



American Association of
Clinical Urologists, Inc.

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August 24, 2022

Mr. Jameson Whitney, Attorney
Division of Policy Development
Department of Safety and Professional Services
PO Box 8366
Madison, WI 53708-8935

RE: Response to proposed Wisconsin Medical Board Med 10.02 (2m) and 10.03 (2)(f)4.a. Relating to Performance of Physical Examinations

On behalf of the American Association of Clinical Urologists (AACU), I am writing to express our opposition of Proposed Order of the Medical Examining Board Med 10.02(2m) and 10.03 (3)(f)4.a, relating to performance of physical examinations. The AACU represents 3800 US urologists, and our mission is to develop and advance health policy education as it affects urologic practice in order to preserve and promote the professional autonomy of its members and support the highest quality of care for patients.

The AACU is aware the Wisconsin Medical Examining Board is considering the creation of new regulations requiring the presence of chaperones for certain portions of the physical exam, specifically referred to as Med 10.02 (2m) and 10.03 (2)(f)4.a. We strongly oppose this the proposed language on the grounds it is an unwarranted regulatory intrusion into medical practice, would impose undue economic burden and harm to urology practices, and does not afford urologists their common law right to presumption of innocence.

The proposed rule “expands unprofessional conduct to include, with limited exceptions, failure to provide a chaperone during a breast, genital, or rectal examination, and failure to document in a patient’s health care record the rationale for an unchaperoned breast, genital, or rectal examination.” Chaperone is defined as “an appropriately trained third person who has received formal training in the responsibility to protect patient privacy, the confidentiality of health information, and the requirements of clinical practice in the setting where the examination or inspection takes place. Medical students, residents or fellows may serve in the role of the chaperone. Regardless of training, a patient’s adult family member, legal guardian, or legal custodian may serve as a chaperone for a patient who is twelve years of age or under.”

The medical examining board claims, “these proposed rules do not have an economic impact on small businesses, as defined in § 227.114(1), Stats.” However, a typical urology practice evaluates many patients each day who would require a chaperone under the proposed regulations, including male patients who require rectal exams. If the language of the proposed regulation is implemented, urology practices may be required to hire additional full-time chaperones in order to comply, as current staff have little slack in their schedules. While we do not have an exact forecast of the financial impact on urology practices, it is almost certain that these small businesses would have to absorb a substantial financial burden if they are required to provide and train chaperones as proposed in this regulation. Additionally, asking a family member to step in is not always in the best interest of every patient.

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Wisconsin already has victim protections in place in the state's Unprofessional Conduct regulations. Listening to allegations when victims come forward, investigating claims, and enforcing the regulations is already within the scope of the Board's responsibilities and does not require additional regulation.

Further, we are very concerned by the proposed language of Med 10.03 (2)(f)4.a., which states "the Medical Examining Board may presume that misconduct has occurred based on an allegation made under Med 10.03(2)(f)" absent various conditions. A respondent physician would then be assigned the responsibility to "rebut the presumption under subsection (2)(f)4.a. by proving by a preponderance of the evidence the alleged misconduct did not occur." The presumption of misconduct in the proposed language is contrary to the common law principle of presumption of innocence.

The AACU stands in strong opposition to the Wisconsin Medical Board's proposed regulation requiring the presence of chaperones during "breast, genital, or rectal examination" and the unwarranted regulatory intrusion into medical practice that will result if enacted. This regulation will place a substantial economic burden on urology practices at a time when they are already stretched thin due to workforce shortages and inflation. If a complaint is filed under the proposed language, urologists would be stripped of their common law presumption of innocence. We request that the Board withdraw this regulatory proposal in its entirety, as the Board already has the legal authority to prosecute violators.

Sincerely,



Damara Kaplan, PhD, MD
President
American Association of Clinical Urologists