



1995 ASSEMBLY BILL 790

January 18, 1996 - Introduced by Representatives URBAN, PROSSER, GREEN, SKINDRUD, LEHMAN, ROBSON, FREESE, GUNDERSON, SCHNEIDERS, GOETSCH, OTT, LAZICH, F. LASEE and HAHN, cosponsored by Senators HUELSMAN, SCHULTZ and WELCH. Referred to 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) and 448.14 of the statutes; **relating to:** disciplinary actions
3 against physicians, fees for renewal of physicians' licenses, requiring a report
4 on disciplinary actions against physicians, granting rule-making authority
5 and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill makes various changes in laws relating to disciplinary actions against physicians. Specifically, the bill:

1. Allows the medical examining board (MEB) to assess a forfeiture of not more than \$25,000 against a physician for "wilful misconduct", as defined by MEB by rule.

2. Provides that a proceeding for judicial review of a decision of MEB to discipline a physician who is a resident of this state may be held in any circuit court except the circuit court for the county in which the physician resides or the circuit court for the county in which the physician's professional practice is located.

3. In a proceeding for judicial review of a disciplinary decision of MEB, prohibits the court from suspending or staying the decision of MEB unless all of the following apply: MEB has received notice of the physician's application for judicial review and has had an opportunity for a hearing on the application; there is a substantial likelihood that the physician will prevail in the proceeding for review; the physician will suffer irreparable harm if the decision of MEB is not suspended or stayed; and there is no likelihood of harm to patients of the physician if the decision of MEB is suspended or stayed.

4. Authorizes additional positions for the department of regulation and licensing for the purpose of providing staff to MEB.

5. Requires MEB to submit a report to the legislature by March 1 of each year which identifies the average length of time to process a disciplinary case against a

physician during the preceding year and the number of disciplinary cases involving physicians pending before MEB on December 31 of the preceding year.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 227.53 (1) (a) 3. of the statutes is amended to read:

2 227.53 (1) (a) 3. If the petitioner is a resident, the proceedings shall be held in
3 the circuit court for the county where the petitioner resides, except that if the
4 petitioner is an agency, the proceedings shall be in the circuit court for the county
5 where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6)
6 and, 182.71 (5) (g) and 448.02 (8) (a). The proceedings shall be in the circuit court
7 for Dane county if the petitioner is a nonresident. If all parties stipulate and the
8 court to which the parties desire to transfer the proceedings agrees, the proceedings
9 may be held in the county designated by the parties. If 2 or more petitions for review
10 of the same decision are filed in different counties, the circuit judge for the county
11 in which a petition for review of the decision was first filed shall determine the venue
12 for judicial review of the decision, and shall order transfer or consolidation where
13 appropriate.

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

15 **227.54 Stay of proceedings.** The institution of the proceeding for review
16 shall not stay enforcement of the agency decision. The reviewing court may order a
17 stay upon such terms as it deems proper, except as otherwise provided in ss. 196.43,
18 448.02 (8) (b) and 551.62.

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

1 448.02 (3) (c) After a disciplinary hearing, the board may, when it determines
2 that a panel established under s. 655.02, 1983 stats., has unanimously found or a
3 court has found that a person has been negligent in treating a patient or when it finds
4 a person guilty of unprofessional conduct or negligence in treatment, do one or more
5 of the following: warn or reprimand that person, or limit, suspend or revoke any
6 license, certificate or limited permit granted by the board to that person. The board
7 may condition the removal of limitations on a license, certificate or limited permit
8 or the restoration of a suspended or revoked license, certificate or limited permit
9 upon obtaining minimum results specified by the board on one or more physical,
10 mental or professional competency examinations if the board believes that obtaining
11 the minimum results is related to correcting one or more of the bases upon which the
12 limitation, suspension or revocation was imposed. In addition to other sanctions
13 allowed under this paragraph, the board may assess a forfeiture of not more than
14 \$25,000 against a physician for wilful misconduct. The board shall promulgate rules
15 defining "wilful misconduct" for purposes of this paragraph.

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

17 448.02 (8) JUDICIAL REVIEW. (a) A proceeding to review the board's decision to
18 discipline a physician under sub. (3) (c) or to suspend a physician's license under sub.
19 (4) may be held in any circuit court except the circuit court for the county in which
20 the physician resides or the circuit court for the county in which the physician's
21 professional practice is located.

22 (b) No injunction, temporary injunction, stay, restraining order or other order
23 may be issued by a court in any proceeding for review that suspends or stays an order
24 of the board to discipline a physician under sub. (3) (c) or to suspend a physician's

1 license under sub. (4), except upon application to the court under par. (a) and a
2 determination by the court that all of the following conditions are met:

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

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

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

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

11 **SECTION 5.** 448.09 (2) of the statutes is amended to read:

12 448.09 (2) APPEAL. Any person aggrieved by any action taken under this
13 chapter by the board, its officers or its agents may apply for judicial review as
14 provided in ch. 227 and s. 448.02 (8), and shall file notice of ~~such~~ the appeal with the
15 secretary of the board within 30 days. No court of this state may enter an ex parte
16 stay of any action taken by the board under this chapter.

17 **SECTION 6.** 448.14 of the statutes is created to read:

18 **448.14 Annual report.** By March 1 of each year, the board shall submit to the
19 chief clerk of each house of the legislature for distribution to the appropriate
20 standing committees under s. 13.172 (3) a report that identifies the average length
21 of time to process a disciplinary case against a physician during the preceding year
22 and the number of disciplinary cases involving physicians pending before the board
23 on December 31 of the preceding year.

24 **SECTION 7. Nonstatutory provisions.**

