

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 12-005
MEDICAL EXAMINING BOARD : (S. 227.19 (3), Stats.)
:

I. THE PROPOSED RULE:

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

II. REFERENCES TO APPLICABLE FORMS:

The proposed rule does not require new forms.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA are attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The purpose of the proposed rule is to increase the physician to physician assistant ratio in Wis. Admin. Code s. Med 8.10 (1). The current rule allows a physician to concurrently supervise no more than 2 physician assistants at a time unless a written plan is submitted to the Board for its approval. The proposed rule increases the maximum number of physician assistants a physician may concurrently supervise from 2 to 4. The Board was prompted by the Council on Physician Assistants to initiate the proposed rule in recognition of a national trend of physician workforce shortages. By increasing the number of physician assistants to physician ratio, the proposed rule proactively addresses an impending physician workforce shortage; increases the efficiency of health care delivery; and insures public safety goals such as protecting the public.

V. NOTICE OF PUBLIC HEARING:

The Medical Examining Board held a public hearing on February 15, 2012. Written comments were accepted until February 15, 2012. The following people either testified at the hearing, submitted written comments or both:

Mark Grapentine, Senior Vice President-Government Relations, Wisconsin Medical Society
Madison, WI,

Lou Falligant, PA-C UW Health Cottage Grove, Stoughton, WI,

David Wilson, President, Wisconsin Academy of Physician Assistants, Madison, WI,

Anne Hletko, La Crosse, WI, Wisconsin Academy of Physician Assistants, Madison, WI

Judith F. Warmuth Madison, Vice President Workforce, Wisconsin Hospital Association, Madison, WI

Clark Collins, Wisconsin Academy of Physician Assistants, Sun Prairie, WI,

Michael D. Richards, La Crosse, WI Executive Director of External Affairs representing Gundersen Lutheran

Lisa Simpson, PA-C UW Health Deforest-Windsor, Windsor, WI

SUMMARY OF PUBLIC HEARING COMMENTS:

Mr. Grapentine of Madison, WI Senior Vice President- Government Relations representing the Wisconsin Medical Society submitted written comments and testified in support of the rule with suggestions for modifications. He proposed striking the language “is minimally competent to practice medicine and surgery” found in s. Med 8.05 (2) (e) and replacing it with “has met requirements for licensure.” He also suggested eliminating any ambiguity between s. Med 8.08 (1) (d) and Med 8.08(3) (e) by deleting the words “during each review.” Mr. Grapentine argued this change would clarify that physicians and physician assistant’s signatures are not required more than annually and reviews done more frequently would not require sign-off.

Mr. Lou Falligant of Stoughton, WI Executive Vice President representing the Wisconsin Academy of Physician Assistants submitted written comments and testified in support of the rule with suggestions for modifications. He advised the Board to avoid adding significant layers of complexity to Med 8. He argued that Med 8 should be streamlined. He suggested that s. Med 8.08 should be deleted in its entirety due to the language being obsolete now that PAs have been granted prescribing authority.

The Wisconsin Academy of Physician Assistants also retained the law firm of Axley Brynelson, LLP, to review the proposed rule. The firm’s recommendations were included in the written statement provided by Mr. Falligant. Axley Brynelson suggested the following changes: (1) amend the language in s. Med 8.01 (2) to express that the discretion of physician-led teams to determine whether more direct or intensive supervision is needed or should be practiced in accordance with the appropriate rules; (2) clarify the intent of s. Med 8.05 (2) (e) as to whether there are other factual circumstances that would require a personal appearance other than those stated in s. Med 8.05 (2) (b), (3) revise s. Med 8.08 in its entirety; and (4) define the terms “written guidelines” and “periodic review”.

Mr. David Wilson of Madison, WI President of the Wisconsin Academy of Physician Assistants testified in opposition of the proposed rule and submitted written comments. Specifically, Mr. Wilson opposed the wording of s. Med 8.08. He argued the current language of the proposed rule made it difficult for practitioners to determine the frequency of the periodic review of the physician assistant practice. He asked for language specifying

the periodic review would take place annually. He also supported Mark Grapentine and Lou Falligant's recommended changes to the proposed rule.

Mr. Clark Collins of Sun Prairie, WI and a member of the Wisconsin Academy of Physician Assistants appeared in support of the proposed rule with minor changes. He supported the changes recommended by Lou Falligant.

Ms. Anne Hletko of La Crosse, WI, a member of the Wisconsin Academy of Physician Assistants provided written comments and testified in support of the rule and submitted written comments. She favored the increase in physician-to-physician assistant ratios, the addition of the personal appearance for credential review and the elimination of the term substitute supervising physician. She suggested amending the definition of "supervising physician" to include physicians that practice in the federal health care system and are not licensed in Wisconsin. Ms. Hletko opposed the co-signature requirement in s. Med 8.08.

Ms. Judith F. Warmuth of Madison, WI, Vice President Workforce representing the Wisconsin Hospital Association provided written comments and appeared in support of the increase in physician-to-physician assistant ratios. Ms. Warmuth, asked the Board to clarify the wording of s. Med 8.10. She stated that the WHA is often asked by its members, how many physician assistants may be concurrently supervised. She asserted that it was unclear whether the current language allowed physicians to supervise two PAs in total or to supervise two PAs who are providing patient care. She suggested that adding the words "during the time the physician assistants are providing patient care" would clarify the terms "concurrently supervise." These suggestions lead to a discussion of the supervisory role of physicians and identifying a physician assistant's supervising physician.

Mr. Michael D. Richards of La Crosse, WI Executive Director of External Affairs representing Gundersen Lutheran provided written comments in support of the proposed rule. Mr. Richards stated that the increase in physician-to-physician assistant ratios would result in greater flexibility in clinical staffing arrangements and help in addressing provider shortages in key areas.

Ms. Lisa Simpson of Windsor, WI provided written comments encouraging the Board to "simplify not complicate the regulations".

BOARD'S RESPONSE TO PUBLIC COMMENTS:

In response to the public comments received the Board replaced the phrase "medicine and surgery" found in s. Med 8.05 (2) (e) with the phrase "as a physician assistant" to indicate physician assistants must be competent to practice as a physician assistant rather than competent to practice medicine and surgery. Med 8.08 was repealed in its entirety in response to public comments suggesting the removal of complexity from the rule. The definitions for adequate supervision, general supervision and supervising physician were deleted from the rule in order to avoid duplication of the same principle. Med 8.10 was amended to address the issue of how many physician assistants may be "concurrently" supervised. The phrase "on duty physician assistants" replaced the term "concurrently" to clarify the time frame in which physicians are supervising physician assistants.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 2. i. (1): The section title could be simplified, for example, as: “**Prescribing authority and written guideline.**” The subsections of s. Med 8.08 could also be given titles, to facilitate locating material within the somewhat lengthy section.

Response: Med 8.08 has been repealed.

Comment 5 d.: In s. Med 8.05 (2) (e), must all applicants be minimally competent to practice surgery?

Response: Physician assistants must be competent to practice as a physician assistant rather than medicine and surgery. The phrase “medicine and surgery” found in s. Med 8.05 (2) (e) has been replaced with “as a physician assistant.”

Comment 5 e.: In s. Med 8.10 (3), what is included in “telecommunication”?

Response: The intent of the term “telecommunication” as it is used in s. Med 8.10 (3) is to require that the physician assistant and physician shall have the capability of establishing communication by any electronic means including telephone, Skype or some other electronic means.

Comment 5 f. : In s. Med 8.10 (4), the new language is somewhat redundant, considering that sub. (3) provides that the physician must be available to be contacted by the physician assistant. Also, the requirements of the provision are vague and would, therefore, be difficult to enforce. In particular, what is meant by “including competent medical practice”?

Response: Med 8.10 (4) was deleted

All of the other recommendations in the clearinghouse report were accepted and incorporated into the final draft of the proposed rule.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

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