL's proposal the initial fees would be set at \$75 for these professions.

5. Table 5 shows the number of individuals that received initial and renewal credentials for MEB professions over the last two full fiscal years (2006-07 and 2007-08). These figures are used as estimates for the initial and renewal applications for the 2009-11 biennial figures.

**TABLE 5**

**2006-08 Medical Examining Board Credentialed Professionals**

	<u>Initial</u>	<u>Renewal</u>
Athletic Trainer	175	667
Certified Dietitian	166	1,453
Perfusionist	9	84
Medicine and Surgery, MD	2,236	19,717
Medicine and Surgery, DO	186	1,091
Physician Assistant	293	1,524
Respiratory Care Practitioner	332	2,604
Occupational Therapist	198	3,125
Occupational Therapy Assistant	133	1,142
Physical Therapist Assistant	171	1,244
Physical Therapist	379	4,418
Podiatric Medicine and Surgery	<u>26</u>	<u>342</u>
Total	4,304	37,411

6. Table 6 shows the current law fee rates that are set to expire on July 1, 2009 and the estimated revenue that would be collected if those fees levels were retained (\$3,122,400 PR and \$346,900 of GPR-Earned).

**TABLE 6**

**Medical Examining Board  
Current Law Fees  
(Set to Expire July 1, 2009)**

	<u>Initial Fee</u>	<u>Initial Revenue</u>	<u>Renewal Fee</u>	<u>Renewal Revenue</u>	<u>Total Revenue</u>
Athletic Trainer	\$53	\$9,275	\$53	\$35,351	\$44,626
Certified Dietitian	53	8,798	56	81,368	90,166
Perfusionist	53	477	56	4,704	5,181
Medicine and Surgery, MD	53	118,508	106	2,090,002	2,208,510
Medicine and Surgery, DO	53	9,858	106	115,646	125,504
Physician Assistant	53	15,529	72	109,728	125,257
Respiratory Care Practitioner	53	17,596	65	169,260	186,856
Occupational Therapist	53	10,494	59	184,375	194,869
Occupational Therapy Assistant	53	7,049	62	70,804	77,853
Physical Therapist Assistant	53	9,063	44	54,736	63,799
Physical Therapist	53	20,087	62	273,916	294,003
Podiatric Medicine and Surgery	53	<u>1,378</u>	150	<u>51,300</u>	<u>52,678</u>
<b>Total</b>		<b>\$228,112</b>		<b>\$3,241,190</b>	<b>\$3,469,302</b>
10% Administrative Fee (GPR-Earned)					\$346,930
Amounts Available for Medical Examining Board Operations					\$3,122,372

7. As previously shown, it is estimated that the Department's January, 2009 revised fee proposal would generate \$5,094,600 PR-Rev biennially to fund the regulation costs of MEB professions and \$566,100 of GPR-Earned biennially.

8. Subsequent to the an objection being raised to the proposed fees, the Governor introduced AB 75, which included total biennial appropriation authority of \$6,174,200 PR for regulation of the Medical Examining Board and the attached affiliated credentialing boards. This includes the transfer of base level funding of \$793,700 PR annually from department-wide general program operations and \$2,293,400 PR annually of new appropriation authority.

9. The amounts appropriated under AB 75 for regulation of these professions would exceed the current law fee estimates by \$3,051,800 biennially and the amounts under the Department's January proposal by \$1,079,500 biennially.

10. In April, the Department provided a revised fee estimate for the Medical Examining Board and the attached affiliated credentialing boards based on the Governor's recommendations. Under this revised proposal, the credential fees for all initial applications would be \$75, as previously proposed and the renewal rates would remain the same as under the January, proposal.

For the five professions directly regulated by the Medical Examining Board (perfusionists, medical doctors, doctors of osteopathy, physician assistants, and respiratory care practitioners), the renewal fee would increase from the earlier proposed \$170 to \$262 per biennium.

11. As shown in Table 7, under the revised proposal, the estimated total revenue would increase to \$7,962,600, which would include \$796,300 of GPR-Earned and \$7,166,300 of program revenue that would be available for the Medical Examining Board and the attached affiliated credentialing boards' expenses. The revised proposal represents a 130% increase in the total fees paid by these professions, including a 42% increase to initial credential fees and a 136% increase to renewal fees. This proposal would also increase the estimated GPR-Earned by \$449,400 over the biennium, compared to current credential fees for these professions.

**TABLE 7**

**Department of Regulation and Licensing Proposal of April, 2009  
Medical Examining Board**

	<u>Initial Fee</u>	<u>Initial Revenue</u>	<u>Renewal Fee</u>	<u>Renewal Revenue</u>	<u>Total Revenue</u>
Athletic Trainer	\$75	\$13,125	\$133	\$88,711	\$101,836
Certified Dietitian	75	12,450	85	123,505	135,955
Perfusionist	75	675	262	20,076	20,751
Medicine and Surgery, MD	75	167,700	262	5,165,854	5,333,554
Medicine and Surgery, DO	75	13,950	262	285,842	299,792
Physician Assistant	75	21,975	262	399,288	421,263
Respiratory Care Practitioner	75	24,900	262	682,248	707,148
Occupational Therapist	75	14,850	82	256,250	271,100
Occupational Therapy Assistant	75	9,975	82	93,644	103,619
Physical Therapist Assistant	75	12,825	82	102,008	114,833
Physical Therapist	75	28,425	82	362,276	390,701
Podiatric Medicine and Surgery	75	<u>1,950</u>	170	<u>58,140</u>	<u>60,090</u>
<b>Total</b>		<b>\$322,800</b>		<b>\$7,639,774</b>	<b>\$7,962,574</b>
10% Administrative Fee (GPR-Earned)					\$796,257
Amounts Available for Medical Examining Board Operations					\$7,166,317

**Use of Increased Funding**

12. Currently, occupational regulation under DRL falls into three categories: (a) occupations and businesses regulated by independent examining boards attached to DRL (or by affiliated credentialing boards attached to an independent examining board); (b) occupations and businesses regulated by semi-autonomous boards that share authority with DRL; and (c) occupations and businesses directly regulated by the Department. The Medical Examining Board and the attached affiliated credentialing boards would fall into the first category.



13. The Department provides administrative, legal, and enforcement services and assistance in rule making and examinations for credentialed professionals. The Department also assists in developing regulatory policies that protect the broad public interest. The Governor's recommendation would fundamentally split the Department's administration structure into two groups, those under the auspices of the Medical Examining Board and its attached affiliated boards and all other credentials.

**Assembly Bill 75 Proposal**

14. Under the bill, 13.0 PR permanent positions and 2.0 PR project positions would be provided for MEB functions as shown in Table 8.

**TABLE 8**

**Medical Examining Board Positions and Salaries Under AB 75**

	<u>Positions</u>	<u>Salary and Fringe Benefits</u>
<b>Permanent Positions</b>		
Administrator	1.00	\$108,600
Attorney Supervisor	1.00	132,100
Attorney	2.00	205,500
Paralegal	1.00	88,100
Program Supervisor	1.00	79,300
Investigators	2.00	135,100
Program Assistant Supervisor	1.00	73,400
License Permit Program Associate	2.00	94,000
Operations Program Associate	1.00	55,800
Information Systems	0.50	58,700
Accountant	<u>0.50</u>	<u>41,100</u>
Permanent Position Total	13.00	\$1,071,700
<b>Project Positions</b>		
Investigators	2.00	\$135,100
All Positions	15.00	\$1,206,800

15. In addition to the new positions provided above, \$793,700 PR annually and 8.93 PR positions would be transferred from the general program operations appropriation that currently funds regulation services for all DRL professions to the newly created MEB program operations. Of the amounts that would be transferred, \$704,400 PR would be for salary and fringe benefits, and \$89,300 PR for supplies and services. The Department indicates that the positions identified in Table 9 would be transferred.

**TABLE 9**

**Medical Examining Board Positions and Salaries Transferred Under AB 75**

<u>Transferred Positions</u>	<u>Positions</u>	<u>Salary and Fringe Benefits</u>
Budget Director	0.20	\$18,600
Attorney	2.80	350,200
Paralegal	1.23	74,800
Investigators	2.78	171,900
Investigator Supervisor	0.10	8,800
License Permit Program Associate	1.76	84,800
Office Services Supervisor	<u>0.06</u>	<u>0</u>
Total	8.93	\$709,100

16. The amount of funding the Department reports are associated with the positions that would be transferred for salary and fringe benefits (\$709,100 PR) would be slightly higher (\$4,700) than the amounts provided under AB 75.

17. Total funding for the Medical Examining Board and the affiliated credentialing boards under AB 75 are shown in Table 10:

**TABLE 10**

**Total Medical Examining Board Funding and Positions Under AB 75**

<u>Funding</u>	<u>Increased Authority</u>	<u>Transferred Amounts</u>	<u>Medical Board Total</u>
Salaries and Fringe Benefits	\$1,206,900	\$704,400	\$1,911,300
Supplies and Services	536,500	89,300	625,800
Unallotted Reserves	<u>550,000</u>	<u>0</u>	<u>550,000</u>
Total	\$2,293,400	\$793,700	\$3,087,100
Positions			
Permanent	13.00	8.93	21.93
Project Positions	<u>2.00</u>	<u>0.00</u>	<u>2.00</u>
Total	15.00	8.93	23.93

18. The State Budget Office indicates that supplies and services would be provided for the following: (a) \$404,300 annually for supplies and services, including \$17,500 annually for permanent staff and \$10,000 annually for project positions; (b) \$10,000 for an annual report on the Medical Examining Board operations; (c) \$175,000 for a statewide contract for the impaired

professionals program; (d) \$5,000 annually for travel costs to the Federation of State Medical Boards; (e) \$4,500 annually for court reporters; (d) \$15,000 annually for court reporters; (e) \$9,000 annually for copying costs; and (f) and \$3,000 for general travel.

19. The State Budget Office also indicates that the unallotted reserves would be used "as back-up for unanticipated costs that may arise due to the unique nature of the Division." The Department of Regulation and Licensing indicates that this funding would be used to pay administrative costs of the Secretary's Office, agency administrative costs, including information technology, the shared costs of division administrators and some supervisors, and contingency funding.

20. Based on the agency's April fee submission (Table 7 above), a total of \$7,962,600 of revenue would be collected, including \$796,300 of GPR-Earned as part of the 10% administrative fee and \$7,166,300 PR for program operations biennially. Under the bill, authorized expenditure authority would be \$6,174,200 PR biennially. This would leave a balance of \$992,100, or 16% of the biennially approved amounts.

21. The Department states that this "contingency fund would be used for pay plan supplements, rent supplements, and special initiatives of the Department." However, as part of the agency's budget request, an average of \$7,700 biennially per employee was provided for rent supplement, health insurance reserves, and pay plan supplements. Based on this request, it could be estimated that the total amount needed for those reserves is \$184,300 biennially for the proposed MEB appropriation

22. In addition, it could be argued that the costs of the Department's administrative staff, including the Secretary's Office, and other Division administrators has not increased, and the total amounts allotted for their pay should not increase. Since the Medical Examining Board staff would make up approximately 11% of all professionals regulated by the Department, these professionals should pay approximately 11% of the salary and fringe benefits of the executive level staff, or \$102,600 PR annually.

23. The combined reserve amounts and the administrative costs would leave over \$700,000 biennially in fees revenues for unforeseen costs, in addition to \$550,000 PR annually budgeted in unallotted reserves. The Department indicates that this funding could be used to support potential legislation that would increase the expenditures for the regulation of medical professionals. It could be argued that, while there is always potential for future legislation in these areas, such legislation would generally review funding issues, and could provide additional funding if necessary.

24. The Department has been required to transfer approximately \$15.6 million to the general fund since 2001-02. These transfers occurred in a period where there were no credential fee changes. Some may argue that a more likely use of excess revenue generated in 2009-11 is for transfer to the general fund. With this consideration, the Committee may wish to consider whether fees should be increased to fund transfer requirements.

25. The Department states that the additional MEB positions would increase DRL's ability to protect consumers from harm from doctors and other Medical Examining Board and the attached affiliated credentialing board professionals. The positions would allow for a more thorough review of MEB professionals before credentials are granted and quicker investigation and prosecution of complaints. The Department states that it is difficult to fulfill its regulatory duties and that case backlogs have resulted in instances of serious harm to consumers.

26. The Department also states that with additional funding and position authority under AB 75, that they would add an online digest that would provide updates on standards of practice as well as a list of complaints received and the outcomes of the complaints received. Currently, Medical Examining Board and the attached affiliated credentialing boards' cases may take over three years to investigate and prosecute. The Department states that it hopes to reduce that time to less than one year.

27. The Department reports that of the cases closed in 2007-08, that 334 were closed after screening, which averaged 3.2 months after the receipt of the complaints; 109 cases were closed after investigation, which averaged 19.6 months after receipt of the complaints; and 47 cases were closed after disciplinary action, which averaged 21.3 months after the receipt of complaints. It could be argued that the current time taken to complete investigations and disciplinary actions is excessive given the potential dangers posed to the public in regards to unlawful or unethical use of medical credentials.

28. As part of a July, 2004, audit on DRL's credentialing fees, the Legislative Audit Bureau noted that several boards, including the Medical Examining Board had expressed an interest in expanding their level of service provided by DRL even if it required paying higher fees. The Legislative Audit Bureau stated that agencies that wanted improved services could pay additional surcharges for those services.

29. The Wisconsin Medical Society and the Chair of the Medical Examining Board have both stated that they support the proposal under AB 75. The Wisconsin Medical Society provided a letter to the Department that stated "the proposal's additional staffing and dedicated resources for the MEB should bolster the board's efforts and DRL's licensing capabilities."

### **Potential Modifications to AB 75 MEB Provisions**

30. The Department's model was established by the Chair of the Medical Examining Board based on a review of Minnesota's staffing levels along with a review of other states programs and informal analysis of position types and needs of the Department.

31. The Minnesota Board of Medical Practice regulates physicians, surgeons, medical residents, physician assistants, respiratory care practitioners, athletic trainers, acupuncturists, traditional midwives, and telemedicine. The total number of professionals regulated by the Minnesota Board of Medical Practice (23,928 as of 2006) is similar to the number of professionals directly regulated by the MEB (28,076 currently), but includes differing professions (perfusionists, doctors of medicine, doctors of osteopathy, physicians, and respiratory care practitioners).

32. The Minnesota model bases most of its staffing on program assistants and investigators (18 of 25 FTE), with only one staff attorney or legal staff position. For legal representation, Minnesota sets aside supplies and services funding for payments to their Attorney General (approximately \$1.1 million annually).

33. Among the MEB professions (excluding the attached affiliated boards), data indicates that despite regulating more credential holders, DRL received 44% fewer complaints than the Minnesota Board of Medical Practice. Additionally, based on the data provided for the last three fiscal years, the number of complaints closed by DRL has exceeded the number of cases opened (1,472 compared to 1,453). Based on these numbers, it could be argued that the Department has not been losing ground on complaint caseload.

34. While the Department's request to the Governor (not included in the 2009-11 biennial budget request) was based on the Minnesota model, the DRL model would use many fewer program associates and would provide many more attorneys, forestalling use of non-agency prosecutors for MEB cases. However, the Department is unable to provide an estimated workload per position identified. It could be argued that increased positions should be based on the documented need of services in which the agency calculates the additional hours of resource need within each personnel classification, rather than by using a different state's model in which different groups are regulated and different statutory regulations and rules apply.

35. If the Committee believes the increase in fees and expenditure authority is unwarranted, it could delete the Governor's recommendation. If the Committee chooses to delete the Governor's recommendation, the fees for the Medical Examining Board and the attached affiliated credentialing boards could be considered in conjunction with all other agency credentialing fees in a subsequent s. 13.10 meeting.

36. However, since the time required to clear the investigation and discipline stages of the complaint process is currently excessive, the Committee could consider some lower cost alternatives until the Department can provide evidence of need in specific areas and provide data on how much staffing is needed to resolve such issues.

37. Assembly Bill 75 would significantly increase DRL's supplies and services per position (from \$10,000 to \$17,500 per FTE) for the MEB, while separately identifying travel, copying costs, and reports, which could be included under supplies and services of personnel. In addition, \$550,000 annually would be set aside for unspecified administrative costs.

38. One alternative would be to fund all of the positions recommended under the bill, but to reduce supplies and services costs. Under the bill, \$10,000 PR annually would be transferred for supplies and services for each position transferred to the MEB professionals program operations appropriation. The same amount could be provided for the 15.0 new positions added under AB 75. Total supplies and services funding of \$239,300 PR annually would be provided, including \$20,000 PR as one-time funding that would be deleted when the 2.0 investigator project positions end at the end of the 2009-11 biennium.

39. In addition, \$102,600 PR could be provided as the Medical Examining Board and attached affiliated credentialing boards' share of executive agency salaries [based on the total salaries and fringe costs of the executive staff multiplied by the percent of MEB professionals that are regulated as compared to all regulated professionals of DRL]. An additional \$200,000 annually could be provided for DOA Division of Hearings and Appeals services and other administrative costs.

40. The above modifications to supplies and services, and administrative costs would reduce the total amounts appropriated under the newly created MEB appropriation to \$1,911,300 PR annually for salary and fringe benefits for 23.93 PR positions, \$219,300 PR annually for supplies and services, and \$20,000 PR annually for one-time funding for supplies and services for the 23.93 PR positions assigned to MEB functions, \$102,600 PR annually for supplies and services for payments to the department-wide general program operations to pay for shared costs of the agency's executive staff, and \$200,000 annually for Hearings and Appeals and other administrative costs of the agency. Total funding would be \$2,453,200 PR annually. The Committee could also chose to allow for the collection of an additional \$184,300 over the biennium to cover the estimated pay plan supplements, which would total \$5,090,700 biennially of needed revenue or a total fee of \$5,656,300 biennially of fees when the 10% administrative fee is included.

41. Based on the above funding and revenue levels, the agency's January, 2009, fee recommendation (total revenue of \$5,660,700 biennially for MEB professions) would provide sufficient funding to support the modified Medical Examining Board administration costs. Further, under this alternative, GPR-Earned would be estimated to total \$566,100 biennially, which would be an increase of \$219,200 biennially compared to current law fee levels.

42. As a second alternative, the Committee could chose to allocate a reduced number of positions that would target specific agency service problems. Based on the average time that it takes to close complaints at various stages (3.2 months for complaints closed after screening, 19.6 months for cases closed after investigation, and 21.3 months for cases closed with formal disciplinary action), it would appear the primary need of the Department is investigators. Under the bill, an additional 4.0 investigators (2.0 permanent and 2.0 project positions) would be provided.

43. It could also be argued that some more prosecutorial personnel could be used to reduce the amount of time taken for disciplinary actions as well as more limited additions to support staff. Thus, the Committee could provide the 4.0 investigators, 1.0 lead attorney, 1.0 attorney, 1.0 paralegal, and 1.0 support staff (0.5 information technology staff and 0.5 accountant) as shown in Table 11. These new positions would accompany positions transferred from the current department-wide program operations appropriation (8.93) positions. As discussed previously, the Committee could provide \$10,000 PR supplies and services per position and \$102,600 PR annually for shared administrative support costs, and \$200,000 PR annually for Hearings and Appeals and other administrative charges, as shown below.

**TABLE 11****Medical Examining Board Alternative Positions and Funding**

	<u>Positions</u>	<u>Salaries and Fringe Benefits</u>	<u>Supplies and Services</u>	<u>One-Time Funding</u>	<u>Total</u>
Transferred Amounts	8.93	\$704,400	\$89,300	\$0	\$793,700
Investigators*	4.00	270,200	20,000	20,000	310,200
Attorney Supervisor	1.00	132,100	10,000	0	142,100
Attorney	1.00	102,800	10,000	0	112,800
Paralegal	1.00	88,100	10,000	0	98,100
Accounting Officer	0.50	41,100	5,000	0	46,100
Information System Data Services	0.50	24,400	5,000	0	29,400
Administration Support			102,600		102,600
Hearings and Appeals and other Administrative Charges	—	—	<u>200,000</u>	—	<u>200,000</u>
<b>Total</b>	<b>16.93</b>	<b>\$1,363,100</b>	<b>\$451,900</b>	<b>\$20,000</b>	<b>\$1,835,000</b>

\*2.0 permanent and 2.0 two-year project positions.

44. Under this modification, a total of \$1,835,000 PR annually would be appropriated. If the Committee wished to approve this amount it could also allow the Department to assess an additional \$130,400 PR biennially for pay plan, health care, and rent supplements (\$7,700 per employee). The amounts set aside for potential MEB program operations would total \$3,800,400 PR biennially.

45. Further, the Committee could chose to reduce each of the renewal fees for Medical Examining Board and the attached affiliated credentialing boards by 40% compared to the April, 2009, proposal. Since current law specifies that initial credential fees cannot be greater than renewal fees, the Committee could modify the fees as shown in Table 12, which would generate biennial revenues of \$4,306,900 for program operations of the Medical Examining Board and the attached affiliated credentialing boards. Should the Department demonstrate additional staffing needs for functions of the new Medical Examining Board and the affiliated credentialing boards operations, there should be sufficient funding to provide supplemental funding of approximately \$500,000 PR for the 2009-11 biennium. Under this alternative, GPR-Earned would be estimated to total \$478,500 biennially, which would be an increase of \$131,600 biennially compared to current law fee levels.

**TABLE 12****Department of Regulation and Licensing, Alternative  
Medical Examining Board**

	<u>Initial Fee</u>	<u>Initial Revenue</u>	<u>Renewal Fee</u>	<u>Renewal Revenue</u>	<u>Total Revenue</u>
Athletic Trainer	\$75	\$13,125	\$75	\$50,025	\$63,150
Certified Dietitian	75	12,450	75	108,975	121,425
Perfusionist	75	675	141	11,844	12,519
Medicine and Surgery, MD	75	167,700	141	2,780,097	2,947,797
Medicine and Surgery, DO	75	13,950	141	153,831	167,781
Physician Assistant	75	21,975	141	214,884	236,859
Respiratory Care Practitioner	75	24,900	141	367,164	392,064
Occupational Therapist	75	14,850	75	234,375	249,225
Occupational Therapy Assistant	75	9,975	75	85,650	95,625
Physical Therapist Assistant	75	12,825	75	93,300	106,125
Physical Therapist	75	28,425	75	331,350	359,775
Podiatric Medicine and Surgery	75	<u>1,950</u>	91	<u>31,122</u>	<u>33,072</u>
Total		\$322,800		\$4,462,617	\$4,785,417
10% Administrative Fee (GPR-Earned)					\$478,542
Amounts Available for Medical Examining Board Operations					\$4,306,875

**Renewal Dates**

46. It could also be noted that, from an administrative perspective, the current renewal dates are too uniform. Ten of the 12 professions have a renewal date of November 1, of odd-numbered years. Based on renewals in 2006-07 and 2007-08, it is estimated that 37,411 MEB professionals will renew credentials and all but 2,120 of them would be due on November 1, 2009 (and each subsequent odd-numbered year). In other words, 94.3% of renewals (and thus revenue for the biennium) would be due on the same date.

47. Under the 2005-07 biennial budget, the Legislature modified the renewal dates of several professions in order to better distribute DRL's workload. If the Legislature wishes to approve the Governor's recommendation to provide separate administration for MEB professionals, it may wish to redistribute the renewal dates of these professions. However, this redistribution is limited by the fact that physicians make up more than half of the total renewals (52.7%).

48. If the Legislature chose to modify the renewals dates, the dates in Table 13 could represent an alternative. Under this alternative, occupational therapists and their assistants, and physical therapists and their assistants would have the same renewal date, and except for the November 1, of odd-numbered year's renewal date, between 1,795 and 5,662 renewals would occur



at three to four month intervals.

**TABLE 13**

**Alternative Renewal Date  
Medical Examining Board**

<u>Profession</u>	<u>Estimated Number of Renewals</u>	<u>Current Renewal Date</u>	<u>Alternative Renewal Date</u>
Athletic Trainer	667	July 1, Even-Numbered Years	July 1, Even-Numbered Years
Certified Dietitian	1,453	November 1, Even-Numbered Years	November 1, Even-Numbered Years
Perfusionist	84	November 1, Odd-Numbered Years	March 1, Even-Numbered Years
Physician	19,717	November 1, Odd-Numbered Years	November 1, Odd-Numbered Years
Doctor of Osteopathy	1,091	November 1, Odd-Numbered Years	March 1, Even-Numbered Years
Physician Assistant	1,524	November 1, Odd-Numbered Years	March 1, Even-Numbered Years
Respiratory Care Practitioner	2,604	November 1, Odd-Numbered Years	July 1, Even-Numbered Years
Occupational Therapist	3,125	November 1, Odd-Numbered Years	June 1, Odd-Numbered Years
Occupational Therapy Assistant	1,142	November 1, Odd-Numbered Years	June 1, Odd-Numbered Years
Physical Therapist	4,418	November 1, Odd-Numbered Years	March 1, Odd-Numbered Years
Physical Therapist Assistant	1,244	November 1, Odd-Numbered Years	March 1, Odd-Numbered Years
Podiatric Medicine and Surgery	342	November 1, Odd-Numbered Years	November 1, Even-Numbered Years

49. Alternatively, the Committee could chose to delete the newly created program operations appropriation for MEB functions, and specify that any additional funding and position authority provided under the bill would instead be provided under the current general program operations appropriation. As a result, no modification to the renewal dates would be necessary.

50. Under this alternative, the additional funding and staff would be provided to the agency as a whole and there would be no separate authority for MEB administrative functions. If agency workload shifts from one profession to another, the time-keeping data would be maintained for the new staff, as it is for the present staff, and the following biennial fees would reflect these changes.

51. The Department indicates that maintaining the current-law single appropriation would simplify its budgeting because its administrative charges relating to the Secretaries Office would not have to be assessed to the separate appropriation. On the other hand, because the additional staffing was requested on the behest of the MEB professions and it could be argued that the additional cost related to the additional positions should be borne by those professions. While the additional staffing could benefit the non-MEB professions, it is also likely that the additional staff would have a related fee cost.

**Fees by Rule Versus Statute**

52. The Department sent a fee proposal to the Joint Committee on Finance on January 31, 2009, as newly required under 2007 Wisconsin Act 20. Current statutes do not give the

Department authority to request modifications to this fee except on a biennial basis, which is due to be complete by January 31, of odd-numbered years.

53. Subsequent to submittal of the January fee proposal, the fee was objected to and the 2009-11 biennial budget was introduced. Included in the budget was a proposal to significantly expand the administrative services provided by the Department. The amounts that were proposed under AB 75, could not have been supported by the Medical Examining Board and the attached affiliated credentialing boards' current fee structure, nor the fee structure proposed on January 31, 2009.

54. Since the expansion of Medical Examining Board and the affiliated credentialing boards functions were not provided under the agency's 2009-11 budget request, the potential impact of the Governor's budget on the agency's fee structure was unknown when the fee proposal was submitted.

55. In addition, the Governor and the Legislature may also have initiatives or budgetary reductions to add or subtract as part of the biennial budget review process. Minus the Committee's objection to the fee proposal, the Department would have lacked statutory recourse in modifying fees. It could, therefore, be argued that the fee structure should revert to previous law, under which fees proposals are included as part of DRL's agency request and ultimately approved as part of the budget process. This process would allow the Legislature to weigh fee levels versus programmatic affects of higher or lower fees.

56. The Committee could require DRL to submit a fee request as part of their 2011-13 biennial budget request using time-keeping methodology. The Legislature could review this fee proposal along with programmatic and expenditure changes in their review of the 2011-13 biennial budget.

## **ALTERNATIVES**

1. Approve the Governor's recommendation to separately administer for the Medical Examining Board functions, including a separate PR-biennial appropriation. [This would provide 13.0 PR permanent and 2.0 PR project positions and funding of \$1,911,300 PR annually for salaries and fringe benefits, \$625,800 PR annually for supplies and services, and \$550,000 PR annually for unallotted reserves]. Approve the agency's revised fee proposal for the Medical Examining Board and the affiliated credentialing boards to specify initial credential fees of \$75 and renewal fees as follows: (a) occupational therapists, occupational therapist assistants, physical therapists, and physical therapist assistants (\$82); (b) certified dieticians (\$85); (c) athletic trainers (\$133); (d) podiatrists (\$170); and (e) perfusionists, medical doctors, doctors of osteopathy, physician assistants, and respiratory care practitioners (\$262). Reestimate GPR-Earned by \$449,400 for the biennium.

ALT 1	Change to Bill	
	Revenue	
GPR	\$449,400	
PR	<u>4,037,900</u>	
Total	\$4,487,300	

2. Modify the AB 75 by providing -\$633,900 PR annually as follows: (a) -\$550,000 annually from unallotted reserves; (b) -\$103,900 PR annually from supplies and services; and (c) \$20,000 PR annually for one-time costs. [This would provide 13.0 PR permanent and 2.0 PR project positions and funding of \$1,911,300 PR annually for salaries and fringe benefits, \$521,900 PR annually for supplies and services, and \$20,000 PR annually for one-time funding]. Specify that the Department adopt the following fees for the Medical Examining Board and the attached affiliated credentialing boards: (a) \$75 and initial credential fees; (b) \$82 for occupational therapists, occupational therapist assistants, physical therapists, and physical therapist assistants renewal fees; (c) \$85 for certified dietitians renewal fees; (d) \$133 for athletic trainers renewals; and (e) \$170 for podiatrists, perfusionists, medical doctors, doctors of osteopathy, physician assistants, and respiratory care practitioners. Reestimate GPR-Earned by \$219,200 for the biennium. [This alternative would approve the total positions and salary and fringe benefits as recommended by the Governor, would reduce supplies and services to \$10,000 PR annually per position, provide \$200,000 for hearing and appeals or other administrative costs, and provide \$102,600 PR annually for payments to the general program operations appropriation for executive staff costs.]

ALT 2	Change to Bill	
	Revenue	Funding
GPR	\$219,200	\$0
PR	<u>1,972,300</u>	<u>- 1,267,800</u>
Total	\$2,191,500	-\$1,267,800

3. Modify AB 75 by approving the transfer of 8.93 PR positions from the general program operations appropriation to the newly created biennial appropriation for the licensing rule-making and regulatory functions of Medical Examining Board and any attached affiliated credentialing board. Approve the following additional positions (a) 2.0 PR permanent and 2.0 PR project investigator positions; (b) 1.0 PR attorney supervisor; (c) 1.0 PR attorney; (d) 1.0 PR paralegal; (e) 0.5 PR accounting officer; and (f) 0.5 PR information system data services position. Provide the following appropriation authority under the newly created biannual appropriation for the licensing rule-making and regulatory functions of Medical Examining Board and any attached affiliated credentialing board: (a) \$1,363,100 PR annually for salaries and fringe benefits, (b) \$451,900 PR annually for supplies and services; and (c) 20,000 PR annually for one-time funding. Specify that the Department adopt the following fees for the Medical Examining Board and the attached affiliated credentialing boards: (a) \$75 and initial credential fees; (b) \$75 for athletic trainers, certified dietitians, occupational therapists, occupational therapist assistants, physical therapists, and physical therapist assistants renewal fees; (c) \$91 for podiatrists renewal fees; and (d) \$141 for perfusionists, medical doctors, doctors of osteopathy, physician assistants, and respiratory care practitioners renewal fees. Reestimate GPR-Earned by \$131,600 for the biennium. [This

alternative would reduce the total positions provided under the bill by 7.0 PR and related salary and fringe benefits by \$548,200 PR annually, would provide reduced supplies and services of \$10,000 PR annually per position, provide \$200,000 PR for hearing and appeals or other administrative costs, and provide \$102,600 PR annually for payments to the general program operations appropriation for executive staff costs.]

ALT 3	Change to Bill		
	Revenue	Funding	Positions
GPR	\$131,600	\$0	0.00
PR	<u>1,184,500</u>	<u>- 2,504,200</u>	<u>- 7.00</u>
Total	\$1,316,100	- \$2,544,200	- 7.00

4. Delete Governor's recommendation. [Fees for the Medical Examining Board and the affiliated credentialing boards would be reviewed as part of the Joint Committee on Finance's review of other agency credential fees].

ALT 4	Change to Bill	
	Funding	Positions
PR	- \$6,174,200	- 15.00

5. Specify, that funding and position authority for the Medical Examining Board and the attached affiliated credentialing boards would be provided under the general program operations appropriation rather than under a separate appropriation.

6. In addition to Alternatives 1, 2 or 3, modify AB 75 by specifying the following renewal dates: (a) March 1, of even numbered years for perfusionists, doctors of osteopathy, and physician assistances; (b) July 1, of even-numbered years for respiratory care practitioners; (c) November 1, of even-numbered years for podiatrists; (d) March 1, of odd-numbered years for physicians and physician assistants; and (e) June 1, of odd-numbered years for occupational therapists and occupational therapist assistants.

7. Specify that beginning with the 2011-13 biennium, the Department of Regulation and Licensing initial and renewal credential fees be set by statute as required previous to 2007 Wisconsin Act 20. Specify that the Department of Regulation and Licensing recalculate fees based on time-keeping data and that these reestimates be provided in the agency's biennial budget request, beginning in 2011-13.

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