

Clearinghouse Rule 09-006

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 09-)

PROPOSED ORDER

An order of the Medical Examining Board to repeal Med 8.08 (2) (e), 1., 2. and 3.; to amend Med 8.08 (1) and (2) (a), and 8.10 (3); and to create Med 8.08 (3), relating to prescribing limitations for physician assistants.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 448.21 (3), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2), 448.05 (5) and 448.40, Stats.

Explanation of agency authority:

The Medical Examining Board is granted the authority under s. 448.40, Stats., to promulgate rules establishing licensing and practice standards for physician assistants for the purpose of protecting the public health, safety and welfare.

Related statutes or rules:

Sections 448.04 (1) (f) and 448.05 (5) (a), Stats., and ch. Med 8.

Plain language analysis:

This proposed rule-making will change the countersignature requirement of the physician assistant prescribing rule which currently provides that the supervising physician must countersign the prescription or patient record within 72 hours or one week, depending on the practice site. Based on the advances in physician assistants' licensure and prescriptive authority, including a record of safe prescribing, co-signature of every prescription is no longer needed. The proposed rule will allow for more flexibility

between the physician and physician assistant by allowing the supervising physician to determine the method and frequency of the review based upon the prescriptive practice, the experience of the physician assistant and the patients' needs. In addition, the proposed rule re-conceptualizes the required written guidelines for prescribing to include the categories of drugs for which prescriptive authority has been authorized and the technological advancement in electronic communications and recordkeeping.

SECTION 1 amends rules to reflect the prescribing or dispensing of a drug pursuant to written guidelines for supervised prescriptive practice.

SECTION 2 repeals rules which currently provide that the supervising physician must countersign the prescription or patient record within 72 hours or one week, based on the advances in physician assistant licensure and prescriptive authority.

SECTION 3 creates rules to allow for more flexibility between the physician and physician assistant by allowing the supervising physician to determine the method and frequency of the review based upon prescriptive practice, experience of the physician assistant, and patient needs.

SECTION 4 amends rules to incorporate the technological advancement in electronic communications.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Iowa:

Physician assistants may prescribe non-controlled and controlled substances (except schedule II depressants). They may dispense under certain conditions. Physician assistants who prescribe controlled medications must register with the DEA.

Supervision: A physician need not be physically present, but must be readily available by telecommunication.

Illinois:

A physician may delegate prescriptive authority for non-controlled and schedules III-V medications to physician assistants, with periodic review by the supervising physician. A physician must file notice of delegation of prescriptive authority to the physician assistant with the Department of Professional Regulation. The physician and physician assistant adopt written guidelines for prescribing. Physician assistants who prescribe controlled substances must register with state controlled substance authority and the DEA.

Supervision: Physical presence of a physician is not required. The physician must be able to consult by radio, telephone, or telecommunications. The supervising physician may designate an alternate supervising physician in accordance with statutes. Physicians within a practice group of the supervising physician may supervise the physician assistant with respect to their patients without being deemed an alternate supervising physician.

Michigan:

Physician assistants may prescribe non-controlled and schedules III-V medications as delegated by a supervising physician. Physician assistants may prescribe a 7-day supply of schedule II drugs as discharge medications. Supervising physicians' and physician assistants' names must be indicated on the prescription. Physician assistant prescribers of controlled medications must register with the DEA.

Supervision: A physician must be continuously available for direct communication in person or by radio, telephone, or telecommunication and must regularly review the physician assistant's performance and patient records, consult, and educate.

Minnesota:

Physician assistants may prescribe controlled (schedules II-V) and non-controlled drugs. The physician reviews prescribing by the physician assistant weekly. Physician assistants authorized to prescribe controlled medications must register with the DEA.

Supervision: Physical presence of a physician is not required. The physician assistant and supervising physician must be able to be in touch via telecommunication.

Summary of factual data and analytical methodologies:

The Wisconsin Council on Physician Assistants initiated this rule by a request to the Medical Examining Board. The board's attorney drafted the rule in accordance with instructions from the Council. Council members sought the collaborative support of several groups and individuals interested in the rules governing prescribing by physician assistants and discussed the rule thoroughly at Council meetings. The Council examined the experience of other states, particularly that of Minnesota.

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

It is anticipated that the impact on small businesses will be positive because of the additional flexibility built into the supervisory relationship. The guidelines, which govern the relationship between the physician and the physician assistant, remain in place though the form will change slightly to include a section outlining the categories of drugs the physician assistant may prescribe.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that this rule will require staff time in the Office of Legal Counsel. The total one-time salary and fringe costs are estimated at \$4,300. The total on-going salary and fringe costs are estimated at \$2,400.

Effect on small business:

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at larry.martin@wisconsin.gov, or by calling 608-266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-0495; email at pamela.haack@wisconsin.gov.

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708, email at pamela.haack@wisconsin.gov. Comments must be received on or before February 20, 2009, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Med 8.08 (1) and (2) (a) are amended to read:

Med 8.08 Prescribing limitations. (1) A physician assistant may not prescribe or dispense any drug independently. A physician assistant may only prescribe or dispense a drug pursuant to written guidelines for supervised prescriptive practice. The guidelines shall be kept on file at the practice site and made available to the board upon request.

(2) (a) The physician assistant issues the prescription order only in patient situations specified and described in established written guidelines, including the categories of drugs for which prescribing authority has been authorized. The guidelines shall be reviewed at least annually by the physician assistant and his or her supervising physician.

SECTION 2. Med 8.08 (2) (e), 1., 2. and 3. are repealed.

SECTION 3. Med 8.08 (3) is created to read:

Med 8.08 (3) (a) A physician who supervises the prescribing practice of a physician assistant shall conduct a periodic review of the prescription orders prepared by the physician assistant to ensure quality of care. The periodic review of the prescriptive practice of a physician assistant shall require the supervising physician to either:

1. Review a selection of the prescription orders prepared by the physician assistant, or
2. Review a selection of the patient records prepared by the physician assistant practicing in the office of the supervising physician or at a facility or a hospital in which the supervising physician has staff privileges, or
3. Review by telecommunications or other electronic means the patient record or prescription orders prepared by the physician assistant who practices in an office facility other than the supervising physician's main office of a facility or hospital in which the supervising physician has staff privileges.

(b) The supervising physician shall determine the method and frequency of the periodic review based upon the nature of the prescriptive practice, the experience of the physician assistant, and the welfare of the patients. The process and schedule for review shall indicate the minimum frequency of review and identify the representative sample of prescriptive orders or patient records to be reviewed.

SECTION 4. Med 8.10 (3) is amended to read:

Med 8.10 (3) The supervising physician or substitute supervising physician shall be available to the physician at all times for consultation either in person or within 15 minutes of contact by ~~telephone or by 2-way radio or television communication~~ telecommunications or other electronic means.

(END OF TEXT OF RULE)

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.

Dated _____

Agency _____

Chairperson
Medical Examining Board

Med 8.08 CR09- (Physician assistant prescribing limitations) Draft to CH 1-21-09