

**STATE OF WISCONSIN
MEDICAL EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 02-008)**

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the MEDICAL EXAMINING BOARD is submitting in final draft form rules relating to defining failing to cooperate in a timely manner in an investigation as unprofessional conduct.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

**STATE OF WISCONSIN
MEDICAL EXAMINING BOARD**

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
MEDICAL EXAMINING BOARD : ON CLEARINGHOUSE RULE 02-008
: (s. 227.19 (3), Stats.)

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

The Medical Examining Board wants to include as unprofessional conduct the failure of a credential holder to cooperate in a timely manner with an investigation. The board wants it to be unprofessional conduct on the part of the credential holder for failing to cooperate by providing information the board has requested in a pending investigation within 30 days and be able to charge that credential holder with unprofessional conduct for failing to cooperate. The board has attempted on several occasions to obtain information from a credential holder on a complaint the board has received which they wish to investigate further but need information from the credential holder.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on May 21, 2002. There were no appearances at the public hearing nor were any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 4. Neither the analysis nor the rule make reference to s. 15.08 (5) (a), Stats., under which the examining board “[may] compel the attendance of witnesses” The rule would allow one request, possibly misaddressed, to establish a rebuttable presumption that the credential holder who takes longer than 30 days to respond has engaged in unprofessional conduct. Should there be some reference to s. 15.08 (5) (a), Stats., and an attempt to first compel the attendance of the credential holder as a witness, before establishing such a rebuttable presumption?

Response: The possibility of a respondent's failure to receive a request for information is the very reason that the rule is drafted to create a rebuttable rather than an irrebuttable presumption. The credential holder requests in question are not requests to appear, and to require that the board subpoena a credential order as a necessary prerequisite to deciding that he or she is not cooperating would create an unnecessary burden.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

g:\rules\med8leg.doc
7/19/02

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 02-008)

PROPOSED ORDER

An order of the Medical Examining Board to create Med 10.02 (2) (zc), relating to defining failing to cooperate in a timely manner in an investigation as unprofessional conduct.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats.

Statutes interpreted: ss. 448.015 (4) and 448.02 (3), Stats.

The Medical Examining Board wants to include as unprofessional conduct the failure of a credential holder to cooperate in a timely manner with an investigation. The board wants it to be unprofessional conduct on the part of the credential holder for failing to cooperate by providing information the board has requested in a pending investigation within 30 days and be able to charge that credential holder with unprofessional conduct for failing to cooperate. The board has attempted on several occasions to obtain information from a credential holder on a complaint the board has received which they wish to investigate further but need information from the credential holder.

TEXT OF RULE

SECTION 1. Med 10.02 (2) (zc) is created to read:

Med 10.02 (2) (zc) After a request by the board, failing to cooperate in a timely manner with the board's investigation of a complaint filed against the credential holder. There is a rebuttable presumption that a credential holder who takes longer than 30 days to respond to a request of the board has not acted in a timely manner.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____ Agency _____
Chairperson
Medical Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

g:\rules\med8.doc
7/3/02



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-008

AN ORDER to create Med 10.02 (2) (zc), relating to defining failing to cooperate in a timely manner in an investigation as unprofessional conduct.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

01-25-02 RECEIVED BY LEGISLATIVE COUNCIL.

02-18-02 REPORT SENT TO AGENCY.

RNS:MO:ksm;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 02-008

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

4. Adequacy of References to Related Statutes, Rules and Forms

Neither the analysis nor the rule make reference to s. 15.08 (5) (a), Stats., under which the examining board “[m]ay compel the attendance of witnesses” The rule would allow one request, possibly misaddressed, to establish a rebuttable presumption that the credential holder who takes longer than 30 days to respond has engaged in unprofessional conduct. Should there be some reference to s. 15.08 (5) (a), Stats., and an attempt to first compel the attendance of the credential holder as a witness, before establishing such a rebuttable presumption?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The analysis uses the term “credential holder” and the term “licensee” interchangeably. “Credential holder” should be used consistently since “credential holder” is the term used in the rule.

b. The rule states: “After a request by the department,” but the analysis states that the request at issue is by “the board.” Should “board” be used instead of “department” in the rule?



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-008

AN ORDER to create Med 10.02 (2) (zc), relating to defining failing to cooperate in a timely manner in an investigation as unprofessional conduct.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

01-25-02 RECEIVED BY LEGISLATIVE COUNCIL.

02-18-02 REPORT SENT TO AGENCY.

RNS:MO:ksm;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 02-008

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

4. Adequacy of References to Related Statutes, Rules and Forms

Neither the analysis nor the rule make reference to s. 15.08 (5) (a), Stats., under which the examining board "[m]ay compel the attendance of witnesses" The rule would allow one request, possibly misaddressed, to establish a rebuttable presumption that the credential holder who takes longer than 30 days to respond has engaged in unprofessional conduct. Should there be some reference to s. 15.08 (5) (a), Stats., and an attempt to first compel the attendance of the credential holder as a witness, before establishing such a rebuttable presumption?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The analysis uses the term "credential holder" and the term "licensee" interchangeably. "Credential holder" should be used consistently since "credential holder" is the term used in the rule.

b. The rule states: "After a request by the department," but the analysis states that the request at issue is by "the board." Should "board" be used instead of "department" in the rule?

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 02-)

PROPOSED ORDER

An order of the Medical Examining Board to create Med 10.02 (2) (zc), relating to defining failing to cooperate in a timely manner in an investigation as unprofessional conduct.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats.

Statutes interpreted: ss. 448.015 (4) and 448.02 (3), Stats.

The Medical Examining Board wants to include as unprofessional conduct the failure of a credential holder to cooperate in a timely manner with an investigation. The board wants it to be unprofessional conduct on the part of the licensee for failing to cooperate by providing information the board has requested in a pending investigation within 30 days and be able to charge that licensee with unprofessional conduct for failing to cooperate. The board has attempted on several occasions to obtain information from a credential holder on a complaint the board has received which they wish to investigate further but need information from the licensee.

TEXT OF RULE

SECTION 1. Med 10.02 (2) (cz) is created to read:

Med 10.02 (2) (zc) After a request by the department, failing to cooperate in a timely manner with the department's investigation of a complaint filed against the credential holder. There is a rebuttable presumption that a credential holder who takes longer than 30 days to respond to a request of the department has not acted in a timely manner.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____ Agency _____
Chairperson
Medical Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

g:\rules\med8.doc
1/23/02