



**STATE OF WISCONSIN**  
Department of Safety and Professional Services  
1400 E Washington Ave.  
Madison WI 53703

Mail to:  
PO Box 8935  
Madison WI 53708-8935

Email: [dsps@wisconsin.gov](mailto:dsps@wisconsin.gov)  
Web: <http://dsps.wi.gov>  
Phone: 608-266-2112

**Governor Scott Walker      Secretary Dave Ross**

**MEDICAL EXAMINING BOARD  
DISCIPLINARY GUIDELINES COMMITTEE  
Room 121A, 1400 E. Washington Avenue, Madison  
Contact: Tom Ryan (608) 266-2112  
May 24, 2013**

*The following agenda describes the issues that the Committee plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions of the Committee.*

**AGENDA**

**11:00 A.M.**

**CALL TO ORDER – ROLL CALL**

**OPEN SESSION:** Disciplinary Guidelines Committee – Dr. Kenneth Simons (Committee Chair), Dr. Timothy Swan, Mr. Greg Collins

- A. Adoption of Agenda (1-2)**
- B. Committee Work Plan and Work Product**
- C. Ohio Guidelines Compared to Wisconsin Experience**
  - 1. Ohio Guidelines **(3-30)**
  - 2. MED 10 Draft **(31-40)**
- D. Next Committee Meeting Planning**

**ADJOURNMENT**

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**THE STATE MEDICAL BOARD OF OHIO  
DISCIPLINARY GUIDELINES**

**(Revised December 2011)**

Disciplinary Guidelines are primarily for the Board's reference and guidance. They are subject to revision at the Board's discretion without notice to the public. Disciplinary Guidelines are intended to promote consistency in Board-imposed sanctions, but are not binding on the Board. The Board recognizes that individual matters present unique sets of circumstances which merit individual consideration by the Board.

## CATEGORIES OF VIOLATIONS

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## APPENDICES

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**CATEGORY I: IMPROPER PRESCRIBING, DISPENSING, OR ADMINISTERING  
OF DRUGS**

- A. Prescribing, dispensing, or administering of any drug for excessive periods of time and/or in excessive amounts.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Definite suspension, min. 90 days; subsequent probation, min. 2 years, to include prescribing course

- B. (Reserved)

- C. (Reserved)

- D. Failing to keep patient records of substances prescribed, dispensed or administered; and/or failing to perform appropriate prior examination and/or failure to document in the patient record performance of appropriate prior examination.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand; probation, min. 2 years, to include medical-recordkeeping course

- E. (Reserved)

- F. Inappropriate purchasing, controlling, dispensing, and/or administering of any drug.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Definite suspension, min. 60 days; subsequent probation, min. 2 years

- G. Failure to use acceptable methods in selection of drugs or other modalities.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 3 years

- H. (Reserved)

- I. Selling, prescribing, dispensing, giving away, or administering any drug for other than a legal and legitimate therapeutic purpose and/or selling, prescribing, dispensing, giving away, or administering any drug in exchange for sexual favors.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- J. (Reserved)

- K. (Reserved)

- L. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug related felony, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- M. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug-related misdemeanor, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 2 years.

- N. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug related felony where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 90 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

- O. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug-related misdemeanor where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 30 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

- P. Utilizing a controlled substance in the treatment of a family member or self in violation of Section 4731-11-08, Ohio Administrative Code.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand; probation, min. 2 years, to include appropriate medical-education course

**Review/Revision History:**

*Sections I.M, I.O, and I.P: 12/10*

*Sections I.A through I.K: 10/10*

*Sections I.L and I.N: 7/10*

**CATEGORY II: MINIMAL STANDARDS OF CARE**

A. Departure from or failure to conform to minimal standards of care.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Probation, min. 3 years

B. Sexual misconduct within practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year, with conditions for reinstatement;  
subsequent probation as appropriate

NOTE: WHERE APPROPRIATE, PERMANENT LIMITATIONS AND RESTRICTIONS  
MAY ALSO BE IMPOSED.

**Review/Revision History:**

*Sections II.A and II.B: 1/11*

### **CATEGORY III: FRAUD, MISREPRESENTATION, OR DECEPTION**

A. Fraud in passing examination.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Revocation of certificate or denial of application (minimum required by statute)

B. (Reserved)

C. (Reserved)

D. Publishing a false, fraudulent, deceptive, or misleading statement.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 1 year

E. (Reserved)

F. Obtaining, or attempting to obtain, anything of value by fraudulent misrepresentations in the course of practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year, with conditions for reinstatement; subsequent probation, min. 2 years

G. Deceptive advertising.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 1 year

- H. Representing, with purpose of obtaining compensation or advantage, that incurable disease can be cured.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 3 years, with conditions for reinstatement to include SPEX and personal/professional ethics courses; subsequent probation, min. 5 years, including requirements for a practice plan and monitoring physician prior to resuming practice

NOTE: SEE APPENDIX A IF VIOLATION BY LICENSURE APPLICANT.

**Review/Revision History:**

*Sections III.A through III.H: 2/11*

### **CATEGORY IV: ETHICS VIOLATIONS**

- A. Division of fees for referral of patients, or receiving a thing of value for specific referral of patient to utilize particular service or business.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year, with conditions for reinstatement; subsequent probation as appropriate

- B. Code of ethics violation.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand

- C. Willfully betraying a professional confidence.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 1 year, to include condition of successfully completing appropriate ethics course(s)

**NOTE: SEE CATEGORY II PENALTIES FOR SEXUAL MISCONDUCT WITHIN PRACTICE, AND CATEGORY III PENALTIES FOR FRAUDULENT ACTS.**

#### **Review/Revision History:**

*Sections IV.A through IV.C: 5/11*

### **CATEGORY V: ACTIONS BY OTHER STATES OR ENTITIES**

Limitation, revocation, suspension, acceptance of license surrender, denial of license, refusal to renew or reinstate a license, imposition of probation, or censure or other reprimand, by another jurisdiction; action against clinical privileges by Department of Defense or Veterans Administration; or termination or suspension from Medicare or Medicaid.

Maximum Penalty: Correspond to maximum penalty in Ohio for type of violation committed

Minimum Penalty: Correspond to minimum penalty in Ohio for type of violation committed

#### **Review/Revision History:**

*Category V: 5/11*

### **CATEGORY VI: UNAUTHORIZED PRACTICE**

- A. Practice during suspension imposed by Board order.
- Maximum Penalty: Permanent revocation of certificate or permanent denial of application
- Minimum Penalty: Permanent revocation of certificate or permanent denial of application
- B. Applicant's prior practice without license or registration as physician assistant, anesthesiologist assistant, or radiologist assistant.
- Maximum Penalty: Denial of licensure or P.A./A.A./R.A. registration with conditions for any future application
- Minimum Penalty: Denial of licensure or P.A./A.A./R.A. registration
- C. Aiding and abetting unlicensed practice or practice by unregistered physician assistant, anesthesiologist assistant, or radiologist assistant.
- Maximum Penalty: One-year suspension; subsequent 2-year probation including requirement of annual report of utilization of employee or P.A./A.A./R.A.
- Minimum Penalty: Suspension for 30 days; subsequent 2-year probation including requirement of annual report of utilization of employee or P.A./A.A./R.A.
- D. Practice outside scope of license or registration.
- Maximum Penalty: Permanent revocation of certificate or permanent denial of application
- Minimum Penalty: 30-day suspension
- E. Supervising a physician assistant, anesthesiologist assistant, or radiologist assistant in the absence of an approved supervisory plan and approved supervision agreement.
- Maximum Penalty: Permanent revocation of certificate or permanent denial of application
- Minimum Penalty: Suspension for 90 days

- F. Practice of a physician assistant, anesthesiologist assistant, or radiologist assistant in the absence of an approved supervisory plan and an approved supervision agreement.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 90 days

- G. Permitting a physician assistant, anesthesiologist assistant, or radiologist assistant to perform services as a P.A., A.A., or R.A. in a manner that is inconsistent with the supervisory plan or special services plan under which that P.A./A.A./R.A. practices.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Probation (non-appearing), min. 1 year

- H. Practice of a physician assistant, anesthesiologist assistant, or radiologist assistant in a manner that is inconsistent with the supervisory plan or special services plan under which that P.A./A.A./R.A. practices.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Probation (non-appearing), min. 1 year

- I. Permitting a physician assistant to perform services as a physician assistant in a manner that is not in accordance with Chapter 4730 or other applicable chapter of the Revised Code and/or the rules adopted thereunder.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 3 years

- J. Practice of a physician assistant in a manner that is not in accordance with Chapter 4730 or other applicable chapter of the Revised Code and/or the rules adopted thereunder.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 3 years

- K. Failure to timely report termination of a physician assistant supervision agreement to the Board.

Maximum Penalty: Suspension for 2 years

Minimum Penalty: Reprimand

- L. Limited Practitioner Holding Self Out as Doctor or Physician in Violation of Rule 4731-1-03(D) and/or 4731-1-03(E), Ohio Admin. Code.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days; conditions for reinstatement to include eliminating the offending references from any advertising, internet sites, signs, business cards, stationery, and similar locations; subsequent probation, min. 2 years

NOTE: SEE CATEGORY VII PENALTIES FOR PRACTICE IN VIOLATION OF  
CONDITIONS OF LIMITATION PLACED BY THE BOARD

**Review/Revision History:**

*Sections VI.A through VI.K: 5/11*

*Section VI.L: 12/11*

## **CATEGORY VII: VIOLATION OF CONDITIONS OF LIMITATION**

- A. Violation of practice or prescribing limitations placed by the Board.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. one year, with conditions for reinstatement; subsequent probation, min. 3 years

- B. Violation of conditions of limitation, other than practice prohibitions, placed by the Board.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. as appropriate, with conditions for reinstatement; subsequent probation, min. 3 years

### **Review/Revision History:**

*Sections VII.A and VII.B: 8/11*

### **CATEGORY VIII: CRIMINAL ACTS OR CONVICTIONS**

- A. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a felony committed in course of practice, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- B. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a felony not committed in course of practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 30 days, with conditions for reinstatement; subsequent 3 year probation

- C. Commission of act constituting a felony in this state, regardless of where committed, if related to practice, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- D. Commission of act constituting a felony in this state, regardless of where committed, if unrelated to practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 30 days, with conditions for reinstatement; subsequent 3 year probation

- E. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in course of practice or involving moral turpitude.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 2 years

- F. Commission of act constituting a misdemeanor committed in course of practice or involving moral turpitude.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 2 years

- G. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a felony committed in course of practice, where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 90 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

- H. Commission of act constituting a felony in this state, regardless of where committed, if related to practice, where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 90 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

NOTE: SEE CATEGORY I PENALTIES FOR DRUG RELATED CONVICTIONS

**Review/Revision History:**

*Sections VIII.B and VIII.D: 8/11*

*Sections VIII.E and VIII.F: 9/10*

*Sections VIII.A, VIII.C, VIII.G, and VIII.H: 7/10*

## CATEGORY IX: IMPAIRMENT OF ABILITY TO PRACTICE

- A. Initial Impairment and/or Less than One Year of Sobriety: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision).

This section applies to:

- (1) All licensees holding an active certificate,
- (2) All licensees holding a previously active certificate that is currently expired/inactive/lapsed for any reason,
- (3) All applicants for licensure/reinstatement/restoration who have not demonstrated continuous current sobriety for at least one year since the date of the applicant's discharge from treatment where the treatment was completed and conformed with board requirements.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, no minimum, with conditions for reinstatement; subsequent probation, minimum 5 years

- B. "Slip Rule": Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision), where all conditions set forth in Rule 4731-16-02(D), Ohio Administrative Code, have been met.

The Respondent will not be subjected to suspension or other formal discipline

- C. First Relapse: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision); first relapse during or following treatment, and/or where all conditions set forth in Rule 4731-16-02(D), Ohio Administrative Code, have not been met.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 90 days following date of license suspension (mandated by administrative rule), with conditions for reinstatement; subsequent probation, min. 5 years

- D. Second Relapse: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision); second relapse during or following treatment.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year following date of license suspension (mandated by administrative rule), with conditions for reinstatement; subsequent probation, min. 5 years

- E. Third Relapse: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision); third relapse during or following treatment.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 3 years following date of license suspension (mandated by administrative rule), with conditions for reinstatement; subsequent probation, min. 5 years

- F. Impairment, 1 - 5 Years of Sobriety: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision).

This section applies to all applicants for licensure/reinstatement/restoration who have demonstrated continuous current sobriety for more than one year, but less than five years, since the date of the applicant's discharge from treatment where the treatment was completed and conformed with board requirements.

Maximum Penalty: Permanent denial of application

Minimum Penalty: Application granted; subject to probation for a minimum term that, when added to the applicant's demonstrated period of continuous current sobriety, shall not be less than 5 years

- G. Impairment, 5+ Years of Sobriety: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision).

This section applies to all applicants for licensure/reinstatement/restoration who have demonstrated continuous current sobriety for more than five years since the date of the applicant's discharge from treatment where the treatment was completed and conformed with board requirements.

Maximum Penalty: Permanent denial of application

Minimum Penalty: License may be granted/reinstated/restored without probation or other disciplinary action

- H. Mental/Physical Illness, Currently Unable To Practice: Inability to practice according to acceptable and prevailing standards of care by reason of mental or physical illness (including any mental disorder, mental illness, physical illness, or physical deterioration that adversely affects cognitive, motor, or perceptive skills).

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: If applicant: Granting of license subject to indefinite suspension, min. as appropriate; conditions for reinstatement; subsequent probation, min. 2 years  
If licensee: Indefinite suspension, min. as appropriate; conditions for reinstatement; subsequent probation, min. 2 years

- I. Mental/Physical Illness, Currently Able To Practice Subject To Appropriate Treatment, Monitoring, Or Supervision: Inability to practice according to acceptable and prevailing standards of care by reason of mental or physical illness (including any mental disorder, mental illness, physical illness, or physical deterioration, that adversely affects cognitive, motor, or perceptive skills) without appropriate treatment, monitoring, or supervision.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: If applicant: Granting of license subject to probationary terms and conditions, min. 2 years  
If licensee: Probation, min. 2 years

**Review/Revision History:**

*Sections IX.A through IX.I: 9/11*

### **CATEGORY X: C.M.E. REQUIREMENTS**

- A. Failure to respond timely to C.M.E. audit, but requisite C.M.E. completed.

Maximum Penalty: Reprimand; subject to mandatory audits of compliance with CME requirements for the current CME acquisition period and for two full CME acquisition periods thereafter.

Minimum Penalty: Reprimand.

- B. Failure to complete C.M.E. as certified on renewal application.

Maximum Penalty: Reprimand; \$5,000.00 fine; indefinite suspension until any outstanding shortage of CME credits has been rectified; subject to mandatory audits of compliance with CME requirements during suspension (if any), for the current CME acquisition period at the time of reinstatement (or for current CME acquisition period if no suspension), and for two full CME acquisition periods thereafter.

Minimum Penalty: Reprimand; \$1,000.00 fine; indefinite suspension until any outstanding shortage of CME credits has been rectified; subject to mandatory audits of compliance with CME requirements during suspension (if any), for the current CME acquisition period at the time of reinstatement (or for current CME acquisition period if no suspension), and for two full CME acquisition periods thereafter.

- C. Failure to complete C.M.E. as certified on renewal application; repeat offense.

Maximum Penalty: \$5,000.00 fine; indefinite suspension, min. 90 days, with conditions for reinstatement; subject to mandatory audits of compliance with CME requirements during suspension, for the current CME acquisition period at the time of reinstatement, and for two full CME acquisition periods thereafter.

Minimum Penalty: \$3,000.00 fine; indefinite suspension, min. 60 days, with conditions for reinstatement; subject to mandatory audits of compliance with CME requirements during suspension, for the current CME acquisition period at the time of reinstatement, and for two full CME acquisition periods thereafter.

NOTE: IF FRAUDULENT MISREPRESENTATIONS (OTHER THAN FALSE CERTIFICATION OF COMPLETION) ARE MADE WITH RESPECT TO C.M.E., CATEGORY III PENALTY MAY BE APPROPRIATE IN ADDITION TO THE STANDARD C.M.E. PENALTY. A BIFURCATED ORDER MAY BE USED.

**Review/Revision History:**

*Sections X.A through X.C: 10/11*

### **CATEGORY XI: MISCELLANEOUS VIOLATIONS**

- A. Violating or attempting to violate, directly or indirectly, or assisting in or abetting violation of, or conspiring to violate, the Medical Practices Act or any rule promulgated by the Board.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Correspond to minimum penalty for actual offense

- B. Violation of any abortion law or rule.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand

- C. Permitting name or certificate to be used when not actually directing treatment.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension, 1 year; subsequent probation, min. 1 year

- D. Failure to cooperate in an investigation conducted by the Board.

Maximum Penalty: Indefinite suspension of license with conditions for reinstatement to include, at a minimum, full cooperation in the underlying investigation.

Minimum Penalty: Reprimand, as long as respondent has fully cooperated in the underlying investigation.

#### **Review/Revision History:**

*Sections XI.A through XI.D: 10/11*

## **APPENDIX A: APPLICABILITY OF GUIDELINES TO LICENSURE AND TRAINING CERTIFICATE APPLICANTS**

The penalties specified in Categories I through XI are generally tailored to apply to violations of the Medical Practices Act by licensees. When applicants for licensure or training certificates are found to have committed like violations, the appropriate penalties will be formulated in terms of either grant, denial, or permanent denial of the application. A grant of a license or training certificate may be accompanied by limitation, suspension, requirements for reinstatement, probation, and/or reprimand, as appropriate, and should be proportionate to penalties imposed for licensees.

### **Review/Revision History:**

*11/11*

## **APPENDIX B: AGGRAVATING AND MITIGATING FACTORS**

After a violation has been established, the Board may consider aggravating and mitigating circumstances in deciding what penalty to impose. If the Board deems such circumstances sufficient to justify a departure from disciplinary guidelines, they should be specified during the Board's deliberations.

### AGGRAVATION

Aggravation or aggravating circumstances are any considerations or factors which might justify an increase in the degree of discipline to be imposed. Aggravating factors may include, but are not limited to:

- (a) Prior disciplinary actions
- (b) Dishonest or selfish motive
- (c) A pattern of misconduct
- (d) Multiple violations
- (e) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process
- (f) Refusal to acknowledge wrongful nature of conduct
- (g) Adverse impact of misconduct on others
- (h) Vulnerability of victim
- (i) Willful or reckless misconduct
- (j) Use/abuse of position of trust, or of licensee status, to accomplish the deception, theft, boundaries violation, or other misconduct
- (k) Where an individual has a duty to disclose information to the Board, the extent of delay in disclosing all or part of the information, including the failure to self-report relapse immediately to the Board as required
- (l) Failure to correct misconduct after recognizing the existence of the problem/violation

### MITIGATION

Mitigation or mitigating circumstances are any considerations or factors which might justify a reduction in the degree of discipline to be imposed. Mitigating factors may include, but are not limited to:

- (a) Absence of a prior disciplinary record
- (b) Absence of a dishonest or selfish motive
- (c) Isolated incident, unlikely to recur
- (d) Full and free disclosure to Board, when done in a timely manner (such as before discovery is imminent)

- (e) Physical or mental disability or impairment  
(NOTE: IT IS THE BOARD'S STATED POLICY THAT IMPAIRMENT SHALL NOT EXCUSE ACTS WHICH RESULT IN CONVICTION OR WHICH POTENTIALLY HAVE AN ADVERSE IMPACT ON OTHER INDIVIDUALS.)
- (f) Interim rehabilitation or remedial measures
- (g) Remorse
- (h) Absence of adverse impact of misconduct on others
- (i) Remoteness of misconduct, to the extent that the passage of time between the misconduct and the Board's determination of the sanction is not attributable to the respondent's delay, evasion, or other acts/omissions
- (j) Absence of willful or reckless misconduct
- (k) Prompt correction of misconduct/problem after recognizing its existence.

**Review/Revision History:**

*11/11*

STATE OF WISCONSIN  
MEDICAL EXAMINING BOARD

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IN THE MATTER OF RULE-MAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	MEDICAL EXAMINING
MEDICAL EXAMINING BOARD	:	BOARD
	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 13-008)

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PROPOSED ORDER

The Wisconsin Medical Examining Board proposes an order to renumber s. Med 10.01; to amend s. Med 10.01 (1) (title); to repeal and recreate s. Med 10.02; and to create ss. Med 10.01 (2) and 10.03, relating to unprofessional conduct.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

Section 448.40 (1), Stats.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) (a), and 448.40 (1), Stats.

**Explanation of agency authority:**

The legislature, via ss. 15.08 (5) (b), and 227.11 (2) (a), Stats., confers upon the Medical Examining Board general power to promulgate rules for the guidance of the profession and to interpret the provisions of statutes it enforces. Section 448.40 (1), Stats., authorizes the Board to promulgate rules that carry out the purposes of the Medical Practices subchapter. Chapter Med 10 Unprofessional Conduct is administered by the Medical Examining Board; as such the Board has statutory authority to revise ch. Med 10 for the purpose of providing guidance within the profession.

**Related statute or rule:**

Chapter Med 10

**Plain language analysis:**

This proposed rule seeks to modernize Chapter Med 10 Unprofessional Conduct by overhauling the current version of the rules, adding language that specifically addresses new topic areas, deleting outdated language of some provisions and augmenting others.

SECTION 1. amends the title of the authority provision.

SECTION 1m. renumbers Med 10.01 to Med 10.01 (1).

SECTION 2. amends the rule by adopting a statement of intent that provides guidance on how the rules should be interpreted.

SECTION 3. repeals and recreates the definitions section adding several new terms.

SECTION 4. creates a new section defining unprofessional conduct.

**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:**

The following comparisons are the result of various internet searches:

**Illinois:** The grounds for administering disciplinary actions against physicians in Illinois are set forth in [225 ILCS 60/ 22 \(2012\)](#). The processes for administering the disciplinary proceedings are stated in the Illinois Code of Regulation Title 68: Professions and Occupations Chapter VII: Department of Financial and Professional Regulation Subchapter B: Professions and Occupations [PART 1285.200-1285.275 MEDICAL PRACTICE ACT OF 1987: Sections Listing](#) The Illinois grounds for disciplinary action covers topics such as patient abandonment, obtaining fees by fraud, and habitual or excessive use of drugs.

**Iowa:** Grounds for disciplining health care professionals in Iowa are codified in Iowa Code § 147.55 and through the Iowa Administrative Code 653-23.1(272C). <http://www.legis.state.ia.us/aspx/ACODocs/DOCS/4-21-2010.653.23.pdf> The administrative code has forty-two provisions that cover topics such as wrong site surgery, engaging in sexual misconduct, and fraud in procuring a license.

**Michigan:** The grounds for disciplinary action against health care professionals in Michigan are codified in the Public Health Code, Public Act 368 of 1978 (2010 PA 101, MCL 333.16221. The code has provisions disciplining incompetence, lack of good moral character and conviction of a misdemeanor.

[http://www.legislature.mi.gov/\(S\(j4bg0h454voc1545vsgjncnx\)\)/documents/mcl/pdf/mcl-333-16221.pdf](http://www.legislature.mi.gov/(S(j4bg0h454voc1545vsgjncnx))/documents/mcl/pdf/mcl-333-16221.pdf)

**Minnesota:** The grounds for administering disciplinary action against physicians in Minnesota are stated in Minn. Stat. §147.091. <https://www.revisor.mn.gov/data/revisor/statute/2009/147/2009-147.091.pdf> has twenty-six provisions covering topics such as revealing privileged communication, improper management of medical records and failure to supervise a physician assistant.

**Summary of factual data and analytical methodologies:**

The Medical Examining Board approved a work group which was convened to gather information and consider unprofessional conduct rules from different states and model language from the Federation of State Medical Boards (FSMB). The work group, over a series of board meetings, presented to the full Medical Examining Board recommended language. The recommended language drafted by the work group was then considered by the full board. The work group also sought out input from stakeholders such as the Wisconsin Medical Society (WMS) and the Wisconsin Hospital Association (WHA). The full board compared and contrasted the work group language with language from WHA and WMS as well as recommended language from the Federation of State Medical Boards (FSMB). This collaboration resulted in a comprehensive review of the rules in their entirety.

**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 s. 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 Fiscal Estimate and Economic Impact Analysis are attached.

**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 [Greg.Gasper@wisconsin.gov](mailto:Greg.Gasper@wisconsin.gov) or by calling (608) 266-8608.

**Agency contact person:**

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

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

Comments may be submitted to Shawn Leatherwood Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison,

Wisconsin 53708-8935, or by email to [Shancethea.L Leatherwood@wisconsin.gov](mailto:Shancethea.L Leatherwood@wisconsin.gov). Comments must be received on or before March 20, 2013, to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. Med. 10.01 (title) is amended to read:

**MED 10.01 (title) Authority and purpose intent.**

SECTION 1m. Med 10.01 is renumbered Med 10.01 (1).

SECTION 2. Med 10.01 (2) is created to read:

(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 require 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.

SECTION 3. MED 10.02 is repealed and recreated to read:

**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.

(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.

(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.

SECTION 4. MED 10.03 is created to read:

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

Med 10.03 (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, for 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, 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.

(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.

Med 10.03 (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 its findings of facts and conclusions of law.

2. A certified copy of a finding, order, or judgment demonstrating the entry of a guilty, 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.

(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.

(k) Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person or allowing another person or organization to use his or her license to practice medicine. This provision does not prohibit a Wisconsin physician or any other practitioner subject to this chapter from providing outpatient services ordered by a physician licensed in another state, if the physician who wrote the order saw the patient in the state in which the physician is licensed and the physician who wrote the order remains responsible for the patient.

(L) Violating the practice standards under s. BC 2.03 to practice medicine and surgery while serving as a medical director or physician who delegates and supervises services performed by non-physicians, including aiding or abetting any person's violation of s. BC 2.03.

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

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

(o) Abandoning a patient occurs when an active professional relationship between physician and patient is terminated by the physician and any of the following occur:

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

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

3. The physician fails to provide for continuity of prescription medications, if the medications are necessary to avoid unacceptable risk of harm.

4. The physician fails to provide for emergency care during the period between the notice of intent to withdraw from the physician-patient relationship and the date on which the physician-patient relationship ends.

Med 10.03 (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 medicine and surgery by another licensing jurisdiction concerned with the practice of medicine and surgery.

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

(c) Having any credential pertaining to the practice of medicine and surgery or any act constituting the practice of medicine and surgery become subject to adverse determination by any agency of this or another state, or by any federal agency or authority.

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

(e) Failing to establish and maintain timely patient health care records, including records of prescription orders, under ch. Med 21.03, or as otherwise required by law.

(f) Violating the duty to report under s. 448.115, Stats.

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

(h) 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 10.03  
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 of 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

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.

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(END OF TEXT OF RULE)  
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Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chairperson  
Medical Examining Board