

Clearinghouse Rule 15-076

STATE OF WISCONSIN
PODIATRY AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : PODIATRY AFFILIATED
 : CREDENTIALING BOARD
PODIATRY AFFILIATED : ADOPTING RULES
CREDENTIALING BOARD : (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Podiatry Affiliated Credentialing Board to amend Pod 4.03 (2) (b) and create Pod 1.02 (9), 4.04, and Chapter 8 relating to the duty to obtain informed consent.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 448.697, Stats.

Statutory authority:

Sections 15.085 (5) (b), 227.11 (2) (a), 448.675 (4), and 448.695 (1) (b), Stats.

Explanation of agency authority:

Section 15.085 (5) (b), Stats., provides that affiliated credentialing boards, such as the Podiatry Affiliated Credentialing Board, “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .” The proposed rule will provide guidance within the profession as to how podiatrists are to inform patients about treatment options.

Section 227.11 (2) (a), Stats., provides that “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 448.675 (4), Stats., states that “[t]he affiliated credentialing board may restore a license which has been voluntarily surrendered or revoked under this subchapter on such terms and conditions as it considers appropriate.”

Section 448.695 (1) (b), Stats., provides that the Podiatry Affiliated Credentialing Board shall promulgate “rules implementing s. 448.697”. Section 448.697, Stats., requires podiatrists to inform patients of their treatment options.

Related statute or rule:

Sections 448.08 and 447.40, Stats.

Plain language analysis:

The duty of certain health care professionals, other than physicians, to obtain informed consent from their patients before conducting treatment had not been codified as a statutory duty prior to the passage of 2013 Wisconsin Act 345. Act 345 sets forth the podiatrists’ duty to obtain informed consent from their patients and institutes the reasonable podiatrist standard as the standard for informing patients regarding their treatment options. The reasonable podiatrist standard requires disclosure only of the information that a reasonable podiatrist would know and disclose under the circumstances. The proposed rule will incorporate the new standard into the current rules governing podiatric practice and make any additional changes necessary to create consistency with the newly enacted legislation. The proposed rule will also provide clarity to the process of renewing a license after 5 years by updating provisions regarding licensure reinstatement.

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

Although several federal agencies require investigators to obtain informed consent of human subjects participating in investigative trials, there are no specific federal regulations regarding podiatrists obtaining informed consent from their patients or the reasonable podiatrist standard.

Comparison with rules in adjacent states:

Illinois: Illinois administrative rules are silent with regards to podiatrists’ duty to inform patients of their treatment options (68 il admin 1360). A person seeking to restore a podiatric physician license after it has been expired or placed on inactive status for more than 5 years must interview before the board and submit evidence of either (1) certification of active practice in another jurisdiction and proof of 100 hours continuing education during the 2 years prior to restoration. Such evidence shall include a statement from the appropriate board or licensing authority in the other jurisdiction that the applicant was authorized to practice during the term of active practice; or (2) proof of successful completion of the PM Lexis examination within one year before applying for restoration (68 il admin 1360.60).

Iowa: Iowa administrative rules are silent with regards to podiatrists’ duty to inform patients of their treatment options (645 IAC 220, 222, 223, and 224). A person seeking to reactivate a podiatry license that has been on inactive status for more than five years,

must provide the following: (1) verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office, and (2) verification of completion of 80 hours of continuing education within two years of application for reactivation (645 IAC 220.15 (3) (b)). A licensee whose license has been revoked, suspended, or voluntarily surrendered must reinstate their license in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the license is permanently revoked. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. If the board determines that the license can be reinstated, then the license reactivation process is followed (645 IAC 220.16, 645 IAC 11.31)

Michigan: Michigan administrative rules are silent with regards to podiatrists' duty to inform patients of their treatment options (mich admin code r 338.8101 - 338.8136). "Reinstatement" is defined as the granting of a license or registration, with or without limitations or conditions, to a person whose license or registration has been revoked. "Relicensure" or "reregistration" is defined as the granting of a registration or license to a person whose license or registration has lapsed for failure to renew within 60 days after the expiration date (Michigan Statutes 339.402). An applicant for relicensure whose license has lapsed for 3 years or more and who holds a current license as a podiatrist in another state may be relicensed by completing 150 hours of continuing podiatric medical education credit within the 3 year period immediately preceding the date of application and taking and achieving a converted score of not less than 75 on the podiatric jurisprudence examination (mich admin code r 338.8111 (1)). An applicant for relicensure whose license has lapsed for 3 years or more and who does not hold a current license as a podiatrist in another state may be relicensed by taking and achieving a score of pass on part III of the examination developed and scored by the NBPME and taking and achieving a score of not less than 75 on the podiatric jurisprudence examination (mich admin code r 338.8111 (2)).

Minnesota: Minnesota administrative rules are silent with regards to podiatrists' duty to inform patients of their treatment options (mn r 6900.0010 – 6900.0500). To reinstate a podiatrist license, the applicant must submit: (1) verification of licensure status from each state in which the podiatrist has held an active license during the five years preceding application; (2) for each year the license has been inactive, evidence of participation in one-half the number of hours of acceptable continuing education required for biennial renewal up to five years, (3) if the license has been inactive for more than five years, the continuing education must be obtained during the five years immediately before application; and (4) other evidence as the board may reasonably require. No license that has been suspended or revoked by the board will be reinstated unless the former licensee

provides evidence of full rehabilitation from the cause for which the license was suspended or revoked and complies with the other reasonable conditions imposed by the board for the purpose of establishing the extent of rehabilitation. In addition, if the disciplinary action was based in part on failure to meet continuing education requirements, the license will not be reinstated until the former licensee has successfully completed the requirements (mn r 6900.0210).

Summary of factual data and analytical methodologies:

No factual data or analytical methodologies, aside from reviewing adjacent states' requirements, were used in drafting the proposed rule due to the majority of the proposed rule being prompted by the passage of 2013 WI Act 345.

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

The rule was posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals, for a period of 14 days. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Katie Vieira (Paff), Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4472; email at Kathleen.Paff@wisconsin.gov.

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

Comments may be submitted to Katie Vieira (Paff), Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Kathleen.Vieira@wisconsin.gov. Comments must be received on or before the public hearing on November 6, 2015 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Pod 1.02 (9) is created to read:

Pod 1.02 (9) “Reinstatement” means the process by which a licensee who has unmet disciplinary requirements and failed to renew a license within 5 years of the renewal date or whose license has been surrendered or revoked, shall apply to have the license reinstated.

SECTION 2. Pod 4.03 (2) (b) is amended to read:

Pod 4.03 (2) (b) If the licensee applies for renewal of the license more than 5 years after its expiration, the board shall make an inquiry to determine whether the applicant is competent to practice under the license in this state, and shall impose any reasonable conditions on ~~reinstatement~~ the renewal of the license, including oral examination, as the board deems appropriate. All applicants under this paragraph shall be required to pass the open book examination on statutes and rules, which is the same examination given to initial applicants. This section does not apply to licensees who have unmet disciplinary requirements or whose licenses have been surrendered or revoked.

SECTION 3. Pod 4.04 is created to read:

Pod 4.04 License reinstatement. A licensee who has unmet disciplinary requirements and failed to renew a license within 5 years of the renewal date or whose license has been surrendered or revoked may apply to have their license reinstated in accordance with all of the following:

1. Evidence of completion of requirements in s. 4.03 (2) (b) if the licensee has not held an active Wisconsin license within the last 5 years.
2. Evidence of completion of disciplinary requirements, if applicable.
3. Evidence of rehabilitation or a change in circumstances, warranting reinstatement of the license.

SECTION 4. Chapter Pod 8 is created to read:

CHAPTER POD 8

INFORMED CONSENT

Pod 8.01 Authority and purpose. (1) AUTHORITY. The rules in this chapter adopted pursuant to the authority delegated in ss. 15.085 (5) (b), 227.11 (2) (a), and 448.695 (1) (b), Stats.

(2) PURPOSE. The purpose of the rules is to define the obligation of a podiatrist to communicate alternate modes of treatment to a patient.

Pod 8.02 Informed consent. Any podiatrist who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The reasonable podiatrist standard is the standard for informing a patient under this section. The reasonable podiatrist standard requires disclosure only of information that a reasonable podiatrist would know and disclose under the circumstances.

Pod 8.03 Exceptions to communication of alternate modes of treatment. The podiatrist's duty to inform the patient under this section does not require disclosure of any of the following:

- (1) Detailed technical information that in all probability a patient would not understand.
- (2) Risks apparent or known to the patient.
- (3) Extremely remote possibilities that might falsely or detrimentally alarm the patient.
- (4) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.
- (5) Information in cases where the patient is incapable of consenting.
- (6) Information about alternate modes of treatment for any condition the podiatrist has not included in his or her diagnosis at the time the podiatrist informs the patient.

Pod 8.04 Recordkeeping. A podiatrist's patient record shall include documentation that alternate modes of treatment have been communicated to the patient and informed consent has been obtained from the patient in keeping with s. Pod 6.01.

SECTION 5. EFFECTIVE DATE. 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.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Chairperson
Podiatry Affiliated Credentialing Board