



## STATE OF WISCONSIN

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### **Positions Statements Related to Physicians Issued by the Medical Examining Board**

#### **UNDER WHAT CIRCUMSTANCES MAY A PHYSICIAN DELEGATE TO A NON-PHYSICIAN AN ACT THAT CONSTITUTES THE PRACTICE OF MEDICINE AND SURGERY?**

Wis. Stat. § 448.03(2)(e) permits physicians to delegate to any unlicensed person an act that constitutes the practice of medicine and surgery. The physician must have the power to “direct, decide and oversee the implementation” of the patient service. The physician must, in fact, direct, supervise and inspect the delegated service.

Because a delegate is not licensed, a delegate performs the medical act under the authority of the physician’s license. Therefore, for regulatory purposes, the physician is responsible for the acts of the delegate.

As explained below, the supervising physician:

- must be competent to perform the act being delegated;
- must insure that the delegate is minimally competent to perform the act;
- and must make it clear to the patient and others that the delegate is an unlicensed person, performing the act under the supervision of the physician.

Wisconsin Admin. Code § MED10.02(2)(h) prohibits a physician from engaging in any practice or conduct that falls below the level of minimal competence and that places a patient at unacceptable risk of harm. The same rule directs that a physician may not aid or abet another person in incompetently placing a patient at unacceptable risk of harm.

Therefore, to competently supervise and oversee a delegate, the physician must be competent to perform the act in question, and must have reasonable evidence that the delegate is minimally competent to perform the act under the circumstances.

Wisconsin Admin. Code § MED10.02(2)(t) requires that a physician identify a delegate as being unlicensed and acting under the supervision of the physician. Failure to do so is considered “aiding or abetting the unlicensed practice of medicine” or representing that the unlicensed persons are licensed.

Although not specifically required in law, professional standards may require written protocols concerning delegated medical acts. If such practice standards exist, and a written protocol does not exist, physicians could be deemed to be in violation of Wis. Stat. Admin. Code § 10.02(2)(h). Hospitals are required to specify in by-laws those classes of employees that may accept and carry out physician orders – this may also include delegated acts. See Wis. Admin Code ch DHS 124.

### **MUST A PHYSICIAN BE PRESENT IN THE ROOM WHEN A DELEGATED MEDICAL ACT IS PERFORMED BY AN UNLICENSED PERSON?**

As explained in response to question no. 1 above, the performance of a delegated medical act must be “directed, supervised and inspected” by a licensed physician. For the Board’s purposes, the physician is responsible for the act in question, and must insure that, under the circumstances present with each act, the delegate is competent to perform the act. The circumstances of each delegated act include the level of supervision under which the act is performed.

The law does not specify any particular level of supervision for acts performed by an unlicensed person under the physician’s supervision.

Therefore, the level of supervision a physician must provide an unlicensed person performing a delegated act is within the discretion of the supervising physician. Adequate supervision of a delegated act does not necessarily require that the physician be present when the act is performed if the physician reasonably determines that his or her absence does not place a patient at unacceptable risk of harm under the circumstances. For example, a simple procedure, with minimal risk of minimal harm and in the hands of an experienced delegate may require only general supervision, ie, the physician is not required to be physically present but is available by telephone. In some circumstances, a physician may require direct supervision, meaning the physician is present in the building and immediately available to assist in the procedure; in other cases, the physician may determine that direct face-to-face supervision is required to insure an adequate level of patient safety.

### **UNDER WHAT CIRCUMSTANCES MAY A NON-PHYSICIAN WHO IS A LICENSED HEALTH CARE PROFESSIONAL PERFORM ACTS CONSTITUTING THE PRACTICE OF MEDICINE AND SURGERY?**

Some acts constituting the practice of medicine and surgery may also fall within the scope of practice of another license, such as a license to practice nursing or a license to practice as a physician assistant. In the case of a licensed professional, the licensed non-physician generally performs the act under the authority of his or her own license and attendant requirements (which may include physician supervision). Therefore, a nurse may independently perform acts within the scope of a license to practice nursing even if the act is also within the scope of a license to practice medicine and surgery.

Conversely, physician assistant licenses require PA's to perform medical services under the supervision of a physician. A physician assistant may not practice independently and may not independently perform acts outside the scope of a license to practice as a physician assistant. Therefore, for regulatory purposes, the responsibility to insure adequate physician supervision is the responsibility of both the supervising physician and the physician assistant, and for the Board's purposes, both are responsible for the service provided.

For guidance on scope of practice for licensed professionals, please see statutes and administrative rules pertaining to the relevant profession(s).

### **MAY A PHYSICIAN PRACTICE MEDICINE WITHIN A PARTNERSHIP OR SERVICE CORPORATION?**

Wisconsin Stat. § 448.08(4) provides that two or more physicians may, in the practice of medicine and surgery, enter into professional partnerships or service corporations. Please see Wis. Stat. § 448.08 concerning business practices for physicians and if additional guidance is necessary, you may wish to consult private counsel.

### **WHAT ARE THE DISCLOSURE REQUIREMENTS FOR A PHYSICIAN WHO SELF-IDENTIFIES AS "BOARD CERTIFIED"?**

Wisconsin Admin. Code § MED 10.02(w) requires truthful disclosure of any claim to board certification or similar phrase. If a physician--by affirmative conduct or by omission--misrepresents themselves as board certified in a particular specialty area, by a particular certifying organization or without current certification, the Board may determine that the physician has engaged in unprofessional conduct and the physician may be subject to disciplinary action.

### **WHAT IS THE LENGTH OF TIME THAT A PHYSICIAN IN WISCONSIN MUST RETAIN PATIENT MEDICAL RECORDS?**

Wisconsin Admin. Code § MED 21.03, Minimum Standards for Patient Health Care Records, requires that a physician or a physician's assistant shall maintain patient health care records for a period of not less than five (5) years after the date of the last entry, or for such longer period as may be otherwise required by law. Wisconsin Stat. § 146.819 also concerns preservation or destruction of patient health care records.

### **ARE SILICONE INJECTIONS LEGAL IN WISCONSIN?**

There is no statutory or administrative code that specifically prohibits the use of silicone injections. While the U.S. Food and Drug Administration banned silicone injections in 1992, there may be recent developments in technology and the practice of medicine that were not addressed in the 1992 ban. Physicians must not engage in any practice or procedure that violates state or federal law or that falls below the level of minimal competence and creates an unacceptable risk of harm. Physicians may wish to consult private counsel if they have any question concerning legality of any medical device or medication.

## **MAY A PHYSICIAN DELEGATE TO AN UNLICENSED PERSON DISPENSING OF SAMPLE MEDICATIONS TO A PATIENT?**

Yes, a physician may delegate an unlicensed person to dispense sample medications to a patient subject to legal requirements, including controlled substances and record-keeping requirements. See general requirements for physician delegation in FAQ No. 1 and the rule concerning prescribing at Wis. Admin Code ch. MED 17.

## **WHERE MAY ONE FIND GUIDANCE ON PHYSICIAN DISPENSING OF MEDICATIONS?**

In addition to Wis. Stat chs. 448 and 961, persons with questions concerning physician dispensing of medication may wish to consult Wisconsin Admin. Code ch. MED17, as well as PHAR ch. 8. Another relevant resource is the United States Drug Enforcement Administration's Practitioner's Manual which is available online at:

[www.deadiversion.usdoj.gov/pubs/manuals/pract/index.html](http://www.deadiversion.usdoj.gov/pubs/manuals/pract/index.html)

## **DOES WISCONSIN RECOGNIZE NATUROPATHIC DOCTORS?**

Wisconsin law does not recognize naturopathic physician education and training. A doctor that is registered and licensed as a naturopathic physician in another state is not qualified for licensure as a physician in Wisconsin unless he or she meets the licensure requirements set forth in Wis. Ch. 448 and Wis. Admin. Code ch. MED 1.

## **WHAT ARE THE REQUIREMENTS FOR MAINTAINING A VALID WISCONSIN MEDICAL LICENSE AFTER RETIRING OR OTHERWISE VOLUNTARILY REFRAINING FROM THE ACTIVE PRACTICE OF MEDICINE?**

Maintaining a medical license requires a renewal fee and completion of 30 hours of biennial continuing medical education. See Wis. Admin. Code chs. MED 13 and 14. Wisconsin law does not authorize a license specifically for retired or inactive physicians. To maintain a license to practice medicine and surgery all requirements for full licensure must be met, including fees and biennial continuing education.

In deciding whether or not to allow a medical license to lapse during any period of inactivity, physicians may wish to review Wis. Admin. Code § MED 1.06(1)(a)11, which permits the Board to require an oral examination prior to issuing or reinstating the license of any physician who, prior to application, has not engaged in practice for a period of three years or more. At oral examination, the Board can be expected to inquire about activities the physician has undertaken to maintain professional competence. The Board may require additional competency evaluation, or training—including a residency—or both, prior to permitting the inactive physician to become licensed.

**MAY WISCONSIN PHYSICIANS PRESCRIBE EITHER NON-CONTROLLED OR CONTROLLED SUBSTANCES FOR THEMSELVES OR THEIR FAMILY MEMBERS?**

Wisconsin Stat. § 961.38(5) criminalizes self-prescribing of controlled substances as well as the act of taking a controlled substance without a valid prescription.

Wisconsin law does not explicitly prohibit self-prescribing of non-controlled substances, nor prescribing medications for family members. Despite the absence of specific statutory prohibitions, the Board may consider whether the circumstances of any particular prescription constitute unprofessional conduct under Wis. Admin. Code § 10.02(2)(h)(contrary to minimally competent practice and creating an unacceptable risk of harm to the physician or family member). Finally, physicians should consider whether prescribing controlled substances to a family member comports with requirements of the federal Drug Enforcement Administration (DEA).

In addition to insuring patient safety, physicians are responsible for all other requirements of competent and lawful practice, including but not limited to record keeping as required in Wis. Stat. § 146.816 and Wis. Admin. Code ch. 21.

**HAS THE WISCONSIN MEDICAL EXAMINING BOARD ADOPTED SPECIFIC GUIDELINES FOR PHYSICIANS WHO ARE TREATING CHRONIC PAIN OR PRESCRIBING CONTROLLED SUBSTANCES FOR THE TREATMENT OF PAIN?**

No. More information on this topic can be found at the [FSMB website](#).