

Report From Agency

**STATE OF WISCONSIN
MEDICAL EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
MEDICAL EXAMINING BOARD : CR 23-037**

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS: N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is 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 objective of the proposed rules is to implement the statutory changes from 2021 Wisconsin Act 158. The Board achieved this objective by creating a new chapter in the Wisconsin Administrative Code, chapter Med 26, to cover the minimum practice standards required for participation in the military medical personal program that is administered by the Department of Safety and Professional Services.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Medical Examining Board held a public hearing on August 16, 2023. No public comments were received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 1: As used throughout proposed ch. Med 26, can the agency elaborate on its use of terms “delegate”, “clinical act”, “basic patient situation”, and “complex patient situation”? In particular, 2021 Wisconsin Act 158 uses the terms “supervise” and “skilled health services” and it is unclear why the agency has adopted a delegation model versus a supervisory one, and why it uses the terms “patient situation” and “clinical act” rather than “skilled health services”. If retained, note that the substantive definitions of “basic” and “complex” patient situations are very subjective and could be revised for clarity. Additionally, is the performance of acts in complex patient situations, as considered in proposed s. Med 26.03 (5), inconsistent with proposed s. Med 26.03 (4) (intro.), which limits practice to performance of acts in basic patient situations.

Response: The Board is rejecting this comment in part and accepting it in part. There is no inherent authority for Military Medical Personnel to perform tasks. Military Medical Personnel gain authority to perform tasks that would otherwise require a license when that authority is delegated to them by their licensed supervisor. Language and concepts relating to “delegation,” “clinical care,” “basic patient situation,” and “complex patient situation” are commonly and consistently used in medical and nursing practice, to define boundaries of practice delegated to unlicensed individuals. The Board used those terms in the proposed rule for clarity and consistency with existing terminology when describing what is appropriate for Military Medical Personnel. The Board therefore rejects the part of this comment regarding delegation and terms utilized. The board accepts that there is an inconsistency between s. Med 26.03 (5) and s, Med 26.03 (4) (intro.) and has decided to remove s. Med 26.03 (5) (a) to eliminate the conflict.

Comment 5c: In proposed s. Med 26.03 (1) (b), what is intended by the phrase, “such reasonable evidence may include...”, beyond the referenced memorandum or understanding? Additionally, how does the text of s. Med 26.03 (2) differ from that of sub. (1) (b)?

Response: The board accepts this comment and would like to note here that that memorandum of understanding should be the main evidence considered when evaluating the competency of a military medical personal program participant. However, the licensed supervising practitioner has the discretion to determine if other evidence is relevant and whether it should be considered. The board agrees that there is no difference between ss. Med 26.03 (1) (b) and (2), so has therefore removed s. Med 26.03 (2).

Comment 5f: Under proposed s. Med 26.06, does the agency have any authority over a supervisor who violates the requirements of the chapter?

Response: The board, by rule, establishes the standards for supervision of military medical personnel who participate in the program. Supervising practitioner's obligations are determined by the board that issues the supervising practitioner's license. If a complaint against a supervising practitioner related to their supervision of military medical personnel is received, the board that issued the supervising practitioner's license would apply the standards in ch. Med 26 and their own rules to determine if discipline is warranted under that board's statutes and rules.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

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