



2009 SENATE BILL 635

March 23, 2010 - Introduced by Senator RISSER, cosponsored by Representative RICHARDS, by request of The Medical Examining Board. Referred to Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue.

1 **AN ACT** *to renumber and amend* 448.015 (4), 448.02 (4) and 448.13 (1); *to*
2 *amend* 448.04 (1) (c), 448.13 (1m), 448.40 (1) and 448.40 (2) (e); and *to create*
3 448.015 (4) (c), 448.115 and 448.13 (1) (a) 2. of the statutes; **relating to:** duties
4 of physicians and of the Medical Examining Board and requiring the exercise
5 of rule-making authority.

Analysis by the Legislative Reference Bureau

Current law authorizes the Medical Examining Board (board) in the Department of Regulation and Licensing to issue licenses to practice medicine and surgery, to practice perfusion, and to practice as a physician assistant, and to certify respiratory care practitioners. This bill makes several changes to the laws regulating persons licensed, permitted, or certified by the board.

Order of summary suspension

Currently, the board may summarily suspend a license, certificate, or other limited permit (credential) granted by the board if the board has probable cause to believe that the credential holder has violated the law and that suspending the credential is necessary to protect the public health, safety, or welfare. The board may suspend the credential for no more than 30 days pending hearing, but may extend the suspension for an additional 30 days while the hearing is in progress and, if the credential holder has caused a delay in the hearing process, from the time the hearing is commenced until a final decision is issued. In addition, the board may

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designate any of the officers of the board to suspend a credential for a period of up to 72 hours.

This bill provides that the board chair and two board members designated by the chair or, if the board chair is unavailable, the board vice-chair and two board members designated by the vice-chair, may exercise the authority to summarily suspend a credential. The bill requires an order of summary suspension to be served on the credential holder in the manner established for service of process. The bill eliminates both the 30-day and 72-hour limitations imposed under current law on a summary suspension. Instead, under the bill, the order of summary suspension remains in effect until the effective date of a final decision and order granted in a disciplinary hearing against the credential holder or until the order of summary suspension is discontinued by the board following a hearing to show cause.

The bill requires the board to issue a notice of hearing commencing a disciplinary proceeding against the credential holder no more than ten days after the order of summary suspension has been issued. The bill also requires the board to notify the credential holder that he or she may request a hearing to show cause. If a hearing to show cause is requested, the board must schedule the hearing on a date within 20 days of the board's receipt of the request.

Duty to report

This bill requires a person licensed by the board as a physician to promptly submit a written report to the board when the person has reason to believe any of the following about another physician licensed by the board:

1. The other physician is engaged in acts that constitute a pattern of unprofessional conduct.
2. The other physician is engaged in an act that creates an immediate or continuing danger to one or more patients or to the public.
3. The other physician is or may be medically incompetent.
4. The other physician is or may be mentally or physically unable to engage in the practice of medicine or surgery.

The bill provides that a physician who complies in good faith with the duty to report may not be held civilly or criminally liable or be found guilty of unprofessional conduct.

Definition of “unprofessional conduct”

Current law governing persons regulated by the board defines “unprofessional conduct” as those acts or attempted acts of commission or omission defined as unprofessional conduct by the board by rule and any act by a physician or physician assistant in violation of the law governing the prescriptive authority of the physician or physician assistant. This bill modifies the definition of “unprofessional conduct” to include failure on the part of a physician to comply with the duty to report as required under the bill.

Biennial training requirement

Current law requires each person licensed or certified by the board to, by November 1 of each odd-numbered year, register with the board. As a condition of registration, each physician must submit proof of attendance at and completion within the preceding two calendar years of continuing education programs or courses

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of study approved by the board. The board may waive the requirement if it finds that exceptional circumstances have prevented the physician from meeting the requirement.

This bill requires a physician to complete professional development and maintenance of certification or performance improvement or continuing medical education programs or courses of study required by the board by rule, and to include proof of attendance at and completion of these additional programs or courses of study in the biennial application for registration with the board. The board may waive this new requirement if it finds that exceptional circumstances have prevented the physician from meeting the requirement.

Temporary educational permit to practice medicine and surgery

Currently, the board may grant a temporary educational permit (TEP) to practice medicine and surgery to a person who has graduated and possesses a diploma from a medical or osteopathic college approved by the board and has completed postgraduate training of 12 months in a facility approved by the board. The board may also grant a TEP to a graduate of a foreign medical school which has not been approved by the board if the graduate of a foreign medical school has had postgraduate training in this country in a 12-month program approved by the board or has had other professional experience suitable to the board, has passed the examinations given by the educational council for foreign medical graduates or its successors, and meets other conditions established by the board.

A person who holds a TEP may take postgraduate educational training in a facility approved by the board, perform services under the direction of a person licensed to practice medicine and surgery, and prescribe drugs other than narcotics. This bill eliminates the prohibition on prescribing narcotics for a person holding a TEP.

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

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

1 **SECTION 1.** 448.015 (4) of the statutes is renumbered 448.015 (4) (intro.) and
2 amended to read:

3 448.015 (4) (intro.) “Unprofessional conduct” means those all of the following:

4 (a) Those acts or attempted acts of commission or omission defined as
5 unprofessional conduct by the board under the authority delegated to the board by
6 s. 15.08 (5) (b) ~~and any.~~

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1 **(b)** Any act by a physician or physician assistant in violation of ch. 450 or 961.

2 **SECTION 2.** 448.015 (4) (c) of the statutes is created to read:

3 448.015 (4) (c) Failure by a physician to report as required under s. 448.115.

4 **SECTION 3.** 448.02 (4) of the statutes is renumbered 448.02 (4) (a) and amended
5 to read:

6 448.02 (4) (a) The board may summarily suspend any license, certificate, or
7 limited permit granted by the board ~~for a period not to exceed 30 days pending~~
8 ~~hearing~~, when the board has in its possession evidence establishing probable cause
9 to believe that the holder of the license, certificate, or limited permit has violated the
10 provisions of this subchapter and that it is necessary to suspend the license,
11 certificate, or limited permit immediately to protect the public health, safety, or
12 welfare. The holder of the license, certificate, or limited permit shall be granted an
13 opportunity to be heard during the determination of probable cause. The board chair
14 and 2 board members designated by the chair or, if the board chair is not available,
15 the board vice-chair and 2 board members designated by the vice-chair, shall
16 exercise the authority granted by this paragraph to suspend summarily a license,
17 certificate, or limited permit in the manner provided under par. (b).

18 **(b)** An order of summary suspension shall be served upon the holder of the
19 license, certificate, or limited permit in the manner provided in s. 801.11 for service
20 of summons. The order of summary suspension shall be effective upon service or
21 upon actual notice of the summary suspension given to the holder of the license,
22 certificate, or limited permit or to the attorney of the license, permit, or limited
23 permit holder, whichever is sooner. A notice of hearing commencing a disciplinary
24 proceeding shall be issued no more than 10 days following the issuance of the order
25 of summary suspension. ~~The board may designate any of its officers to exercise the~~

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1 authority granted by this subsection to suspend summarily a license, certificate or
2 limited permit, but such suspension shall be for a period of time not to exceed 72
3 hours. If a license, certificate or limited permit has been summarily suspended by
4 the board or any of its officers, the board may, while the hearing is in progress, extend
5 the initial 30-day period of suspension for an additional 30 days. If the holder of the
6 license, certificate or limited permit has caused a delay in the hearing process, the
7 board may subsequently suspend the license, certificate or limited permit from the
8 time the hearing is commenced until a final decision is issued or may delegate such
9 authority to the hearing examiner order of summary suspension remains in effect
10 until the effective date of a final decision and order in the disciplinary proceeding
11 against the holder or until the order of summary suspension is discontinued by the
12 board following a hearing to show cause. The holder of the license, certificate, or
13 limited permit shall have the right to request a hearing to show cause why the order
14 of summary suspension should not be continued and the order of summary
15 suspension shall notify the holder of the license, certificate, or limited permit of that
16 right. If a hearing to show cause is requested by the holder of the license, certificate,
17 or limited permit, the hearing shall be scheduled on a date within 20 days of receipt
18 by the board of the request for the hearing to show cause.

19 **SECTION 4.** 448.04 (1) (c) of the statutes is amended to read:

20 448.04 (1) (c) *Temporary educational permit to practice medicine and surgery.*

21 Application for a temporary educational permit to practice medicine and surgery
22 may be made to the board by a person who meets the requirements of s. 448.05 (2).
23 Such permit may be issued for a period not to exceed one year and may be renewed
24 annually for not more than 4 years. Such permit shall entitle the holder to take
25 postgraduate educational training in a facility approved by the board. The holder

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1 of such permit may, under the direction of a person licensed to practice medicine and
2 surgery in this state, perform services requisite to the training authorized by this
3 section. Acting under such direction, the holder of such permit shall also have the
4 right to prescribe drugs ~~other than narcotics~~ and to sign any certificates, reports, or
5 other papers for the use of public authorities which are required of or permitted to
6 persons licensed to practice medicine and surgery. The holder of such permit shall
7 confine training and practice to the facility in which the holder is taking the training.
8 The purpose of this paragraph is solely to provide opportunities in this state for the
9 postgraduate education of certain persons having training in medicine and surgery
10 satisfactory to the board, without compliance with the licensure requirements of this
11 subchapter. Nothing in this paragraph changes in any respect the requirements for
12 licensure to practice medicine and surgery in this state. The violation of this
13 paragraph by the holder of such permit shall constitute cause for the revocation of
14 the permit. All holders of such permits shall be subject to such provisions of this
15 subchapter as the board, by rule, determines are appropriate and to any penalties
16 applicable to those with a temporary or regular license to practice medicine and
17 surgery. The board may require an applicant for licensure under this paragraph to
18 appear before a member of the board for an interview and oral examination.

19 **SECTION 5.** 448.115 of the statutes is created to read:

20 **448.115 Duty to report. (1)** A physician who has reason to believe any of the
21 following about another physician shall promptly submit a written report to the
22 board that shall include facts relating to the conduct of the other physician:

23 (a) The other physician is engaging or has engaged in acts that constitute a
24 pattern of unprofessional conduct.

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1 (b) The other physician is engaging or has engaged in an act that creates an
2 immediate or continuing danger to one or more patients or to the public.

3 (c) The other physician is or may be medically incompetent.

4 (d) The other physician is or may be mentally or physically unable safely to
5 engage in the practice of medicine or surgery.

6 **(2)** No physician who reports to the board under sub. (1) may be held civilly or
7 criminally liable or be found guilty of unprofessional conduct for reporting in good
8 faith.

9 **SECTION 6.** 448.13 (1) of the statutes is renumbered 448.13 (1) (a) (intro.) and
10 amended to read:

11 448.13 (1) (a) (intro.) ~~Each~~ Except as provided in par. (b), each physician shall,
12 in each 2nd year at the time of application for a certificate of registration under s.
13 448.07, submit proof of attendance at and completion of ~~continuing~~ all of the
14 following:

15 1. Continuing education programs or courses of study approved for at least 30
16 hours of credit by the board within the 2 calendar years preceding the calendar year
17 for which the registration is effective.

18 (b) The board may waive ~~this requirement~~ any of the requirements under par.
19 (a) if it finds that exceptional circumstances such as prolonged illness, disability or
20 other similar circumstances have prevented a physician from meeting the
21 ~~requirement~~ requirements.

22 **SECTION 7.** 448.13 (1) (a) 2. of the statutes is created to read:

23 448.13 (1) (a) 2. Professional development and maintenance of certification or
24 performance improvement or continuing medical education programs or courses of

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1 study required by the board by rule under s. 448.40 (1) and completed within the 2
2 calendar years preceding the calendar year for which the registration is effective.

3 **SECTION 8.** 448.13 (1m) of the statutes is amended to read:

4 448.13 **(1m)** The board shall, on a random basis, verify the accuracy of proof
5 submitted by physicians under sub. (1) (a) and may, at any time during the 2 calendar
6 years specified in sub. (1) (a), require a physician to submit proof of any continuing
7 education, professional development, and maintenance of certification or
8 performance improvement or continuing medical education programs or courses of
9 study that he or she has attended and completed at that time during the 2 calendar
10 years.

11 **SECTION 9.** 448.40 (1) of the statutes is amended to read:

12 448.40 **(1)** The board may promulgate rules to carry out the purposes of this
13 subchapter, including rules requiring the completion of continuing education,
14 professional development, and maintenance of certification or performance
15 improvement or continuing medical education programs for renewal of a license to
16 practice medicine and surgery.

17 **SECTION 10.** 448.40 (2) (e) of the statutes is amended to read:

18 448.40 **(2)** (e) Establishing the criteria for the substitution of uncompensated
19 hours of professional assistance volunteered to the department of health services for
20 some or all of the hours of continuing education credits required under s. 448.13 (1)
21 (a) 1. for physicians specializing in psychiatry. The eligible substitution hours shall
22 involve professional evaluation of community programs for the certification and
23 recertification of community mental health programs, as defined in s. 51.01 (3n), by
24 the department of health services.

25 **(END)**