

**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 BOARD  
MEDICAL EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 02-055)**

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TO: Senator Judy Robson, Senate Co-Chairperson  
Joint Committee for the Review of Administrative Rules  
Room 15 South, State Capitol  
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the MEDICAL EXAMINING BOARD is submitting in final draft form rules relating to defining sexual contact with a patient as unprofessional conduct.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

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**STATE OF WISCONSIN  
MEDICAL EXAMINING BOARD**

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**IN THE MATTER OF RULE-MAKING :**  
**PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE**  
**MEDICAL EXAMINING BOARD : ON CLEARINGHOUSE RULE 02-055**  
**: (s. 227.19 (3), Stats.)**

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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS:**

No new or revised forms are required by these rules.

**III. FISCAL ESTIMATES:**

These rules will have no significant impact upon state or local units of government.

**IV. STATEMENT EXPLAINING NEED:**

The Medical Examining Board has for many years prosecuted cases involving inappropriate sexual contact between physicians and their patients under s. Med 10.02 (2) (h), Wis. Admin. Code. That section reads as follows:

Med 10.02 Definitions. . . . (2) The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding or abetting the same:

(h) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

In a recent circuit court case, the board's finding of a violation of the cited section, arising from a respondent having engaged in a sexual relationship with a patient over a period of approximately eight months, was appealed based in part on the argument that the cited section was vague in terms of what it permitted and prohibited. The court agreed, reversing the board's decision and remanding the case to the board "for either further evidentiary proceedings or for particularly specific findings as to how the danger to patient rule was violated or caused, rather, in this case by improper medical treatment."

Based upon this challenge to the board's interpretation of the so-called "danger rule," it is deemed appropriate to join most of the other health care boards in specifically prohibiting inappropriate sexual contact or behavior with a patient. Also consistent with similar rules promulgated by other affected boards, the patient's status as a patient is extended for two years beyond actual termination of services in order to obviate the possible problem of a

licensee summarily suspended terminating treatment immediately upon commencement of improper personal contact with a patient.

**V. NOTICE OF PUBLIC HEARING:**

A public hearing was held on June 19, 2002. There were no appearances at the public hearing nor were any written comments received.

**VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

There were no recommendations suggested in the Clearinghouse Report.

**VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:**

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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7/15/02

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PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD  
MEDICAL EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 02-055)

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PROPOSED ORDER

An order of the Medical Examining Board to create Med 10.02 (2) (zd), relating to defining sexual contact with a patient as unprofessional conduct.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1), Wis. Stats.

Statutes interpreted: s. 448.015 (4), Wis. Stats.

The Medical Examining Board has for many years prosecuted cases involving inappropriate sexual contact between physicians and their patients under s. Med 10.02 (2) (h), Wis. Admin. Code. That section reads as follows:

Med 10.02 Definitions. . . . (2) The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding or abetting the same:

(h) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

In a recent circuit court case, the board's finding of a violation of the cited section, arising from a respondent having engaged in a sexual relationship with a patient over a period of approximately eight months, was appealed based in part on the argument that the cited section was vague in terms of what it permitted and prohibited. The court agreed, reversing the board's decision and remanding the case to the board "for either further evidentiary proceedings or for particularly specific findings as to how the danger to patient rule was violated or caused, rather, in this case by improper medical treatment."

Based upon this challenge to the board's interpretation of the so-called "danger rule," it is deemed appropriate to join most of the other health care boards in specifically prohibiting inappropriate sexual contact or behavior with a patient. Also consistent with similar rules promulgated by other affected boards, the patient's status as a patient is extended for two years beyond actual termination of services in order to obviate the possible problem of a licensee

summarily suspended terminating treatment immediately upon commencement of improper personal contact with a patient.

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TEXT OF RULE

SECTION 1. Med 10.02 (2) (zd) is created to read:

Med 10.02 (2) (zd) Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient. For the purposes of this subsection, an adult receiving treatment shall continue to be a patient for 2 years after the termination of professional services. If the person receiving treatment is a minor, the person shall continue to be a patient for the purposes of this subsection for 2 years after termination of services, or for 2 years after the patient reaches the age of majority, whichever is longer.

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

Dated \_\_\_\_\_ Agency \_\_\_\_\_  
Chairperson  
Medical Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE 02-055

AN ORDER to create Med 10.02 (2) (zd), relating to defining sexual contact with a patient as unprofessional conduct.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

04-30-02 RECEIVED BY LEGISLATIVE COUNCIL.

05-07-02 REPORT SENT TO AGENCY.

RS:PGC:tlu





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MEDICAL EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 02- )

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

Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chairperson  
Medical Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.