

2009 DRAFTING REQUEST

Bill

Received: **01/28/2010**

Received By: **tkuczens**

Wanted: **As time permits**

Identical to LRB:

For: **Jon Richards (608) 266-0650**

By/Representing: **Jeff Kostelic**

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

Drafter: **tkuczens**

May Contact:

Addl. Drafters:

Subject: **Occupational Reg. - prof lic**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Richards@legis.wisconsin.gov**

Carbon copy (CC:) to: **tracy.kuczenski@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Changes to duties of physicians and medical examining board

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	tkuczens 01/29/2010	kfollett 02/05/2010	rschluet 02/05/2010	_____	mbarman 02/05/2010		
	tkuczens 02/27/2010	bkraft 03/02/2010		_____			
/P2	tkuczens 03/08/2010	kfollett 03/09/2010	mduchek 03/02/2010	_____	lparisi 03/02/2010		State
/1			jfrantze	_____	cduerst	sbasford	

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			03/10/2010 _____		03/10/2010	03/12/2010	

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*at
intro*

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FE Sent For:

1/P2 bjk 3/2

For J+
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/?	tkuczens	1P/1kf 2/5		==			
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FE Sent For:

<END>

Kuczenski, Tracy

From: Ryan, Robin
Sent: Tuesday, January 26, 2010 5:05 PM
To: Kuczenski, Tracy; Sundberg, Christopher
Subject: FW: Proposed Changes from the Medical Examining Board

Tracy and Chris, is this yours and if so will one of you let Jeff know?

Thanks
Robin

Jeff gave permission to
talk to Tom Ryan @ DRL
261-2378

From: Kostelic, Jeff
Sent: Tuesday, January 26, 2010 5:03 PM
To: Ryan, Robin
Subject: Proposed Changes from the Medical Examining Board

Feb. 17 mtg. of MEB

Robin,

Below, please find four changes the Medical Examining Board would like to see drafted as a single bill. Point "b." has a few questions associated with it. I spoke with Sheldon Wasserman about those questions and he suggested that the Chair and two designees make these determinations and that in the event the Chair is not available that the vice-chair and two designees make the decision.

designees
of chair
or
vice-
Chair

Please let me know if you have any questions or if you need additional information to complete the draft.

Thank you.

Jeff Kostelic, office of Rep. Jon Richards
266-0650

do the designees
have to be officers? s. 15.405(7)

Just
physicians
?

a. Physician duty to report professional conduct violations of other physicians – Currently there is no requirement that physicians report to the Board known violations of the practice act and regulations by other physicians. Recommendation: Impose by statute a duty for physicians to report known violations (or other appropriate language) by other physicians. Failure to report known violations (or other appropriate language) should be considered unprofessional conduct. (eggsyious) violation

see
s. 49.45(2)(
12r.
448.05?
or 448.115

b. Summary suspension – Currently the Board must convene by teleconference if a summary suspension petition needs to be heard between regularly scheduled Board meetings. The applicable rules, Wis. Admin. Code RL 6, allows the Board to designate a member to rule on a petition for summary suspension, to issue the order, and to preside over and rule in a hearing to show cause. Wis. Stat. s. 448.02 (4) permits the delegated suspension for a period of time not to exceed 72 hours. The statutory limitation on delegated suspension and on the duration of the suspension should be eliminated. The rules provide that the suspension continues until a final decision is rendered or successfully challenged at a hearing to show cause. Additional recommendations: Should the statutes specify that the Board Chair identify the designee? Should the statutes state that an alternate designation also be identified?

c. Prescribing controlled substances under a temporary educational permit – Residents in their first year of residency cannot prescribe controlled substances under Wis. Stat. s. 448.04 (1) (c). The work group recommends first year residents should be allowed unrestricted prescribing authority.

d. Continuing Education (CE) – Consider a change to the current statutes and/or rules to allow the Board flexibility to change by rule the nature of the requirement and/or the number of CE credits.

cr. 448.02(2m) or am. 448.40(1)
am 448.13(1) * amend [] (1m) too
see 448.40(2)(c)

• maintenance of competence
• continuance of professional development 1

Kuczenski, Tracy

From: Ryan, Thomas - DRL [Thomas.Ryan@wisconsin.gov]
Sent: Friday, January 29, 2010 10:15 AM
To: Kuczenski, Tracy
Subject: FW: physician duty to report

Attachments: PHYSICIAN'S DUTY TO REPORT OTHER PHYSICIANS-State Overview.doc



PHYSICIAN'S DUTY
TO REPORT OTH...

Tracy, here is a chart showing what other states include as language for the
Duty to Report.

Tom Ryan
DRL

Physician's Duty to Report Other Physicians Overview by State

Board	Requirement
Alabama	<p>34-24-361. Investigations; reporting offenses; proceedings and actions; privileged information.</p> <p>(b) Any physician or osteopath holding a certificate of qualification to practice medicine or osteopathy in the State of Alabama shall and is hereby required to, and any other person may, report to the board or the commission any information such physician, osteopath, or other person may have which appears to show that any physician or osteopath holding a certificate of qualification to practice medicine or osteopathy in the State of Alabama may be guilty of any of the acts, offenses, or conditions set out in Section 34-24-360 (Restrictions, etc., on license; grounds), and any physician, osteopath, or other person who in good faith makes such a report to the board or to the commission shall not be liable to any person for any statement or opinion made in such report.</p>
Alaska	<p>08.64.336. Duty of physicians and hospitals to report</p> <p>(a) A physician who professionally treats a person licensed to practice medicine or osteopathy in this state for alcoholism or drug addiction, or for mental, emotional, or personality disorders, shall report it to the board if there is probable cause that the person may constitute a danger to the health and welfare of that person's patients or the public if that person continues in practice. The report must state the name and address of the person and the condition found.</p>
Arizona-Medical	<p>32-1451. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements</p> <p>A... Any person may, and a doctor of medicine, the Arizona medical association, a component county society of that association and any health care institution shall, report to the board any information that appears to show that a doctor of medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine... It is an act of unprofessional conduct for any doctor of medicine to fail to report as required by this section. The board shall report any health care institution that fails to report as required by this section to that institution's licensing agency.</p>
Arizona-Osteo	<p>32-1855. Disciplinary action; duty to report; hearing; notice; independent medical examinations; surrender of license</p> <p>A... Any osteopathic physician or surgeon or the Arizona osteopathic medical association or any health care institution as defined in § 36-401 shall, and any other person may, report to the board any information the physician or surgeon, association, health care institution or other person may have that appears to show that an osteopathic physician and surgeon is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine.</p>
Arkansas	None
California-Medical	None
California-Osteo	None
Colorado	None
Connecticut	None
Delaware	<p>1730. Duty to report unprofessional conduct and inability to practice medicine</p> <p>(a) Every person to whom a certificate to practice medicine is issued has a duty to report to the Board if that person is treating professionally another person who possesses a certificate to practice medicine for a condition defined in § 1731(c) of this title, if, in the reporting person's opinion, the person being treated may be unable to practice medicine with reasonable skill or safety.</p>

District of Columbia	None
Florida-Medical	None
Florida-Osteo	None
Georgia	None
Guam	None
Hawaii	None
Idaho	§ 54-1818. Reporting of violations by physicians A licensed physician and surgeon possessing knowledge of a violation of section 54-1814, Idaho Code, by any other physician and surgeon licensed to practice medicine in Idaho shall with reasonable promptness report such knowledge to the board of medicine or its duly authorized committee, agency or representative, and failure to do so shall subject such person to disciplinary action by the state board of medicine as in its discretion the board shall deem proper, pursuant to procedures provided in chapter 18, title 54, Idaho Code[.]
Illinois	60/24. Report of violations; medical associations § 24. Report of violations; medical associations. Any physician licensed under this Act, the Illinois State Medical Society, the Illinois Association of Osteopathic Physicians and Surgeons, the Illinois Chiropractic Society, the Illinois Prairie State Chiropractic Association, or any component societies of any of these 4 groups, and any other person, may report to the Disciplinary Board any information the physician, association, society, or person may have that appears to show that a physician is or may be in violation of any of the provisions of Section 22 of this Act (Disciplinary Action).
Indiana	None
Iowa	None
Kansas	65-28,122. Person licensed to practice healing arts required to report knowledge of violation of 65-2836 to state board of healing arts. (a) Subject to the provisions of subsection (c) of K.S.A. 65-4923, any person licensed to practice the healing arts who possesses knowledge not subject to the physician-patient privilege that another person so licensed has committed any act enumerated under K.S.A. 65-2836 and amendments thereto which may be a ground for disciplinary action pursuant to K.S.A. 65-2836 and amendments thereto shall immediately report such knowledge, under oath, to the state board of healing arts. A person licensed to practice the healing arts who possesses such knowledge shall reveal fully such knowledge upon official request of the state board of healing arts.
Kentucky	311.606 Medical association, hospital, or its medical staff to report actions taken against licensed physicians; violations to be reported by physicians; reports by court clerks (1) In order to assist the board in the enforcement of KRS 311.595(20) and (21), any professional medical association or society operating in the Commonwealth of Kentucky, or any hospital or medical staff of said hospital located in the Commonwealth of Kentucky, shall report all actions taken against a licensed physician as described in KRS 311.595(20) and (21) to the board within thirty (30) days of the final adjudication of said action together with all pertinent documents to include but not limited to transcripts, pleadings and certified copy of the final order. (2) In order to assist the board in the enforcement of the provisions of KRS Chapter 311, any licensed physician who observes another licensed physician violating a provision of KRS Chapter 311 shall submit a written report to the board, or to the board and the concerned medical association or society, or to the board and the concerned hospital or medical staff of the hospital within ten (10) days of observing such a violation or obtaining other direct knowledge of such a violation; the report shall contain the name of the licensed physician believed to be in violation of a provision of KRS Chapter 311, a detailed account of the concerned actions, a list of all other witnesses to said actions, and the name of the physician submitting the report.
Louisiana	None

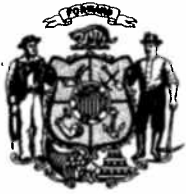
Maine-Medical	<p>§ 3282-A. Disciplinary sanctions</p> <p>...</p> <p>2. Grounds for discipline. The board may suspend or revoke a license pursuant to Title 5, section 10004. The following are grounds for an action to refuse to issue, modify, restrict, suspend, revoke or refuse to renew the license of an individual licensed under this chapter:</p> <p>...</p> <p>K. Failure to report to the secretary of the board a physician licensed under this chapter for addiction to alcohol or drugs or for mental illness in accordance with Title 24, section 2505, except when the impaired physician is or has been a patient of the licensee;</p>
Maine-Osteo	None
Maryland	None
Massachusetts	None
Michigan-Medical	None
Michigan-Osteo	None
Minnesota	None
Mississippi	None
Missouri	None
Montana	<p>37-3-401. Report of incompetence or unprofessional conduct</p> <p>(1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society of the association shall and any other person may report to the board any information that the physician, organization, association, society, or person has that appears to show that a physician is:</p> <p>(a) medically incompetent;</p> <p>(b) mentally or physically unable to safely engage in the practice of medicine; or</p> <p>(c) guilty of unprofessional conduct.</p>
Nebraska	<p>71-168. Enforcement; investigations; violations; credentialed person; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report; confidentiality; immunity.</p> <p>(4) Every credentialed person regulated under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law except pharmacist interns and pharmacy technicians, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require by rule and regulation whenever he or she:</p> <p>(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession has committed acts indicative of gross incompetence, a pattern of negligent conduct as defined in subdivision (5)(e) of section 71-147, or unprofessional conduct, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability, or has otherwise violated such regulatory provisions governing the practice of the profession;</p>
Nevada-Medical	None
Nevada-Osteo	None
New Hampshire	None

New Jersey	<p>45:1-37. Notification to division of impairment of health care professional.</p> <p>a. A health care professional shall promptly notify the division if that health care professional is in possession of information which reasonably indicates that another health care professional has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or to the public health, safety or welfare. A health care professional who fails to so notify the division is subject to disciplinary action and civil penalties pursuant to sections 8, 9 and 12 of P.L.1978, c.73 (C.45:1-21, 45:1-22 and 45:1-25).</p>
New Mexico-Medical	None
New Mexico-Osteo	None
New York	SKIP
North Carolina	None
North Dakota	<p>43-17.1-05.1 Reporting Requirements</p> <p>A physician, physician assistant, or a fluoroscopy technologist, a health care institution in the state, a state agency, or a law enforcement agency in the state having actual knowledge that a licensed physician, a physician assistant, or a fluoroscopy technologist may have committed any of the grounds for disciplinary action provided by the law or by rules adopted by the board shall promptly report that information in writing to the investigative panel of the board.</p>
Northern Mariana Islands	None
Ohio	<p>4731-15-01 Licensee reporting requirement; exceptions.</p> <p>(A) Licensees of the board shall be required to report as listed below:</p>
	<p>(1) Subject to paragraph (B) of this rule, any individual licensed under Chapter 4731. of the Revised Code or any association or society of individuals licensed under Chapter 4731. of the Revised Code shall report to the board a belief that a violation of Chapter 4730., Chapter 4731., Chapter 4760. or Chapter 4762. of the Revised Code, or any rule of the board has occurred.</p>
Oklahoma-Medical	None
Oklahoma-Osteo	None
Oregon	<p>677.415 Investigation of incompetence; reports to board; informal interview</p> <p>(3) A licensee licensed by the board, the Oregon Medical Association, Inc., or any component society thereof, the Osteopathic Physicians and Surgeons of Oregon, Inc. or the Oregon Podiatric Medical Association shall report within 10 working days, and any other person may report, to the board any information such licensee, association, society or person may have that appears to show that a licensee is or may be medically incompetent or is or may be guilty of unprofessional or dishonorable conduct or is or may be an impaired licensee unable safely to engage in the practice of medicine or podiatry. However, a licensee who is treating another licensee for a mental disability has a duty to report within 10 working days the licensee patient unless, in the opinion of the treating licensee, the patient is not impaired.</p>
Pennsylvania-Medical	<p>Section 4 – Impaired Physicians</p> <p>(f) Reports to the board.-Any hospital or health care facility, peer or colleague who has substantial evidence that a professional has an active addictive disease for which the professional is not receiving treatment, is diverting a controlled substance or is mentally or physically incompetent to carry out the duties of his or her license shall make or cause to be made a report to the board. Provided, That any person or facility who acts in a treatment capacity to an impaired physician in an approved treatment program is exempt from the mandatory reporting requirements of this subsection. Any person or facility who reports pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from such report. Failure to provide such report within a reasonable time from receipt of knowledge of impairment shall subject the person or facility to a fine not to exceed \$1,000. The board shall levy this penalty only after</p>

	affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).
Pennsylvania-Osteo	Section 16.3. Impaired professional (f) Any hospital or health care facility, peer or colleague who has substantial evidence that a professional has an active addictive disease for which the professional is not receiving treatment, is diverting a controlled substance or is mentally or physically incompetent to carry out the duties of his or her license shall make or cause to be made a report to the board. Provided, That any person or facility who acts in a treatment capacity to an impaired osteopathic physician in an approved treatment program is exempt from the mandatory reporting requirements of this subsection. Any person or facility who reports pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from such report. Failure to provide such report within a reasonable time from receipt of knowledge of impairment shall subject the person or facility to a fine not to exceed \$1,000. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).
Puerto Rico	None
Rhode Island	§ 5-37-9 Reports relating to professional conduct and capacity – Regulations – Confidentiality – Immunity. – In addition to the requirements of § 42-14-2.1: (1) The board, with the approval of the director, may adopt regulations requiring any person, including, but not limited to, corporations, health care facilities, health maintenance organizations, organizations, federal, state, or local governmental agencies, and peer review boards to report to the board any conviction, determination, or finding that a licensed physician has committed unprofessional conduct as defined by § 5-37-5.1, or to report information which indicates that a licensed physician may not be able to practice medicine with reasonable skill and safety to patients as the result of any mental or physical condition. The regulations shall include the reporting requirements of paragraphs (2)(i), (ii) and (iii) of this section.
South Carolina	None
South Dakota	None
Tennessee-Medical	None
Tennessee-Osteo	None
Texas	Sec. 160.003. REPORT BY CERTAIN PRACTITIONERS. (a) This section applies to: (1) a medical peer review committee in this state; (2) a physician licensed in this state or otherwise lawfully practicing medicine in this state; (3) a physician engaged in graduate medical education or training; (4) a medical student; (5) a physician assistant or acupuncturist licensed in this state or otherwise lawfully practicing in this state; and (6) a physician assistant student or acupuncturist student. (b) A person or committee subject to this section shall report relevant information to the board relating to the acts of a physician in this state if, in the opinion of the person or committee, that physician poses a continuing threat to the public welfare through the practice of medicine. (c) The duty to report under this section may not be nullified through contract.
Utah-Medical	None
Utah-Osteo	None

Vermont-Medical	None
Vermont-Osteo	None
Virgin Islands	None
Virginia	None
Washington-Medical	None
Washington-Osteo	None
West Virginia-Medical	§ 30-3-14. Professional discipline of physicians and podiatrists; reporting of information to Board pertaining to medical professional liability and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the Board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations
	Any person may report to the Board relevant facts about the conduct of any physician or podiatrist in this state which in the opinion of that person amounts to medical professional liability or professional incompetence.
West Virginia-Osteo	§ 30-14-12a. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; probable cause determinations
	Any person may report to the board relevant facts about the conduct of any osteopathic physician in this state which in the opinion of such person amounts to professional malpractice or professional incompetence.
Wisconsin	None
Wyoming	None

For informational purposes only: This document is not intended as a comprehensive statement of the law on this topic, nor to be relied upon as authoritative. Non-cited laws, regulation, or policy could impact analysis on a case-by-case or state-by-state basis, and all information should be verified independently.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 1/29/2010
wanted for 2/17/10 mtg
(by 2/12 or 2/15)

Gen

1 **AN ACT ...; relating to:** duties of physicians and of the Medical Examining Board.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

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

4 448.015 (4) (intro.) "Unprofessional conduct" means ~~those~~ all of the following:

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

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

History: 1997 a. 175 ss. 16, 23, 24, 25, 27; 1999 a. 32; 2001 a. 89, 105. ✓

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

10 448.015 (4) (c) Failure by a physician to report as required under s. 448.115. ✓

1 SECTION 3. 448.02 (4) of the statutes is amended to read:

2 448.02 (4) SUSPENSION PENDING HEARING. The board may summarily suspend
3 any license, certificate, or limited permit granted by the board ~~for a period not to~~
4 ~~exceed 30 days pending hearing,~~ when the board has in its possession evidence
5 establishing probable cause to believe that the holder of the license, certificate, or
6 limited permit has violated the provisions of this subchapter and that it is necessary
7 to suspend the license, certificate, or limited permit immediately to protect the public
8 health, safety, or welfare. The holder of the license, certificate, or limited permit
9 shall be granted an opportunity to be heard during the determination of probable
10 cause. The board may designate any of its officers to chair and ² two board members
11 designated by the chair or, if the board chair is not available, the board vice-chair
12 and ² two board members designated by the vice-chair, shall exercise the authority
13 granted by this subsection to suspend summarily a license, certificate, or limited
14 permit, ~~but such suspension shall be for a period of time not to exceed 72 hours. If~~
15 ~~a license, certificate or limited permit has been summarily suspended by the board~~
16 ~~or any of its officers, the board may, while the hearing is in progress, extend the initial~~
17 ~~30-day period of suspension for an additional 30 days.~~ If the holder of the license,
18 certificate, or limited permit has caused a delay in the hearing process, the board
19 may subsequently suspend the license, certificate, or limited permit from the time
20 the hearing is commenced until a final decision is issued or may delegate such
21 authority to the hearing examiner.

History: 1975 c. 383, 421; 1977 c. 418; 1981 c. 135, 375, 391; 1983 a. 188 s. 10; 1983 a. 189 s. 329 (5); 1983 a. 253, 538; 1985 a. 29; 1985 a. 146 s. 8; 1985 a. 315, 332, 340; 1987 a. 27, 399, 403; 1989 a. 229; 1991 a. 186; 1993 a. 105, 107; 1995 a. 309; 1997 a. 67, 175, 191, 311; 1999 a. 32, 180; 2001 a. 89.

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

23 448.04 (1) (c) *Temporary educational permit to practice medicine and surgery.*
24 Application for a temporary educational permit to practice medicine and surgery

1 may be made to the board by a person who meets the requirements of s. 448.05 (2).
 2 Such permit may be issued for a period not to exceed one year and may be renewed
 3 annually for not more than 4 years. Such permit shall entitle the holder to take
 4 postgraduate educational training in a facility approved by the board. The holder
 5 of such permit may, under the direction of a person licensed to practice medicine and
 6 surgery in this state, perform services requisite to the training authorized by this
 7 section. Acting under such direction, the holder of such permit shall also have the
 8 right to prescribe drugs ~~other than narcotics~~ and to sign any certificates, reports, or
 9 other papers for the use of public authorities which are required of or permitted to
 10 persons licensed to practice medicine and surgery. The holder of such permit shall
 11 confine training and practice to the facility in which the holder is taking the training.
 12 The purpose of this paragraph is solely to provide opportunities in this state for the
 13 postgraduate education of certain persons having training in medicine and surgery
 14 satisfactory to the board, without compliance with the licensure requirements of this
 15 subchapter. Nothing in this paragraph changes in any respect the requirements for
 16 licensure to practice medicine and surgery in this state. The violation of this
 17 paragraph by the holder of such permit shall constitute cause for the revocation of
 18 the permit. All holders of such permits shall be subject to such provisions of this
 19 subchapter as the board, by rule, determines are appropriate and to any penalties
 20 applicable to those with a temporary or regular license to practice medicine and
 21 surgery. The board may require an applicant for licensure under this paragraph to
 22 appear before a member of the board for an interview and oral examination.

23 ~~Cross Reference: Cross Reference: Cross Reference: See also ch. Med 5, Wis. adm. code. Cross Reference:~~
 History: 1975 c. 383, 421; 1979 c. 162 s. 38 (10); 1979 c. 337; 1981 c. 380; 1981 c. 391 s. 211; 1985 a. 290; 1987 a. 399; 1989 a. 31, 229; 1991 a. 39, 180; 1993 a. 105, 107;
 1997 a. 67, 175; 1999 a. 180; 2001 a. 89; 2007 a. 54.

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

1 **448.115 Duty to report.** (1) A physician who has reason to believe that
 2 another physician is engaged in unprofessional conduct or is or may be medically
 3 incompetent or is or may be mentally or physically unable safely to engage in the
 4 practice of medicine and surgery shall promptly submit a written report to the board,
 5 including facts relating to the conduct of the other physician.

f *e subsection*
 ****NOTE: This paragraph requires the physician to submit this report in writing.
 Okay? Must the person submitting the report have observed the misconduct? Or merely
 be aware of it? How certain must the physician making the report be about the validity
 of his or her belief that misconduct has occurred? Is there any specific information you
 want the person making the report to include? Should the physician observing the
 professional misconduct, etc., be required to report the conduct within a certain time
 period? ✓ ✓

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

****NOTE: I've included a waiver of liability for a physician who has made a report
 in good faith. Was that your intent?

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

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

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

17 (b) The board may waive this requirement either or both of the requirements
 18 under par. (a) if it finds that exceptional circumstances such as prolonged illness,

1 disability or other similar circumstances have prevented a physician from meeting
2 the ~~requirement~~ requirements.

3 **History:** 1977 c. 131, 418; 1987 a. 399; 1995 a. 245; 1997 a. 175, 311; 1999 a. 180; 2001 a. 89.

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

4 448.13 (1) (a) 2. Professional development and maintenance of competence
5 programs or courses of study required by the board by rule under s. 448.40 (1) and
6 completed within the 2 calendar years preceding the calendar year for which the
7 registration is effective.

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

9 448.13 (1m) The board shall, on a random basis, verify the accuracy of proof
10 submitted by physicians under sub. (1) and may, at any time during the 2 calendar
11 years specified in sub. (1), require a physician to submit proof of any continuing
12 education, professional development, and maintenance of competence programs or
13 courses of study that he or she has attended and completed at that time during the
14 2 calendar years.

15 **History:** 1977 c. 131, 418; 1987 a. 399; 1995 a. 245; 1997 a. 175, 311; 1999 a. 180; 2001 a. 89.

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

16 448.40 (1) The board may promulgate rules to carry out the purposes of this
17 subchapter, including rules requiring the completion of continuing education,
18 professional development, and maintenance of competence programs for renewal of
19 a license to practice medicine and surgery.

20 **History:** 1975 c. 383; 1981 c. 375; 1987 a. 399; 1993 a. 445; 1995 a. 27 s. 9126 (19); 1997 a. 67, 175, 311; 1999 a. 32, 180; 2001 a. 89; 2007 a. 20 s. 9121 (6) (a).

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

21 448.40 (2) (e) Establishing the criteria for the substitution of uncompensated
22 hours of professional assistance volunteered to the department of health services for
23 some or all of the hours of continuing education credits required under s. 448.13 (1)
24 (a) 1. for physicians specializing in psychiatry. The eligible substitution hours shall

SECTION 10

1 involve professional evaluation of community programs for the certification and
2 recertification of community mental health programs, as defined in s. 51.01 (3n), by
3 the department of health services.

4 **History:** 1975 c. 383; 1981 c. 375; 1987 a. 399; 1993 a. 445; 1995 a. 27 s. 9126 (19); 1997 a. 67, 175, 311; 1999 a. 32, 180; 2001 a. 89; 2007 a. 20 s. 9121 (6) (a).

(END)

LRB 4220/P1 267-2914 February 18, 2010
T. conference w/ Mike Berndt, genl. counsel for DRL

p. 2 Modify s. 448.02(4) to include procedure for order of summary suspension, including all of the following:

- duration of summary suspension order (from service of process to final order)
- H. to request hearing to show cause
- That hearing to show cause shall be held w/in 20 days of a request

→ reference DRL admin code PL 6.06, 6.10, 6.07

p. 4 Modify duty to report under 448.115(1)

- pattern of unprofessional conduct and/or
- one act if it creates an "immediate or continuing danger to a patient or the public"
- medically incompetent
- medically or physically unable

p. 4, line 8 delete "and w/in scope of authority"

p. 5 lines 4, 12, 18: replace "competence" with "certification program of performance improvement continuing medical education" program core

2/19/10 Jeff K in Rep. Richards' office: proceed w/ changes requested by DRL

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter RL 6

SUMMARY SUSPENSIONS

RL 6.01	Authority and intent.	RL 6.07	Contents of summary suspension order.
RL 6.02	Scope.	RL 6.08	Service of summary suspension order.
RL 6.03	Definitions.	RL 6.09	Hearing to show cause.
RL 6.04	Petition for summary suspension.	RL 6.10	Commencement of disciplinary proceeding.
RL 6.05	Notice of petition to respondent.	RL 6.11	Delegation.
RL 6.06	Issuance of summary suspension order.		

RL 6.01 Authority and intent. (1) This chapter is adopted pursuant to authority in ss. 227.11 (2) (a) and 440.03 (1), Stats., and interprets s. 227.51 (3), Stats.

(2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.02 Scope. This chapter governs procedures in all summary suspension proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with s. 448.02 (4), Stats., the chapter shall also apply in proceedings brought under that section.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.03 Definitions. In this chapter:

(1) "Board" means the bingo control board, real estate board or any examining board attached to the department.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary proceeding" means a proceeding against one or more licensees in which a licensing authority may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(4) "License" means any license, permit, certificate, or registration granted by a board or the department or a right to renew a license, permit, certificate or registration granted by a board or the department.

(5) "Licensee" means a person, partnership, corporation or association holding any license.

(6) "Licensing authority" means the bingo control board, real estate board or any examining board attached to the department, the department for licenses granted by the department, or one acting under a board's or the department's delegation under s. RL 6.11.

(7) "Petitioner" means the division of enforcement in the department.

(8) "Respondent" means a licensee who is named as respondent in a petition for summary suspension.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.04 Petition for summary suspension. (1) A petition for a summary suspension shall state the name and position of the person representing the petitioner, the address of the petitioner, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

(2) A petition for a summary suspension order shall be signed upon oath by the person representing the petitioner and may be made on information and belief.

(3) The petition shall be presented to the appropriate licensing authority.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.05 Notice of petition to respondent. Prior to the presenting of the petition, the petitioner shall give notice to the respondent or respondent's attorney of the time and place when the petition will be presented to the licensing authority. Notice may be given by mailing a copy of the petition and notice to the last-known address of the respondent as indicated in the records of the licensing authority as provided in s. 440.11 (2), Stats., as created by 1987 Wis. Act 27. Notice by mail is complete upon mailing. Notice may also be given by any procedure described in s. 801.11, Stats.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.06 Issuance of summary suspension order.

(1) If the licensing authority finds that notice has been given under s. RL 6.05 and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license, the licensing authority may issue an order for summary suspension. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under s. RL 2.04.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension order shall be effective upon service under s. RL 6.08, or upon actual notice of the summary suspension order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, unless the license is restored under s. RL 6.09 prior to a formal disciplinary hearing.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.07 Contents of summary suspension order.

The summary suspension order shall include the following:

(1) A statement that the suspension order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the licensing authority;

(2) Notification of the respondent's right to request a hearing to show cause why the summary suspension order should not be continued;

(3) The name and address of the licensing authority with whom a request for hearing should be filed;

(4) Notification that the hearing to show cause shall be scheduled for hearing on a date within 20 days of receipt by the licensing authority of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent;

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(5) The identification of all witnesses providing evidence at the time the petition for summary suspension was presented and identification of the evidence used as a basis for the decision to issue the summary suspension order;

(6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension; and

(7) A finding that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.08 Service of summary suspension order. An order of summary suspension shall be served upon the respondent in the manner provided in s. 801.11, Stats., for service of summons.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.09 Hearing to show cause. (1) The respondent shall have the right to request a hearing to show cause why the summary suspension order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shall be filed with the licensing authority which issued the summary suspension order. The hearing shall be scheduled and heard promptly by the licensing authority but no later than 20 days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(3) At the hearing to show cause the petitioner and the respondent may testify, call, examine and cross-examine witnesses, and offer other evidence.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension order should be continued.

(5) At the conclusion of the hearing to show cause the licensing authority shall make findings and an order. If it is determined that the summary suspension order should not be continued, the suspended license shall be immediately restored.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.10 Commencement of disciplinary proceeding. (1) A notice of hearing commencing a disciplinary proceeding under s. RL 2.06 against the respondent shall be issued no later than 10 days following the issuance of the summary suspension order or the suspension shall lapse on the tenth day following issuance of the summary suspension order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness, the respondent may make a motion to the hearing officer or may directly petition the appropriate board, or the department, for an order granting relief.

(3) If it is found that the disciplinary proceeding is not advancing with reasonable promptness, and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summary suspension; or

(b) An order compelling that the disciplinary proceeding be held and determined by a specific date.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.11 Delegation. (1) A board may by a two-thirds vote:

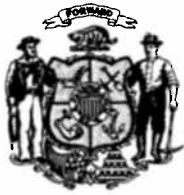
(a) Designate under s. 227.46 (1), Stats., a member of the board or an employe of the department to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09; or

(b) Appoint a panel of no less than two-thirds of the membership of the board to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09.

(2) In matters in which the department is the licensing authority, the department secretary or the secretary's designee shall rule on a petition for summary suspension, issue a summary suspension order, and preside over and rule in a hearing provided for in s. RL 6.09.

(3) Except as provided in s. 227.46 (3), Stats., a delegation of authority under subs. (1) and (2) may be continuing.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4220-~~PT~~^{P2}
TKK:kjf:rs
RMNR stay
insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
x-ref

Inserts

in (2/27/10)
3/1/10

wanted 3/3/10 or sooner

regen.

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

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

5 **SECTION 1.** 448.015 (4) of the statutes is renumbered 448.015 (4) (intro.) and
6 amended to read:
7 448.015 (4) (intro.) "Unprofessional conduct" means those all of the following:
8 (a) Those acts or attempted acts of commission or omission defined as
9 unprofessional conduct by the board under the authority delegated to the board by
10 s. 15.08 (5) (b) ~~and any.~~

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

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

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

4 SECTION 3. 448.02 (4) of the statutes is amended to read:

5 448.02 (4) SUSPENSION PENDING HEARING. The board may summarily suspend
6 any license, certificate, or limited permit granted by the board ~~for a period not to~~
7 ~~exceed 30 days pending hearing,~~ when the board has in its possession evidence
8 establishing probable cause to believe that the holder of the license, certificate, or
9 limited permit has violated the provisions of this subchapter and that it is necessary
10 to suspend the license, certificate, or limited permit immediately to protect the public
11 health, safety, or welfare. The holder of the license, certificate, or limited permit
12 shall be granted an opportunity to be heard during the determination of probable
13 cause. The board ~~may designate any of its officers to chair and 2 board members~~
14 designated by the chair or, if the board chair is not available, the board vice-chair
15 and 2 board members designated by the vice-chair, shall exercise the authority
16 granted by this subsection to suspend summarily a license, certificate, or limited
17 permit, ~~but such suspension shall be for a period of time not to exceed 72 hours. If~~
18 ~~a license, certificate or limited permit has been summarily suspended by the board~~
19 ~~or any of its officers, the board may, while the hearing is in progress, extend the initial~~
20 ~~30-day period of suspension for an additional 30 days.~~ If the holder of the license,
21 certificate, or limited permit has caused a delay in the hearing process, the board
22 may subsequently suspend the license, certificate, or limited permit from the time
23 the hearing is commenced until a final decision is issued or may delegate such
24 authority to the hearing examiner.

Invert 2-4

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

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

2 Application for a temporary educational permit to practice medicine and surgery
3 may be made to the board by a person who meets the requirements of s. 448.05 (2).
4 Such permit may be issued for a period not to exceed one year and may be renewed
5 annually for not more than 4 years. Such permit shall entitle the holder to take
6 postgraduate educational training in a facility approved by the board. The holder
7 of such permit may, under the direction of a person licensed to practice medicine and
8 surgery in this state, perform services requisite to the training authorized by this
9 section. Acting under such direction, the holder of such permit shall also have the
10 right to prescribe drugs ~~other than narcotics~~ and to sign any certificates, reports, or
11 other papers for the use of public authorities which are required of or permitted to
12 persons licensed to practice medicine and surgery. The holder of such permit shall
13 confine training and practice to the facility in which the holder is taking the training.
14 The purpose of this paragraph is solely to provide opportunities in this state for the
15 postgraduate education of certain persons having training in medicine and surgery
16 satisfactory to the board, without compliance with the licensure requirements of this
17 subchapter. Nothing in this paragraph changes in any respect the requirements for
18 licensure to practice medicine and surgery in this state. The violation of this
19 paragraph by the holder of such permit shall constitute cause for the revocation of
20 the permit. All holders of such permits shall be subject to such provisions of this
21 subchapter as the board, by rule, determines are appropriate and to any penalties
22 applicable to those with a temporary or regular license to practice medicine and
23 surgery. The board may require an applicant for licensure under this paragraph to
24 appear before a member of the board for an interview and oral examination.

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

Insert 4-1

1 **448.115 Duty to report.** (1) A physician who has reason to believe that
2 another physician is engaged in unprofessional conduct or is or may be medically
3 incompetent or is or may be mentally or physically unable safely to engage in the
4 practice of medicine and surgery shall promptly submit a written report to the board,
5 including facts relating to the conduct of the other physician.

***NOTE: This subsection requires the physician to submit this report in writing.
Okay? Must the person submitting the report have observed the misconduct? Or merely
be aware of it? How certain must the physician making the report be about the validity
of his or her belief that misconduct has occurred? Is there any specific information you
want the person making the report to include? Should the physician observing the
professional misconduct, etc., be required to report the conduct within a certain time
period?

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

***NOTE: I've included a waiver of liability for a physician who has made a report
in good faith. Was that your intent?

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

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

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

18 (b) The board may waive this requirement either or both of the requirements
19 under par. (a) if it finds that exceptional circumstances such as prolonged illness,

any

1 disability or other similar circumstances have prevented a physician from meeting
2 the ~~requirement~~ requirements.

Insert 5-4

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

4 448.13 (1) (a) 2. Professional development and maintenance of competence
5 programs or courses of study required by the board by rule under s. 448.40 (1) and
6 completed within the 2 calendar years preceding the calendar year for which the
7 registration is effective.

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

9 448.13 (1m) The board shall, on a random basis, verify the accuracy of proof
10 submitted by physicians under sub. (1) ^(a) and may, at any time during the 2 calendar
11 years specified in sub. (1) ^(a) require a physician to submit proof of any continuing
12 education, professional development, and maintenance of competence ^{Insert 5-12} programs or
13 courses of study that he or she has attended and completed at that time during the
14 2 calendar years.

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

16 448.40 (1) The board may promulgate rules to carry out the purposes of this
17 subchapter, including rules requiring the completion of continuing education,
18 professional development, and maintenance of competence programs for renewal of
19 a license to practice medicine and surgery. ^{Insert 5-18}

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

21 448.40 (2) (e) Establishing the criteria for the substitution of uncompensated
22 hours of professional assistance volunteered to the department of health services for
23 some or all of the hours of continuing education credits required under s. 448.13 (1)
24 (a) 1. for physicians specializing in psychiatry. The eligible substitution hours shall
25 involve professional evaluation of community programs for the certification and

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4220/P2ins
TKK:kjf:rs

1 **Insert 2-4**

2 **SECTION 1.** 448.02 (4) of the statutes is renumbered 448.02 (4) (a) and amended
3 to read:

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

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

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

History: 1975 c. 383, 421; 1977 c. 418; 1981 c. 135, 375, 391; 1983 a. 188 s. 10; 1983 a. 189 s. 329 (5); 1983 a. 253, 538; 1985 a. 29; 1985 a. 146 s. 8; 1985 a. 315, 332, 340; 1987 a. 27, 399, 403; 1989 a. 229; 1991 a. 186; 1993 a. 105, 107; 1995 a. 309; 1997 a. 67, 175, 191, 311; 1999 a. 32, 180; 2001 a. 89.

20 **Insert 4-1**

21 A physician who has reason to believe any of the following about another physician
 22 shall promptly submit a written report to the board, including in the report facts
 23 relating to the conduct of the other physician:

including in the report facts

that shall include

****NOTE: Note that this duty to report only applies to physicians. Do you want any other persons licensed under this or any other chapters, such as ch. 441, to be required to submit such a report if they have reason to believe the information about the physician?

****NOTE: May the report be anonymous? Or must the physician include his or her name?

1

(a) The other physician is ^{engaging} or has ~~been~~ engaged in acts that constitute a pattern of unprofessional conduct.

3

(b) The other physician is ^{engaging} or has engaged in an act that creates an immediate or continuing danger to ^{one or more} patient or to the public.

4

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

5

6

7

8

Insert 5-4

9

certification or performance improvement or continuing medical education

10

Insert 5-12

11

certification or performance improvement or continuing medical education

12

Insert 5-18

13

certification or performance improvement or continuing medical education

Kuczenski, Tracy

From: Kostelic, Jeff
Sent: Friday, March 05, 2010 10:43 AM
To: Kuczenski, Tracy
Subject: FW: Draft review: LRB 09-4220/P2 Topic: Changes to duties of physicians and medical examining board
Attachments: LRB-4220_P2

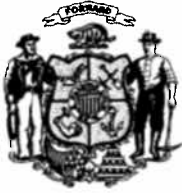
Tracy,

I shared this draft with DRL and they are fine with the language as is. Please prepare this draft for introduction and thank you for all of your work on this.

Jeff Kostelic
Office of Rep. Jon Richards
266-0650

From: Parisi, Lori
Sent: Tuesday, March 02, 2010 4:04 PM
To: Rep.Richards
Subject: Draft review: LRB 09-4220/P2 Topic: Changes to duties of physicians and medical examining board

Following is the PDF version of draft LRB 09-4220/P2.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4220/P2

TKK:kjf:md

RMNR
insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

bjk

in 3/8/2010
wanted soon
(by 3/10/2010)

Regen

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

Insert analysis

Analysis by the Legislative Reference Bureau
This is a preliminary draft. An analysis will be provided in a later version.

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

5 SECTION 1. 448.015 (4) of the statutes is renumbered 448.015 (4) (intro.) and
6 amended to read:
7 448.015 (4) (intro.) "Unprofessional conduct" means these all of the following:
8 (a) Those acts or attempted acts of commission or omission defined as
9 unprofessional conduct by the board under the authority delegated to the board by
10 s. 15.08 (5) (b) ~~and any~~.

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

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

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

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

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

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

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

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

20 448.04 (1) (c) *Temporary educational permit to practice medicine and surgery.*
21 Application for a temporary educational permit to practice medicine and surgery
22 may be made to the board by a person who meets the requirements of s. 448.05 (2).
23 Such permit may be issued for a period not to exceed one year and may be renewed
24 annually for not more than 4 years. Such permit shall entitle the holder to take
25 postgraduate educational training in a facility approved by the board. The holder

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

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

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

le ******NOTE:** Note that this duty to report only applies to physicians. Do you want any other persons licensed under this or any other chapters, such as ch. 441, to be required to submit such a report if they have reason to believe the information about the physician?

******NOTE:** May the report be anonymous? Or must the physician include his or her name?

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

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

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

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

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

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

13 448.13 (1) (a) (intro.) Each Except as provided in par. (b), each physician shall,
14 in each 2nd year at the time of application for a certificate of registration under s.
15 448.07, submit proof of attendance at and completion of continuing all of the
16 following:

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

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

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

1 448.13 (1) (a) 2. Professional development and maintenance of certification or
2 performance improvement or continuing medical education programs or courses of
3 study required by the board by rule under s. 448.40 (1) and completed within the 2
4 calendar years preceding the calendar year for which the registration is effective.

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

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

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

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

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

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

1

Insert analysis

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

Order of summary suspension

Currently, the board may summarily suspend a license, certificate, or other limited permit (credential) granted by the board if the board has probable cause to believe that the credential holder has violated the law and that suspending the credential is necessary to protect the public health, safety, or welfare. The board may suspend the credential for no more than 30 days pending hearing, but may extend the suspension for an additional 30 days while the hearing is in progress and, if the credential holder has caused a delay in the hearing process, from the time the hearing is commenced until a final decision is issued. In addition, the board may designate any of the officers of the board to suspend a credential for a period of up to 72 hours.

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

The bill requires the board to issue a notice of hearing commencing a disciplinary proceeding against the credential holder no more than 10 days after the order of summary suspension has been issued. The bill also requires the board to notify the credential holder that he or she may request a hearing to show cause. If a hearing to show cause is requested, the board must schedule the hearing on a date within 20 days of the board's receipt of the request.

Duty to report

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

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

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

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

Definition of “unprofessional conduct”

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

Biennial training requirement

Current law requires each person licensed or certified by the board to, by November 1 of each odd-numbered year, register with the board. As a condition of registration, each physician must submit proof of attendance at and completion within the preceding two calendar years of continuing education programs or courses of study approved by the board. The board may waive the requirement if it finds that exceptional circumstances have prevented the physician from meeting the requirement.

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

Temporary educational permit to practice medicine and surgery

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

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

Xtra space
→

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

Basford, Sarah

From: Kostelic, Jeff
Sent: Friday, March 12, 2010 11:14 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-4220/1 Topic: Changes to duties of physicians and medical examining board

Please Jacket LRB 09-4220/1 for the ASSEMBLY.