

Clearinghouse Rule 23-037

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Medical Examining Board to **create** Med 26, relating to Military Medical Personnel.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 440.077, Stats.

Statutory authority: ss. 15.08 (5) (b) and 448.40 (1), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats. states that “The Board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 448.40 (1), Stats., provides that “[t]he board may promulgate rules to carry out the purposes of this subchapter, including rules requiring the completion of continuing education, professional development, and maintenance of certification or performance improvement or continuing medical education programs for renewal of a license to practice medicine and surgery.”

Related statute or rule: None

Plain language analysis: The objective of the proposed rules is to implement the statutory changes from 2021 Wisconsin Act 158.

Summary of, and comparison with, existing or proposed federal regulation: The federal regulations that govern the U.S. armed forces are included under Title 32 of U.S. Code of Federal Regulations.

Comparison with rules in adjacent states:

Illinois: The Illinois Department of Financial and Professional Regulation is responsible for the licensure and regulation of the practice of medicine in Illinois, with input from the Illinois State Medical Board. The Illinois Department is also responsible for the promulgation of rules to implement certain sections of the Illinois Medical Practice Act of 1987. This Act contains requirements for applications, licensure, and discipline for physicians [225 Illinois Compiled Statutes ch. 60]. The rules in the Illinois Administrative Code include requirements for education programs, visiting physician permits, and disciplinary proceedings, among others. [Illinois Administrative Code Title 68, ch. 7, s. 1285]. Neither the Illinois statutes nor the administrative rules for medical practice include requirements for military medical personnel. The Illinois Service Member Employment and Reemployment Rights Acts includes general provisions for employment for all military personnel, but none are specific to medical or healthcare practice [330 Illinois Compiled Statutes ch. 61].

Iowa: The Iowa Board of Medicine is responsible for the licensure and regulation of medicine and surgery in Iowa. Chapter 148 of the Iowa Code includes statutory requirements for licensure, composition and powers of the Iowa Board, and discipline for physicians [Iowa Code ch. 148]. The Iowa Administrative Code includes rules relating to medical practice. These requirements also include rules on military service and veteran reciprocity. Military service members can apply to have their service and training counted for credit toward licensure as a medical physician or surgeon, osteopathic physician or surgeon, or licensed acupuncturist. Veterans can apply for provisional licensure to service members who are licensed in another jurisdiction with a credential that is not substantially equivalent to an Iowa license. This provisional license allows for that Veteran to obtain the additional experience or education needed for a regular Iowa license. Iowa also has rules for reciprocal licensure for veterans and their spouses that are licensed in other jurisdictions and that license is substantially equivalent to an Iowa license [653 Iowa Administrative Code ch. 18]. The Iowa statutes and rules for medicine and surgery do not include requirements specifically for military medical personnel supervision and practice.

Michigan: The Michigan Board of Medicine is responsible for the licensure and regulation of medical practice in Michigan. Act 368 Article 15 Part 170 of the Michigan Compiled Laws includes the regulations for medicine in Michigan, among several other occupations. Some of the requirements in this part include those for licensure, informed consent, and duties of the Michigan Board. This part of the Michigan rules also includes requirements for physician assistants and genetic counselors in addition to physicians. [Michigan Compiled Laws ss. 333.17001-333.17097]. The Michigan rules for medicine do not include requirements specifically for military medical personnel supervision and practice.

Minnesota: The Minnesota Board of Medical Practice is responsible for the licensure and regulation of medicine in Minnesota. Part 6800 of the Minnesota Administrative Code includes requirements for licensure, continuing education, and hearings before the Minnesota Board. [Minnesota Administrative Rules part 5600]. Chapter 147 of the Minnesota Statutes, or the Minnesota Medical Practice Act, also includes requirements

for licensure, practice, and discipline for physicians [Minnesota Statutes ch. 147].

Chapter 197 of the Minnesota Statutes includes requirements for expedited licensing processing and temporary licensure for former and current military personnel. The expedited licensing process is for those service members who are otherwise qualified to obtain licensure in an efficient manner. The temporary license process allows certain qualified service members who are licensed in another state to practice while waiting for a regular license to be granted [Minnesota Statutes ch. 197]. The Minnesota statutes and rules for medicine do not include requirements specifically for military medical personnel supervision and practice.

Summary of factual data and analytical methodologies:

The Board reviewed 2021 Wisconsin Act 158 and added to the Wisconsin Administrative Code accordingly. While promulgating these rules, the Board referenced material submitted by the Virginia Military Medic and Corpsman Program, Heroes for Healthcare, and the Wisconsin Hospital Association, among other sources.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule was posted for 14 days on the Department of Safety and Professional Services website to solicit economic impact comments, including how the proposed rules may affect businesses, local municipalities, and private citizens. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

These rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-6795.

Agency contact person:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-267-7139; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing, held on August 16, 2023, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapter Med 26 is created to read:

Chapter Med 26
MILITARY MEDICAL PERSONNEL

Med 26.01 Authority and Purpose. The rules in this chapter are adopted by the medical examining board pursuant to the authority delegated by ss. 15.08 (5) (b) and 448.40 (1m), Stats.

Med 26.02 Definitions. (1) “Adequate supervision” means the licensed supervising practitioner is competent and authorized under his or her applicable license or certification to perform the delegated clinical act, and must have reasonable evidence that the supervised individual is minimally competent to perform the act under the circumstances.

(2) “Administering facility” means an inpatient health care facility defined in s. 50.135(1), Stats., an outpatient health care location, a community-based residential facility defined in s. 50.01(1g), Stats., or a residential care apartment complex defined in s. 50.01(6d), Stats., that is a party to the memorandum of understanding specified in s. Med 26.03(1) and maintains a written policy governing registered military medical personnel specified in s. Med 26.03 (1) (g).

(3) “Advanced practice nurse prescriber” means a certified advanced practice nurse prescriber authorized to issue prescription orders under ch. 441, Stats.

(4) “Basic patient care” means care that can be performed following a defined procedure with minimal modification in which the responses of the patient to the care are predictable.

(5) “Basic patient situation” as determined by a licensed supervising practitioner means the following 3 conditions prevail at the same time in a given situation:

- (a) The patient's clinical condition is predictable;
- (b) Medical or nursing orders are not changing frequently and do not contain complex modifications; and,
- (c) The patient's clinical condition requires only basic patient care.

(6) “Complex patient situation” as determined by a Licensed supervising practitioner means any one or more of the following conditions exist in a given situation:

- (a) The patient's clinical condition is not predictable;
- (b) Medical or nursing orders are likely to involve frequent changes or complex modifications; or,

- (c) The patient's clinical condition indicates care that is likely to require modification of procedures in which the responses of the patient to the care are not predictable.
- (7) "Licensed supervising practitioner" means a physician licensed under ch. 448, Stats., a physician assistant licensed under ch. 448, Stats., a podiatrist licensed under ch. 448, Stats., a registered nurse licensed under ch. 441, Stats., and a certified advanced practice nurse prescriber defined in sub. (3).
- (8) "Military medical personnel" means a person who served as an army medic, a navy or coast guard corpsman, or an air force aerospace medical technician in the U.S. armed forces.
- (9) "Military medical personnel program participant" means military medical personnel who meet all of the following requirements:
- (a) The person has signed a memorandum of understanding specified in s. Med 26.04 (1) and has submitted the memorandum of understanding to their employer as specified in s. Med 26.04 (2).
 - (b) The person has signed a reasonable timeline consistent with s. 440.077 (3) (c), Stats. that describes the actions the military medical personnel intends to take to acquire a license or certification under ss. 441.06, 441.10, 448.04, 448.61, or 448.974, Stats., including the date by which the military medical personnel agrees to acquire the license, and has submitted the timeline to the medical examining board as specified in s. Med 26.04 (3).
 - (c) The person was discharged or released from the service in par. (a) under honorable or general conditions no later than 12 months prior to the date the person signed the memorandum of understanding specified in s. Med 26.04 (1).

Med 26.03 Delegated authority. (1) Pursuant to the authority specified in s. 440.077 (2), Stats. and notwithstanding any rule or statute to the contrary, a licensed supervising practitioner may delegate his or her licensed or certified professional practice authority to perform a delegated clinical act to a person who is a military medical personnel program participant if all of the following are true:

- (a) The licensed supervising practitioner is competent and authorized under his or her applicable license or certification to perform the delegated clinical act.
- (b) The licensed supervising practitioner has reasonable evidence that the supervised military medical personnel program participant is minimally competent to perform the delegated clinical act under the circumstances based on the individual's level of training and experience. Such reasonable evidence may include the memorandum of understanding signed by the military medical personnel program participant and the administering facility specified in s. Med 26.04.
- (c) The delegated clinical act is not a surgical procedure or the issuance of a prescription order.
- (d) The delegated clinical act is performed in an administering facility.

(2) The licensed supervising practitioner may rely on the representations made regarding the training and experience of the registered military medical personnel that are specified in the memorandum of understanding as reasonable evidence under subd. (1) (b) of the individual's clinical training, experience and competency to perform the delegated clinical act.

(3) The licensed supervising practitioner who delegates a clinical act for a patient to a registered military medical personnel pursuant to this section retains responsibility for the care of the patient.

(4) Subject to the limitation in s. 440.077 (2) (b), Stats. and except as provided in sub. (5), the scope in which a registered military medical personnel may practice is limited to the performance of acts in basic patient situations under the general supervision of a licensed supervising practitioner, which includes the following:

- (a) Accept only patient care assignments which the military medical personnel program participant is competent to perform.
- (b) Provide basic patient care.
- (c) Record patient care given and report changes in the condition of a patient to the appropriate person.
- (d) Consult with a provider in cases where the military medical personnel program participant knows or should know a delegated clinical act may harm a patient.
- (e) Perform the following other acts when applicable:
 - 1. Assist with the collection of data.
 - 2. Assist with the development and revision of a patient care plan.
 - 3. Reinforce the teaching provided by a licensed provider and provide basic health care instruction.
 - 4. Participate with other health team members in meeting basic patient needs.

(5) In the performance of acts in complex patient situations the military medical personnel program participant shall do all of the following:

- (a) Meet standards under sub. (4) under the general supervision of a licensed supervising practitioner.
- (b) Perform delegated clinical acts beyond basic patient care under the direct supervision of a licensed supervising provider. A military medical personnel program participant shall, upon request of the medical examining board, provide documentation of his or her education, training, or experience which prepares the military medical personnel program participant to competently perform these assignments.

Med 26.04 Documentation of training and experience. (1) A military medical personnel who practices pursuant to this chapter Med 26 shall sign a memorandum of understanding form published by the medical examining board that includes all of the following:

- (a) The name of the administering facility at which the military medical personnel will be providing delegated clinical care pursuant this chapter Med 26.

- (b) An identification of the military medical personnel as either an army medic, a navy corpsman, a coastguard corpsman, or an air force aerospace medical technician, and the individual's dates of service in such role.
- (c) The date of the military medical personnel's date of honorable or regular discharge from military service. Such date must be no earlier than 12 months prior to the date the memorandum of understanding is signed by the military medical personnel and the administering facility.
- (d) A description of the medical training and experience the individual received as an army medic, a navy corpsman, a coastguard corpsman, or an air force aerospace medical technician.
- (e) A reasonable timeline consistent with s. 440.077 (3) (c), Stats. that describes the actions the military medical personnel intends to take to acquire a license under ss. 441.06, 441.10, 448.04, 448.61, or 448.974, Stats., including the date by which the military medical personnel agrees to acquire the license. Except as provided in s. Med 26.05, the memorandum of understanding shall terminate one day after the date specified above or the date the military medical personnel acquires the license, whichever is earlier.
- (f) An attestation by the military medical personnel that he or she will not accept a delegation of practice authority under chapter Med 26 to perform a clinical act if his or her training and experience as a military medical personnel did not include that clinical act.
- (g) An attestation by the administering facility that it has a written policy governing clinical practice by registered military medical personnel, and that policy is shared with the military medical personnel subject to the memorandum of understanding and those licensed supervising practitioners authorized to delegate clinical acts to the individual.
- (h) An attestation by the administering facility that the administering facility to the best of the administering facility's knowledge and with a reasonable degree of certainty, all of the information in the memorandum of understanding is true.
- (i) The memorandum of understanding is signed and dated by the military medical personnel and an authorized representative of the administering facility.

(2) The military medical personnel shall submit a completed memorandum of understanding that meets all of the requirements in sub. (1) to the military medical personnel's employer.

(3) The military medical personnel shall submit the completed timeline under sub. (1) (e) to the department in the manner specified by the medical examining board on its published timeline form.

Med 26.05 Extension of Memorandum of Understanding Expiration Date. The medical examining board may extend the termination date of a signed memorandum of understanding under s. Med 26.04 if it appears that, because of unforeseen circumstances, the applicant requires more time to receive a license under ss. 441.06, 441.10, 448.04, 448.61, or 448.974, Stats.

Med 26.06 Complaints, investigations, suspension, and termination of authorization.

The medical examining board may receive and investigate complaints against a military medical personnel program participant performing delegated clinical acts pursuant to this chapter Med 26. The medical examining board may suspend or terminate a military medical personnel program participant's authority to perform delegated clinical acts pursuant to this chapter Med 26.

SECTION 2. EFFECTIVE DATE. 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.

(END OF TEXT OF RULE)
