



**Carol Roessler**  
STATE SENATOR

December 1, 2003

To: Members of the Senate Committee on Health, Children, Families, Aging and Long Term Care.

From: Senator Carol Roessler, Chair

Re: Clearinghouse Rule 02-103 relating to extension of disciplinary action time limits.

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CR 02-103 has been referred to the Senate Committee on Health, Children, Families, Aging and Long Term Care.

Current Law:

The Medical Examining Board may initiate disciplinary action against a physician no later than one year after initiating an investigation of an allegation involving the death of a patient and no later than three years after initiating an investigation of any other allegation, **unless the Board shows to the satisfaction of the Secretary of the Department of Regulation and Licensing 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.**

CR 02-103

Under this rule, the Board may request the Secretary of the Department of Regulation and Licensing to grant an extension to the statutory time limits. This rule describes how time is computed in applying the time limits in the statute, how a request for an extension is made and the factors to be considered in determining whether to grant an extension.

If you would like the Committee to hold a hearing on CR 02-103, please contact Jennifer Halbur in my office at 266-5300 by **Monday December 22, 2003.**

**STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING**

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**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE  
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 02-103  
DEPARTMENT OF REGULATION : (s. 227.19 (3), Stats.)  
AND LICENSING :**

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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:**

**IV. STATEMENT EXPLAINING NEED:**

Section 448.02 (3) (cm), Wis. Stats., establishes time limits for the Medical Examining Board (Board) to initiate disciplinary action against a physician. The Board may initiate disciplinary action against a physician no later than one year after initiating an investigation of an allegation involving the 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 of the Department of Regulation and Licensing 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.

This rule was drafted to describe the procedure to be used to request an extension of time under s. 448.02 (3) (cm), Stats., and the factors to be considered in determining whether to extend the time limit. The rule was originally submitted to the Assembly and Senate on February 18, 2003. The Department requested to modify the rule by letter of April 9, 2003. The Department rewrote the rule to address comments of the Clearinghouse and also inserted language identifying the time for initiation of an investigation to be no later than 45 days after receipt of an informal complaint.

The initial draft of this rule included a definition of "initiating an investigation" that was intended to help define the commencement of the time period for initiating disciplinary actions. That definition was removed from the rule in response to a recommendation suggested in the Clearinghouse Report that the term was defined in the rule but not used in the text of the rule.

Under this rule, the Board may request the Secretary of the Department of Regulation and Licensing (Secretary) to grant an extension to the statutory time limits. This rule describes how time is computed in applying the time limits in the statute, how a request for an extension is made and the factors to be considered in determining whether to grant an extension.

**V. NOTICE OF PUBLIC HEARING:**

A public hearing was held on August 26, 2002. No one appeared at the public hearing. Written comments were submitted from Arthur K. Thexton, an attorney in the Division of Enforcement. No other written comments were received.

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

All of the recommendations suggested in the Clearinghouse Report were accepted in whole.

**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.

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING

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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 02-103)  
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PROPOSED ORDER

An order of the Department of Regulation and Licensing to create s. RL 2.20 relating to extension of disciplinary action time limits.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

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

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

Section 448.02 (3) (cm), Wis. Stats., establishes time limits for the Medical Examining Board (Board) to initiate disciplinary action against a physician. The Board may initiate disciplinary action against a physician no later than one year after initiating an investigation of an allegation involving the 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 of the Department of Regulation and Licensing 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.

Under the proposed rule, the Board may request the Secretary of the Department of Regulation and Licensing (Secretary) to grant an extension to the statutory time limits. This proposed rule describes how time is computed in applying the time limits in the statute, how a request for an extension is made and the factors to be considered in determining whether to grant an extension.

The rule includes a subsection describing how the statutory time periods are computed. The date of initiating an investigation is established as the date of the decision to commence an investigation of an informal complaint following the screening of the informal complaint, except that if the decision to commence an investigation of an informal complaint is made more than 45 days after the date of receipt of the informal complaint, or if no screening of the informal complaint is conducted, the time for initiating an investigation is set at 45 days after the date of receipt of the informal complaint. The date that the Board initiates a disciplinary action is established as the date that a disciplinary proceeding is commenced by the filing of a notice of hearing.

A request for an extension must be made in writing and include the nature and date of the conduct or negligence, and the reasons why the Board has not made a decision within the time specified.

Section RL 2.20 (3) summarizes the information needed for a request. Under sec. 2.20 (4), in determining whether to grant an extension of time the Secretary shall take into consideration certain factors: the nature and complexity of the investigation, whether delays were caused by lack of timely response to requests for records or other evidence, whether civil or criminal litigation relating to the matter investigated caused any delay, the quality and complexity of evidence available, the extent to which the physician will be prejudiced by an extension of time, and the potential harm to the public if the investigation is terminated.

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TEXT OF RULE

SECTION 1. RL 2.20 is created to read:

**RL 2.20 Extension of time limits in disciplinary actions against physicians. (1)**  
AUTHORITY AND PURPOSE. The rules in this section are adopted under the authority of ss. 15.08 (5) (b), 227.11 (2) and 448.02 (3) (cm), Stats., to govern the extension of time limits in disciplinary actions against physicians.

(2) COMPUTING TIME LIMITS. In computing time limits under s. 448.02 (3) (cm), Stats., the date of initiating an investigation shall be the date of the decision to commence an investigation of an informal complaint following the screening of the informal complaint under s. RL 2.035, except that if the decision to commence an investigation of an informal complaint is made more than 45 days after the date of receipt of the informal complaint in the division, or if no screening of the informal complaint is conducted, the time for initiating an investigation shall commence 45 days after the date of receipt of the informal complaint in the division. The date that the medical examining board initiates a disciplinary action shall be the date that a disciplinary proceeding is commenced under s. RL 2.04.

(3) PROCEDURE FOR REQUESTING AN EXTENSION OF TIME. The medical examining board or the division on behalf of the medical examining board shall make a written request for an extension of time under s. 448.02 (3) (cm), Stats., to the secretary of the department of regulation and licensing and shall state all of the following:

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

(b) The number of days the medical examining board requires as an extension in order to determine whether a physician is guilty of unprofessional conduct or negligence in treatment and to initiate disciplinary action.

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

(4) FACTORS TO BE CONSIDERED. In deciding whether to grant or deny a specified extension of time for the medical examining board to determine whether a physician is guilty of unprofessional conduct or negligence in treatment, the secretary of the department of regulation and licensing shall consider the information set forth in the request and at least the following factors:

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

(b) Whether delays encountered during the screening of the complaint or the complaint handling process were caused in whole or part by the fact that record custodians, witnesses, or persons investigated did not make a timely response to requests for records or other evidence.

(c) Whether civil or criminal litigation relating to the matter investigated caused any delay in the investigation.

(d) The quality and complexity of evidence available to the medical examining board.

(e) The extent to which the physician will be prejudiced by an extension of time.

(f) The potential harm to the public if the investigation is terminated without a determination of whether the physician complained about is guilty of unprofessional conduct or negligence in treatment.

(5) APPROVE OR DENY AN EXTENSION. The secretary of the department of regulation and licensing shall approve or deny a request for an extension within 20 days of receipt. A request not approved within 20 days shall be deemed denied.

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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 \_\_\_\_\_

Secretary Strong Hill  
Department of Regulation and Licensing

FISCAL ESTIMATE

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

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), Wis. Stat.

RL 2.20 CR02-103 (Timelines physician discipline) Draft 11-18-03



LCRC  
FORM 2

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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."