Chapter Med 10
UNPROFESSIONAL CONDUCT

Med 10.01  Authority and intent. (1) The definitions of this chapter are adopted by the medical examining board pursuant to the authority delegated by ss. 15.08 (5) 227.11, and 448.40, Stats., for the purposes of ch. 448, Stats.

(2) Physicians act with a high level of independence and responsibility, often in emergencies. Every physician represents the medical profession in the community and must do so in a manner worthy of the trust bestowed upon the physician and the profession. The minimally competent practice of medicine and surgery requires that care of the patient is paramount. Physicians must therefore act with honesty, respect for the law, reasonable judgment, competence, and respect for patient boundaries.

History: Cr. Register, October, 1976, No. 250, eff. 11−1−76; correction made by Register, April, 1978, No. 268, eff. 5−1–78; am. (2) (s), Register, May, 1978, No. 269, eff. 6−1−78; repealed to correct History note, Register, June, 1980, No. 294; r. and recr. (2) (o), cr. (2) (t), Register, September, 1985, No. 357, eff. 10−1–85; cr. (2) (u), Register, April, 1987, No. 376, eff. 5–1–87; cr. (2) (v), Register, January, 1988, No. 385, eff. 2–1–88; am. (2) (s), Register, March, 1990, No. 411, eff. 3–1–90; cr. (2) (t), Register, September, 1990, No. 417, eff. 10–1–90; cr. (2) (w), Register, October, 1990, No. 418, eff. 11–1–90; am. (2) (q), Register, August, 1992, No. 440, eff. 9–1–92; cr. (2) (y), Register, September, 1992, No. 441, eff. 10–1–92; cr. (2) (z), Register, May, 1995, No. 473, eff. 6–1–95; cr. (2) (aa), Register, April, 1996, No. 484, eff. 5–1–96; am. (2) (q), Register, September, 1996, No. 489, eff. 10–1–96; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494; cr. (2) (zb), Register, May, 1998, No. 509, eff. 6–1–98; cr. (2) (v) and (y), am. (2) (ca), Register, December, 1999, No. 528, eff. 1–1–00; CR 01–031: am. (2) (b) intro. and (zb) intro., Register October 2001 No. 550, eff. 11–1–01; CR 02–008: cr. (2) (ze), CR 02–055: cr. (2) (zd), Register November 2002 No. 563, eff. 12–1–02; CR 13–006 r and recr Register September 2013 No. 693, eff. 10–1–13; CR 22–065: cr. (2m), (4m) Register September 2023 No. 813, eff. 10–1–23.

Med 10.02  Definitions. For the purposes of this chapter:

(1) “Adequate supervision” means a physician should be competent to perform the delegated medical act, and must have reasonable evidence that the supervised individual is minimally competent to perform the act under the circumstances.

(2) “Board” means the medical examining board.

(2m) “Chaperone” means an individual whom a physician requests to be present during a clinical examination that exposes the breasts, genitals, or rectal area, and who can serve as a witness to the examination taking place should there be any misunderstanding or concern for sexual misconduct.

(3) “Intimate parts” has the meaning given in s. 939.22 (19), Stats.

(4) “License” means any license, permit, certificate, or registration issued by the board or by any other credentialing jurisdiction with the authority to grant credentials to practice medicine and surgery, or any other practice authorized within ch. 448, Stats.

(4m) “Observer” means an individual chosen by the patient to be present during an examination or inspection that exposes the breasts, genitals, or rectal area. A patient’s adult family member, legal guardian, or legal custodian is presumed to be able to act as an observer if the patient is twelve years of age or under.

(5) “Patient health care records” has the meaning given in s. 146.81 (4), Stats.

(6) “Sexual contact” has the meaning given in s. 948.01 (5), Stats.

(7) “Sexually explicit conduct” has the meaning given in s. 948.01 (7), Stats.

Note: Chapter Med 16 as it existed on October 31, 1976 was repealed and a new Chapter Med 10 was created effective November 1, 1976.

Med 10.03  Unprofessional conduct. “Unprofessional conduct” includes the following, or aiding or abetting the same:

(1) DISHONESTY AND CHARACTER. (a) Violating or attempting to violate ch. 448, Stats., or any provision, condition, or term of a valid rule or order of the board.

(b) Knowingly engaging in fraud or misrepresentation or dishonesty in applying, or procuring a medical license, by examination for a medical license, or in connection with applying for or procuring periodic renewal of a medical license, or in otherwise maintaining such licensure.

(c) Knowingly giving false, fraudulent, or deceptive testimony while serving as an expert witness.

(d) Employing illegal or unethical business practices.

(e) Knowingly, negligently, or recklessly making any false statement, written or oral, in the practice of medicine and surgery which creates an unacceptable risk of harm to a patient, the public, or both.

(f) Engaging in any act of fraud, deceit, or misrepresentation, including acts of omission to the board or any person acting on the board’s behalf.

(g) Obtaining any fee by fraud, deceit, or misrepresentation.

(h) Directly or indirectly giving or receiving any fee, commissions, rebate, or other compensation for professional services not actually and personally rendered, unless allowed by law. This prohibition does not preclude the legal functioning of lawful professional partnerships, corporations, or associations.

(i) Representing or claiming as true the appearance that a physician possesses a medical specialty certification by a board recognized certifying organization, such as the American Board of Medical Specialties, or the American Osteopathic Association, if it is not true.

(j) Engaging in uninvited in-person solicitation of actual or potential patients who, because of their particular circumstances, may be vulnerable to undue influence.

(k) Engaging in false, misleading, or deceptive advertising.

(L) Failure to adequately supervise delegated medical acts performed by licensed or unlicensed personnel.

(2) DIRECT PATIENT CARE VIOLATIONS. (a) Practicing or attempting to practice under any license when unable or unwilling to do so with reasonable skill and safety. A certified copy of an order issued by a court of competent jurisdiction finding that a person is mentally incompetent is conclusive evidence that the physician was, for any period covered by the order, unable to practice medicine and surgery with reasonable skill and safety.

(b) Departing from or failing to conform to the standard of minimally competent medical practice which creates an unacceptable risk of harm to a patient or the public whether or not the act or omission resulted in actual harm to any person.

(c) Prescribing, ordering, dispensing, administering, supplying, selling, giving, or obtaining any prescription medication in any manner that is inconsistent with the standard of minimal competence.
(d) Performing or attempting to perform any surgical or invasive procedure on the wrong patient, or at the wrong anatomical site, or performing the wrong procedure on any patient.

(e) Administering, dispensing, prescribing, supplying, or obtaining a controlled substance as defined in s. 961.01 (4), Stats., other than in the course of legitimate professional practice, or as otherwise permitted by law.

1. Except as otherwise provided by law, a certified copy of a relevant finding, order, or judgment by a state or federal court or agency charged with making legal determinations shall be conclusive evidence of the findings of facts and conclusions of law.

2. A certified copy of a finding, order, or judgment demonstrating the entry of a guilty plea, nolo contendere plea or deferred adjudication, with or without expungement, of a crime substantially related to the practice of medicine and surgery is conclusive evidence of a violation of this paragraph.

(f) Engaging in sexually explicit conduct, sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient, a patient’s immediate family, or a person responsible for the patient’s welfare.

1. Sexual motivation may be determined from the totality of the circumstances and shall be presumed when the physician has contact with a patient’s intimate parts without legitimate medical justification for doing so.

2. For the purpose of this paragraph, an adult receiving treatment shall be considered a patient for 2 years after the termination of professional services.

3. If the person receiving treatment is a child, the person shall be considered a patient for the purposes of this paragraph for 2 years after termination of services or for 2 years after the patient reaches the age of majority, whichever is longer.

(fm) 1. If a physician who practices in a hospital or works for any other employer fails to comply with the rules established by their hospital or employer regarding chaperones or other observers in patient examinations, then the failure to follow such rules during an exam in which a violation of par. (f) is alleged may be considered by the board in determining whether the alleged misconduct occurred.

2. Physicians who are self-employed or in other practice settings that do not involve hospitals or employers shall establish written procedures for the use of chaperones or other observers in patient examinations and shall comply with these procedures once established.

3. A copy of any rules and procedures, or summary thereof, regarding the physician’s use of chaperones or other observers shall be made available and accessible to all patients who are likely to receive a non-emergency examination of the breasts, genitals, or rectal area.

4. A physician shall not be found in violation of this section because of the failure of a third-party to create a policy regarding chaperones, or to allow posting or notification of any policy regarding chaperones.

(g) Engaging in any sexual contact or conduct with or in the presence of a patient or a former patient who lacks the ability to consent for any reason, including medication or psychological or cognitive disability.

(h) Engaging in repeated or significant disruptive behavior or interaction with physicians, hospital personnel, patients, family members, or others that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered.

(i) Knowingly, recklessly, or negligently divulging a privileged communication or other confidential patient health care information except as required or permitted by state or federal law.

(j) Performing an act constituting the practice of medicine and surgery without required informed consent under s. 448.30, Stats.
(h) Failing, within 48 hours of the entry of judgment of conviction of any crime, to provide notice to the department of safety and professional services as required under s. SPS 4.09 (2), or failing, within 30 days of conviction of any crime, to provide the board with certified copies of the criminal complaint and judgment of conviction.

(i) Except as provided in par. (j), a violation or conviction of any laws or rules of this state, or of any other state, or any federal law or regulation that is substantially related to the practice of medicine and surgery.

1. Except as otherwise provided by law, a certified copy of a relevant decision by a state or federal court or agency charged with determining whether a person has violated a law or rule relevant to this paragraph is conclusive evidence of findings of facts and conclusions of law contained therein.

2. The department has the burden of proving that the circumstances of the crime are substantially related to the practice of medicine and surgery.

(j) Violating or being convicted of any of the conduct listed in Table 10.03, any successor statute criminalizing the same conduct, or if in another jurisdiction, any act which, if committed in Wisconsin would constitute a violation of any statute listed in Table 10.03:

<table>
<thead>
<tr>
<th>Statute Section</th>
<th>Description of Violation or Conviction</th>
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<tbody>
<tr>
<td>940.01</td>
<td>First degree intentional homicide</td>
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<tr>
<td>940.02</td>
<td>First degree reckless homicide</td>
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<tr>
<td>940.03</td>
<td>Felony murder</td>
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<tr>
<td>940.05</td>
<td>Second degree intentional homicide</td>
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<tr>
<td>940.12</td>
<td>Assisting suicide</td>
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<tr>
<td>940.19 (2), (4), (5), or (6)</td>
<td>Battery, substantial battery, or aggravated battery</td>
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<tr>
<td>940.22 (2) or (3)</td>
<td>Sexual exploitation by therapist; duty to report</td>
</tr>
<tr>
<td>940.225 (1), (2), or (3)</td>
<td>First, second, or third degree sexual assault</td>
</tr>
<tr>
<td>940.285 (2)</td>
<td>Abuse of individuals at risk</td>
</tr>
<tr>
<td>940.29</td>
<td>Abuse of residents of penal facilities</td>
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<tr>
<td>940.295</td>
<td>Abuse and neglect of patients and residents</td>
</tr>
<tr>
<td>948.02 (1) or (2)</td>
<td>First and second degree sexual assault of a child</td>
</tr>
<tr>
<td>948.03 (2)</td>
<td>Physical abuse of a child, intentional causation of bodily harm</td>
</tr>
<tr>
<td>948.05</td>
<td>Sexual exploitation of a child</td>
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<tr>
<td>948.051</td>
<td>Trafficking of a child</td>
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<td>948.055</td>
<td>Causing a child to view or listen to sexual activity</td>
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<td>948.06</td>
<td>Incest with a child</td>
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<td>948.07</td>
<td>Child enticement</td>
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<tr>
<td>948.08</td>
<td>Soliciting a child for prostitution</td>
</tr>
<tr>
<td>948.085</td>
<td>Sexual assault of a child placed in substitute care</td>
</tr>
</tbody>
</table>

History: CR 13−008: cr. Register September 2013 No. 603, eff. 10−1−13; CR 21−030: am. (3) (h) Register January 2022 No. 793, eff. 2−1−22; CR 22−063: cr. (2) (fm) Register September 2023 No. 813, eff. 10−1−23; correction in (2) (fm) 1. made under s. 35.17, Stats., Register September 2023 No. 813.