



## 1997 ASSEMBLY BILL 381

May 22, 1997 - Introduced by Representatives UNDERHEIM, LA FAVE, F. LASEE and POWERS. Referred to Committee on Health.

1     **AN ACT to renumber and amend** 448.06 (2); **to amend** 448.01 (9) (a) and 448.01  
2           (11); and **to create** 448.01 (2d), 448.02 (3) (am), 448.02 (4m) and 448.06 (2) (b)  
3           of the statutes; **relating to:** the grounds for disciplinary action against a person  
4           regulated by the medical examining board and requiring the medical  
5           examining board to consult certain persons when conducting disciplinary  
6           investigations.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, the medical examining board (board) issues credentials to physicians, podiatrists, occupational therapists, physician assistants and respiratory care practitioners (credential holders). The board is required to investigate allegations of unprofessional conduct and negligence in treatment by credential holders. The board may warn or reprimand a credential holder, or limit, suspend or revoke the credential of a credential holder, if the credential holder is found to have engaged in unprofessional conduct or negligence in treatment or if the credential holder is found to have violated laws regulating controlled substances. The board may also deny a credential or refuse to renew a credential if the applicant for the credential or for renewal of the credential has engaged in unprofessional conduct. Under current law, the board defines what constitutes unprofessional conduct.

This bill prohibits the board from warning or reprimanding a credential holder, limiting, suspending or revoking the credential of a credential holder, denying a

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credential or refusing to renew a credential solely because the credential holder or credential applicant is providing nonconventional care, which is defined by the bill to mean any method of diagnosis, treatment, prescribing or advising employed by a physician that is not generally used but that the physician reasonably expects will effectively treat disease.

Also, under the bill, as part of its investigation into allegations of unprofessional conduct or negligence in treatment by a physician, the board must consult with at least one physician from the area of medical specialty of the physician being investigated. If the specialty area of the treatment provided by the physician being investigated differs from the specialty area of that physician, the board must consult at least one physician from the area of medical specialty of the treatment provided. Finally, if the allegation of unprofessional conduct or negligence in treatment involves nonconventional care, the board must also consult with at least one physician who devotes a significant portion of his or her practice to the type of nonconventional care that was provided by the physician being investigated.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 448.01 (2d) of the statutes is created to read:

2           448.01 **(2d)** “Nonconventional care” means any method of diagnosing, treating,  
3           prescribing or advising employed by a physician that is not generally used but that  
4           the physician reasonably expects will effectively treat disease.

5           **SECTION 2.** 448.01 (9) (a) of the statutes is amended to read:

6           448.01 **(9)** (a) To examine into the fact, condition or cause of human health or  
7           disease, or to treat, operate, prescribe or advise for the same, by any means or  
8           instrumentality, including nonconventional care.

9           **SECTION 3.** 448.01 (11) of the statutes is amended to read:

10           448.01 **(11)** “Unprofessional conduct” means those acts or attempted acts of  
11           commission or omission defined, subject to s. 448.02 (4m), as unprofessional conduct  
12           by the board under the authority delegated to the board by s. 15.08 (5) (b) and any  
13           act by a physician or podiatrist in violation of ch. 450 or 961.

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

2           448.02 **(3)** (am) 1. As part of an investigation under par. (a) of an allegation of  
3 unprofessional conduct in providing treatment or an allegation of negligence in  
4 treatment, the board shall consult with at least one physician from the area of  
5 medical specialty of the physician who provided the treatment or, if the specialty area  
6 of the treatment provided is different than the specialty area of the physician who  
7 provided the treatment, consult with at least one physician from the area of medical  
8 specialty of the treatment provided.

9           2. In addition to the consultation required under subd. 1., if the board is  
10 investigating an allegation of unprofessional conduct in providing treatment or an  
11 allegation of negligence in treatment and the treatment provided involves  
12 nonconventional care, the board shall consult with at least one physician who  
13 devotes a significant portion of his or her practice to the type of nonconventional care  
14 provided by the physician being investigated.

15           **SECTION 5.** 448.02 (4m) of the statutes is created to read:

16           448.02 **(4m)** DISCIPLINE BASED ON NONCONVENTIONAL PRACTICE. Notwithstanding  
17 subs. (3) and (4), the board may not warn or reprimand a person under sub. (3), or  
18 may not limit, suspend or revoke under sub. (3) or (4) any license, certificate or  
19 limited permit granted by the board to a person, solely on the grounds that the person  
20 provides nonconventional care.

21           **SECTION 6.** 448.06 (2) of the statutes is renumbered 448.06 (2) (a) and amended  
22 to read:

23           448.06 **(2)** (a) The Except as provided in par. (b), the board may deny an  
24 application for any class of license or certificate and refuse to grant such license or  
25 certificate on the basis of unprofessional conduct on the part of the applicant, failure

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1 to possess the education and training required for that class of license or certificate  
2 for which application is made, or failure to achieve a passing grade in the required  
3 examinations.

4 **SECTION 7.** 448.06 (2) (b) of the statutes is created to read:

5 448.06 (2) (b) The board may not deny an application for any class of license  
6 or certificate or may not refuse to grant such license or certificate solely on the  
7 grounds that the person provides nonconventional care.

8 **SECTION 8. Initial applicability.**

9 (1) DISCIPLINARY PROCEEDINGS. The treatment of section 448.02 (4m) of the  
10 statutes first applies to disciplinary proceedings commenced on the effective date of  
11 this subsection.

12 (2) INVESTIGATION OF COMPLAINTS. The treatment of section 448.02 (3) (am) 1.  
13 and 2. of the statutes first applies to investigations of allegations of unprofessional  
14 conduct or negligence in treatment that begin on the effective date of this subsection.

15 (3) DENIAL OF LICENSE APPLICATIONS. The renumbering and amendment of  
16 section 448.06 (2) of the statutes and the creation of section 448.06 (2) (b) of the  
17 statutes first apply to applications for a license or certificate that are submitted on  
18 the effective date of this subsection.

19 (END)