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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 02-103

AN ORDER to create chapter RL 222, relating to extension of disciplinary action time limits.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

07-10-2002 RECEIVED BY LEGISLATIVE COUNCIL.

07-23-2002 REPORT SENT TO AGENCY.

RS:AS

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO



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### CLEARINGHOUSE RULE 02-103

#### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

- a. In the statement of statutory authority and statutes interpreted in the analysis, the citation "448.02 (cm)" should be replaced by the citation "448.02 (3) (cm)."
- b. The analysis provides that the Secretary of the Department of Regulation and Licensing must consider the extent to which a person who is the potential subject of a disciplinary action will be prejudiced by an extension in considering whether to approve an extension, but the rule does not include this requirement.
- c. The definitions in s. RL 222.02 (1) and (4) should be deleted because the phrases are not used in ch. RL 222.
- d. The definitions in s. RL 222.02 should include a definition of "secretary."

#### 5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the first paragraph of the analysis, in the last sentence, "fin" should be replaced with "in."
- b. In s. RL 222.02 (1), "sdthe" should be replaced with "the."
- c. In s. RL 222.02 (3), "the filing of" should be replaced with "to file."

d. In s. RL 222.03 (1) (intro.), the text would be clearer if it read: "The board may request an extension of a time limit under s. 448.02 (3) (cm), Stats., from the secretary. The request shall be in writing and shall state all of the following:"

e. In s. RL 222.03 (1) (b), "A request for an extension of the time specified in days to" should be replaced with a phrase such as: "The number of days the board requires as an extension in order to."

f. In s. RL 222.03 (3), "act on" should be replaced with "approve or deny."

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION  
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES  
AND LICENSING : (CLEARINGHOUSE RULE 02- )

PROPOSED ORDER

An order of the Department of Regulation and Licensing to create ch. RL 222 relating to extension of disciplinary action time limits.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 448.02 (cm), Wis. Stats. (3) X

Statutes interpreted: s. 448.02 (cm), Wis. Stats. (3) X

Section 448.02 (3) (cm), Wis. Stats., establishes certain time limits for the Medical Examining Board to initiate disciplinary action against physicians. The board may request the Secretary of the Department of Regulation and Licensing to grant an extension to those time limits. This proposed rule-making order describes how a request is made and the factors to be considered in determining whether to grant an extension.

The request for an extension must be made in writing and shall include the nature and date of the investigation, the extension of time to determine whether a physician is guilty of unprofessional conduct or negligence, and the reasons why the board has not made a decision within the time specified.

Section RL 222.02, Wis. Admin. Code, creates definitions of terms used in the statutes. The four definitions are "allegation involving the death of a patient," "board," "initiate disciplinary action," and "initiating an investigation."

Section RL 222.03, Wis. Admin. Code, summarizes the information needed for a request. In determining whether a specified extension of time is necessary for the board to determine whether there is probable cause for the extension the secretary shall take into consideration the nature and complexity of the investigation, the quantity and quality of evidence, the cause of any delays in the investigation, and the extent to which the person will be prejudiced by an extension of time.

The board may initiate disciplinary action against a physician no later than one year after initiating an investigation involving the death of a patient and no later than 3 years after initiating

an investigation of any other allegation, unless the board shows that an extension of time is necessary.

TEXT OF RULE

SECTION 1. Chapter RL 222 is created to read:

CHAPTER RL 222

EXTENSION OF DISCIPLINARY ACTION TIME LIMITS

**RL 222.01 Authority and purpose.**  
**RL 222.02 Definitions.**

**RL 222.03 Extension of disciplinary  
action time limits.**

**RL 222.01 Authority and purpose.** The rules in this chapter are adopted by the department under the authority of ss. 15.08 (5) (b), 227.11 (2) and 448.02 (3) (cm), Stats., to govern the extension of disciplinary action time limits.

**RL 222.02 Definitions.** As used in this chapter:

(1) "Allegation involving the death of a patient" means the cause of the patient's death is alleged to be the direct result of the physician's alleged unprofessional conduct or negligence in treating the patient.

(2) "Board" means the medical examining board.

(3) "Initiate disciplinary action" means the filing of a complaint as defined in s. RL 2.03 (2).

(4) "Initiating an investigation" means the decision to commence an investigation of an informal complaint as defined in s. RL 2.03 (7) following the initial screening of the informal complaint as provided for in s. RL 2.035.

**RL 222.03 Extension of disciplinary action time limits.** (1) The board shall make a written request for an extension of time under s. 448.02 (3) (cm), Stats., to the secretary and shall state all of the following:

(a) The nature of the investigation and the date the investigation commenced.

(b) A request for an extension of time specified in days to determine whether a physician is guilty of unprofessional conduct or negligence in treatment and to initiate disciplinary action.

(c) The reasons why the board has not made a decision within the time specified under s. 448.02 (3) (cm), Stats.

(2) In deciding whether to grant or deny a specified extension of time for the board to determine whether a physician is guilty of unprofessional conduct or negligence in treatment, the secretary shall consider all of the following:

(a) The nature and complexity of the investigation including the cause of any delays encountered during the investigation.

(b) The quality and quantity of evidence available to the board.

(3) The secretary shall act on a request for an extension within 20 days of receipt. A request not approved within 20 days shall be deemed denied. (5)

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(END OF TEXT OF RULE)  
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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.), Wis. Stats.

Dated \_\_\_\_\_

Agency \_\_\_\_\_

Oscar Herrera, Secretary  
Department of Regulation and Licensing

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), Wis. Stat.