

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3463/3dn
TKK:jld:ph

December 7, 2009

Rep. Pasch:

This draft incorporates changes proposed in an e-mail from Marisa Stanley, at the Wisconsin Division of Public Health, to me. I forwarded this e-mail, dated December 3, 2009, to your office. I have the following comments for your consideration:

1. Definition of unprofessional conduct.

In her e-mail, Ms. Stanley includes the following comment about LRB-3463/2:

Page 5, section 7, lines 8-10, there was a question as to whether the way this is worded would limit the Pharmacy Examining Board so that the only thing not included as "unprofessional conduct" is EPT. They are concerned the way it is currently written might unintentionally limit their decision making authority. They suggested creating a new subsection rather than crossing out "is not limited to."

Section 450.10 (1) (a) (intro.), as revised in LRB-3463/2, reads as follows:

"In this subsection, "unprofessional conduct" includes any of the following, but ~~is not limited to~~ does not include the dispensing of an antimicrobial drug for expedited partner therapy as described in s. 450.11 (1g):"

I don't believe any additional revisions to this section are necessary for the following reasons:

a. Current LRB drafting conventions discourage the use of "is not limited to" after the word, "includes," as the phrase is redundant.

b. The use of "includes any of the following" rather than "means" in the definition of "unprofessional conduct" indicates that the list that follows the colon is partial, rather than complete.

c. Although the amendment to s. 450.10 (1) (a) (intro.), stats., does expressly affect the scope of the examining board's authority to determine what does and does not constitute "unprofessional conduct," the change in scope is both very narrow and very specific: the examining board may not determine that the dispensing of antimicrobial drugs for EPT constitutes unprofessional conduct. The amendment does not otherwise

limit the authority of the examining board to determine what does or does not constitute unprofessional conduct. In fact, each time the examining board determines what does constitute unprofessional conduct, the examining board is also determining by its silence, or by omission, what does not constitute unprofessional conduct.

Okay?

2. Prescription orders.

Ms. Stanley's e-mail also directs me to add the following sentence to proposed s. 448.035 (2):

"The sexual partner's prescription shall be separate from the practitioner's patient's prescription."

Ms. Stanley indicates that "we intend to make it clear that the patient's prescription order and the sexual partner's prescription order are two separate orders and not on the same prescription."

I don't believe this addition is necessary. Proposed s. 448.035 does not authorize a practitioner to combine the prescription order of a patient with that of the patient's sexual partner. Proposed s. 448.035, by its terms, is limited to and authorizes a practitioner to provide "expedited partner therapy." "Expedited partner therapy" is defined in proposed s. 448.035 (1) (c) as:

"to prescribe, dispense, or furnish to a patient an antimicrobial drug to be used by a sexual partner of the patient to treat a chlamydial infection, gonorrhea, or trichomoniasis without physical examination of the sexual partner." (emphasis added).

That is, proposed s. 448.035 does not apply to a practitioner prescribing an antimicrobial drug to the patient for use by the patient; presumably, a practitioner is already authorized to prescribe an antimicrobial drug to a patient?

However, perhaps I am not familiar with common practice of practitioners. Is it acceptable or common practice for a practitioner to combine the prescription orders of two patients for antimicrobial drugs when the sexual partner of the patient is present for examination? For that matter, is it acceptable or common practice for a practitioner to *ever* combine the prescription orders of two patients?

Please advise.

3. Changes to liability provision.

Note that I adjusted the language of proposed s. 448.035 (4) (a) to eliminate an inappropriate use of the defined term, "expedited partner therapy" on p. 4, line 21, of LRB-3463/2. Specifically, I replaced "provided to that person as expedited partner therapy" with "prescribed, dispensed, or furnished." Let me know if you have any concerns about this change.

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