

## Chapter PA 4

### UNPROFESSIONAL CONDUCT

PA 4.01 Unprofessional conduct.

PA 4.02 Discipline.

**PA 4.01 Unprofessional conduct.** “Unprofessional conduct” includes the following, or aiding or abetting the same:

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

(b) Violating or attempting to violate any term, provision, or condition of any order of the board.

(c) Knowingly engaging in fraud or misrepresentation or dishonesty in applying, for or procuring a physician assistant license, or in connection with applying for or procuring periodic renewal of a physician assistant license, or in otherwise maintaining such licensure.

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

(e) Employing illegal or unethical business practices.

(f) Knowingly, negligently, or recklessly making any false statement, written or oral, as a physician assistant which creates an unacceptable risk of harm to a patient, the public, or both.

(g) 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.

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

(i) Directly or indirectly giving or receiving any fee, commission, 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.

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

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

(L) Offering, undertaking, or agreeing to treat or cure a disease or condition by a secret means, method, device, or instrumentality; or refusing to divulge to the board upon demand the means, method, device, or instrumentality used in the treatment of a disease or condition.

(2) **DIRECT PATIENT CARE VIOLATIONS.** (a) Practicing or attempting to practice under any license when unable 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 assistant was, for any period covered by the order, unable to practice with reasonable skill and safety.

(b) Departing from or failing to conform to the standard of minimally competent 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 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 controlled substances as defined in s. 961.01 (4), Stats.,

other than in the course of legitimate professional practice, or as otherwise prohibited by law.

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

2. A certified copy of a finding, order, or judgement demonstrating that entry of a guilty plea, nolo contendere plea or deferred adjudication, with or without expungement, of a crime substantially related to the practice of a physician assistant 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 assistant 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.

(g) Engaging in any sexual conduct with or in the presence of a patient or 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 physician assistants, 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 physician assistant services without required informed consent under s. 448.9785, Stats., or s. PA 3.07.

(k) Aiding or abetting the practice of an unlicensed, incompetent, or impaired person or allowing another person or organization to use his or her license to practice as a physician assistant.

(L) Prescribing a controlled substance to oneself as described in s. 961.38 (5), Stats.

(m) Practicing as a physician assistant in another state or jurisdiction without appropriate licensure. A physician assistant has not violated this paragraph if, after issuing an order for services that complies with the laws of Wisconsin, their patient requests that the services ordered be provided in another state or jurisdiction.

(n) Patient abandonment occurs when a physician assistant without reasonable justification unilaterally withdraws from a physician assistant–patient relationship by discontinuing a patient’s treatment regimen when further treatment is medically indicated and any of the following occur:

1. The physician assistant fails to give the patient at least 30 days' notice in advance of the date on which the physician assistant's withdrawal becomes effective.

2. The physician assistant fails to allow for patient access to or transfer of the patient's health record as required by law.

3. The physician assistant fails to provide for continuity of prescription medications between the notice of intent to withdraw from the physician assistant-patient relationship and the date on which the physician assistant-patient relationship ends, if the prescription medications are necessary to avoid unacceptable risk of harm.

4. The physician assistant fails to provide for continuity of care during the period between the notice of intent to withdraw from the physician assistant-patient relationship and the date on which the physician assistant-patient relationship ends. Nothing in this section shall be interpreted to imposed upon the physician assistant a greater duty to provide continuity care to a patient than otherwise required by law.

**(3) LAW VIOLATIONS, ADVERSE ACTION, AND REQUIRED REPORTS TO THE BOARD.** (a) Failing, within 30 days to report to the board any final adverse action taken against the licensee's authority to practice by another licensing jurisdiction.

(b) Failing, within 30 days, to report the board any adverse action taken by the Drug Enforcement Administration against the licensee's authority to prescribe controlled substances.

(c) Failing to comply with state and federal laws regarding access to patient health care records.

(d) Failure by a licensee to establish and maintain patient

health care records consistent with the requirements of ss. PA 3.05 and 3.06 (4), or as otherwise required by law.

(e) Violating the duty to report under s. 448.9795, Stats.

(f) After a request by the board, failing to cooperate in a timely manner with the board's investigation of a complaint filed against a licensee. There is a rebuttable presumption that a licensee who takes longer than 30 days to respond to a request of the board has not acted within a timely manner.

(g) Failing, within 48 hours of the entry of judgement of conviction of any crime, to provide notice to the department 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 judgement of conviction.

(h) Except as provided under par. (i), 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 a physician assistant.

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 therein.

2. The department has the burden of proving that the circumstances of the crime are substantially related to the practice of a physician assistant.

(i) Violating or being convicted of any the conduct listed under in Table PA 4.01, 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 PA 4.01:

**Table PA 4.01**

**Violations or Convictions Cited by Statute**

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

**History:** EmR2206: cr., eff. 4-1-22; CR 22-064: cr. Register July 2023 No. 811, eff. 8-1-23; correction in (1) (a) made under s. 13.92 (4) (b) 1., Stats., correction in (3) (g), (h) 2. made under s. 13.92 (4) (b) 12., Stats., and correction in (2) (e) 2., (j) made under s. 35.17, Stats., Register July 2023 No. 811.

**PA 4.02 Discipline.** (1) The board may conduct investigations and hearings to determine whether a licensee has violated s. PA 4.01 or has violated any state or federal law or any other jurisdiction that substantially relates to the practice of a physician assistant.

(2) The board may reprimand a physician assistant or deny, limit, suspend, or revoke a physician assistant's license if the physician assistant has violated s. PA 4.01.

**History:** EmR2206: cr., eff. 4-1-22; CR 22-064: cr. Register July 2023 No. 811, eff. 8-1-23.