



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 549**

March 3, 1998 – Offered by COMMITTEE ON JUDICIARY.

1 **AN ACT** *to renumber* 448.13 (1); *to amend* 227.54, 448.02 (3) (c), 448.09 (1) and
2 448.40 (2) (e); and *to create* 440.03 (5m), 448.02 (3) (cm), 448.02 (8), 448.02 (9),
3 448.09 (1m), 448.13 (1) (b), 448.14 and 448.40 (2) (f) of the statutes; **relating**
4 **to:** verifying compliance of physicians with continuing education requirements,
5 allegations of misconduct involving persons with medical credentials, issuance
6 of administrative warnings by the medical examining board, disciplinary
7 actions by the medical examining board, granting rule-making authority and
8 providing a penalty.

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

9 **SECTION 1.** 227.54 of the statutes, as affected by 1997 Wisconsin Act 27, is
10 amended to read:

11 **227.54 Stay of proceedings.** The institution of the proceeding for review
12 shall not stay enforcement of the agency decision. The reviewing court may order a

1 stay upon such terms as it deems proper, except as otherwise provided in ss. 196.43,
2 253.06 (7), 448.02 (9) and 551.62.

3 **SECTION 2.** 440.03 (5m) of the statutes is created to read:

4 440.03 (5m) The department shall maintain a toll-free telephone number to
5 receive reports of allegations of unprofessional conduct, negligence or misconduct
6 involving a physician licensed under subch. II of ch. 448. The department shall
7 publicize the toll-free telephone number and the investigative powers and duties of
8 the department and the medical examining board as widely as possible in the state,
9 including in hospitals, clinics, medical offices and other health care facilities.

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

11 448.02 (3) (c) ~~After Subject to par. (cm), after~~ a disciplinary hearing, the board
12 may, when it determines that a panel established under s. 655.02, 1983 stats., has
13 unanimously found or a court has found that a person has been negligent in treating
14 a patient or when it finds a person guilty of unprofessional conduct or negligence in
15 treatment, do one or more of the following: warn or reprimand that person, or limit,
16 suspend or revoke any license, certificate or limited permit granted by the board to
17 that person. The board may condition the removal of limitations on a license,
18 certificate or limited permit or the restoration of a suspended or revoked license,
19 certificate or limited permit upon obtaining minimum results specified by the board
20 on one or more physical, mental or professional competency examinations if the
21 board believes that obtaining the minimum results is related to correcting one or
22 more of the bases upon which the limitation, suspension or revocation was imposed.

23 **SECTION 4.** 448.02 (3) (cm) of the statutes is created to read:

24 448.02 (3) (cm) The board may take disciplinary action against a physician
25 under par. (c) no later than one year after initiating an investigation of an allegation

1 involving the death of a patient and no later than 3 years after initiating an
2 investigation of any other allegation, unless the board shows to the satisfaction of the
3 secretary that a specified extension of time is necessary for the board to determine
4 whether a physician is guilty of unprofessional conduct or negligence in treatment.
5 For purposes of this paragraph, the date that a matter is reopened under sub. (8) (c)
6 is considered the date that an investigation of the matter is initiated.

7 **SECTION 5.** 448.02 (8) of the statutes is created to read:

8 448.02 (8) ADMINISTRATIVE WARNING. (a) After an investigation by the board
9 under sub. (3) (a) or by the department under s. 440.03 (3m) or (5), the board may
10 issue a private and confidential administrative warning to a holder of a license,
11 certificate or limited permit if the board determines that there is evidence of
12 misconduct by him or her. The board may issue an administrative warning under
13 this paragraph only if the board determines that no further action is warranted
14 because the matter involves a first occurrence of minor misconduct and the issuance
15 of an administrative warning adequately protects the public by putting the holder
16 of the license, certificate or limited permit on notice that any subsequent misconduct
17 may result in disciplinary action. The board shall review the determination if the
18 holder of the license, certificate or limited permit makes a personal appearance
19 before the board. Following the review, the board may affirm, rescind or modify the
20 administrative warning. A holder of a license, certificate or limited permit may seek
21 judicial review under ch. 227 of an affirmation or modification of an administrative
22 warning by the board.

23 (b) An administrative warning issued under par. (a) does not constitute an
24 adjudication of guilt or the imposition of discipline and may not be used as evidence
25 that the holder of a license, certificate or limited permit is guilty of misconduct.

1 (c) Notwithstanding par. (b), if the board receives a subsequent allegation of
2 misconduct about a holder of a license, certificate or limited permit to whom the
3 board issued an administrative warning under par. (a), the board may reopen the
4 matter that resulted in the issuance of the administrative warning or use the
5 administrative warning in any subsequent disciplinary hearing under sub. (3) (b) as
6 evidence that he or she had actual knowledge that the misconduct that was the basis
7 for the administrative warning was contrary to law.

8 (d) The record that an administrative warning was issued under par. (a) shall
9 be a public record. The contents of an administrative warning shall be private and
10 confidential.

11 **SECTION 6.** 448.02 (9) of the statutes is created to read:

12 448.02 (9) JUDICIAL REVIEW. No injunction, temporary injunction, stay,
13 restraining order or other order may be issued by a court in any proceeding for review
14 that suspends or stays an order of the board to discipline a physician under sub. (3)
15 (c) or to suspend a physician's license under sub. (4), except upon application to the
16 court and a determination by the court that all of the following conditions are met:

17 (a) The board has received notice of the application and the court has provided
18 advance notice to the board of the date of the court hearing on the application.

19 (b) There is a substantial likelihood that the applicant will prevail in the
20 proceeding for review.

21 (c) The applicant will suffer irreparable harm if the order is not suspended or
22 stayed.

23 (d) There is no substantial likelihood of harm to patients of the applicant if the
24 board's order is suspended or stayed.

25 **SECTION 7.** 448.09 (1) of the statutes is amended to read:

1 448.09 (1) PENALTIES. ~~Anyone violating~~ A person who violates s. 448.08 (3) may
2 be fined not more than \$250. ~~Anyone violating~~ Except as provided in sub. (1m), a
3 person who violates any other provision of this ~~chapter~~ subchapter may be fined not
4 more than \$10,000 or imprisoned not more than 9 months or both.

5 **SECTION 8.** 448.09 (1m) of the statutes is created to read:

6 448.09 (1m) PHYSICIANS. A physician who violates any provision of this
7 subchapter, except s. 448.08 (3), or any rule promulgated under this subchapter may
8 be fined not more than \$25,000 or imprisoned not more than 9 months or both.

9 **SECTION 9.** 448.13 (1) of the statutes is renumbered 448.13 (1) (a).

10 **SECTION 10.** 448.13 (1) (b) of the statutes is created to read:

11 448.13 (1) (b) The board shall, on a random basis, verify the accuracy of proof
12 submitted by physicians under par. (a) and may, at any time during the 2 calendar
13 years specified in par. (a), require a physician to submit proof of any continuing
14 education programs or courses of study that he or she has attended and completed
15 at that time during the 2 calendar years.

16 **SECTION 11.** 448.14 of the statutes is created to read:

17 **448.14 Annual report.** Annually, no later than March 1, the board shall
18 submit to the chief clerk of each house of the legislature for distribution to the
19 appropriate standing committees under s. 13.172 (3) a report that identifies the
20 average length of time to process a disciplinary case against a physician during the
21 preceding year and the number of disciplinary cases involving physicians pending
22 before the board on December 31 of the preceding year.

23 **SECTION 12.** 448.40 (2) (e) of the statutes is amended to read:

24 448.40 (2) (e) Establishing the criteria for the substitution of uncompensated
25 hours of professional assistance volunteered to the department of health and family

1 services for some or all of the hours of continuing education credits required under
2 s. 448.13 (1)(a) for physicians specializing in psychiatry. The eligible substitution
3 hours shall involve professional evaluation of community programs for the
4 certification and recertification of community mental health programs, as defined in
5 s. 51.01 (3n), by the department of health and family services.

6 **SECTION 13.** 448.40 (2) (f) of the statutes is created to read:

7 448.40 (2) (f) Establishing procedures for issuing and using administrative
8 warnings under s. 448.02 (8).

9 **SECTION 14. Nonstatutory provisions.**

10 (1) STAFF FOR MEDICAL EXAMINING BOARD.

11 (a) The authorized FTE positions for the department of regulation and
12 licensing are increased by 1.5 PR program assistant positions and 1.5 PR legal
13 assistant positions on July 1, 1998, to be funded from the appropriation under section
14 20.165 (1) (g) of the statutes, for the purpose of providing staff only to the medical
15 examining board.

16 (b) The authorized FTE positions for the department of regulation and
17 licensing are increased by 0.5 PR position on July 1, 1998, to be funded from the
18 appropriation under section 20.165 (1) (g) of the statutes, for the purpose of providing
19 physician consulting services to the department of regulation and licensing and the
20 medical examining board with respect to investigations of physicians under section
21 440.03 (3m) or (5) or 448.02 (3) (a) of the statutes.

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

1 (3m) STUDY REGARDING EDUCATION AND TRAINING. The medical examining board
2 and the University of Wisconsin-Madison Medical School shall jointly study
3 whether physicians licensed by the medical examining board are sufficiently
4 informed, educated or trained about advances in techniques and procedures for
5 making a diagnosis or providing treatment. The board and the medical school shall
6 jointly submit its report, including any recommendations for proposed legislation, to
7 the governor, and to the appropriate standing committees of the legislature in the
8 manner provided under section 13.172 (3) of the statutes, by the first day of the 12th
9 month beginning after the effective date of this subsection.

10 **SECTION 15. Initial applicability.**

11 (1) The treatment of sections 227.54 and 448.02 (9) of the statutes first applies
12 to disciplinary actions taken by the medical examining board on the effective date
13 of this subsection.

14 (2m) The treatment of section 448.09 (1) and (1m) of the statutes first applies
15 to violations that occur on the effective date of this subsection.

16 (3m) The treatment of section 448.02 (3) (c) and (cm) and (8) of the statutes first
17 applies to investigations initiated on the effective date of this subsection.

18 (END)