

Clearinghouse Rule 12-005

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING
MEDICAL EXAMINING BOARD : BOARD
: ADOPTING RULES
: (CLEARINGHOUSE RULE 12-)

PROPOSED ORDER

The Wisconsin Medical Examining Board proposes an order to repeal Med 8.10 (2); to renumber Med 8.02 (1); to renumber and amend Med 8.01 and Med 8.10 (3) and (4); to amend Med 8.05 (2) (title), Med 8.05 (2) (b), Med 8.05 (2) (b) (7), Med 8.05 (2) (c), Med 8.07 (1), Med 8.07 (2) (a) and (e), Med 8.08 (title), Med 8.08 (1), Med 8.08 (3) (b), Med 8.10 (title), Med 8.10 (1); to repeal and recreate Med 8.08 (2) and Med 8.08 (3) (a) and to create Med 8.01 (2), Med 8.02 (1), Med 8.02 (4m), Med 8.02 (7), Med 8.05(2) (e), Med 8.07 (1) (a) and (b), and Med 8.08 (1) (a), (b), (c) and (d), and Med 8.08 (3) (c) and (d) (e) relating to definitions, practice prescribing limitations, employment requirements and supervising physician responsibilities.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 448.21 (2) and (3), Stats.,

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 448.05 (5), 448.20 (3) (a), 448.40 (2) (f), Stats.,

Explanation of agency authority:

The legislature, via Wis. Stats. §§ 15.08 (5) (b), and 227.11 (2) (a), conferred upon the Medical Examining Board general powers to promulgate rules for the guidance of the profession and to interpret the provisions of statutes it enforces. Section 448.05 (5) authorizes the Board to promulgate rules that establish licensing and practice standards for physician assistants. Section 448.40 (2) (f), Stats., directs the board to promulgate rules regarding the prescriptive practice of physician assistants. Therefore, the Medical Examining Board is both generally and specifically authorized to promulgate these proposed rules.

Section 448.20(3)(a) confers upon the Council on Physician Assistants the authority to advise the Medical Examining Board on revisions of standards in licensing, practice, education and training of physician assistants.

Related statute or rule:

Sections 448.01 (6), 448.20 (3), Stats., Wis. Admin. Code §MED 10.02 (t)

Plain language analysis:

Physician assistants practice as part of a physician-led team with physicians supervising the health care services they provide. Currently, one physician may supervise no more than two physician assistants at one time without permission from the Medical Examining Board (Board). The proposed rule increases the maximum number of physician assistants a physician may concurrently supervise from 2 to 4.

Under current law the Board may, in an exercise of discretion, authorize a physician to supervise more than two physician assistants concurrently. A physician requesting an increase in the numbers of physician assistants to be supervised must submit a written plan for the Board's review. The Board may grant the request if the Board is satisfied that the increased number of physician assistants will not compromise patient safety. The proposed rules retain the Board's authority to increase the number of physician assistants a physician may concurrently supervise on a case-by-cases basis.

The proposed rule defines terms necessary to clarify responsibilities in the physician-led teams in which physician assistants work. It further eliminates any reference to the outdated term, "substitute supervising physician."

Current law provides that applicants for licensure as physician assistants may be required to submit to an oral examination. The existing term is outdated and does not reflect that during a personal appearance the Board may also require an applicant to submit to an interview, or a review of credentials, or both. The proposed rule clarifies that the Board may require, as a prerequisite to licensure, successful completion of an oral examination or a personal appearance or both.

Finally, the proposed rule explains that the periodic review of physician assistant prescribing practices must occur at least annually, with more frequent review optional, depending upon applicable standards of care and other factors.

SECTION 1. renumbers and amends Med 8.01

SECTION 2 creates a statement of intent and add it to the authority and purpose provision.

SECTION 3. rennumbers Med 8.02 (1) to 8.02 (1m).

SECTION 4. defines the terms “adequate supervision”, “general supervision” and “supervising physician”.

SECTION 5. clarifies that in addition to written and oral examinations, the Board may require satisfactory performance of a personal appearance for the purpose of an interview, a review of credential, or both.

SECTION 6. amends Med 8.05(2) (b) (7) to remove outdated references to particular mental health disorders.

SECTION 7. amends Med 8.05 (2) (c) to allow a personal appearance as well as an oral examination if required by the application review panel.

SECTION 8. creates Med 8.05 (2) (e) a provision regarding the components of a satisfactory personal appearance.

SECTION 9. amends Med 8.07(1) by clarifying that a physician assistant’s practice may be supervised by one or more supervising physicians.

SECTION 10. creates Med 8.07 (1) (a) and (b) regarding physician assistant’s scope of practice.

SECTION 11. amends Med 8.07 (2) (a) and (e) by striking repetitive and ambiguous language.

SECTION 12. amends Med 8.08 (title) and Med 8.08 (1) to specify that the supervising physician and the physician assistant shall review guidelines for supervised prescriptive practice at least annually and clarifies the requirement that the guidelines for supervised prescriptive practice shall include the process and schedule for the supervising physician’s review.

SECTION 13. creates Med 8.08 (1) (a), (b), (c) and (d) specifying the contents of the written guidelines for the required supervised prescriptive practice.

SECTION 14. repeals and recreates Med 8.08 (2) to simplify when physician assistants are authorized to prescribe.

SECTION 15. repeals and recreates Med 8.08 (3) (a).

SECTION 16. amends Med 8.08 (3)(b) to require supervising physicians to document review of the physician assistant’s prescriptive practice in the patient records.

SECTION 17. creates Med 8.08 (3) (c) and (d) regarding documenting the periodic review.

SECTION 18. amends Med 8.10 (1) by increasing the number of physician assistants a physician may supervise from 2 to 4, and clarifying the nature of supervision.

SECTION 19.. repeals Med 8.10 (2) eliminating the provision regarding substitute supervising physicians.

SECTION 20. amends Med 8.10 (3) and (4) striking repetitive language regarding supervising physicians.

Summary of, and comparison with, existing or proposed federal legislation:

There is no comparative existing or proposed federal rule.

Comparison with rules in adjacent states:

Illinois: The state of Illinois limits the physician assistant to physician ratio to 2:1; unless the supervising physician designates an alternate supervising physician. An alternate supervising physician may supervise more than two physician assistants at the same time when the supervising physician is unable to fulfill the duties. 225 ILL. COMP.STAT.95/7

Iowa: The state of Iowa limits the physician assistant to physician ratio to 2:1. 645 IAC 326.8 (3) (148 C)

Michigan: The state of Michigan allows a physician assistant to physician ratio of 4:1 when the supervising physician is a solo practitioner who practices in a group of physicians and treats patients on an outpatient basis. Physicians who have privileges at a health facility or agency or a state correctional facility may supervise more than four physician assistants; but the physician assistant to physician ratio is 2:1 if the physician supervises a physician assistant at more than one location. MCLS § 333.17048

Minnesota: The state of Minnesota allows a physician to supervise five physician assistants simultaneously. In the case of an emergency a physician may supervise more than five physician assistants at any given time. MINN. STAT. §147A.01

Summary of factual data and analytical methodologies:

In recognition of physician work-force shortages and at the request of the Council on Physician Assistants, the Medical Examining Board created a work group to research and advise the board on whether or not to increase the supervision ratio of physician assistants to physicians, and if so under what circumstances. The work group consisted of members of the Medical Examining Board, who are licensed physicians, the chairperson of the Council on Physician Assistants and consultation from the State

Medical Society, the Wisconsin Council of Physician Assistants and the Wisconsin Hospital Association. Members of the work group examined the statutes and regulations of other states as well as recommendations of the Federation of State Medical Boards, the American Medical Association, the American Association of Family Practitioners and the American Academy of Physician Assistants.

The national trend, as recognized by the Federation of State Medical Boards and the American Academy of Physician Assistants, is to increase the number of physician assistants a physician may supervise. Both organizations have, as a national model, recommended that regulatory bodies refrain from specifying a particular number of physician assistants a physician may concurrently supervise. Rather, the recommendation is that supervising physicians make the determination based on prevailing standards for competent medical practice, day-to-day realities, and the nature of the physician's actual practice.

The work group presented its findings to the Medical Examining Board with a recommendation that the board increase the ratio from 1:5. The board considered several factors including practice setting in which physician and physician assistants carry out their duties and patient care issues such as a growing shortage of health care practitioners in underserved communities. The board emphasized the need for adequate physician supervision of physician assistant's practice and adopted the work group's recommendation to increase the ratio of physician assistants a physician may supervise. However, after extensive discussion, the board decided to authorize a physician to physician assistant supervision ratio of 1:4. The proposed rule would continue to allow the board, in its discretion, to increase the ratio in individual circumstances.

Analysis and supporting documents used to determine effect on small business or in preparation of economic report:

The department finds that this rule will have no effect on small business as small business is defined in 227.114 (1), Stats.

Anticipated costs incurred by the private sector:

The department finds that this rule will incur no additional cost to the private sector.

Fiscal Estimate and Economic Impact Analysis:

The proposed rule is not anticipated to have any fiscal impact on businesses, public utility rate payers, local government units or the state's economy as a whole. The proposed rule was posted on the department's website for 14 days. Comments were solicited. The department did not receive any comments regarding an economic impact from local government units, specific business sectors or public utility rate payers. Therefore, the department finds the proposed rule will have no economic impact.

Effect on small business:

The department finds that this rule will have no effect on small business as small business is defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted at Bill.Wendle@wisconsin.gov or by calling (608) 267-2435.

Agency contact person:

Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.Leatherwood@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to Shancethea.Leatherwood@wisconsin.gov. Comments must be received on or before February 15, 2012, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Med. 8.01 is renumbered Med 8.01 (1) and amended to read:

Med 8.01 Authority and purpose. (1) The rules in this chapter are adopted by the medical examining board pursuant to authority in ss 15.08 (5), 227.11, 448.04 (1) (f) and 448.40, Stats., and govern the licensure and regulation of physician assistants.

SECTION 2. Med 8.01 (2) is created to read

Med 8.01 (2) Physician assistants provide health care services as part of physician-led teams, the objectives of which include safe, efficient and economical health care. The realities of the modern practice of medicine and surgery require supervising physicians and physician assistants to use discretion in delivering the health care services, typically at the level of general supervision. The constant physical presence of a supervising physician is often unnecessary. The supervising physician and the physician assistant are jointly responsible for employing more intensive supervision when circumstances require direct observation or hands-on assistance from the supervising physician.

SECTION 3. Med 8.02 (1) is renumbered 8.02 (1m)

SECTION 4. Med 8.02 (1), (4m) and (7) are created to read:

Med. 8.02 Definitions. (1) "adequate supervision" means the supervising physician has knowledge of the physician assistant's training, skill and experience pertaining to the acts undertaken; the supervising physician knows the scope of the health

care to be provided; the supervising physician is competent and credentialed to perform the act; and there is an adequate physician-to-physician assistant ratio, taking into consideration the training, skill and experience of the physician assistant, risk of harm to the patient due to the nature of the procedure, and risk of harm due to characteristics of the patient.

(4m) “General supervision” means off-premises supervision, and may include on- premises or face-to-face contact between the supervisor and the physician assistant being supervised as necessary. Between direct contacts, the supervisor is required to maintain indirect, off-premises telecommunication contact such that the physician assistant can, within 15 minutes, establish direct telecommunication with the supervisor.

(7) “Supervising physician” means a physician licensed in this state, who has an unlimited and unrestricted license, and who has accepted responsibility for providing adequate supervision of medical services provided by a physician assistant.

SECTION 5. Med 8.05 (2) (title), Med 8.05 (2) (b), are amended to read:

Med 8.05 (2) (title) EXAMINATIONS, PERSONAL APPEARANCE, PANEL REVIEW OF APPLICATIONS

Med 8.05 (2) (b) An applicant may be required to complete an oral examination or a personal appearance or both if the applicant:

SECTION 6 Med 8.05 (2) (b) (7) is amended to read:

Med 8.05 (2) (b) (7) ~~Has been diagnosed as suffering from pedophilia, exhibitionism or voyeurism.~~ Has been diagnosed with any condition, impairment, or illness, including a personality disorder, which presents a risk of harm to another person.

SECTION 7 Med 8.05 (2) (c) is amended to read:

(c) An application filed under this chapter shall be reviewed by an application review panel of at least 2 council members designated by the chairperson of the board to determine whether an applicant is required to complete an oral examination or a personal appearance or both under par. ~~(a)~~ (b). If the application review panel is not able to reach unanimous agreement on whether an applicant is eligible for licensure without completing an oral examination or a personal appearance or both, the application shall be referred to the board for a final determination.

SECTION 8. Med 8.05 (2) (e) is created to read:

(e) The board may require an applicant to complete a personal appearance for purposes of interview or review of credentials or both. An applicant’s performance at a personal appearance is satisfactory if the applicant establishes to the board’s satisfaction

that the applicant has met requirements for licensure and is minimally competent to practice medicine and surgery.

SECTION 9. Med 8.07 (1) is amended to read:

Med 8.07 Practice. (1) SCOPE AND LIMITATIONS. ~~In providing medical care, the entire~~ The practice of any physician assistant shall be under the supervision of ~~a licensed physician~~ one or more supervising physicians. The scope of practice is limited to providing medical care specified in sub. (2). ~~A physician assistant's practice may not exceed his or her educational training or experience and may not exceed the scope of practice of the supervising physician. A medical care task assigned by the supervising physician to a physician assistant may not be delegated by the physician assistant to another person.~~

SECTION 10. Med 8.07 (1) (a) and (b) are created to read:

Med 8.07 (1) (a) A physician assistant's practice may not exceed his or her educational training or experience and may not exceed the scope of practice of the supervising physician.

Med 8.07 (1) (b) A medical care task assigned by the supervising physician to a physician assistant may not be delegated by the physician assistant to another person.

SECTION 11. Med 8.07 (2) (a) and (e) are amended to read

Med 8.07 (2) (a) Attending initially a patient of any age in any setting to obtain a personal medical history, perform an appropriate physical examination, and record and present pertinent data concerning the patient ~~in a manner meaningful to the supervising physician.~~

Med 8.07 (2) (e) Assisting the supervising physician in a hospital or facility, as defined in s. 50.01 (1m), Stats., by assisting in surgery, making patient rounds, recording patient progress notes, compiling and recording detailed narrative case summaries and accurately writing or executing orders ~~under the supervision of a licensed physician.~~

SECTION 12. Med 8.08 (title) and Med 8.08 (1) are amended to read:

Med 8.08 Prescribing ~~limitations; authority; written guidelines for supervised prescriptive practice required; written guidelines for periodic review of prescriptive practice required.~~ (1) Written guidelines for supervised prescriptive practice are required. ~~A physician assistant may not prescribe or dispense any drug independently. A physician assistant may only prescribe or dispense a drug medication pursuant to written guidelines for supervised prescriptive practice. The guidelines shall be kept on file at the practice site and made available to the board upon request.~~

SECTION 13. Med 8.08 (1) (a), (b), (c) and (d) are created to read:

Med 8.08 (1) (a) The written guidelines shall specify the patient situations and categories of medication for which prescriptions or dispensing are authorized. The situations and categories shall be determined by mutual agreement between supervising physician and physician assistant, taking into account the physician assistant's training experience and the requirements of competent medical practice.

Med 8.08 (1) (b) The written guidelines shall include a process and schedule for periodic review of the prescriptive practice of the physician assistant, including the frequency of review and the method used to select prescriptive orders and patient records to be reviewed.

Med 8.08 (1) (c) The written guidelines shall be maintained at the practice site and shall be made available upon request of the board or its designee. The written guidelines shall be updated in response to changes in the practice and experience of the physician assistant.

Med 8.08 (1) (d) The supervising physician and physician assistant shall review the written guidelines at least once annually, unless more frequent review is necessary for competent medical practice. Dated signatures of the supervising and the physician assistant, verifying that the review has occurred shall be maintained with the written guidelines.

SECTION 14. Med 8.08 (2) is repealed and recreated to read:

Med 8.08 (2) Physician assistants are authorized to prescribe if all of the following conditions apply:

- (a) The supervision requirements of s. Med 8.10 are met.
- (b) The prescription orders contain all information required under s. 450.11 (1) Stats.
- (c) The prescriptive practice conforms to s. 448.21 Stats.
- (d) The prescriptive practice is not otherwise prohibited by law.

SECTION 15. Med 8.08 (3) (a) is repealed and recreated to read:

Med 8.08 (3) (a) The periodic review of the physician assistant's prescriptive practice required by Med 8.08 (1) (b) shall include at least one of the following:

SECTION 16. Med 8.08 (3) (b) is amended to read:

Med 8.08 (3) (b) The supervising physician shall determine the method and frequency of the periodic review based upon the nature of the prescriptive practice, the

experience of the physician assistant, and the welfare of the patients. The periodic review of prescriptive practice shall be performed according to the written guidelines required under Med. 8.08 (1) (b). The process and schedule for review shall indicate the minimum frequency of review and identify the selection of prescriptive orders or patient records to be reviewed.

SECTION 17. Med 8.08 (3) (c), (d), and (e) are created to read:

Med 8.08 (3) (c) The periodic review of prescriptive practice must occur at least annually. Additional review of prescriptive practice may occur, as set out in the written guidelines for supervised prescriptive practice, or if the supervising physician determined additional review is necessary for competent patient care.

Med 8.08 (3) (d) At least annually, the supervising physician and the physician assistant shall document compliance with the guideline's requirement of periodic review. Documentation of compliance shall be dated signatures, and shall indicate that during the preceding period of time, the periodic review of prescriptive practice occurred as set out in the written guidelines.

Med 8.08 (3) (e) Documentation of the periodic review must occur at least annually but may occur more frequently at the discretion of the supervised physician or as agreed upon in the written guideline. Documentation that the periodic review has occurred need not be documented during each review. The documentation that the periodic review has occurred shall be maintained with the written guidelines for supervised prescriptive practice.

SECTION 18. Med 8.10 (title) and Med 8.10 (1) are amended to read:

Med 8.10 Employment requirements; supervising physician responsibilities
Supervising physicians; physician to physician assistant ratio. (1) No physician may concurrently supervise more than 2 physician assistants unless the physician submits a written plan for the supervision of more than 2 physician assistants and the board approves the plan. A physician assistant may be supervised by more than one physician. A supervising physician shall supervise physician assistants as part of a physician-led team in a manner consistent with competent medical practice, considering the type and circumstance of the physician's practice and the authority delegated to the physician assistant. The physician assistant's scope of practice must be mutually understood by the physician and physician assistant, and consistent with the physician assistant's level of competence. A supervising physician may not concurrently supervise more than four physician assistants unless a written plan to do so has been submitted to and approved by the board.

SECTION 19. Med 8.10 (2) is repealed

SECTION 20. Med 8.10 (3) and (4) are renumbered and amended to read:

~~(3 2) The supervising physician or substitute supervising physician shall be available to the physician assistant at all times for consultation either in person or within 15 minutes of contact by telecommunications or other electronic means.~~

~~(4 3) A supervising physician shall visit and conduct an on-site review of facilities attended by the physician assistant at least once a month. Any patient in a location other than the location of the supervising physician's main office shall be attended personally by the physician consistent with his or her medical needs. The constant physical presence of a supervising physician is not required, however the methods utilized for supervision must allow the physician to fulfill all supervisory duties required by law including competent medical practice.~~

(END OF TEXT OF RULE)

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

Dated _____

Agency _____

Chairperson
Medical Examining Board