



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1995 ASSEMBLY BILL 790**

February 29, 1996 – Offered by COMMITTEE ON CONSUMER AFFAIRS.

1 **AN ACT to amend** 227.53 (1) (a) 3., 227.54, 448.02 (3) (c) and 448.09 (2); and **to**
2 **create** 448.02 (8), 448.02 (9) and 448.14 of the statutes; **relating to:**
3 disciplinary actions against physicians, requiring a report on disciplinary
4 actions against physicians, granting rule-making authority and providing a
5 penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 **SECTION 1.** 227.53 (1) (a) 3. of the statutes is amended to read:
7 227.53 (1) (a) 3. If the petitioner is a resident, the proceedings shall be held in
8 the circuit court for the county where the petitioner resides, except that if the
9 petitioner is an agency, the proceedings shall be in the circuit court for the county
10 where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6)
11 and, 182.71 (5) (g) and 448.02 (8) (a). The proceedings shall be in the circuit court
12 for Dane county if the petitioner is a nonresident. If all parties stipulate and the
13 court to which the parties desire to transfer the proceedings agrees, the proceedings
14 may be held in the county designated by the parties. If 2 or more petitions for review

1 of the same decision are filed in different counties, the circuit judge for the county
2 in which a petition for review of the decision was first filed shall determine the venue
3 for judicial review of the decision, and shall order transfer or consolidation where
4 appropriate.

5 **SECTION 2.** 227.54 of the statutes is amended to read:

6 **227.54 Stay of proceedings.** The institution of the proceeding for review
7 shall not stay enforcement of the agency decision. The reviewing court may order a
8 stay upon such terms as it deems proper, except as otherwise provided in ss. 196.43,
9 448.02 (8) (b) and 551.62.

10 **SECTION 3.** 448.02 (3) (c) of the statutes is amended to read:

11 448.02 (3) (c) After a disciplinary hearing, the board may, when it determines
12 that a panel established under s. 655.02, 1983 stats., has unanimously found or a
13 court has found that a person has been negligent in treating a patient or when it finds
14 a person guilty of unprofessional conduct or negligence in treatment, do one or more
15 of the following: warn or reprimand that person, or limit, suspend or revoke any
16 license, certificate or limited permit granted by the board to that person. The board
17 may condition the removal of limitations on a license, certificate or limited permit
18 or the restoration of a suspended or revoked license, certificate or limited permit
19 upon obtaining minimum results specified by the board on one or more physical,
20 mental or professional competency examinations if the board believes that obtaining
21 the minimum results is related to correcting one or more of the bases upon which the
22 limitation, suspension or revocation was imposed. In addition to other sanctions
23 allowed under this paragraph, the board may assess a forfeiture of not more than
24 \$25,000 against a physician. The board shall promulgate rules relating to the
25 imposition of a forfeiture under this paragraph.

1 **SECTION 4.** 448.02 (8) of the statutes is created to read:

2 448.02 (8) JUDICIAL REVIEW. (a) A proceeding to review the board's decision to
3 discipline a physician under sub. (3) (c) or to suspend a physician's license under sub.
4 (4) may be held in any circuit court except the circuit court for the county in which
5 the physician resides or the circuit court for the county in which the physician's
6 professional practice is located.

7 (b) No injunction, temporary injunction, stay, restraining order or other order
8 may be issued by a court in any proceeding for review that suspends or stays an order
9 of the board to discipline a physician under sub. (3) (c) or to suspend a physician's
10 license under sub. (4), except upon application to the court under par. (a) and a
11 determination by the court that all of the following conditions are met:

12 1. The board has received notice of the application and has had an opportunity
13 for a hearing on the application.

14 2. There is a substantial likelihood that the applicant will prevail in the
15 proceeding for review.

16 3. The applicant will suffer irreparable harm if the order is not suspended or
17 stayed.

18 4. There is no likelihood of harm to patients of the applicant if the board's order
19 is suspended or stayed.

20 **SECTION 5.** 448.02 (9) of the statutes is created to read:

21 448.02 (9) ADMINISTRATIVE WARNINGS. If, after the board determines that there
22 is substantial evidence of misconduct by the holder of a license, certificate or limited
23 permit, but determines that a disciplinary proceeding should not be commenced
24 against the holder of the license, certificate or limited permit, then the board may
25 close the investigation by the issuance of an administrative warning. If an

1 administrative warning is issued, the holder of the license, certificate or limited
2 permit may obtain a review of the administrative warning through a personal
3 appearance before the board. An administrative warning issued under this
4 subsection shall be private and confidential, does not constitute an adjudication of
5 guilt or the imposition of discipline and may not be used as evidence that the holder
6 of the license, certificate or limited permit is guilty of the alleged misconduct.
7 However, if a subsequent allegation of misconduct by the holder of the license,
8 certificate or limited permit is received by the board, the matter relating to the
9 issuance of the administrative warning may be reopened and disciplinary
10 proceedings may be commenced on the matter, or the administrative warning may
11 be used in any subsequent disciplinary proceeding as evidence that the holder of the
12 license, certificate or limited permit had actual knowledge that certain practices
13 were contrary to law. The board shall promulgate rules establishing a procedure for
14 the issuance and use of administrative warnings. The rules shall include a definition
15 of "substantial evidence of misconduct" for purposes of this subsection.

16 **SECTION 6.** 448.09 (2) of the statutes is amended to read:

17 448.09 (2) APPEAL. Any person aggrieved by any action taken under this
18 chapter by the board, its officers or its agents may apply for judicial review as
19 provided in ch. 227 and s. 448.02 (8), and shall file notice of ~~such~~ the appeal with the
20 secretary of the board within 30 days. No court of this state may enter an ex parte
21 stay of any action taken by the board under this chapter.

22 **SECTION 7.** 448.14 of the statutes is created to read:

23 **448.14 Annual report.** By March 1 of each year, the board shall submit to the
24 chief clerk of each house of the legislature for distribution to the appropriate
25 standing committees under s. 13.172 (3) a report that identifies the average length

1 of time to process a disciplinary case against a physician during the preceding year
2 and the number of disciplinary cases involving physicians pending before the board
3 on December 31 of the preceding year.

4 **SECTION 8. Nonstatutory provisions.**

5 (1) STAFF FOR MEDICAL EXAMINING BOARD. The authorized FTE positions for the
6 department of regulation and licensing are increased by 1.5 PR program assistant
7 positions and 1.5 PR legal assistant positions on July 1, 1996, to be funded from the
8 appropriation under section 20.165 (1) (g) of the statutes, for the purpose of providing
9 staff only to the medical examining board.

10 (2) USE OF AUTHORIZED POSITIONS. The department of regulation and licensing
11 may not use the positions authorized under subsection (1) to supplant positions in
12 the department that are being used immediately prior to the effective date of this
13 subsection to provide staff to the medical examining board.

14 **SECTION 9. Initial applicability.**

15 (1) The treatment of sections 227.53 (1) (a) 3., 227.54 and 448.02 (8) of the
16 statutes first applies to reviews of decisions of the medical examining board that are
17 rendered on the effective date of this subsection.

18 (2) The treatment of section 448.02 (3) (c) (as it relates to allowing the
19 assessment of forfeitures) of the statutes first applies to disciplinary actions against
20 physicians based on acts or omissions that occur on the effective date of this
21 subsection.

22 (END)