

# State of Wisconsin



1997 Assembly Bill 549

Date of enactment: **June 30, 1998**  
Date of publication\*: **July 14, 1998**

## 1997 WISCONSIN ACT 311

AN ACT *to renumber* 448.13 (1); *to amend* 227.54, 448.02 (3) (c), 448.09 (1) and 448.40 (2) (e); and *to create* 440.03 (5m), 448.02 (3) (cm), 448.02 (8), 448.02 (9), 448.03 (5) (c), 448.09 (1m), 448.13 (1) (b), 448.14, 448.40 (2) (f) and 753.30 (4) of the statutes; **relating to:** verifying compliance of physicians with continuing education requirements, allegations of misconduct involving persons with medical credentials, issuance of administrative warnings by the medical examining board, disciplinary actions by the medical examining board, requiring clerks of circuit court to notify the medical examining board about findings of negligence by physicians, granting rule-making authority and providing a penalty.

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

**SECTION 1.** 227.54 of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

**227.54 Stay of proceedings.** The institution of the proceeding for review shall not stay enforcement of the agency decision. The reviewing court may order a stay upon such terms as it deems proper, except as otherwise provided in ss. 196.43, 253.06 (7), 448.02 (9) and 551.62.

**SECTION 2.** 440.03 (5m) of the statutes is created to read:

440.03 (5m) The department shall maintain a toll-free telephone number to receive reports of allegations of unprofessional conduct, negligence or misconduct involving a physician licensed under subch. II of ch. 448. The department shall publicize the toll-free telephone number and the investigative powers and duties of the department and the medical examining board as widely as possible in the state, including in hospitals, clinics, medical offices and other health care facilities.

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

448.02 (3) (c) ~~After Subject to par. (cm), after~~ a disciplinary hearing, the board may, when it determines that a panel established under s. 655.02, 1983 stats., has unanimously found or a court has found that a person has been negligent in treating a patient or when it finds a person guilty of unprofessional conduct or negligence in treatment, do one or more of the following: warn or reprimand that person, or limit, suspend or revoke any license, certificate or limited permit granted by the board to that person. The board may condition the removal of limitations on a license, certificate or limited permit or the restoration of a suspended or revoked license, certificate or limited permit upon obtaining minimum results specified by the board on one or more physical, mental or professional competency examinations if the board believes that obtaining the minimum results is related to correcting one or more of the bases upon which the limitation, suspension or revocation was imposed.

**SECTION 4.** 448.02 (3) (cm) of the statutes is created to read:

448.02 (3) (cm) The board may initiate disciplinary action against a physician no later than one year after initiating an investigation of an allegation involving the

\* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

death of a patient and no later than 3 years after initiating an investigation of any other allegation, unless the board shows to the satisfaction of the secretary that a specified extension of time is necessary for the board to determine whether a physician is guilty of unprofessional conduct or negligence in treatment. For purposes of this paragraph, the date that a matter is reopened under sub. (8) (c) is considered the date that an investigation of the matter is initiated.

**SECTION 5.** 448.02 (8) of the statutes is created to read:

448.02 (8) ADMINISTRATIVE WARNING. (a) After an investigation by the board under sub. (3) (a) or by the department under s. 440.03 (3m) or (5), the board may issue a private and confidential administrative warning to a holder of a license, certificate or limited permit if the board determines that there is evidence of misconduct by him or her. The board may issue an administrative warning under this paragraph only if the board determines that no further action is warranted because the matter involves a first occurrence of minor misconduct and the issuance of an administrative warning adequately protects the public by putting the holder of the license, certificate or limited permit on notice that any subsequent misconduct may result in disciplinary action. The board shall review the determination if the holder of the license, certificate or limited permit makes a personal appearance before the board. Following the review, the board may affirm, rescind or modify the administrative warning. A holder of a license, certificate or limited permit may seek judicial review under ch. 227 of an affirmation or modification of an administrative warning by the board.

(b) An administrative warning issued under par. (a) does not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the holder of a license, certificate or limited permit is guilty of misconduct.

(c) Notwithstanding par. (b), if the board receives a subsequent allegation of misconduct about a holder of a license, certificate or limited permit to whom the board issued an administrative warning under par. (a), the board may reopen the matter that resulted in the issuance of the administrative warning or use the administrative warning in any subsequent disciplinary hearing under sub. (3) (b) as evidence that he or she had actual knowledge that the misconduct that was the basis for the administrative warning was contrary to law.

(d) The record that an administrative warning was issued under par. (a) shall be a public record. The contents of an administrative warning shall be private and confidential.

**SECTION 6.** 448.02 (9) of the statutes is created to read:

448.02 (9) JUDICIAL REVIEW. No injunction, temporary injunction, stay, restraining order or other order may be issued by a court in any proceeding for review that sus-

pends or stays an order of the board to discipline a physician under sub. (3) (c) or to suspend a physician's license under sub. (4), except upon application to the court and a determination by the court that all of the following conditions are met:

(a) The board has received notice of the application and the court has provided advance notice to the board of the date of the court hearing on the application.

(b) There is a substantial likelihood that the applicant will prevail in the proceeding for review.

(c) The applicant will suffer irreparable harm if the order is not suspended or stayed.

(d) There is no substantial likelihood of harm to patients of the applicant if the board's order is suspended or stayed.

**SECTION 6m.** 448.03 (5) (c) of the statutes is created to read:

448.03 (5) (c) A physician who in good faith provides the board with information concerning an allegation that another physician has engaged in unprofessional conduct or acted negligently in treating a patient is immune from liability for any damage that results from any act or omission in providing the information and may not be disciplined by the board for providing the information. In any administrative or court proceeding, the good faith of a physician who provides such information shall be presumed.

**SECTION 7.** 448.09 (1) of the statutes is amended to read:

448.09 (1) PENALTIES. ~~Anyone violating~~ A person who violates s. 448.08 (3) may be fined not more than \$250. ~~Anyone violating~~ Except as provided in sub. (1m), a person who violates any other provision of this ~~chapter~~ subchapter may be fined not more than \$10,000 or imprisoned not more than 9 months or both.

**SECTION 8.** 448.09 (1m) of the statutes is created to read:

448.09 (1m) PHYSICIANS. A physician who violates any provision of this subchapter, except s. 448.08 (3), or any rule promulgated under this subchapter may be fined not more than \$25,000 or imprisoned not more than 9 months or both.

**SECTION 9.** 448.13 (1) of the statutes is renumbered 448.13 (1) (a).

**SECTION 10.** 448.13 (1) (b) of the statutes is created to read:

448.13 (1) (b) The board shall, on a random basis, verify the accuracy of proof submitted by physicians under par. (a) and may, at any time during the 2 calendar years specified in par. (a), require a physician to submit proof of any continuing education programs or courses of study that he or she has attended and completed at that time during the 2 calendar years.

**SECTION 11.** 448.14 of the statutes is created to read:

**448.14 Annual report.** Annually, no later than March 1, the board shall submit to the chief clerk of each

house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3) a report that identifies the average length of time to process a disciplinary case against a physician during the preceding year and the number of disciplinary cases involving physicians pending before the board on December 31 of the preceding year.

**SECTION 12.** 448.40 (2) (e) of the statutes is amended to read:

448.40 (2) (e) Establishing the criteria for the substitution of uncompensated hours of professional assistance volunteered to the department of health and family services for some or all of the hours of continuing education credits required under s. 448.13 (1) (a) for physicians specializing in psychiatry. The eligible substitution hours shall involve professional evaluation of community programs for the certification and recertification of community mental health programs, as defined in s. 51.01 (3n), by the department of health and family services.

**SECTION 13.** 448.40 (2) (f) of the statutes is created to read:

448.40 (2) (f) Establishing procedures for issuing and using administrative warnings under s. 448.02 (8).

**SECTION 13m.** 753.30 (4) of the statutes is created to read:

753.30 (4) The clerk of circuit court shall provide the medical examining board with a certified copy of an order of a circuit court in which a physician licensed under subch. II of ch. 448 is found negligent in treating a patient. The clerk of circuit court shall provide a certified copy of an order under this subsection no later than 7 business days after the entry of such a court order.

**SECTION 14. Nonstatutory provisions.**

(1) **STAFF FOR MEDICAL EXAMINING BOARD.** The authorized FTE positions for the department of regulation and licensing are increased by 1.5 PR program assistant positions and 1.5 PR legal assistant positions on

July 1, 1998, to be funded from the appropriation under section 20.165 (1) (g) of the statutes, for the purpose of providing staff only to the medical examining board.

(2) **USE OF AUTHORIZED POSITIONS.** The department of regulation and licensing may not use the positions authorized under subsection (1) to supplant positions in the department that are being used immediately prior to the effective date of this subsection to provide staff to the medical examining board.

(3m) **STUDY REGARDING EDUCATION AND TRAINING.** The medical examining board, the Medical College of Wisconsin and the University of Wisconsin-Madison Medical School shall jointly study whether physicians licensed by the medical examining board are sufficiently informed, educated or trained about advances in techniques and procedures for making a diagnosis or providing treatment. The board, the medical college and the medical school shall jointly submit its report, including any recommendations for proposed legislation, to the governor, and to the appropriate standing committees of the legislature in the manner provided under section 13.172 (3) of the statutes, by the first day of the 12th month beginning after the effective date of this subsection.

**SECTION 15. Initial applicability.**

(1) The treatment of sections 227.54 and 448.02 (9) of the statutes first applies to disciplinary actions taken by the medical examining board on the effective date of this subsection.

(2m) The treatment of section 448.09 (1) and (1m) of the statutes first applies to violations that occur on the effective date of this subsection.

(3m) The treatment of section 448.02 (3) (c) and (cm) and (8) of the statutes first applies to investigations initiated on the effective date of this subsection.

(4m) The treatment of section 753.30 (4) of the statutes first applies to court orders entered on the effective date of this subsection.