1999 DRAFTING REQUEST

Bill

Received: **10/08/1999**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Don Dyke**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Occupational Reg. - misc**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Health care professional discipline cases

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	kunkemd 11/18/1999 kunkemd 12/06/1999	chanaman 11/19/1999 chanaman 12/06/1999	mclark 11/22/1999	_____ _____ _____ _____	lrb_docadmin 11/22/1999		State
/1	kunkemd 12/29/1999	chanaman 12/29/1999	martykr 12/06/1999	_____ _____	lrb_docadmin 12/06/1999		State
/2			martykr 12/29/1999	_____ _____	lrb_docadmin 12/29/1999	lrb_docadmin 01/05/2000	State

FE Sent For: **01/05/2000.**

"/2"

1999 DRAFTING REQUEST

Bill

Received: **10/08/1999**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Don Dyke**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Occupational Reg. - misc**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Health care professional discipline cases

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	kunkemd 11/18/1999 kunkemd 12/06/1999	chanaman 11/19/1999 chanaman 12/06/1999	mclark 11/22/1999	_____ _____ _____ _____	lrb_docadmin 11/22/1999		State
/1	kunkemd 12/29/1999	chanaman 12/29/1999	martykr 12/06/1999	_____ _____	lrb docadmin 12/06/1999		State
/2			martykr 12/29/1999	_____ _____	lrb_docadmin 12/29/1999		State

FE Sent For:

1999 DRAFTING REQUEST

Bill

Received: **10/08/1999**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Don Dyke**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Occupational Reg. - misc**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Health care professional discipline cases

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	kunkemd 11/18/1999 kunkemd 12/06/1999	chanaman 11/19/1999 chanaman 12/06/1999	mclark 11/22/1999	_____ _____ _____ _____	lrb_docadmin 11/22/1999		State
/1	cmh 12/29 /2		martykr 12/06/1999	_____ _____	lrb_docadmin 12/06/1999		State

FE Sent For: km 12/29 cmh km 12/29

<END>

1999 DRAFTING REQUEST

Bill

Received: **10/08/1999**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Don Dyke**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Occupational Reg. - misc**

Extra Copies: DAK, PJK

Pre Topic:

No specific pre topic given

Topic:

Health care professional discipline cases

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	kunkemd 11/18/1999	chanaman 11/19/1999	mclark 11/22/1999	_____ _____	lrb_docadmin 11/22/1999		State

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: **10/08/1999**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Don Dyke**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Occupational Reg. - misc**

Extra Copies: DAK, PJK

Pre Topic:

No specific pre topic given

Topic:

Health care professional discipline cases

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	kunkemd	MK / 1	LC COUVER MRC 10/8	_____ _____			
FE Sent For:		11/19					

<END>

11/22 MRC
MRC

MRC/KM 11/22

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3728/P1
MDK:...:mrc

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** directing the department of regulation and licensing to establish priority discipline cases for health care professionals, factors to identify health care professionals in possible need of investigation, and time lines for the health care professional disciplinary process; requiring notice to health care professionals and their places of employment and to complainants, patients and clients in connection with the disciplinary process; adding public members to the medical examining board; authorizing the medical examining board to summarily limit a credential granted by the board; authorizing the medical examining board to impose a civil forfeiture in certain cases of unprofessional conduct; requiring reports which must be submitted to the national practitioner data bank to be submitted to the medical examining board; including health care professionals who practice alternative forms of health care on panels of health care experts established by the department of regulation and licensing; requiring coroners and medical examiners to indicate on certificates of death when a death is therapeutic-related and to provide this

information to the department of regulation and licensing; and providing a penalty.

Analysis by the Legislative Reference Bureau

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

PREFATORY NOTE: This draft is recommended by the joint legislative council's special committee on discipline of health care professionals. Provisions of the draft are described in this prefatory note and in notes to individual provisions of the draft.

Duties of Department of Regulation and Licensing (DRL) in Health Care Professional Discipline Process

The draft imposes on the DRL a variety of duties related to the state disciplinary process that applies to licensed and certified health care professionals, as defined under the proposal.

In some instances, the duties imposed on DRL under the proposal reflect current practices of the DRL. By giving formal statutory recognition to these current practices, the public policy of these practices is supported and the continuation of the practices is guaranteed. In other instances, new duties are imposed on the DRL where the special committee concluded that the fairness or efficiency of or public confidence in the health care professional disciplinary process might be improved.

In general terms, these provisions of the draft:

1. Require the DRL to develop a system to establish the relative priority of cases involving possible unprofessional conduct on the part of a health care professional.

2. Require the DRL to develop a system for identifying health care professionals who, even if not the subject of a specific allegation of, or specific information relating to, unprofessional conduct, may nonetheless warrant further evaluation and possible investigation.

3. Require the DRL to notify a health care professional's place of practice or employment when a formal complaint alleging unprofessional conduct by the health care professional is filed.

4. Require the DRL to give notice to a complainant and the health care professional when: (a) a case of possible unprofessional conduct by the health care professional is closed following screening for a possible investigation; (b) a case of possible unprofessional conduct by the health care professional has been opened for investigation; and (c) a case of possible unprofessional conduct by the health care professional is closed after investigation. In addition, DRL is required to provide a copy of the notices under (b) or (c) to an affected patient or the patient's family members.

5. Require that a patient or client of a health care professional who has been adversely affected by conduct of the health care professional that is the subject of a disciplinary proceeding be given opportunity to confer with the DRL's prosecuting attorney concerning the disposition of the case and the economic, physical and psychological effect on the patient or client of the unprofessional conduct.

6. Require the DRL to establish guidelines for the timely completion of each stage of the health care professional disciplinary process.

7. Require, if the DRL establishes panels of health care experts to review complaints against health care professionals, that DRL attempt to include on the panels health care professionals who practice alternative forms of health care to assist in evaluating cases involving alternative health care.

8. Require, by May 1, 2001, the DRL to submit to the legislature a report on the disciplinary process time lines which were implemented by the department as guidelines in February 1999.

Composition of Medical Examining Board (MEB)

Under current law, the MEB consists of the following 13 members, appointed for staggered 4–year terms:

--9 licensed doctors of medicine.

--1 licensed doctor of osteopathy.

--3 public members.

This draft adds 2 public members to the MEB, resulting in a 15–member MEB with 5 public members, 9 medical doctor members and one member who is a doctor of osteopathy.

Summary Limitation of Credential Issued by MEB

Current law authorizes the MEB to summarily suspend any credential granted by it, pending a disciplinary hearing, for a period not to exceed 30 days when the board has in its possession evidence establishing probable cause to believe: (1) that the credential holder has violated the provisions of ch. 448, stats.; and (2) that it is necessary to suspend the credential to protect the public health, safety or welfare. [s. 448.02 (4), stats.] The credential holder must be granted an opportunity to be heard during the determination of probable cause for suspension. The MEB is authorized to designate any of its officers to exercise the suspension authority but suspension by an officer may not exceed 72 hours. If a credential has been suspended pending hearing, the MEB may, while the hearing is in progress, extend the initial 30–day period of suspension for an additional 30 days. If the physician has caused a delay in the hearing process, the MEB may subsequently suspend the physician's credential from the time the hearing is commenced until a final decision is issued or may delegate that authority to the administrative law judge.

This draft adds to the current summary suspension authority the authority to summarily limit any credential issued by the MEB. Thus, for example, a physician could be restricted from practicing in a certain area of practice pending a disciplinary hearing but be permitted to practice in nonrestricted areas.

Authority of MEB to Impose a Forfeiture for Certain Unprofessional Conduct

Currently, the MEB has no authority to impose a civil forfeiture against a credential holder found guilty of unprofessional conduct. In order to give the MEB an additional tool to deal with unprofessional conduct that is currently available to certain other examining boards, this draft gives the MEB authority to assess a forfeiture of not more than $1,000 for each violation against a credential holder found guilty of unprofessional conduct. The authority to assess the civil forfeiture does not extend to a violation that constitutes negligence in treatment; the special committee concluded that exposure to malpractice awards and the costs of defending malpractice actions make unnecessary a civil forfeiture for negligence in treatment in the disciplinary context.

Reports to MEB of Reports to National Practitioners Data Bank (NPDB); Penalty

Under current law, the Federal Health Care Quality Improvement Act [42 USC ss. 11111 to 11152] requires certain entities to report information on physicians to the NPDB. Specifically, 42 USC s. 11131 requires entities (including insurance companies) which make payment under an insurance policy or in settlement of a malpractice action or claim to report information on the payment and the circumstances of the payment to the NPDB. Boards of medical examiners (in this state, the MEB) must report actions which suspend, revoke or otherwise restrict a physician's license or censure, reprimand or place a physician on probation; physician surrender of a license also must be reported. [42 USC s. 11132.] In addition, under 42 USC s. 11133, health care entities (which include hospitals, health maintenance organizations, group medical practices and professional societies) must report to the NPDB professional review actions which adversely affect the clinical privileges of a physician for longer than 30 days; the surrender of a physician's clinical privileges while the physician is under investigation or in return for not investigating the physician; or a professional review action which restricts membership in a professional society.

Federal regulations require the information on malpractice payments to be reported to the NPDB within 30 days of a payment, and simultaneously to the board of medical examiners. [45 CFR s. 60.5 (a).] A payor is subject to a fine of up to $10,000 for each nonreported payment.

Federal regulations require health care entities to report adverse actions to the board of medical examiners within 15 days (which in turn has 15 days to forward the report to the NPDB). [45 CFR s. 60.5 (c).] The penalty for not complying with these reporting requirements is a loss of the immunity protections under the Health Care Quality Improvement Act.

This draft creates a state requirement that reports on medical malpractice payments and professional review actions by health care entities which are required to be submitted to the NPDB must be submitted to the MEB in accordance with the time limits set forth in 45 CFR ss. 60.5 (a) and (c). A person or entity who violates this requirement is subject to a forfeiture of not more than $10,000 for each violation.

Indication of Certain Therapeutic–Related Deaths on Death Certificate

Under current s. 69.18 (2) (d) 1., stats., if a death is the subject of a coroner's or medical examiner's determination under s. 979.01 or 979.03, stats., the coroner or medical examiner or a physician supervised by a coroner or medical examiner in the county where the event which caused the death occurred is required to complete and sign the medical certification part of the death certificate for the death and mail the death certificate within 5 days after the pronouncement of death or present the certificate to the person responsible for filing the death certificate within 6 days after the pronouncement of death.

Further, s. 69.18 (2) (f) provides that a person signing a medical certification part of the death certificate must describe, in detail, on a form prescribed by the state registrar, the cause of death; show the duration of each cause and the sequence of each cause if the cause of death was multiple; and, if the cause was disease, the evolution of the disease.

This draft provides that when a coroner or medical examiner receives a report of a death under s. 979.01, stats. (set forth in pertinent part in the note to SECTION of this draft), and subsequently determines that the death was therapeutic–related, the coroner or medical examiner must indicate this determination on the death certificate. The draft creates a definition of therapeutic–related death based on the definition contained in the instruction manual on completing the death certificate published by the State of Wisconsin. The manual classifies 3 types of therapeutic–related deaths: death resulting

from complications of surgery, prescription drug use or other medical procedures performed or given for disease conditions; death resulting from complications of surgery, drug use or medical procedures performed or given for traumatic conditions; or death resulting from "therapeutic misadventures", where medical procedures were done incorrectly or drugs were given in error. Further, the draft requires the state registrar to revise the death certificate to include a space in which determinations of therapeutic–related deaths may be recorded. Finally, the draft requires the coroner or medical examiner who determines that a death is therapeutic–related to forward this information to the DRL.

SECTION 1. 15.405 (7) (b) 3. of the statutes is amended to read:

15.405 **(7)** (b) 3. ~~Three~~ Five public members.

NOTE: Adds 2 public members to the MEB.

SECTION 2. 69.18 (2) (g) of the statutes is created to read:

69.18 **(2)** (g) On the form for a certificate of death prescribed by the state registrar under sub. (1) (b), the state registrar shall provide for a separate section for the indication of a therapeutic-related death as required under s. 979.01 (1n). In this subsection, "therapeutic–related" means a death which resulted from one of the following:

1. Complications of surgery, prescription drug use and other medical procedures performed or given for disease conditions.

2. Complications of surgery, prescription drug use and other medical procedures performed or given for traumatic conditions, either accidental or intentional.

3. Therapeutic misadventures, where a medical procedure may have been done incorrectly or resulted from an error in dosage or type of drug administered.

NOTE: Requires the state registrar of vital statistics to provide on the death certificate form a separate section for indicating a therapeutic–related death. See SECTION of the draft.

SECTION 3. 146.365 of the statutes is created to read:

146.365 Submission of reports to the medical examining board. Reports which are required to be submitted to the national practitioner data bank under 42

USC ss. 11131 and 11133 shall be submitted to the medical examining board in accordance with the time limits set forth in 45 CFR ss. 60.5 (a) and (c). Any person or entity who violates this section is subject to a forfeiture of not more than $10,000 for each violation.

NOTE: Creates a requirement that information reported to the NPDB, established by the Federal Health Care Quality Improvement Act of 1986, must also be reported to the MEB. The requirement applies to reports on medical malpractice payments and on certain professional review actions taken by health care entities. A person or entity who violates this requirement is subject to a forfeiture of not more than $10,000 for each violation.

SECTION 4. 440.037 of the statutes is created to read:

440.037 Duties of department regarding health care professional disciplinary process. (1) DEFINITIONS. In this section:

(a) "Health care credentialing authority" means the:

1. Board of nursing.

2. Chiropractic examining board.

3. Dentistry examining board.

4. Dietitians affiliated credentialing board.

5. Hearing and speech examining board.

6. Joint board of social workers, marriage and family therapists and professional counselors.

7. Medical examining board.

8. Optometry examining board.

9. Pharmacy examining board.

10. Physical therapists affiliated credentialing board.

12. Psychology examining board.

13. Podiatrists affiliated credentialing board.

(b) "Health care professional" means:

1. An individual who has a license issued by or who is certified by a health care credentialing authority.

2. An acupuncturist certified by the department under s. 451.04.

NOTE: Health care professionals included in the definition are: acupuncturists; audiologists; chiropractors; dental hygienists; dentists; dietitians; hearing instrument specialists; advanced practice prescriber nurses; licensed practical nurses; registered nurses; nurse midwives; occupational therapists; occupational therapy assistants; optometrists; pharmacists; physical therapists; physicians; physicians assistants; podiatrists; private practice school psychologists; psychologists; respiratory care practitioners; and speech–language pathologists.

(2) ESTABLISHMENT OF PRIORITY DISCIPLINE CASES. The department shall develop a system to establish the relative priority of cases involving possible unprofessional conduct on the part of a health care professional. The prioritization system shall give highest priority to cases of unprofessional conduct that have the greatest potential to adversely affect the public health, safety and welfare. In establishing the priorities, the department shall give particular consideration to cases of unprofessional conduct that may involve the death of a patient or client, serious injury to a patient or client, substantial damages incurred by a patient or client or sexual abuse of a patient or client. The priority system shall be used to determine which cases receive priority of consideration and resources in order for the department and health care credentialing authorities to most effectively protect the public health, safety and welfare.

NOTE: Generally reflects current practice of the DRL.

(3) IDENTIFICATION OF HEALTH CARE PROFESSIONALS WHO MAY WARRANT EVALUATION. The department shall develop a system for identifying health care professionals who, even if not the subject of a specific allegation of, or specific information relating to, unprofessional conduct, may warrant further evaluation and possible investigation.

NOTE: Based on a recommendation contained in Evaluation of Quality of Care and Maintenance of Competence, Federation of State Medical Boards of the United States, Inc., 1998. The recommendation was included in a series of recommendations of the

Federation's Special Committee on the Evaluation of Quality of Care and Maintenance of Competence, which were adopted as policy by the House of Delegates of the Federation of State Medical Boards of the United States, Inc., in May 1998.

The recommendation on which the above provision is based suggests that state medical boards develop a system of markers to identify licensees warranting evaluation. Narrative comments to the recommendation note that historically the disciplinary function of state medical boards may be characterized as reactive. The committee making the recommendation suggests that measures to prevent, in contrast to only reacting to, breaches of professional conduct and to improve physician practice will greatly enhance public protection; the development of a system of markers is one means to identify physicians, before a case of unprofessional conduct arises, who may be failing to maintain acceptable standards in one or more areas of professional physician practice as well as to identify opportunities to improve physician practice.

(4) NOTICE TO HEALTH CARE PROFESSIONALS, COMPLAINANTS AND PATIENTS CONCERNING DISCIPLINARY CASE. (a) In this subsection, "complainant" means a person who has requested the department or a health care credentialing authority to investigate a health care professional for possible unprofessional conduct.

(b) Within 30 days after the occurrence of the event requiring notice, the department shall notify a health care professional in writing:

1. When a case of possible unprofessional conduct by the health care professional is closed following screening for a possible investigation.

2. When a case of possible unprofessional conduct by the health care professional has been opened for investigation.

3. When a case of possible unprofessional conduct by the health care professional is closed after an investigation.

(c) The department shall make a reasonable attempt to provide the complainant with a copy of each notice made under par. (b) that relates to a disciplinary proceeding requested by the complainant.

(d) If a case of possible unprofessional conduct by a health care professional involves conduct adversely affecting a patient or client of the health care professional

and the patient or client is not a complainant, the department shall make a reasonable attempt to do one of the following:

1. Provide the patient or client with a copy of each notice made under par. (b) 2. and 3. related to that case.

2. Provide the spouse, child, sibling, parent or legal guardian of the patient or client with a copy of each notice made under par. (b) 2. and 3. related to that case.

(e) Failure to provide a notice under this subsection is not grounds for appeal or dismissal.

NOTE: Paragraph (b) generally reflects current practice of the DRL, although notice of the fact that a case of possible unprofessional conduct by a health care professional has been opened for investigation may be delayed by the DRL currently if there is concern that such notice may adversely affect the investigation. The notice requirement of par. (b) only addresses the early stages of the disciplinary process because it is assumed that if a disciplinary case continues after an investigation is completed, the health care professional will be well aware of the course of proceedings from that point on.

The requirement of par. (c) is new and assures that a person who has made the effort to request an investigation for possible unprofessional conduct is given the same notice that the health care professional receives regarding the status of the early stages of the process.

The requirement of par. (d) is new. It recognizes that patients or clients are often interested in the early stages of a disciplinary case. If a case proceeds beyond the investigation stage, the patient or client and, in some cases, the family of the patient or client and others, will be given the opportunity to confer with the DRL regarding the disposition of the case. See sub. (6) below.

(5) NOTICE OF PENDING COMPLAINT TO HEALTH CARE PROFESSIONALS' PLACE OF PRACTICE. (a) Within 30 days after a formal complaint alleging unprofessional conduct by a health care professional is filed, the department shall send written notice that a complaint has been filed to all of the following:

1. Each hospital where the health care professional has hospital staff privileges.

2. Each managed care plan, as defined under s. 609.01 (3c), for which the health care professional is a participating provider.

3. Each employer, not included under subd. 1. or 2., who employs the health care professional to practice the health care profession for which the health care professional is credentialed.

(b) If requested by the department, a health care professional shall provide information necessary for the department to comply with this subsection.

NOTE: New requirement. Because many health care professionals have multiple places of practice or employment, notifying all places of a health care professional's practice or employment will serve to alert them of the pending disciplinary action and allow them to determine if any action on their part might be desirable.

Note that reference to "formal complaint" in the provision refers to the complaint that is filed after a finding that there is probable cause to believe that the health care professional is guilty of unprofessional conduct. See, generally, ss. RL 2.06 and 2.08, Wis. Adm. Code.

(6) OPPORTUNITY FOR PATIENTS AND CLIENTS TO CONFER CONCERNING DISCIPLINE. (a) In this subsection "patient" means any of the following:

1. A patient or client of a health care professional who has been adversely affected by conduct of the health care professional that is a subject of the disciplinary proceeding.

2. If the person specified in subd. 1. is a child, a parent, guardian or legal custodian of the child.

3. If the person specified in subd. 1. is physically or emotionally unable to confer as authorized in this subsection, a person designated by that person or the spouse or a child, sibling, parent or legal guardian of that person.

4. If the person specified in subd. 1. is deceased, any of the following:

a. The spouse or a child, sibling, parent or legal guardian of the deceased person.

b. A person who resided with the deceased person.

5. If the person specified in subd. 1. has been determined to be incompetent under ch. 880, the guardian of the person appointed under ch. 880.

(b) Following an investigation of possible unprofessional conduct by a health care professional and before disciplinary action may be negotiated or imposed against the health care professional, a patient shall be provided an opportunity to confer with the department's prosecuting attorney concerning the disposition of the case and the economic, physical and psychological effect on the patient of the unprofessional conduct. A prosecuting attorney may confer with a patient under this paragraph in person or by telephone or, if the patient agrees to the method, by any other method. The duty to confer under this paragraph does not limit the authority or obligation of the prosecuting attorney to exercise his or her discretion concerning the handling of a case of unprofessional conduct against the health care provider. Failure to provide an opportunity to confer under this paragraph is not grounds for appeal or dismissal of a disciplinary case against a health care professional.

NOTE: New requirement. The definition of "patient" is based on the definition of "victim" currently found in s. 950.02 (4), stats., which defines the term for purposes of the statutory chapter on rights of victims of crimes. Providing opportunity for involvement in the health care professional disciplinary process will enhance the public's understanding of and trust in that process. Further, the prospect of additional public scrutiny may well accelerate the disciplinary process, rather than delay it. While a patient's recommendations as to disposition are not determinative, the opportunity to be heard and considered is appropriate for a patient adversely affected by the unprofessional conduct that is a subject of the disciplinary proceeding.

(7) ESTABLISHMENT OF DISCIPLINARY PROCEDURE TIME GUIDELINES. The department shall establish guidelines for the timely completion of each stage of the health care professional disciplinary process. The guidelines may account for the type and complexity of the case. The guidelines shall promote the fair and efficient processing of cases of unprofessional conduct. Failure to comply with the guidelines is not grounds for appeal or dismissal. The guidelines are for administrative

purposes, to permit the department to monitor the progress of cases and the performance of personnel handling the cases.

NOTE: Reflects current practice of the DRL. See also, SECTION of the draft and the note thereto.

(8) PANELS OF EXPERTS; ALTERNATIVE HEALTH CARE PRACTITIONERS. If the department establishes a panel of health care experts to be used on a consulting basis by a health care credentialing authority, it shall attempt to include a health care professional who practices alternative forms of health care on the panel. A health care professional who practices alternative health care and who participates on a panel shall be of the same profession as the professionals regulated by the health care credentialing authority utilizing the panel. The health care professional who practices alternative health care shall be available to assist in evaluating complaints filed with the department or health care credentialing authority against a health care professional who is alleged to have practiced health care in an unprofessional or negligent manner through the use of alternative forms of health care, the referral to an alternative health care provider or the prescribing of alternative medical treatment.

(9) ADVICE OF CREDENTIALING AUTHORITIES. In carrying out its duties under the section, the department shall seek the advice of health care credentialing authorities.

SECTION 5. 448.02 (3) (c) of the statutes is amended to read:

448.02 **(3)** (c) Subject to par. (cm), after a disciplinary hearing, the board may, when it determines that a panel established under s. 655.02, 1983 stats., has unanimously found or a court has found that a person has been negligent in treating a patient or when it finds a person guilty of unprofessional conduct or negligence in

treatment, do one or more of the following: warn or reprimand that person, assess a forfeiture against that person under par. (d), or limit, suspend or revoke any license, certificate or limited permit granted by the board to that person. The board may condition the removal of limitations on a license, certificate or limited permit or the restoration of a suspended or revoked license, certificate or limited permit upon obtaining minimum results specified by the board on one or more physical, mental or professional competency examinations if the board believes that obtaining the minimum results is related to correcting one or more of the bases upon which the limitation, suspension or revocation was imposed.

SECTION 6. 448.02 (3) (d) of the statutes is created to read:

448.02 **(3)** (d) The board may, except in cases where the person is found guilty of negligence in treatment, assess a forfeiture of not more than $1,000 for each violation against a person who is found guilty of unprofessional conduct.

NOTE: Authorizes the MEB to assess a forfeiture, of not more than $1,000 for each violation, against a credential holder who is found guilty of unprofessional conduct, not including cases of negligence in treatment.

SECTION 7. 448.02 (4) and (9) (intro.) of the statutes are amended to read:

448.02 **(4)** SUSPENSION PENDING HEARING. The board may summarily suspend or limit any license, certificate or limited permit granted by the board for a period not to exceed 30 days pending hearing, when the board has in its possession evidence establishing probable cause to believe that the holder of the license, certificate or limited permit has violated the provisions of this subchapter and that it is necessary to suspend or limit the license, certificate or limited permit immediately to protect the public health, safety or welfare. The holder of the license, certificate or limited permit shall be granted an opportunity to be heard during the determination of probable cause. The board may designate any of its officers to exercise the authority

granted by this subsection to suspend or limit summarily a license, certificate or limited permit, but such suspension or limitation shall be for a period of time not to exceed 72 hours. If a license, certificate or limited permit has been summarily suspended or limited by the board or any of its officers, the board may, while the hearing is in progress, extend the initial 30–day period of suspension or limitation for an additional 30 days. If the holder of the license, certificate or limited permit has caused a delay in the hearing process, the board may subsequently suspend or limit the license, certificate or limited permit from the time the hearing is commenced until a final decision is issued or may delegate such authority to the hearing examiner.

NOTE: Authorizes the MEB to summarily limit the credential of a credential holder when the board has probable cause to believe that the credential holder has violated a provision of subch. II of ch. 448, stats. (MEB), and that it is necessary to immediately limit the credential to protect the public health, safety and welfare.

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

SECTION 8. 979.01 (1n) of the statutes is created to read:

979.01 **(1n)** If the coroner or medical examiner determines that a death reported under sub. (1) was therapeutic–related, as defined in s. 69.18 (2) (g), the coroner or medical examiner shall indicate this determination on the death certificate of the person whose death was reported.

NOTE: Requires a coroner or medical examiner who determines that a death reported under s. 969.01 (1), stats., was therapeutic–related to indicate that determination on the death certificate. See SECTION of the draft for the definition of "therapeutic–related".

Section 979.01 (1), stats., provides for reporting certain deaths to coroners and medical examiners as follows:

All physicians, authorities of hospitals, sanatoriums, institutions (public and private), convalescent homes, authorities of any institution of a like nature, and other persons having knowledge of the death of any person who has died under any of the following circumstances, shall immediately report such death to the sheriff, police chief, medical examiner or coroner of the county wherein such death took place, and the sheriff or police chief shall, immediately upon notification, notify the coroner or the medical examiner and the coroner or medical examiner of the county where death took place, if the crime, injury or event occurred in another county, shall report such death immediately to the coroner or medical examiner of that county:

(a) All deaths in which there are unexplained, unusual or suspicious circumstances.

(b) All homicides.

(c) All suicides.

(d) All deaths following an abortion.

(e) All deaths due to poisoning, whether homicidal, suicidal or accidental.

(f) All deaths following accidents, whether the injury is or is not the primary cause of death.

(g) When there was no physician, or accredited practitioner of a bona fide religious denomination relying upon prayer or spiritual means for healing in attendance within 30 days preceding death.

(h) When a physician refuses to sign the death certificate.

(i) When, after reasonable efforts, a physician cannot be obtained to sign the medical certification as required under s. 69.18 (2) (b) or (c) within 6 days after the pronouncement of death or sooner under circumstances which the coroner or medical examiner determines to be an emergency.".

SECTION 9. 979.01 (1p) of the statutes is created to read:

979.01 **(1p)** The coroner or medical examiner making a determination under sub. (1n) that a death was therapeutic–related shall report this information to the department of regulation and licensing.

NOTE: Requires a coroner or medical examiner who determines that a death reported under s. 979.01, stats., was therapeutic–related to report that information to the DRL.

SECTION 10. Nonstatutory provisions; report to legislature.

(1) REPORT ON TIME GUIDELINES. No later than May 1, 2001, the department of regulation and licensing shall submit to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under section

13.172 (3) of the statutes a report on the disciplinary process time lines which were implemented by the department as guidelines in February 1999. The report shall address compliance with and enforcement of the guidelines and the effect of the guidelines on the fairness and efficiency of the disciplinary process.

NOTE: Based on recommendations of its ad hoc enforcement advisory committee, the DRL in February of 1999 adopted as department policy specific time lines for processing disciplinary cases once a complaint is received by the DRL division of enforcement. The special committee on discipline of health care professionals was supportive of the implementation of the guidelines and concluded it will be useful for the legislature to be apprised of the experience with the guidelines.

SECTION 11. Nonstatutory provisions; medical examining board.

(1) INITIAL APPOINTMENT OF ADDITIONAL PUBLIC MEMBERS. Notwithstanding section 15.405 (7) (b) (intro.) of the statutes, in order to bring the membership of the medical examining board into conformance with section 15.405 (7) (b) 3. of the statutes, as affected by this act, the 2 additional public members of the medical examining board shall be initially appointed for the following terms by the first day of the 4th month beginning after the effective date of this act:

(a) One public member, for a term expiring on July 1, 2002.

(b) One public member, for a term expiring on July 1, 2003.

NOTE: Provides that the 2 new public members, who are appointed to the MEB for staggered 4–year terms, will have initial terms which expire on July 1, 2002 and July 1, 2003.

SECTION 12. Initial applicability.

(1) The treatment of section 448.02 (3) (c) and (d) of the statutes by this act first applies to cases of unprofessional conduct for which a formal complaint is filed on the effective date of this act .... [revisor inserts date].

(END)

-3728

DHCP: Combined Draft WLCS: 0147/1

DD:LR:ksm:rv;jal 6/07/99

AN ACT *to amend* 15.405 (7) (b) 3., 448.02 (3) (c) and 448.02 (4) and (9) (intro.); and *to create* 69.18 (2) (g), 146.365, 440.037, 448.02 (3) (d), 979.01 (1n) and 979.01 (1p) of the statutes; **relating to:** directing the department of regulation and licensing to establish priority discipline cases for health care professionals, factors to identify health care professionals in possible need of investigation, and time lines for the health care professional disciplinary process; requiring notice to health care professionals and their places of employment and to complainants, patients and clients in connection with the disciplinary process; adding public members to the medical examining board; authorizing the medical examining board to summarily limit a credential granted by the board; authorizing the medical examining board to impose a civil forfeiture in certain cases of unprofessional conduct; requiring reports which must be submitted to the national practitioner data bank to be submitted to the medical examining board; including health care professionals who practice alternative forms of health care on panels of health care experts established by the department of regulation and licensing; requiring coroners and medical examiners to indicate on certificates of death when a death is therapeutic–related and to provide this information to the department of regulation and licensing; and providing a penalty.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft is recommended by the joint legislative council's special committee on discipline of health care professionals. Provisions of the draft are

described in this prefatory note and in notes to individual provisions of the draft.

Duties of Department of Regulation and Licensing (DRL) in Health Care Professional Discipline Process

The draft imposes on the DRL a variety of duties related to the state disciplinary process that applies to licensed and certified health care professionals, as defined under the proposal.

In some instances, the duties imposed on DRL under the proposal reflect current practices of the DRL. By giving formal statutory recognition to these current practices, the public policy of these practices is supported and the continuation of the practices is guaranteed. In other instances, new duties are imposed on the DRL where the special committee concluded that the fairness or efficiency of or public confidence in the health care professional disciplinary process might be improved.

In general terms, these provisions of the draft:

1. Require the DRL to develop a system to establish the relative priority of cases involving possible unprofessional conduct on the part of a health care professional.

2. Require the DRL to develop a system for identifying health care professionals who, even if not the subject of a specific allegation of, or specific information relating to, unprofessional conduct, may nonetheless warrant further evaluation and possible investigation.

3. Require the DRL to notify a health care professional's place of practice or employment when a formal complaint alleging unprofessional conduct by the health care professional is filed.

4. Require the DRL to give notice to a complainant and the health care professional when: (a) a case of possible unprofessional conduct by the health care professional is closed following screening for a possible investigation; (b) a case of possible unprofessional conduct by the health care professional has been opened for investigation; and (c) a case of possible unprofessional conduct by the health care professional is closed after investigation. In addition, DRL is required to provide a copy of the notices under (b) or (c) to an affected patient or the patient's family members.

5. Require that a patient or client of a health care professional who has been adversely affected by conduct of the health care professional that is the subject of a disciplinary proceeding be given opportunity to confer with the DRL's prosecuting attorney concerning the disposition of the

case and the economic, physical and psychological effect on the patient or client of the unprofessional conduct.

6. Require the DRL to establish guidelines for the timely completion of each stage of the health care professional disciplinary process.

7. Require, if the DRL establishes panels of health care experts to review complaints against health care professionals, that DRL attempt to include on the panels health care professionals who practice alternative forms of health care to assist in evaluating cases involving alternative health care.

8. Require, by May 1, 2001, the DRL to submit to the legislature a report on the disciplinary process time lines which were implemented by the department as guidelines in February 1999.

Composition of Medical Examining Board (MEB)

Under current law, the MEB consists of the following 13 members, appointed for staggered 4–year terms:

--9 licensed doctors of medicine.

--1 licensed doctor of osteopathy.

--3 public members.

This draft adds 2 public members to the MEB, resulting in a 15–member MEB with 5 public members, 9 medical doctor members and one member who is a doctor of osteopathy.

Summary Limitation of Credential Issued by MEB

Current law authorizes the MEB to summarily suspend any credential granted by it, pending a disciplinary hearing, for a period not to exceed 30 days when the board has in its possession evidence establishing probable cause to believe: (1) that the credential holder has violated the provisions of ch. 448, stats.; and (2) that it is necessary to suspend the credential to protect the public health, safety or welfare. [s. 448.02 (4), stats.] The credential holder must be granted an opportunity to be heard during the determination of probable cause for suspension. The MEB is authorized to designate any of its officers to exercise the suspension authority but suspension by an officer may not exceed 72 hours. If a credential has been suspended pending hearing, the MEB may, while the hearing is in progress, extend the initial 30–day period of suspension for an additional 30 days. If the physician has caused a delay in the hearing process, the MEB may subsequently suspend the physician's credential from the time the hearing is commenced until a final decision is issued or may delegate that authority to the administrative law judge.

This draft adds to the current summary suspension authority the authority to summarily limit any credential issued by the MEB. Thus, for example, a physician could be restricted from practicing in a certain area of practice pending a disciplinary hearing but be permitted to practice in nonrestricted areas.

Authority of MEB to Impose a Forfeiture for Certain Unprofessional Conduct

Currently, the MEB has no authority to impose a civil forfeiture against a credential holder found guilty of unprofessional conduct. In order to give the MEB an additional tool to deal with unprofessional conduct that is currently available to certain other examining boards, this draft gives the MEB authority to assess a forfeiture of not more than $1,000 for each violation against a credential holder found guilty of unprofessional conduct. The authority to assess the civil forfeiture does not extend to a violation that constitutes negligence in treatment; the special committee concluded that exposure to malpractice awards and the costs of defending malpractice actions make unnecessary a civil forfeiture for negligence in treatment in the disciplinary context.

Reports to MEB of Reports to National Practitioners Data Bank (NPDB); Penalty

Under current law, the Federal Health Care Quality Improvement Act [42 USC ss. 11111 to 11152] requires certain entities to report information on physicians to the NPDB. Specifically, 42 USC s. 11131 requires entities (including insurance companies) which make payment under an insurance policy or in settlement of a malpractice action or claim to report information on the payment and the circumstances of the payment to the NPDB. Boards of medical examiners (in this state, the MEB) must report actions which suspend, revoke or otherwise restrict a physician's license or censure, reprimand or place a physician on probation; physician surrender of a license also must be reported. [42 USC s. 11132.] In addition, under 42 USC s. 11133, health care entities (which include hospitals, health maintenance organizations, group medical practices and professional societies) must report to the NPDB professional review actions which adversely affect the clinical privileges of a physician for longer than 30 days; the surrender of a physician's clinical privileges while the physician is under investigation or in return for not investigating the physician; or a professional review action which restricts membership in a professional society.

Federal regulations require the information on malpractice payments to be reported to the NPDB within 30 days of a payment, and simultaneously to the board of medical examiners. [45 CFR s. 60.5 (a).]

A payor is subject to a fine of up to $10,000 for each nonreported payment.

Federal regulations require health care entities to report adverse actions to the board of medical examiners within 15 days (which in turn has 15 days to forward the report to the NPDB). [45 CFR s. 60.5 (c).] The penalty for not complying with these reporting requirements is a loss of the immunity protections under the Health Care Quality Improvement Act.

This draft creates a state requirement that reports on medical malpractice payments and professional review actions by health care entities which are required to be submitted to the NPDB must be submitted to the MEB in accordance with the time limits set forth in 45 CFR ss. 60.5 (a) and (c). A person or entity who violates this requirement is subject to a forfeiture of not more than $10,000 for each violation.

Indication of Certain Therapeutic–Related Deaths on Death Certificate

Under current s. 69.18 (2) (d) 1., stats., if a death is the subject of a coroner's or medical examiner's determination under s. 979.01 or 979.03, stats., the coroner or medical examiner or a physician supervised by a coroner or medical examiner in the county where the event which caused the death occurred is required to complete and sign the medical certification part of the death certificate for the death and mail the death certificate within 5 days after the pronouncement of death or present the certificate to the person responsible for filing the death certificate within 6 days after the pronouncement of death.

Further, s. 69.18 (2) (f) provides that a person signing a medical certification part of the death certificate must describe, in detail, on a form prescribed by the state registrar, the cause of death; show the duration of each cause and the sequence of each cause if the cause of death was multiple; and, if the cause was disease, the evolution of the disease.

This draft provides that when a coroner or medical examiner receives a report of a death under s. 979.01, stats. (set forth in pertinent part in the note to SECTION 8 of this draft), and subsequently determines that the death was therapeutic–related, the coroner or medical examiner must indicate this determination on the death certificate. The draft creates a definition of therapeutic–related death based on the definition contained in the instruction manual on completing the death certificate published by the State of Wisconsin. The manual classifies 3 types of therapeutic–related deaths: death resulting from complications of surgery, prescription drug use or other medical procedures performed or given for disease conditions; death resulting from complications of

surgery, drug use or medical procedures performed or given for traumatic conditions; or death resulting from "therapeutic misadventures", where medical procedures were done incorrectly or drugs were given in error. Further, the draft requires the state registrar to revise the death certificate to include a space in which determinations of therapeutic–related deaths may be recorded. Finally, the draft requires the coroner or medical examiner who determines that a death is therapeutic–related to forward this information to the DRL.

SECTION 1. 15.405 (7) (b) 3. of the statutes is amended to read:

15.405 (7) (b) 3. ~~Three~~ Five public members.

NOTE: Adds 2 public members to the MEB.

SECTION 2. 69.18 (2) (g) of the statutes is created to read:

69.18 (2) (g) On the form for a certificate of death prescribed by the state registrar under sub. (1) (b), the state registrar shall provide for a separate section for the indication of a therapeutic-related death as required under s. 979.01 (1n). In this subsection, "therapeutic–related" means a death which resulted from one of the following:

1. Complications of surgery, prescription drug use and other medical procedures performed or given for disease conditions.

2. Complications of surgery, prescription drug use and other medical procedures performed or given for traumatic conditions, either accidental or intentional.

3. Therapeutic misadventures, where a medical procedure may have been done incorrectly or resulted from an error in dosage or type of drug administered.

NOTE: Requires the state registrar of vital statistics to provide on the death certificate form a separate section for indicating a therapeutic–related death. See SECTION 8 of the draft.

SECTION 3. 146.365 of the statutes is created to read:

146.365 Submission of reports to the medical examining board. Reports which are required to be submitted to the national practitioner data bank under 42 USC ss. 11131 and

11133 shall be submitted to the medical examining board in accordance with the time limits set forth in 45 CFR ss. 60.5 (a) and (c). Any person or entity who violates this section is subject to a forfeiture of not more than $10,000 for each violation.

NOTE: Creates a requirement that information reported to the NPDB, established by the Federal Health Care Quality Improvement Act of 1986, must also be reported to the MEB. The requirement applies to reports on medical malpractice payments and on certain professional review actions taken by health care entities. A person or entity who violates this requirement is subject to a forfeiture of not more than $10,000 for each violation.

SECTION 4. 440.037 of the statutes is created to read:

440.037 Duties of department regarding health care professional disciplinary process. (1) DEFINITIONS. In this section:

(a) "Health care credentialing authority" means the:

1. Board of nursing.

2. Chiropractic examining board.

3. Dentistry examining board.

4. Dietitians affiliated credentialing board.

5. Hearing and speech examining board.

6. Joint board of social workers, marriage and family therapists and professional counselors.

7. Medical examining board.

8. Optometry examining board.

9. Pharmacy examining board.

10. Physical therapists affiliated credentialing board.

12. Psychology examining board.

13. Podiatrists affiliated credentialing board.

(b) "Health care professional" means:

1. An individual who has a license issued by or who is certified by a health care credentialing authority.

2. An acupuncturist certified by the department under s. 451.04.

NOTE: Health care professionals included in the definition are: acupuncturists; audiologists; chiropractors; dental hygienists; dentists; dietitians; hearing instrument specialists; advanced practice prescriber nurses; licensed practical nurses; registered nurses; nurse midwives; occupational therapists; occupational therapy assistants; optometrists; pharmacists; physical therapists; physicians; physicians assistants; podiatrists; private practice school psychologists; psychologists; respiratory care practitioners; and speech–language pathologists.

(2) ESTABLISHMENT OF PRIORITY DISCIPLINE CASES. The department shall develop a system to establish the relative priority of cases involving possible unprofessional conduct on the part of a health care professional. The prioritization system shall give highest priority to cases of unprofessional conduct that have the greatest potential to adversely affect the public health, safety and welfare. In establishing the priorities, the department shall give particular consideration to cases of unprofessional conduct that may involve the death of a patient or client, serious injury to a patient or client, substantial damages incurred by a patient or client or sexual abuse of a patient or client. The priority system shall be used to determine which cases receive priority of consideration and resources in order for the department and health care credentialing authorities to most effectively protect the public health, safety and welfare.

NOTE: Generally reflects current practice of the DRL.

(3) IDENTIFICATION OF HEALTH CARE PROFESSIONALS WHO MAY WARRANT EVALUATION. The department shall develop a system for identifying health care professionals who, even if not the subject of a specific allegation of, or specific information relating to, unprofessional conduct, may warrant further evaluation and possible investigation.

NOTE: Based on a recommendation contained in Evaluation of Quality of Care and Maintenance of Competence, Federation of State Medical Boards of the United States, Inc., 1998. The recommendation was included in a series of recommendations of the Federation's Special Committee on the Evaluation of Quality of Care and Maintenance of Competence, which were adopted as policy by the House of Delegates of the Federation of State Medical Boards of the United States, Inc., in May 1998.

The recommendation on which the above provision is based suggests that state medical boards develop a system of markers to identify licensees warranting evaluation. Narrative comments to the recommendation note that historically the disciplinary function of state medical boards may be characterized as reactive. The committee making the recommendation suggests that measures to prevent, in contrast to only reacting to, breaches of professional conduct and to improve physician practice will greatly enhance public protection; the development of a system of markers is one means to identify physicians, before a case of unprofessional conduct arises, who may be failing to maintain acceptable standards in one or more areas of professional physician practice as well as to identify opportunities to improve physician practice.

(4) NOTICE TO HEALTH CARE PROFESSIONALS, COMPLAINANTS AND PATIENTS CONCERNING DISCIPLINARY CASE. (a) In this subsection, "complainant" means a person who has requested the department or a health care credentialing authority to investigate a health care professional for possible unprofessional conduct.

(b) Within 30 days after the occurrence of the event requiring notice, the department shall notify a health care professional in writing:

1. When a case of possible unprofessional conduct by the health care professional is closed following screening for a possible investigation.

2. When a case of possible unprofessional conduct by the health care professional has been opened for investigation.

3. When a case of possible unprofessional conduct by the health care professional is closed after an investigation.

(c) The department shall make a reasonable attempt to provide the complainant with a copy of each notice made under par. (b) that relates to a disciplinary proceeding requested by the complainant.

(d) If a case of possible unprofessional conduct by a health care professional involves conduct adversely affecting a patient or client of the health care professional and the patient or client is not a complainant, the department shall make a reasonable attempt to do one of the following:

1. Provide the patient or client with a copy of each notice made under par. (b) 2. and 3. related to that case.

2. Provide the spouse, child, sibling, parent or legal guardian of the patient or client with a copy of each notice made under par. (b) 2. and 3. related to that case.

(e) Failure to provide a notice under this subsection is not grounds for appeal or dismissal.

NOTE: Paragraph (b) generally reflects current practice of the DRL, although notice of the fact that a case of possible unprofessional conduct by a health care professional has been opened for investigation may be delayed by the DRL currently if there is concern that such notice may adversely affect the investigation. The notice requirement of par. (b) only addresses the early stages of the disciplinary process because it is assumed that if a disciplinary case continues after an investigation is completed, the health care professional will be well aware of the course of proceedings from that point on.

The requirement of par. (c) is new and assures that a person who has made the effort to request an investigation for possible unprofessional conduct is given the same notice that the health care professional receives regarding the status of the early stages of the process.

The requirement of par. (d) is new. It recognizes that patients or clients are often interested in the early stages of a disciplinary case. If a case proceeds beyond the investigation stage, the patient or client and, in some cases, the family of the patient or client and others, will be given the opportunity to confer with the DRL regarding the disposition of the case. See sub. (6) below.

(5) NOTICE OF PENDING COMPLAINT TO HEALTH CARE PROFESSIONALS' PLACE OF PRACTICE. (a) Within 30 days after a formal complaint alleging unprofessional conduct by a health care professional is filed, the department shall send written notice that a complaint has been filed to all of the following:

1. Each hospital where the health care professional has hospital staff privileges.

2. Each managed care plan, as defined under s. 609.01 (3c), for which the health care professional is a participating provider.

3. Each employer, not included under subd. 1. or 2., who employs the health care professional to practice the health care profession for which the health care professional is credentialed.

(b) If requested by the department, a health care professional shall provide information necessary for the department to comply with this subsection.

> NOTE: New requirement. Because many health care professionals have multiple places of practice or employment, notifying all places of a health care professional's practice or employment will serve to alert them of the pending disciplinary action and allow them to determine if any action on their part might be desirable.
>
> Note that reference to "formal complaint" in the provision refers to the complaint that is filed after a finding that there is probable cause to believe that the health care professional is guilty of unprofessional conduct. See, generally, ss. RL 2.06 and 2.08, Wis. Adm. Code.

(6) OPPORTUNITY FOR PATIENTS AND CLIENTS TO CONFER CONCERNING DISCIPLINE. (a) In this subsection "patient" means any of the following:

1. A patient or client of a health care professional who has been adversely affected by conduct of the health care professional that is a subject of the disciplinary proceeding.

2. If the person specified in subd. 1. is a child, a parent, guardian or legal custodian of the child.

3. If the person specified in subd. 1. is physically or emotionally unable to confer as authorized in this subsection, a person designated by that person or the spouse or a child, sibling, parent or legal guardian of that person.

4. If the person specified in subd. 1. is deceased, any of the following:

a. The spouse or a child, sibling, parent or legal guardian of the deceased person.

b. A person who resided with the deceased person.

5. If the person specified in subd. 1. has been determined to be incompetent under ch. 880, the guardian of the person appointed under ch. 880.

(b) Following an investigation of possible unprofessional conduct by a health care professional and before disciplinary action may be negotiated or imposed against the health care professional, a patient shall be provided an opportunity to confer with the department's prosecuting attorney concerning the disposition of the case and the economic, physical and psychological effect on the patient of the unprofessional conduct. A prosecuting attorney may confer with a patient under this paragraph in person or by telephone or, if the patient agrees to the method, by any other method. The duty to confer under this paragraph does not limit the authority or obligation of the prosecuting attorney to exercise his or her discretion concerning the handling of a case of unprofessional conduct against the health care provider. Failure to provide an opportunity to confer under this paragraph is not grounds for appeal or dismissal of a disciplinary case against a health care professional.

NOTE: New requirement. The definition of "patient" is based on the definition of "victim" currently found in s. 950.02 (4), stats., which defines the term for purposes of the statutory chapter on rights of victims of crimes. Providing opportunity for involvement in the health care professional disciplinary process will enhance the public's understanding of and trust in that process. Further, the prospect of additional public scrutiny may well accelerate the disciplinary process, rather than delay it. While a patient's recommendations as to disposition are not

determinative, the opportunity to be heard and considered is appropriate for a patient adversely affected by the unprofessional conduct that is a subject of the disciplinary proceeding.

(7) ESTABLISHMENT OF DISCIPLINARY PROCEDURE TIME GUIDELINES. The department shall establish guidelines for the timely completion of each stage of the health care professional disciplinary process. The guidelines may account for the type and complexity of the case. The guidelines shall promote the fair and efficient processing of cases of unprofessional conduct. Failure to comply with the guidelines is not grounds for appeal or dismissal. The guidelines are for administrative purposes, to permit the department to monitor the progress of cases and the performance of personnel handling the cases.

NOTE: Reflects current practice of the DRL. See also, SECTION 10 of the draft and the note thereto.

(8) PANELS OF EXPERTS; ALTERNATIVE HEALTH CARE PRACTITIONERS. If the department establishes a panel of health care experts to be used on a consulting basis by a health care credentialing authority, it shall attempt to include a health care professional who practices alternative forms of health care on the panel. A health care professional who practices alternative health care and who participates on a panel shall be of the same profession as the professionals regulated by the health care credentialing authority utilizing the panel. The health care professional who practices alternative health care shall be available to assist in evaluating complaints filed with the department or health care credentialing authority against a health care professional who is alleged to have practiced health care in an unprofessional or negligent manner through the use of alternative forms of health care, the referral to an alternative health care provider or the prescribing of alternative medical treatment.

COMMENT: Provides that if the DRL establishes panels of health care experts to be used on a consulting basis by health care credentialing authorities, DRL must attempt to include health care professionals who practice alternative forms of health care on the panels. The alternative

health care practitioners would assist in evaluating cases where a health care professional is alleged to have practiced health care in an unprofessional or negligent manner through the use of alternative forms of health care, the referral to an alternative health care provider or the prescribing of alternative medical treatment.

(9) ADVICE OF CREDENTIALING AUTHORITIES. In carrying out its duties under the section, the department shall seek the advice of health care credentialing authorities.

SECTION 5. 448.02 (3) (c) of the statutes is amended to read:

448.02 **(3)** (c) Subject to par. (cm), after a disciplinary hearing, the board may, when it determines that a panel established under s. 655.02, 1983 stats., has unanimously found or a court has found that a person has been negligent in treating a patient or when it finds a person guilty of unprofessional conduct or negligence in treatment, do one or more of the following: warn or reprimand that person, assess a forfeiture against that person under par. (d), or limit, suspend or revoke any license, certificate or limited permit granted by the board to that person. The board may condition the removal of limitations on a license, certificate or limited permit or the restoration of a suspended or revoked license, certificate or limited permit upon obtaining minimum results specified by the board on one or more physical, mental or professional competency examinations if the board believes that obtaining the minimum results is related to correcting one or more of the bases upon which the limitation, suspension or revocation was imposed.

SECTION 6. 448.02 (3) (d) of the statutes is created to read:

448.02 **(3)** (d) The board may, except in cases where the person is found guilty of negligence in treatment, assess a forfeiture of not more than $1,000 for each violation against a person who is found guilty of unprofessional conduct.

NOTE: Authorizes the MEB to assess a forfeiture, of not more than $1,000 for each violation, against a credential holder who is found guilty

of unprofessional conduct, not including cases of negligence in treatment.

SECTION 7. 448.02 (4) and (9) (intro.) of the statutes are amended to read:

448.02 **(4)** SUSPENSION PENDING HEARING. The board may summarily suspend or limit any license, certificate or limited permit granted by the board for a period not to exceed 30 days pending hearing, when the board has in its possession evidence establishing probable cause to believe that the holder of the license, certificate or limited permit has violated the provisions of this subchapter and that it is necessary to suspend or limit the license, certificate or limited permit immediately to protect the public health, safety or welfare. The holder of the license, certificate or limited permit shall be granted an opportunity to be heard during the determination of probable cause. The board may designate any of its officers to exercise the authority granted by this subsection to suspend or limit summarily a license, certificate or limited permit, but such suspension or limitation shall be for a period of time not to exceed 72 hours. If a license, certificate or limited permit has been summarily suspended or limited by the board or any of its officers, the board may, while the hearing is in progress, extend the initial 30–day period of suspension or limitation for an additional 30 days. If the holder of the license, certificate or limited permit has caused a delay in the hearing process, the board may subsequently suspend or limit the license, certificate or limited permit from the time the hearing is commenced until a final decision is issued or may delegate such authority to the hearing examiner.

NOTE: Authorizes the MEB to summarily limit the credential of a credential holder when the board has probable cause to believe that the credential holder has violated a provision of subch. II of ch. 448, stats. (MEB), and that it is necessary to immediately limit the credential to protect the public health, safety and welfare.

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

SECTION 8. 979.01 (1n) of the statutes is created to read:

979.01 **(1n)** If the coroner or medical examiner determines that a death reported under sub. (1) was therapeutic–related, as defined in s. 69.18 (2) (g), the coroner or medical examiner shall indicate this determination on the death certificate of the person whose death was reported.

NOTE: Requires a coroner or medical examiner who determines that a death reported under s. 969.01 (1), stats., was therapeutic–related to indicate that determination on the death certificate. See SECTION 1 of the draft for the definition of "therapeutic–related".

Section 979.01 (1), stats., provides for reporting certain deaths to coroners and medical examiners as follows:

All physicians, authorities of hospitals, sanatoriums, institutions (public and private), convalescent homes, authorities of any institution of a like nature, and other persons having knowledge of the death of any person who has died under any of the following circumstances, shall immediately report such death to the sheriff, police chief, medical examiner or coroner of the county wherein such death took place, and the sheriff or police chief shall, immediately upon notification, notify the coroner or the medical examiner and the coroner or medical examiner of the county where death took place, if the crime, injury or event occurred in another county, shall report such death immediately to the coroner or medical examiner of that county:

(a) All deaths in which there are unexplained, unusual or suspicious circumstances.

(b) All homicides.

(c) All suicides.

(d) All deaths following an abortion.

(c) All deaths due to poisoning, whether homicidal, suicidal or accidental.

(f) All deaths following accidents, whether the injury is or is not the primary cause of death.

(g) When there was no physician, or accredited practitioner of a bona fide religious denomination relying upon prayer or spiritual means for healing in attendance within 30 days preceding death.

(h) When a physician refuses to sign the death certificate.

(i) When, after reasonable efforts, a physician cannot be obtained to sign the medical certification as required under s. 69.18 (2) (b) or (c) within 6 days after the pronouncement of death or sooner under circumstances which the coroner or medical examiner determines to be an emergency.".

SECTION 9. 979.01 (1p) of the statutes is created to read:

979.01 **(1p)** The coroner or medical examiner making a determination under sub. (1n) that a death was therapeutic–related shall report this information to the department of regulation and licensing.

NOTE: Requires a coroner or medical examiner who determines that a death reported under s. 979.01, stats., was therapeutic–related to report that information to the DRL.

SECTION 10. Nonstatutory provisions; report to legislature.

(1) REPORT ON TIME GUIDELINES. No later than May 1, 2001, the department of regulation and licensing shall submit to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under section 13.172 (3) of the statutes a report on the disciplinary process time lines which were implemented by the department as guidelines in February 1999. The report shall address compliance with and enforcement of the guidelines and the effect of the guidelines on the fairness and efficiency of the disciplinary process.

NOTE: Based on recommendations of its ad hoc enforcement advisory committee, the DRL in February of 1999 adopted as department policy specific time lines for processing disciplinary cases once a complaint is received by the DRL division of enforcement. The special committee on discipline of health care professionals was supportive of the

implementation of the guidelines and concluded it will be useful for the legislature to be apprised of the experience with the guidelines.

SECTION 11. Nonstatutory provisions; medical examining board.

(1) INITIAL APPOINTMENT OF ADDITIONAL PUBLIC MEMBERS. Notwithstanding section 15.405 (7) (b) (intro.) of the statutes, in order to bring the membership of the medical examining board into conformance with section 15.405 (7) (b) 3. of the statutes, as affected by this act, the 2 additional public members of the medical examining board shall be initially appointed for the following terms by the first day of the 4th month beginning after the effective date of this act:

(a) One public member, for a term expiring on July 1, 2002.

(b) One public member, for a term expiring on July 1, 2003.

NOTE: Provides that the 2 new public members, who are appointed to the MEB for staggered 4–year terms, will have initial terms which expire on July 1, 2002 and July 1, 2003.

SECTION 12. Initial applicability.

(1) The treatment of section 448.02 (3) (c) and (d) of the statutes by this act first applies to cases of unprofessional conduct for which a formal complaint is filed on the effective date of this act .... [revisor inserts date].

(END)

State of Wisconsin
1999 – 2000 LEGISLATURE

LRB–3728/P1
MDK:...:mrc

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT *to amend* 15.405 (7) (b) 3., 448.02 (3) (c) and 448.02 (4) and (9) (intro.); and *to create* 69.18 (2) (g), 146.365, 440.037, 448.02 (3) (d), 979.01 (1n) and 979.01 (1p) of the statutes; **relating to:** priorities, completion guidelines and notices required for health care professional disciplinary cases; identification of health care professionals in possible need of investigation; additional public members for the medical examining board; authority of the medical examining board to limit credentials and impose civil forfeitures; reporting requirements for reports submitted to the national practitioner data bank; inclusion of health care professionals who practice alternative forms of health care on panels of health care experts established by the department of regulation and licensing; indication of therapeutic–related deaths on certificates of death; and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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:

PREFATORY NOTE: This bill is recommended by the joint legislative council's special committee on discipline of health care professionals. Provisions of the bill are described in this prefatory note and in notes to individual provisions of the bill.

Duties of Department of Regulation and Licensing (DORL) in Health Care Professional Discipline Process

The bill imposes on DORL a variety of duties related to the state disciplinary process that applies to licensed and certified health care professionals, as defined under the proposal.

In some instances, the duties imposed on DORL under the proposal reflect current practices of DORL. By giving formal statutory recognition to these current practices, the public policy of these practices is supported and the continuation of the practices is guaranteed. In other instances, new duties are imposed on DORL where the special committee concluded that the fairness or efficiency of or public confidence in the health care professional disciplinary process might be improved.

In general terms, these provisions of the bill:

1. Require DORL to develop a system to establish the relative priority of cases involving possible unprofessional conduct on the part of a health care professional.

2. Require DORL to develop a system for identifying health care professionals who, even if not the subject of a specific allegation of, or specific information relating to, unprofessional conduct, may nonetheless warrant further evaluation and possible investigation.

3. Require DORL to notify a health care professional's place of practice or employment when a formal complaint alleging unprofessional conduct by the health care professional is filed.

4. Require DORL to give notice to a complainant and the health care professional when: (a) a case of possible unprofessional conduct by the health care professional is closed following screening for a possible investigation; (b) a case of possible unprofessional conduct by the health care professional has been opened for investigation; and (c) a case of possible unprofessional conduct by the health care professional is closed after investigation. In addition, DORL is required to provide a copy of the notices under (b) or (c) to an affected patient or the patient's family members.

5. Require that a patient or client of a health care professional who has been adversely affected by conduct of the health care professional that is the subject of a disciplinary proceeding be given opportunity to confer with DORL's prosecuting attorney concerning the disposition of the case and the economic, physical and psychological effect on the patient or client of the unprofessional conduct.

6. Require DORL to establish guidelines for the timely completion of each stage of the health care professional disciplinary process.

7. Require, if DORL establishes panels of health care experts to review complaints against health care professionals, that DORL attempt to include on the panels health

care professionals who practice alternative forms of health care to assist in evaluating cases involving alternative health care.

8. Require, by May 1, 2001, DORL to submit to the legislature a report on the disciplinary process time lines which were implemented by the department as guidelines in February 1999.

Composition of Medical Examining Board (board)

Under current law, the board consists of the following 13 members, appointed for staggered 4–year terms:

--9 licensed doctors of medicine.

--1 licensed doctor of osteopathy.

--3 public members.

This bill adds 2 public members to the board, resulting in a 15–member board with 5 public members, 9 medical doctor members and one member who is a doctor of osteopathy.

Summary Limitation of Credential Issued by Board

Current law authorizes the board to summarily suspend any credential granted by it, pending a disciplinary hearing, for a period not to exceed 30 days when the board has in its possession evidence establishing probable cause to believe: (1) that the credential holder has violated the provisions of subch. II of ch. 448, stats.; and (2) that it is necessary to suspend the credential to protect the public health, safety or welfare. [s. 448.02 (4), stats.] The credential holder must be granted an opportunity to be heard during the determination of probable cause for suspension. The board is authorized to designate any of its officers to exercise the suspension authority but suspension by an officer may not exceed 72 hours. If a credential has been suspended pending hearing, the board may, while the hearing is in progress, extend the initial 30–day period of suspension for an additional 30 days. If the physician has caused a delay in the hearing process, the board may subsequently suspend the physician's credential from the time the hearing is commenced until a final decision is issued or may delegate that authority to the administrative law judge.

This bill adds to the current summary suspension authority the authority to summarily limit any credential issued by the board. Thus, for example, a physician could be restricted from practicing in a certain area of practice pending a disciplinary hearing but be permitted to practice in nonrestricted areas.

Authority of Board to Impose a Forfeiture for Certain Unprofessional Conduct

Currently, the board has no authority to impose a civil forfeiture against a credential holder found guilty of unprofessional conduct. In order to give the board an additional tool to deal with unprofessional conduct that is currently available to certain other examining boards, this bill gives the board authority to assess a forfeiture of not more than $1,000 for each violation against a credential holder found guilty of unprofessional conduct. The authority to assess the civil forfeiture does not extend to a violation that constitutes negligence in treatment; the special committee concluded that exposure to malpractice awards and the costs of defending malpractice actions make unnecessary a civil forfeiture for negligence in treatment in the disciplinary context.

Reports to Board of Reports to National Practitioner Data Bank (NPDB); Penalty

Under current law, the Federal Health Care Quality Improvement Act [42 USC 11111 to 11152] requires certain entities to report information on physicians to the NPDB. Specifically, 42 USC 11131 requires entities (including insurance companies) which make

payment under an insurance policy or in settlement of a malpractice action or claim to report information on the payment and the circumstances of the payment to the NPDB. Boards of medical examiners (in this state, the board) must report actions ~~which~~ that suspend, revoke or otherwise restrict a physician's license or censure, reprimand or place a physician on probation; physician surrender of a license also must be reported. [42 USC 11132.] In addition, under 42 USC 11133, health care entities (which include hospitals, health maintenance organizations, group medical practices and professional societies) must report to the NPDB professional review actions ~~which~~ that adversely affect the clinical privileges of a physician for longer than 30 days; the surrender of a physician's clinical privileges while the physician is under investigation or in return for not investigating the physician; or a professional review action ~~which~~ that restricts membership in a professional society.

Federal regulations require the information on malpractice payments to be reported to the NPDB within 30 days of a payment, and simultaneously to the board of medical examiners. [45 CFR 60.5 (a).] A payor is subject to a fine of up to $10,000 for each nonreported payment.

Federal regulations require health care entities to report adverse actions to the board of medical examiners within 15 days (which in turn has 15 days to forward the report to the NPDB). [45 CFR 60.5 (c).] The penalty for not complying with these reporting requirements is a loss of the immunity protections under the Health Care Quality Improvement Act.

This bill creates a state requirement that reports on medical malpractice payments and professional review actions by health care entities ~~which~~ that are required to be submitted to the NPDB must be submitted to the board in accordance with the time limits set forth in 45 CFR 60.5 (a) and (c). A person that violates this requirement is subject to a forfeiture of not more than $10,000 for each violation.

Indication of Certain Therapeutic–Related Deaths on Death Certificate

Under current s. 69.18 (2) (d) 1., stats., if a death is the subject of a coroner's or medical examiner's determination under s. 979.01 or 979.03, stats., the coroner or medical examiner or a physician supervised by a coroner or medical examiner in the county where the event ~~which~~ that caused the death occurred is required to complete and sign the medical certification part of the death certificate for the death and mail the death certificate within 5 five days after the pronouncement of death or present the certificate to the person responsible for filing the death certificate within 6 six days after the pronouncement of death.

Further, s. 69.18 (2) (f) provides that a person signing a medical certification part of the death certificate must describe, in detail, on a form prescribed by the state registrar, the cause of death; show the duration of each cause and the sequence of each cause if the cause of death was multiple; and, if the cause was disease, the evolution of the disease.

This bill provides that when a coroner or medical examiner receives a report of a death under s. 979.01, stats. (set forth in pertinent part in the note to SECTION 8 of this bill), and subsequently determines that the death was a therapeutic–related death, the coroner or medical examiner must indicate this determination on the death certificate. The bill creates a definition of therapeutic–related death based on the definition contained in the instruction manual on completing the death certificate published by the State of Wisconsin. The manual classifies 8 three types of therapeutic–related deaths: death resulting from complications of surgery, prescription drug use or other medical procedures performed or given for disease conditions; death resulting from complications of surgery, drug use or medical procedures performed or given for traumatic conditions; or death resulting from "therapeutic misadventures", ~~where~~ when medical procedures were done incorrectly or drugs were given in error. Further, the bill requires the state registrar

use another "a" – created on page 14

to revise the death certificate to include a space in which determinations of therapeutic–related deaths may be recorded. Finally, the bill requires the coroner or medical examiner who determines that a death is therapeutic–related to forward this information to DORL.

SECTION 1. 15.405 (7) (b) 3. of the statutes is amended to read:

15.405 **(7)** (b) 3. ~~Three~~ Five public members.

NOTE: Adds 2 public members to the board.

SECTION 2. 69.18 (2) (g) of the statutes is created to read:

69.18 **(2)** (g) 1. In this paragraph, "therapeutic–related death" means a death ~~which~~ that resulted from any of the following:

a. Complications of surgery, prescription drug use, or other medical procedures, performed or given for disease conditions.

b. Complications of surgery, prescription drug use, or other medical procedures, performed or given for accidental or intentional traumatic conditions.

c. Therapeutic misadventures, ~~where~~ when a medical procedure may have been done incorrectly or resulted from an error in dosage or type of drug administered.

2. On the form for a certificate of death prescribed by the state registrar under sub. (1) (b), the state registrar shall provide for a separate section for the indication of a therapeutic-related death as required under s. 979.01 (1n).

NOTE: Requires the state registrar of vital statistics to provide on the death certificate form a separate section for indicating a therapeutic–related death. See SECTION 8 of the bill.

SECTION 3. 146.365 of the statutes is created to read:

146.365 Submission of reports to the medical examining board. Reports that are required to be submitted to the national practitioner data bank under 42 USC 11131 and 11133 shall be submitted to the medical examining board in accordance with the time limits set forth in 45 CFR 60.5 (a) and (c). Any person that

violates this section may be required to forfeit not more than $10,000 for each violation.

NOTE: Creates a requirement that information reported to the NPDB, established by the Federal Health Care Quality Improvement Act of 1986, must also be reported to the board. The requirement applies to reports on medical malpractice payments and on certain professional review actions taken by health care entities. A person that violates this requirement may be required to forfeit not more than $10,000 for each violation.

create auto-reference "b" (use on pg. 12)

SECTION 4. 440.037 of the statutes is created to read:

440.037 Duties of department regarding health care professional disciplinary process. (1) DEFINITIONS. In this section:

(a) "Health care credentialing authority" means the:

1. Board of nursing.

2. Chiropractic examining board.

3. Dentistry examining board.

4. Dietitians affiliated credentialing board.

5. Hearing and speech examining board.

6. Examining board of social workers, marriage and family therapists and professional counselors.

7. Medical examining board.

8. Optometry examining board.

9. Pharmacy examining board.

10. Physical therapists affiliated credentialing board.

12. Psychology examining board.

13. Podiatrists affiliated credentialing board.

(b) "Health care professional" means:

1. An individual who has a credential issued by a health care credentialing authority.

2. An acupuncturist certified by the department under s. 451.04.

NOTE: Health care professionals included in the definition are: acupuncturists; audiologists; chiropractors; dental hygienists; dentists; dietitians; hearing instrument specialists; advanced practice prescriber nurses; licensed practical nurses; registered nurses; nurse midwives; occupational therapists; occupational therapy assistants; optometrists; pharmacists; physical therapists; physicians; physicians assistants; podiatrists; private practice school psychologists; psychologists; respiratory care practitioners; and speech–language pathologists.

(2) ESTABLISHMENT OF PRIORITY DISCIPLINARY CASES. The department shall develop a system to establish the relative priority of disciplinary cases involving possible unprofessional conduct on the part of a health care professional. The prioritization system shall give highest priority to cases of unprofessional conduct that have the greatest potential to adversely affect the public health, safety and welfare. In establishing the priorities, the department shall give particular consideration to cases of unprofessional conduct that may involve the death of a patient or client, serious injury to a patient or client, substantial damages incurred by a patient or client or sexual abuse of a patient or client. The priority system shall be used to determine which cases receive priority of consideration and resources in order for the department and health care credentialing authorities to most effectively protect the public health, safety and welfare.

NOTE: Generally reflects current practice of DORL.

(3) IDENTIFICATION OF HEALTH CARE PROFESSIONALS WHO MAY WARRANT EVALUATION. The department shall develop a system for identifying health care professionals who, even if not the subject of a specific allegation of, or specific information relating to, unprofessional conduct, may warrant further evaluation and possible investigation.

NOTE: Based on a recommendation contained in Evaluation of Quality of Care and Maintenance of Competence, Federation of State Medical Boards of the United States, Inc., 1998. The recommendation was included in a series of recommendations of the Federation's Special Committee on the Evaluation of Quality of Care and Maintenance of Competence, which were adopted as policy by the House of Delegates of the Federation of State Medical Boards of the United States, Inc., in May 1998.

The recommendation on which the above provision is based suggests that state medical boards develop a system of markers to identify licensees warranting evaluation. Narrative comments to the recommendation note that historically the disciplinary function of state medical boards may be characterized as reactive. The committee making the recommendation suggests that measures to prevent, in contrast to only reacting to, breaches of professional conduct and to improve physician practice will greatly enhance public protection; the development of a system of markers is one means to identify physicians, before a case of unprofessional conduct arises, who may be failing to maintain acceptable standards in one or more areas of professional physician practice as well as to identify opportunities to improve physician practice.

(4) NOTICE TO HEALTH CARE PROFESSIONALS, COMPLAINANTS, PATIENTS AND CLIENTS CONCERNING DISCIPLINARY CASE. (a) In this subsection, "complainant" means a person who has requested the department or a health care credentialing authority to investigate a health care professional for possible unprofessional conduct.

(b) The department shall notify a health care professional in writing within 30 days after any of the following:

1. A case of possible unprofessional conduct by the health care professional is closed following screening for a possible investigation.

2. A case of possible unprofessional conduct by the health care professional has been opened for investigation.

3. A case of possible unprofessional conduct by the health care professional is closed after an investigation.

(c) The department shall make a reasonable attempt to provide the complainant with a copy of each notice made under par. (b) that relates to a disciplinary proceeding requested by the complainant.

(d) If a case of possible unprofessional conduct by a health care professional involves conduct adversely affecting a patient or client of the health care professional and the patient or client is not a complainant, the department shall make a reasonable attempt to do one of the following:

1. Provide the patient or client with a copy of each notice made under par. (b) 2. and 3. related to that case.

2. Provide the spouse, child, sibling, parent or legal guardian of the patient or client with a copy of each notice made under par. (b) 2. and 3. related to that case.

(e) Failure to provide a notice under this subsection is not grounds for appeal or dismissal.

NOTE: Paragraph (b) generally reflects current practice of DORL, although notice of the fact that a case of possible unprofessional conduct by a health care professional has been opened for investigation may be delayed by DORL currently if there is concern that such notice may adversely affect the investigation. The notice requirement of par. (b) only addresses the early stages of the disciplinary process because it is assumed that if a disciplinary case continues after an investigation is completed, the health care professional will be well aware of the course of proceedings from that point on.

The requirement of par. (c) is new and assures that a person who has made the effort to request an investigation for possible unprofessional conduct is given the same notice that the health care professional receives regarding the status of the early stages of the process.

The requirement of par. (d) is new. It recognizes that patients or clients are often interested in the early stages of a disciplinary case. If a case proceeds beyond the investigation stage, the patient or client and, in some cases, the family of the patient or client and others, will be given the opportunity to confer with DORL regarding the disposition of the case. See sub. (6) below.

(5) NOTICE OF PENDING COMPLAINT TO HEALTH CARE PROFESSIONALS' PLACE OF PRACTICE. (a) Within 30 days after a formal complaint alleging unprofessional conduct by a health care professional is filed, the department shall send written notice that a complaint has been filed to all of the following:

1. Each hospital where the health care professional has hospital staff privileges.

2. Each managed care plan, as defined under s. 609.01 (3c), for which the health care professional is a participating provider.

3. Each employer, not included under subd. 1. or 2., who employs the health care professional to practice the health care profession for which the health care professional is credentialed.

(b) If requested by the department, a health care professional shall provide information necessary for the department to comply with this subsection.

NOTE: New requirement. Because many health care professionals have multiple places of practice or employment, notifying all places of a health care professional's practice or employment will serve to alert them of the pending disciplinary action and allow them to determine if any action on their part might be desirable.

close space

Note that reference to "formal complaint" in the provision refers to the complaint that is filed after a finding that there is probable cause to believe that the health care professional is guilty of unprofessional conduct. See, generally, ss. RL 2.06 and 2.08, Wis. Adm. Code.

(6) OPPORTUNITY FOR PATIENTS AND CLIENTS TO CONFER CONCERNING DISCIPLINE. (a) In this subsection "patient" means any of the following:

1. A patient or client of a health care professional who has been adversely affected by conduct of the health care professional that is a subject of a disciplinary proceeding.

2. A parent, guardian or legal custodian of a patient or client specified in subd. 1., if the patient or client is a child.

3. A person designated by a patient or client specified in subd. 1. or the spouse or a child, sibling, parent or legal guardian of a patient or client specified in subd. 1., if the patient or client is physically or emotionally unable to confer as authorized in this subsection.

4. If a patient or client specified in subd. 1. is deceased, any of the following:

a. The spouse or a child, sibling, parent or legal guardian of the deceased patient or client.

b. A person who resided with the deceased patient or client.

5. A guardian appointed under ch. 880 of a patient or client specified in subd. 1., if the patient or client has been determined to be incompetent under ch. 880.

(b) Following an investigation of possible unprofessional conduct by a health care professional and before disciplinary action may be negotiated or imposed against the health care professional, a patient shall be provided an opportunity to confer with the department's prosecuting attorney concerning the disposition of the case and the economic, physical and psychological effect on the patient of the unprofessional conduct. A prosecuting attorney may confer with a patient under this paragraph in person or by telephone or, if the patient agrees to the method, by any other method. The duty to confer under this paragraph does not limit the authority or obligation of the prosecuting attorney to exercise his or her discretion concerning the handling of a case of unprofessional conduct against the health care provider. Failure to provide an opportunity to confer under this paragraph is not grounds for appeal or dismissal of a disciplinary case against a health care professional.

NOTE: New requirement. The definition of "patient" is based on the definition of "victim" currently found in s. 950.02 (4), stats., which defines the term for purposes of the statutory chapter on rights of victims of crimes. Providing opportunity for involvement in the health care professional disciplinary process will enhance the public's understanding of and trust in that process. Further, the prospect of additional public scrutiny may well accelerate the disciplinary process, rather than delay it. While a patient's recommendations as to disposition are not determinative, the opportunity to be heard and considered is appropriate for a patient adversely affected by the unprofessional conduct that is a subject of the disciplinary proceeding.

(7) ESTABLISHMENT OF DISCIPLINARY PROCEDURE TIME GUIDELINES. The department shall establish guidelines for the timely completion of each stage of the health care professional disciplinary process. Notwithstanding s. 227.10 (1), the guidelines need not be promulgated as rules under ch. 227. The guidelines may account for the type and complexity of the case. The guidelines shall promote the fair and efficient processing of cases of unprofessional conduct. The guidelines shall be for administrative purposes and shall permit the department to monitor the progress

of cases and the performance of personnel handling the cases. Failure to comply with the guidelines is not grounds for appeal or dismissal.

NOTE: Reflects current practice of DORL. See also proposed s. 440.037 (2) in SECTION 4 of the bill and the note thereto.
(use auto-ref "b" (created on page 6))

(8) PANELS OF EXPERTS; ALTERNATIVE HEALTH CARE PRACTITIONERS. If the department establishes a panel of health care experts to be used on a consulting basis by a health care credentialing authority, it shall attempt to include a health care professional who practices alternative forms of health care on the panel. A health care professional who practices alternative health care and who participates on a panel shall be of the same profession as the professionals regulated by the health care credentialing authority utilizing the panel. The health care professional who practices alternative health care shall be available to assist in evaluating complaints filed with the department or health care credentialing authority against a health care professional who is alleged to have practiced health care in an unprofessional or negligent manner through the use of alternative forms of health care, the referral to an alternative health care provider or the prescribing of alternative medical treatment.

(9) ADVICE OF CREDENTIALING AUTHORITIES. In carrying out its duties under this section, the department shall seek the advice of health care credentialing authorities.

SECTION 5. 448.02 (3) (c) of the statutes is amended to read:

448.02 **(3)** (c) Subject to par. (cm), after a disciplinary hearing, the board may, when it determines that a panel established under s. 655.02, 1983 stats., has unanimously found or a court has found that a person has been negligent in treating a patient or when it finds a person guilty of unprofessional conduct or negligence in

treatment, do one or more of the following: warn or reprimand that person, assess a forfeiture against that person under par. (d), or limit, suspend or revoke any license, certificate or limited permit granted by the board to that person. The board may condition the removal of limitations on a license, certificate or limited permit or the restoration of a suspended or revoked license, certificate or limited permit upon obtaining minimum results specified by the board on one or more physical, mental or professional competency examinations if the board believes that obtaining the minimum results is related to correcting one or more of the bases upon which the limitation, suspension or revocation was imposed.

SECTION 6. 448.02 (3) (d) of the statutes is created to read:

448.02 **(3)** (d) The board may, except in cases where the person is found guilty of negligence in treatment, assess a forfeiture of not more than $1,000 for each violation against a person who is found guilty of unprofessional conduct.

NOTE: Authorizes the board to assess a forfeiture, of not more than $1,000 for each violation, against a credential holder who is found guilty of unprofessional conduct, not including cases of negligence in treatment.

SECTION 7. 448.02 (4) and (9) (intro.) of the statutes are amended to read:

448.02 **(4)** SUSPENSION PENDING HEARING. The board may summarily suspend or limit any license, certificate or limited permit granted by the board for a period not to exceed 30 days pending hearing, when the board has in its possession evidence establishing probable cause to believe that the holder of the license, certificate or limited permit has violated the provisions of this subchapter and that it is necessary to suspend or limit the license, certificate or limited permit immediately to protect the public health, safety or welfare. The holder of the license, certificate or limited permit shall be granted an opportunity to be heard during the determination of probable cause. The board may designate any of its officers to exercise the authority

granted by this subsection to suspend or limit summarily a license, certificate or limited permit, but such suspension or limitation shall be for a period of time not to exceed 72 hours. If a license, certificate or limited permit has been summarily suspended or limited by the board or any of its officers, the board may, while the hearing is in progress, extend the initial 30–day period of suspension or limitation for an additional 30 days. If the holder of the license, certificate or limited permit has caused a delay in the hearing process, the board may subsequently suspend or limit the license, certificate or limited permit from the time the hearing is commenced until a final decision is issued or may delegate such authority to the hearing examiner.

NOTE: Authorizes the board to summarily limit the credential of a credential holder when the board has probable cause to believe that the credential holder has violated a provision of subch. II of ch. 448, stats. (board), and that it is necessary to immediately limit the credential to protect the public health, safety and welfare.

JUDICIAL REVIEW — C S

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

create auto. reference "a"

SECTION 8. 979.01 (1n) of the statutes is created to read:

979.01 **(1n)** If the coroner or medical examiner determines that a death reported under sub. (1) was a therapeutic–related death, as defined in s. 69.18 (2) (g) 1., the coroner or medical examiner shall indicate this determination on the death certificate of the person whose death was reported.

NOTE: Requires a coroner or medical examiner who determines that a death reported under s. 969.01 (1), stats., was a therapeutic–related death to indicate that determination on the death certificate. See SECTION 2 of the bill for the definition of "therapeutic–related death".

use auto. reference "c"

(created on page 5)

Section 979.01 (1), stats., provides for reporting certain deaths to coroners and medical examiners as follows:

"All physicians, authorities of hospitals, sanatoriums, institutions (public and private), convalescent homes, authorities of any institution of a like nature, and other persons having knowledge of the death of any person who has died under any of the following circumstances, shall immediately report such death to the sheriff, police chief, medical examiner or coroner of the county wherein such death took place, and the sheriff or police chief shall, immediately upon notification, notify the coroner or the medical examiner and the coroner or medical examiner of the county where death took place, if the crime, injury or event occurred in another county, shall report such death immediately to the coroner or medical examiner of that county:

(a) All deaths in which there are unexplained, unusual or suspicious circumstances.

(b) All homicides.

(c) All suicides.

(d) All deaths following an abortion.

(e) All deaths due to poisoning, whether homicidal, suicidal or accidental.

(f) All deaths following accidents, whether the injury is or is not the primary cause of death.

(g) When there was no physician, or accredited practitioner of a bona fide religious denomination relying upon prayer or spiritual means for healing in attendance within 30 days preceding death.

(h) When a physician refuses to sign the death certificate.

(i) When, after reasonable efforts, a physician cannot be obtained to sign the medical certification as required under s. 69.18 (2) (b) or (c) within 6 days after the pronouncement of death or sooner under circumstances which the coroner or medical examiner determines to be an emergency.".

SECTION 9. 979.01 (1p) of the statutes is created to read:

979.01 **(1p)** The coroner or medical examiner making a determination under sub. (1n) that a death was a therapeutic–related death shall report this information to the department of regulation and licensing.

NOTE: Requires a coroner or medical examiner who determines that a death reported under s. 979.01, stats., was a therapeutic–related death to report that information to DORL.

SECTION 10. Nonstatutory provisions; report to legislature.

(1) REPORT ON TIME GUIDELINES. No later than May 1, 2001, the department of regulation and licensing shall submit, to the appropriate standing committees of the legislature in the manner provided under section 13.172 (3) of the statutes, a report

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3728/P1dn
MDK:...:mrc

DATE

Don Dyke:

Please note the following about this draft:

1. The nonstatutory provision regarding appointment of initial members has been revised to conform to my usual drafting style for this type of provision. In addition, the language in the nonstatutory provision on the report to the legislature has been revised to conform to our drafting style.

2. The definition of "therapeutic–related death" in proposed s. 69.18 (2) (g) is renumbered according to our drafting style.

3. Proposed s. 146.365, refers to "person", rather than "person or entity", because "person" is broadly defined under s. 990.01 (26), stats., to include "all partnerships, associations and bodies politic or corporate".

4. The language of proposed s. 440.037 (4) (b) is slightly different than the language in the instructions.

5. The definition of "health care professional" in proposed s. 440.037 (1) (b) 1. refers to a "credential", which is defined as a "license, permit, or certificate of certification or registration" under s. 440.01 (2) (a), stats. I made this change to account for any registrations by a health care credentialing authority that may be created in future legislation. Is this okay?

6. I revised the definition of "patient" in proposed s. 440.037 (6) (a).

7. Is the sentence that notwithstands s. 227.10 (1), stats., in proposed s. 440.037 (7) okay? Without the sentence, there may be some confusion as to whether the guidelines are rules that must be promulgated under ch. 227, stats. Note also that I made other slight changes to proposed s. 440.037 (7).

8. Is the NOTE following proposed s. 440.037 (7) okay? (I wasn't sure which section of the bill you wanted to refer to.)

9. Do you think it is necessary to define "therapeutic misadventure"? Or is the common dictionary definition of "misadventure" (i.e., misfortune or mishap) okay?

10. Do you want to delay the effective date of the bill to give the state registrar time to prepare death certificate forms?

11. You may want to consider an initial applicability provision for the notice requirements included in proposed s. 440.037 (4) and (5) or the duty to confer in proposed s. 440.037 (6).

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266–0131
E–mail: Mark.Kunkel@legis.state.wi.us

on the disciplinary process time lines ~~which~~ that were implemented by the department as guidelines in February 1999. The report shall address compliance with and enforcement of the guidelines and the effect of the guidelines on the fairness and efficiency of the disciplinary process.

NOTE: Based on recommendations of its ad hoc enforcement advisory committee, DORL in February of 1999 adopted as department policy specific time lines for processing disciplinary cases once a complaint is received by DORL division of enforcement. The special committee on discipline of health care professionals was supportive of the implementation of the guidelines and concluded it will be useful for the legislature to be apprised of the experience with the guidelines.

SECTION 11. Nonstatutory provisions; medical examining board.

(1) INITIAL APPOINTMENT OF ADDITIONAL PUBLIC MEMBERS. Notwithstanding the length of term specified in section 15.405 (7) (b) (intro.) of the statutes, the 2 additional public members of the medical examining board shall be initially appointed for the following terms by the first day of the 4th month beginning after the effective date of this act:

(a) One public member, for a term expiring on July 1, 2002.

(b) One public member, for a term expiring on July 1, 2003.

NOTE: Provides that the 2 new public members, who are appointed to the board for staggered 4–year terms, will have initial terms ~~which~~ that expire on July 1, 2002 and July 1, 2003.

SECTION 12. Initial applicability.

(1) The treatment of section 448.02 (3) (c) and (d) of the statutes first applies to cases of unprofessional conduct for which a formal complaint is filed on the effective date of this subsection.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3728/P1dn
MDK:cmh:mrc

November 22, 1999

Don Dyke:

Please note the following about this draft:

1. The nonstatutory provision regarding appointment of initial members has been revised to conform to my usual drafting style for this type of provision. In addition, the language in the nonstatutory provision on the report to the legislature has been revised to conform to our drafting style.

2. The definition of "therapeutic–related death" in proposed s. 69.18 (2) (g) is renumbered according to our drafting style.

3. Proposed s. 146.365, refers to "person", rather than "person or entity", because "person" is broadly defined under s. 990.01 (26), stats., to include "all partnerships, associations and bodies politic or corporate".

4. The language of proposed s. 440.037 (4) (b) is slightly different than the language in the instructions.

5. The definition of "health care professional" in proposed s. 440.037 (1) (b) 1. refers to a "credential", which is defined as a "license, permit, or certificate of certification or registration" under s. 440.01 (2) (a), stats. I made this change to account for any registrations by a health care credentialing authority that may be created in future legislation. Is this okay?

6. I revised the definition of "patient" in proposed s. 440.037 (6) (a).

7. Is the sentence that notwithstands s. 227.10 (1), stats., in proposed s. 440.037 (7) okay? Without the sentence, there may be some confusion as to whether the guidelines are rules that must be promulgated under ch. 227, stats. Note also that I made other slight changes to proposed s. 440.037 (7).

8. Is the NOTE following proposed s. 440.037 (7) okay? (I wasn't sure which section of the bill you wanted to refer to.)

9. Do you think it is necessary to define "therapeutic misadventure"? Or is the common dictionary definition of "misadventure" (i.e., misfortune or mishap) okay?

10. Do you want to delay the effective date of the bill to give the state registrar time to prepare death certificate forms?

11. You may want to consider an initial applicability provision for the notice requirements included in proposed s. 440.037 (4) and (5) or the duty to confer in proposed s. 440.037 (6).

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266–0131
E–mail: Mark.Kunkel@legis.state.wi.us