



STATE OF WISCONSIN
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Governor Scott Walker Secretary Dave Ross

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RESPIRATORY CARE PRATITIONERS EXAMINING COUNCIL
Room 121A, 1400 E. Washington Avenue, Madison
Contact: Tom Ryan 608-261-2378
September 10, 2013

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions and deliberations of the Board.

9:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A.** Recognition of Council Members
- B.** Welcome New Council Appointees
- C. Adoption of Agenda (1-4)**
- D. Approval of Minutes – September 13, 2011 (5-8)**
- E.** Election of Officers and Liaison Appointments
- F. Administrative Updates**
 - 1) Staff Changes
 - 2) Public Board Agenda Item
 - 3) Paperless Initiative **(9-12)**
 - 4) Other
- G. Education and Examination Matters**
 - 1) Discussion of the RRT as the Minimum Credential for Licensing
 - 2) Discussion of the National Board of Respiratory Care (NBRC) Changes to the CRT and RRT Examinations in 2015
- H. Legislation/Administrative Rules Matters**
 - 1) Executive Order 61 **(13-16)**
 - 2) Executive Order 50 – Review of Position Statements **(17-30)**
- J.** Informational Items
- K.** Items received after preparation of agenda
 - 1) Presentation of Proposed Stipulations and Final Decisions and Orders
 - 2) Presentation of Proposed Decisions
 - 3) Petitions for Re-hearing

- 4) Petitions for Summary Suspension
- 5) Petitions for Extension of Time
- 6) Petitions for Assessments
- 7) Petitions to Vacate Orders
- 8) Requests for Disciplinary Proceeding Presentations
- 9) Motions
- 10) Appearances from Requests Received or Renewed
- 11) Division of Legal Services and Compliance Matters
- 12) Education and Examination Matters/CE Issues
- 13) Credentialing Matters/Application Issues
- 14) Practice Questions/Issues
- 15) Legislation/Administrative Rule Matters
- 16) Liaison Reports
- 17) Speaking Engagement, Travel, Public Relation Requests

L. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1) (a), Stats.; consider closing disciplinary investigation with administrative warning (s. 19.85(1)(b), Stats. and 440.205, Stats., to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.; and, to confer with legal counsel (s. 19.85(1)(g), Stats.)

M. Deliberation of Proposed Stipulations, Final Decisions and Orders including any received after printing of the agenda

N. Deliberation of Proposed Administrative Warning(s)

O. Application Review(s)

P. Case Closings

Q. Deliberation of other items received after preparation of agenda

- 1) Proposed Stipulations
- 2) Proposed Decisions and Orders
- 3) Objections and Responses to Objections
- 4) Complaints
- 5) Petitions for Summary Suspension
- 6) Remedial Education Cases
- 7) Petitions for Extension of Time
- 8) Petitions for Assessments
- 9) Petitions to Vacate Orders
- 10) Motions
- 11) Administrative Warnings
- 12) Matters Relating to Costs
- 13) Appearances from Requests Received or Renewed
- 14) Examination Issues
- 15) Continuing Education Issues
- 16) Credentialing Matters/Application Issues
- 17) Case Closings
- 18) Case Status Report
- 19) Monitoring Cases
- 20) PAP Cases

R. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

S. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

T. Training

- 1) Board Member Training
- 2) Case Advisor Training **(31-44)**

ADJOURNMENT

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**RESPIRATORY CARE PRACTITIONERS EXAMINING COUNCIL
SEPTEMBER 13, 2011
MINUTES**

PRESENT: Ann Meicher, William Rosandick (teleconference), Lynn Waldera

STAFF: Tom Ryan, Bureau Director, Sandra Nowack, Legal Counsel; Karen Rude-Evans, Bureau Assistant

GUESTS: none

CALL TO ORDER

Chair William Rosandick called the meeting to order at 12:10 a.m. A quorum of three (3) members was confirmed.

ADOPTION OF AGENDA

Amendments:

- After Item G, insert after page 12:
 - Request for Board Review of NBRC Membership Dues Policies – Jason Gerald Tschida, Appleton, WI

MOTION: Ann Meicher moved, seconded by William Rosandick, to adopt the agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES OF SEPTEMBER 14, 2010

MOTION: William Rosandick moved, seconded by Ann Meicher, to approve the minutes of September 14, 2010 as written. Motion carried unanimously.

ELECTION OF OFFICERS FOR 2012

MOTION: William Rosandick moved, seconded by Ann Meicher, to retain Bill Rosandick as Chair, Ann Meicher as secretary and by unanimous consent to elect Lynn Waldera as Vice Chair. Motion carried unanimously.

The new officer elections are effective January 1, 2012.

BUREAU DIRECTOR MATTERS

2012 Meeting Dates

The 2012 meeting dates were noted.

NBRC REPORT

Ann Meicher and Tom Ryan drafted a letter to the NBRC to elicit their assistant in notifying Wisconsin after an applicant has failed the examination three times. Follow up contacts were made, however no response was received from the NBRC.

UPDATE FROM THE SCHOOLS

William Rosandick reported there are currently 410 schools with respiratory care practitioner programs, of which 350 require associate degrees. The NBRC is considering eliminating the entry level CRT examination.

APPLICATION ISSUES RECEIVED IN THE BUREAU AFTER MAILING OF THE AGENDA

The Council reviewed correspondence from Jason Tschida regarding his concerns with NBRC membership dues as relates to an application for Wisconsin licensure. Tom Ryan will reply to Mr. Tschida.

INFORMATIONAL ITEMS

None.

PUBLIC COMMENT

None.

CLOSED SESSION

MOTION: Ann Meicher moved, seconded by William Rosandick, to convene into closed session to deliberate on case(s) following hearing (Wis. Stat. § 19.85 (1) (a)); consider closing disciplinary investigation(s) with administrative warning(s) (Wis. Stat. § 19.85 (1) (b) and 440.205); to consider individual histories or disciplinary data (Wis. Stat. § 19.85 (1) (f)); and to confer with legal counsel (Wis. Stat. § 19.85 (1) (g)). Motion carried by roll call vote: Ann Meicher-yes; William Rosandick-yes; Lynn Waldera-yes.

Open session recessed at 12:38 p.m.

RECONVENE IN OPEN SESSION

MOTION: William Rosandick moved, seconded by Ann Meicher, to reconvene in open session. Motion carried unanimously

Open session reconvened at 2:26 p.m.

RATIFICATION OF EXAMINATION SCORES

MOTION: Ann Meicher moved, seconded by Lynn Waldera, to recommend that the Medical Examining Board ratify the oral exam scores. Motion carried unanimously.

OTHER BUSINESS

William Rosandick appointed himself as the Examination Liaison and Lynn Waldera as the alternate.

ADJOURNMENT

MOTION: William Rosandick moved, seconded by Ann Meicher, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 2:33 p.m.

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Karen Rude-Evans, Bureau Assistant		2) Date When Request Submitted: 8/26/2013 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Respiratory Care Practitioners Examining Council			
4) Meeting Date: Sept 10, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Paperless Initiative	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Brief presentation on SharePoint access as part of the paperless initiative as well as instructions for using DSPS laptops.			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

How to register for a username/password on <http://register.wisconsin.gov> .

In order to access the Board SharePoint site, Board Members must obtain a State of WI/DOA username/password from this site <http://register.wisconsin.gov> . Once registered, Board Members will be provided a DOA credential under the Wisconsin External (wiext) domain. This account is intended to provide users with access to multiple State of Wisconsin web applications, including the DSPS SharePoint site.

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To Begin, use the 'Self Registration' link

DOA/Wisconsin Logon Management System

The DOA/Wisconsin Logon Management System allows authorized individuals to access many DOA Internet applications using a single ID and password. When access to information or services is restricted to protect your privacy or the privacy of others, you will be asked to provide your DOA/Wisconsin Logon and password to access DOA/Wisconsin Logon and password verified your identity, so that we can provide you with access to your information and services and prevent access by unauthorized individuals.

User Acceptance Agreement

Please note that only certain types of information will be stored in your user profile, as described in the [User Acceptance Agreement](#). Your user profile will never contain records such as driving history, tax information, unemployment compensation, vehicle registrations or prison records.

Sign Up for your DOA/Wisconsin Logon

Self Registration (Request a DOA/Wisconsin Logon and Password.)

Self Registration allows you to create your **personal** DOA/Wisconsin Logon. This is your key to doing secure business with DOA over the Internet.

Change / Update Your Information

Profile Management allows you to change your account information, e-mail address and other information.

Change Your Password

Password Management allows you to change your password.

Forgot Your Logon ID or Password?

Logon ID/Password Recovery allows you to recover a forgotten DOA/Wisconsin Logon and/or Password.

Updated February 6, 2009
DOA/Wisconsin Logon Management System
Direct Contact: [BISS@DOA](mailto:BISS@DOA.wisconsin.gov)
Content Contact: [BISS@DOA](mailto:BISS@DOA.wisconsin.gov)

[Wisconsin.gov](#) | [Search](#) | [Legal](#) | [DOA Home](#)

Not sure if you already have DOA/State of WI account?

Use the 'Forgot Your Logon ID or Password' link to check

After accepting the user agreement, complete the 'Account Creation' form.

IMPORTANT!!! Indicate 'SharePoint' under the section entitled, 'Systems You Will Access'

The screenshot shows the 'Account Creation' form with the following fields and values:

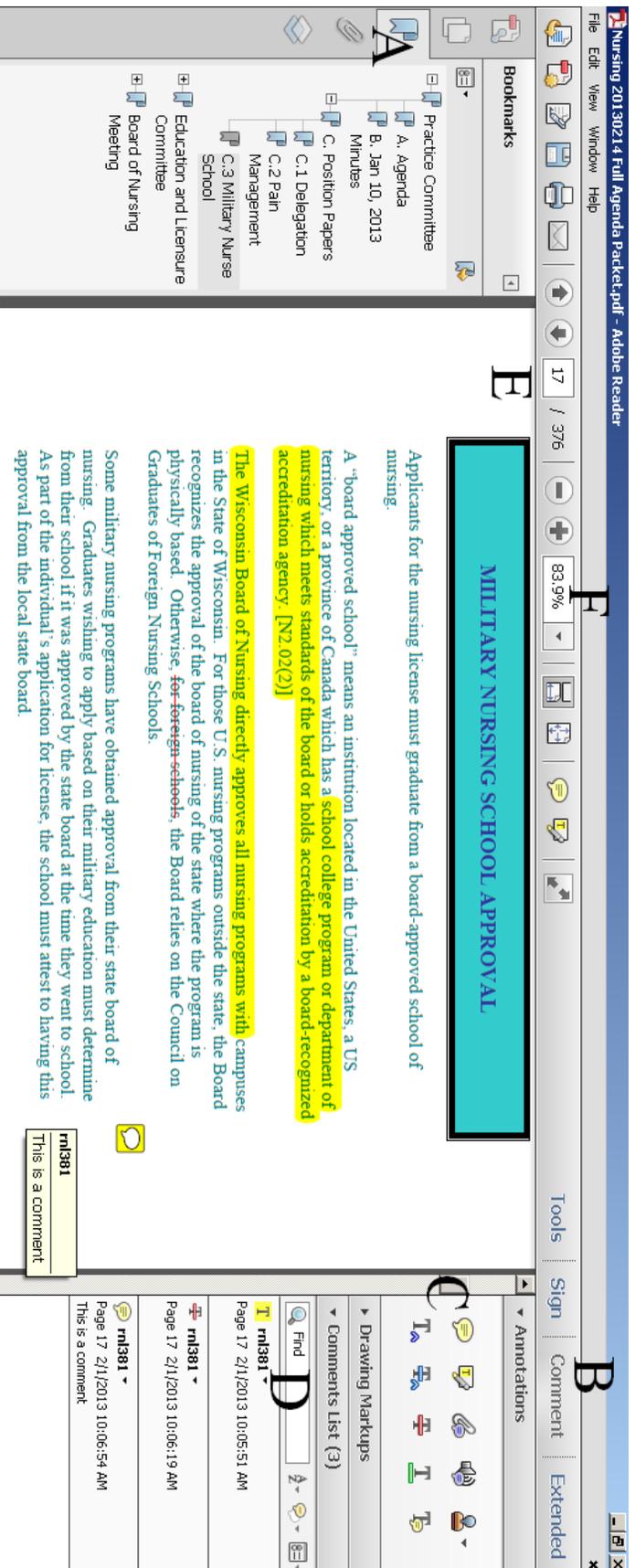
- Profile Information:** First Name: Barbara, Middle Initial: H, Last Name: Cumberland, Suffix: [dropdown arrow]
- E-Mail:** Barbara.Cumberland@salud.net
- Phone:** 431.074.393 ext. [dropdown arrow]
- Mailing Address:** 182 Fingers Lane, Big Patch, Wisconsin, 53818
- Systems You Will Access:** A dropdown menu with 'SharePoint' selected. An arrow points from the red text above to this dropdown.
- Account Information:** Logon ID: jchumberdale
- Password:** [masked with dots]
- Logon ID/Password Recovery:** Secret Question: 'What was your mother's maiden name?', Secret Answer: Logan-Frice
- Verification:** A box contains the number '80542'.

Red asterisks (*) indicate required fields. A red box highlights the '80542' verification number.

Please use a login ID of your first initial followed by your middle initial followed by your last name, as in the example to the left.

Remember your logon ID, as you will need to provide that to DSPS staff in order for you to receive proper access rights.

Once you have been granted permission to access the Board's website, you should receive an automated 'Welcome to SharePoint' email with a link to the site.



Above is an example of an agenda packet page, with some features you can access through Adobe Reader.

A: Bookmarks – When the Bureau Assistant creates the Agenda Packet, it is possible to place in bookmarks for quick reference during meetings. You can expand and minimize categories to better enable you to jump from section to section of your agenda here.

B: Comment – On specially designated .pdf files, it is possible for Adobe Reader to be given comment privileges. This allows a Board member to make comments on documents, as well as edit, highlight, or insert text in suitable files. Please note, if the file is a scanned copy, it is likely that the highlight and text editing features will not be usable. The comment feature will still work in such an issue.

C: Annotations & Drawing Markups – These are the different options you can use to mark up your document for your reference. If you mouse over an option, it will give a brief description of what it can do for you. Feel free to experiment and find out what works best for you!

D: Comments List – Quickly jump between your comments by selecting them in this list. Never again will you miss out on a note during a discussion with this handy tool.

E: Page List – No more rifling through papers in order to track down that page someone mentioned! With this handy bar, you can simply type in the page you are looking for, hit enter, and Adobe Reader will take you directly to the page.

F: Zoom – Having trouble reading something? You can zoom in and out on a document with this bar. The plus and minus signs to the left can be used to make quick adjustments as well.

**State of Wisconsin
Department of Safety & Professional Services**

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3) Name of Board, Committee, Council, Sections: Respiratory Care Practitioners Examining Council			
4) Meeting Date: Sept 10, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Executive Order 61	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Review of Executive Order 61 and the Council's rules in relationship to job creation and small business expansion.			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			



EXECUTIVE ORDER # 61

Relating to Job Creation and Small Business Expansion

WHEREAS, creating jobs and growing our state's economy is dependent on a vibrant small business sector; and

WHEREAS, small businesses have generated 64% of net new jobs over the past fifteen years and employ over half of all private sector employees; and

WHEREAS, according to recent U.S. Census data, 86% of Wisconsin business employ fewer than 20 workers, and 74% have ten workers or less; and

WHEREAS, small businesses spend 80% more per worker than large employers to comply with government regulations and, according to a recent National Federation of Independent Business survey of Wisconsin employers, 91% said it was impossible to know about, comply with, and understand all of government's regulations; and

WHEREAS, according to the U.S. Small Business Administration, complying with government regulations costs small businesses \$10,585 per worker, which discourages investment and hiring by small businesses; and

WHEREAS, government regulations are regularly cited as one of the top three concerns for small business growth, according to NFIB's Small Business Optimism Index; and

WHEREAS, 2011 Wisconsin Act 46 strengthened Wisconsin's Small Business Regulatory Review Board (Board) empowering small business owners and giving them the ability to judge the economic impact of government regulation; and

WHEREAS, 2011 Wisconsin Act 46 requires state agencies to submit any rule with an economic impact to the Board for review and allows the Board to suggest changes to the agency that will improve compliance and reduce the rule's burden on small businesses; and

WHEREAS, pursuant to Wis. Stat. § 227.30, the Board has the authority to review rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses to conduct their affairs; and

WHEREAS, state agencies and the Board should not only be reviewing new rules but collaborating to reform existing rules that hinder job creation and small business expansion and that this effort would help further the state's goal of creating 250,000 jobs by 2015.

NOW THEREFORE, I, SCOTT WALKER, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and laws of this State, specifically Wis. Stat. § 227.10(2m), do hereby:

1. Require all state agencies to review 2011 Wisconsin Act 46 to ensure they are in compliance, ready to assist small business owners, and properly submitting any proposed rules with an economic impact to the Board;
2. Require all state agencies to cooperate with the Board to identify existing rules hindering job creation and small business growth;

3. Require all state agencies to work with the Board to recommend changes to these rules that will both reduce their burden on job creators while continuing to comply with the intent of the statutes that created them;
4. Require all state agencies to work with the Board to identify strategies that will increase compliance with existing rules;
5. Request that the Board engage small business owners and their representative organizations to gather input on any rules hindering job growth;
6. Request that the Board provide a report and analysis of these rules, in a manner similar to Wis. Stat. § 227.30(1), to the Governor's Office of Regulatory Compliance and the agency with the authority to amend the rules, which details the rules they have identified for modification.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done in the City of Eau Claire this twenty-second day of February, in the year two thousand twelve.


SCOTT WALKER
Governor

By the Governor:


DOUGLAS LA FOLLETTE
Secretary of State

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4) Meeting Date: Sept 10, 2013	5) Attachments: <input type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Executive Order 50 and Review of Position Statements	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Review of Executive Order 50 and review of the Council's position statements.			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
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EXECUTIVE ORDER # 50

Relating to Guidelines for the Promulgation of Administrative Rules

WHEREAS, 2011 Wisconsin Act 21 reformed the administrative rulemaking process in Wisconsin in order to increase accountability, clarify agency regulatory authority, and evaluate the economic impact of all new and amended state administrative rules; and

WHEREAS, Wis. Stat. § 227.10(1) requires that each agency statement of policy and each interpretation of a statute adopted to govern its enforcement or administration of that statute shall be promulgated as a rule, and Wis. Stat. § 227.01(13) defines a rule as “a regulation, standard, statement of policy or general order of general application which has the effect of law and which is issued by an agency to implement, interpret or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency;” and

WHEREAS, Wis. Stat. § 227.10(2m) requires an explicit grant of authority under statute or administrative rule before a state agency can implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency; and

WHEREAS, Wis. Stat. §§ 227.11(2)(a)1. to 3. defines agency authority to promulgate administrative rules, specifically providing the following:

- A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rulemaking authority on the agency or augment the agency’s rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the legislature.
- A statutory provision describing the agency’s general powers or duties does not confer rulemaking authority on the agency or augment the agency’s rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the legislature.
- A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision; and

WHEREAS, Wis. Stat. §§ 227.135(2), 227.24(1)(e)1d. requires the Governor to approve a statement of scope before an agency may proceed with rulemaking, Wis. Stat. § 227.185 requires the Governor to approve a final draft rule before it is submitted to the Legislature for review, and Wis. Stat. § 227.24(1)(e)1g. requires the Governor to approve an emergency rule before it is filed with the Legislative Reference Bureau and published in the official state newspaper; and

WHEREAS, Wis. Stat. § 227.137 requires state agencies to complete an Economic Impact Analysis (EIA) for every proposed rule in coordination with local governmental units that may be affected and to solicit information and advice from and consult with businesses,

associations representing businesses, local governmental units and individuals that may be affected by the proposed rule; and

WHEREAS, Wis. Stat. § 227.10(2m) establishes that “[t]he Governor, by executive order, may prescribe guidelines to ensure that rules are promulgated in compliance with [Subchapter II of Chapter 227 of the Wisconsin Statutes].”

NOW THEREFORE, I, Scott Walker, Governor of the State of Wisconsin, by virtue of the authority vested in me by the Constitution and the laws of Wisconsin, specifically Wis. Stat. § 227.10(2m), do hereby direct that state agencies shall comply with the requirements of Subchapter II of Chapter 227 and this Executive Order when promulgating administrative rules.

I. General Provisions

1. To assure timely and proficient review of administrative rules in accordance with this Executive Order and with Wis. Stat. § 227.10(2m), the Governor’s Office of Regulatory Compliance is hereby established.
2. Each agency that develops any document interpreting, clarifying, or explaining statutes and rules that regulate individuals or entities or local governmental units, shall submit a copy to the Governor’s Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov prior to its finalization by that agency.
3. Each agency shall submit to the Governor’s Office of Regulatory Compliance all materials required to be submitted under Subchapter II of Chapter 227. This includes all publicly available materials submitted to the Legislative Council Rules Clearinghouse, Legislative Reference Bureau, Department of Administration, Chief Clerks of the State Assembly and State Senate, legislative standing committees, and the Joint Committee for Review of Administrative Rules.
4. The electronic submission of materials to the State Budget Office, via SBOAdminRules@wisapps.wi.gov or as the State Budget Office otherwise prescribes, shall fulfill an agency’s duty, under Chapter 227 and Paragraph I.3. of this Executive Order, to submit materials to the Governor, the Governor’s Office of Regulatory Compliance, or the Department of Administration.
5. Each statement of scope submitted by an agency on or after June 8, 2011 is subject to review and approval by the Governor as required by Wis. Stat. §§ 227.135(2), 227.24(1)(e)1d. and Paragraph II.1. of this Executive Order. An EIA shall be prepared as required by Wis. Stat. § 227.137 and Paragraph IV.1. of this Executive Order if the draft rule is submitted to the Legislative Council Rules Clearinghouse under Wis. Stat. § 227.15 on or after June 8, 2011. An EIA is not required when an agency promulgates an emergency rule. A final draft rule or emergency rule is subject to review and approval by the Governor, as required by Wis. Stat. §§ 227.185, 227.24(1)(e)1g. and Paragraph V.1. of this Executive Order, if the statement of scope for the rule or emergency rule was submitted on or after June 8, 2011.
6. The language of Wis. Stat. § 990.001(11) concerning severability and Wis. Stat. § 990.01 concerning construction of words and phrases are intended to apply to this Executive Order.

II. Statements of Scope

1. A statement of scope shall be submitted to the Governor’s Office of Regulatory Compliance for approval by the head of the agency proposing a rule or emergency rule or by a deputy or executive assistant who has been authorized to do so by the agency head under Wis. Stat. §§ 15.04(2) or 15.05(3). Statements of scope shall be submitted electronically, as prescribed in Paragraph I.4. of this Executive Order, and contain the following information as required by Wis. Stat. § 227.135(1).
 - a. A detailed description of the objective of the rule.

- b. A detailed description of existing policies relevant to the rule and new policies proposed to be included in the rule and an analysis of policy alternatives. The description shall include an overview of the requirement or program that the rule will implement. If the proposed rule will amend an existing rule, the description shall also include an overview of the existing rule and the general changes. If the proposed rule will replace an emergency rule currently in effect, the agency shall summarize the status of any legislative action under Wis. Stat. § 227.24(2) or § 227.26(2) and identify any implementation issues that have arisen since the rule was promulgated.
 - c. A detailed description of the statutory authority for the rule. The agency shall reference each statute that authorizes the promulgation of the proposed rule and each statute or rule that will affect the proposed rule or be affected by it. The agency shall also explain in detail the agency's authority to promulgate the proposed rule under those statutes. An agency shall rely on an explicit grant of authority from the Legislature to promulgate a rule, if one exists. An agency shall not rely upon general statements of legislative purpose or legislative findings or agency general powers and duties clauses to confer authority to promulgate rules. Pursuant to Wis. Stat. § 227.11(2)(a), in the absence of an explicit grant of rulemaking authority, an agency may promulgate a rule if:
 - i. The agency considers it necessary to effectuate the purpose of the statute; and
 - ii. The agency has a general grant of rulemaking authority to administer or enforce the chapter, subchapter, or section of the Wisconsin statutes.
 - d. An estimate of the amount of time that state employees will spend to develop the rules and of other resources necessary to develop the rule.
 - e. A description of all of the entities that may be affected by the rule. This includes a description of any local governmental units, businesses, economic sectors, or public utility ratepayers who may reasonably be anticipated to be affected by the rule.
 - f. A summary and preliminary comparison, with state law, of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.
2. A statement of scope shall also include a statement of whether the agency anticipates that the proposed rule will have minimal or no economic impact, may have a moderate economic impact, or is likely to have a significant economic impact locally or statewide.
 3. A statement of scope for a proposed emergency rule shall also include an explanation of why the rule is necessary for the preservation of the public peace, health, safety, or welfare. If the rule is exempt from the required finding of emergency, the statement of scope shall cite the Wisconsin Act number and section authorizing the promulgation of an emergency rule or the statute section providing the exemption. The statement of scope shall also indicate whether the agency will promulgate a non-emergency rule and when it will begin the non-emergency rulemaking process.
 4. An agency that intends to simultaneously draft an emergency and a non-emergency rule that are identical in substance may submit one scope statement indicating this intent.
 5. Pursuant to Wis. Stat. § 227.135(2), no state employee may begin work on a proposed rule or emergency rule until the statement of scope has been approved by the Governor, published in the Administrative Register, and approved by the agency head or body with policy making powers for the agency.
 6. A statement of scope not submitted in accordance with Wis. Stat § 227.135(1) and this Executive Order will be returned to the agency and the Governor's Office of

Regulatory Compliance's review will be suspended until a complete description and analysis is resubmitted.

7. The Governor's Office of Regulatory Compliance may request an agency to withdraw a statement of scope and resubmit separate statements of scope if, in the Governor's discretion, the original statement of scope encompasses more than one rule change.
8. Following a review of the statement of scope, the Governor's Office of Regulatory Compliance shall notify the agency in writing whether the statement of scope is approved or disapproved. A disapproval by the Governor may be accompanied by suggested modifications in the event an agency chooses to submit a revised statement of scope.
9. An agency must file a statement of scope approved by the Governor for publication by the Legislative Reference Bureau within thirty calendar days of approval if the agency intends to proceed with rulemaking, or the Governor's Office of Regulatory Compliance will deem the statement of scope to be withdrawn.
10. If at any time during the rulemaking process prior to final approval by the Governor, the scope of a proposed rule is changed in any meaningful or measureable way, including changing the scope so as to include any activity, business, material or product that is not specifically included in the original statement of scope under Wis. Stat. § 227.135(4), a revised statement of scope shall be submitted to the Governor's Office of Regulatory Compliance for approval. A meaningful or measurable change includes a change to the following:
 - a. The objectives of the proposed rule;
 - b. The basis and purpose of the proposed rule;
 - c. The policies to be included in the proposed rule;
 - d. The entities affected by the proposed rule; or
 - e. The overall breadth or scope of the regulation in the proposed rule.
11. If at any time following the Governor's approval of a statement of scope, prior to the submission of a final draft rule to the Legislature for review, the Governor's Office of Regulatory Compliance requests a revised statement of scope from the agency because the rule has been changed in a meaningful or measureable way under Wis. Stat. § 227.135(4), the agency shall submit the revised statement of scope to the Governor's Office of Regulatory Compliance electronically as prescribed in Paragraph I.4. of this Executive Order within fourteen calendar days of receiving the request.

III. Additional Agency Actions in the Rule-Making Process

1. If an agency intends to establish an advisory committee under Wis. Stat. § 227.13, it shall provide a list of members to the Governor's Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov prior to establishing the advisory committee.
2. The agency's draft rule analysis required under Wis. Stat. § 227.14(2) shall be submitted to the Governor's Office of Regulatory Compliance electronically, as prescribed in Paragraph I.4. of this Executive Order, upon completion and prior to finalization and submittal to the Legislative Council under Wis. Stat. § 227.15(1). In accordance with Wis. Stat. § 227.14(2m), the agency shall include a statement within the analysis describing how the requirements for ensuring the accuracy, integrity, objectivity and consistency of data were used in preparing the proposed rule and related analysis.

IV. Economic Impact Analysis

1. For each proposed rule that is not an emergency rule, an Economic Impact Analysis (EIA) shall be submitted to the Legislative Council, the Governor, the Department of Administration, and the Legislature by the head of the agency proposing a rule as required by § 227.137(4). An EIA shall be submitted electronically to the

Governor's Office of Regulatory Compliance as prescribed in Paragraph I.4. of this Executive Order and this submission shall also fulfill the requirement under § 227.137(4) to submit the EIA to the Governor and the Department of Administration.

2. Prior to initiating an EIA of a proposed rule, the agency shall review the statement of scope to determine whether it was changed in any meaningful or measurable way, under Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order, while the rule was being developed. If a meaningful or measurable change has been made, the agency shall revise and resubmit the statement of scope for approval as required by Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order.
3. In preparing an EIA, under Wis. Stat. § 227.137(3), the agency shall solicit information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule by making information about the rule available and requesting comments.
 - a. Information including the proposed rule language shall be made available by posting on the agency website and the Wisconsin administrative rules website, submitting the information to the Governor's Office of Regulatory Compliance, as prescribed in Paragraph I.4. of this Executive Order, and by e-mailing individuals who have requested to receive information and other persons identified by the agency as potentially interested parties.
 - b. The agency shall accept comments for a period of at least fourteen calendar days if the statement of scope indicates that the draft rule will have no or minimal economic impact locally or statewide, at least thirty calendar days if the statement of scope indicates a moderate economic impact locally or statewide and at least sixty calendar days if the statement of scope indicates that the draft rule may or is likely to have a significant economic impact locally or statewide or on a sector of the economy. If the agency determines that the anticipated economic impact will be greater than indicated in the statement of scope, it shall adjust the comment period accordingly and a revised statement of scope is not required. If an agency determines that the anticipated economic impact will be less than indicated in the statement of scope, it may adjust the comment period accordingly and a revised statement of scope is not required.
 - c. The agency shall review the comments received and the statement of scope description of all of the persons that may be affected by the proposed rule. The agency shall update the list of businesses, business sectors, associations representing businesses, local governmental units, and individuals included in the statement of scope and submit the list to the Governor's Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov.
4. After soliciting information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule, the agency shall prepare the EIA in coordination with the local governmental units that respond to the agency's solicitation of comments and request to coordinate with the agency, as required by Wis. Stat. § 227.137(3). The agency shall contact those local governmental units to discuss such comments and incorporate them into the EIA to the extent feasible. The agency may at the same time consult with the local governmental units about whether the proposed rule would adversely affect in any material way the economy, a sector of the economy, productivity, jobs or the overall economic competitiveness of the state as required by Wis. Stat. § 227.137(3)(e) and Paragraph IV.3. of this Executive Order.
5. After soliciting information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule, the agency shall make a determination in the EIA as required by Wis. Stat. § 227.137(3)(e), in consultation with those businesses, business sectors, associations representing businesses, local governmental units, and individuals as to whether the proposed rule would adversely affect in a material way

the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state in the following manner:

- a. The agency shall compile a list of affected persons and economic concerns identified in the comments solicited by the agency.
 - b. The agency shall contact those affected persons to discuss economic concerns and give consideration to those concerns in its EIA determination.
 - c. The agency shall document in the EIA the affected persons who were consulted and whether the agency's determination is disputed by any of the affected persons.
6. For purposes of developing an EIA for a proposed rule that is anticipated to have a significant economic impact locally or statewide, or on a sector of the economy, agencies are encouraged to establish an advisory committee of affected persons following its solicitation of comments in order to coordinate with local governmental units and consult with other affected persons. An agency that previously established an advisory committee under Wis. Stat. § 227.13 to advise it during rulemaking, including the development of the EIA, shall add to the committee affected persons, identified following the agency's solicitation of comments, who wish to serve on the committee.
7. The final EIA shall contain the following information as required by Wis. Stat. § 227.137 on the economic impact of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole:
- a. An analysis and quantification of the policy problem that the proposed rule is intending to address, including comparisons with approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address the policy problem and, if the approach chosen by the agency to address that policy problem is different from those approaches, a statement as to why the agency chose a different approach.
 - b. An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by the businesses, local government units, and individuals that may be affected by the proposed rule. A summary of comments related to the implementation and compliance costs received by businesses, local governmental units, and individuals shall be included in the final analysis.
 - c. An analysis of the actual and quantifiable benefits of the proposed rule, including an assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.
 - d. An analysis of the alternatives to the proposed rule including the alternative of not promulgating the proposed rule.
 - e. A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. Included in the final analysis shall be a summary of comments related to whether the proposed rule would adversely affect, in a material way, the economic competitiveness of this state received by businesses, local governmental units, and individuals.
 - f. If the agency finds that a proposed rule will not have an economic effect on public utilities or their ratepayers, it shall state this conclusion in the EIA. If the agency finds that a proposed rule will have an economic impact on public utilities or their ratepayers or both, it shall request the information necessary from the Public Service Commission to provide an estimate of the increased costs or resulting savings for public utilities and their ratepayers.

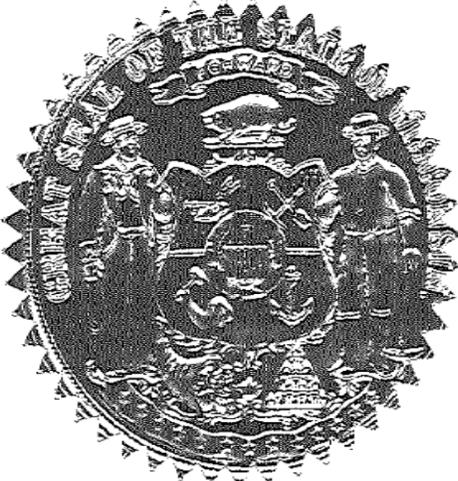
- g. Pursuant to Wis. Stat. § 227.137(3)(f), if an EIA relates to a rule of the Department of Safety and Professional Services establishing standards for dwelling construction, the EIA shall address whether the rule would increase the cost of constructing or remodeling the dwelling by more than \$1,000.
- 8. If the agency finds that a proposed rule will not have an economic impact after a review of comments submitted in response to the agency's solicitation, it may complete the EIA without additional coordination with local governmental units or consultation with other affected parties. The agency shall detail in the EIA the information supporting the conclusion that the proposed rule will not have an economic impact.
- 9. If at any time after the final EIA is submitted under Wis. Stat. § 227.137(4) and before the final draft rule is submitted to the Governor's Office of Regulatory Compliance for an approval, the economic impact of the proposed rule is significantly changed, a revised EIA shall be submitted to the Legislative Council, the Legislature, the Department of Administration, and the Governor, as required by under Wis. Stat. § 227.137(4).
 - a. A significant change includes an increase or a decrease of at least 10 percent or \$50,000, whichever is greater, in the estimated compliance costs reasonably expected to be incurred by a majority of the businesses, business sector, local governmental units, or individuals that may be affected by the proposed rule or a significant change in the persons affected by the proposed rule.
 - b. If in addition to a significant change in the economic impact of the proposed rule, there is also a meaningful or measureable change in the scope of the rule, the agency shall prepare a revised statement of scope and submit it to the Governor's Office of Regulatory Compliance for approval as required by Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order. If a revised statement of scope is approved by the Governor, published in the Administrative Register and approved by the agency head or body with policy making powers for the agency, the agency shall prepare the revised EIA in accordance with Wis. Stat. § 227.137 and Paragraph IV.9. of this Executive Order.
 - c. If a revised statement of scope is not required because the scope of the proposed rule has not changed in a meaningful or measurable way, the agency may proceed with the development of the revised EIA using the list of businesses, business sectors, local governmental units, and individuals affected by the proposed rule developed following the agency solicitation of information and advice under Wis. Stat. § 227.137(3) and Paragraph IV.3. of this Executive Order. The agency shall comply with the remaining requirements of Wis. Stat. § 227.137 and this Executive Order.
- 10. If at any time after the final EIA is submitted under Wis. Stat. § 227.137(4), the Governor's Office of Regulatory Compliance requests a revised EIA because the economic impact of the proposed rule has significantly changed under Wis. Stat. § 217.137(4) and Paragraph IV.9. of this Executive Order, the agency shall submit the revised EIA electronically as prescribed in Paragraph I.4. of this Executive Order within ninety calendar days of receiving the request.
- 11. If the final EIA submitted under Wis. Stat. § 227.137(4) indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred or passed along to businesses, local governmental units and individuals as a result of the proposed rule, the Department of Administration shall review the rule and issue a report under Wis. Stat. § 227.137(6). Any cost savings identified in the analysis of actual and quantifiable benefits as required by Wis. Stat. § 227.137(3)(c) shall not reduce the total estimated implementation and compliance costs for purposes of determining whether the Department of Administration shall issue a report under Wis. Stat. § 227.137(6).
- 12. If the Department of Administration is required to complete a report under Wis. Stat. § 227.137(6), an agency shall not submit a proposed rule to the legislature for review under § 227.19(2) until the report has been received.

13. If an agency makes modifications to a proposed rule following the agency public hearing, the agency shall review the rule to determine whether the scope has been changed in any meaningful or measurable way under Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order and whether the economic impact of the proposed rule is significantly changed under Wis. Stat. § 227.137(4) and Paragraph IV.9. of this Executive Order.
 - a. The agency shall notify the Governor's Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov if it will submit a revised statement of scope to the Governor's Office of Regulatory Compliance for approval or a revised EIA to the Governor's Office of Regulatory Compliance, the Department of Administration, the Legislative Council Rules Clearinghouse and the Legislature, or both a revised statement of scope and a revised EIA. A revised statement of scope shall be submitted to the Governor's Office of Regulatory Compliance electronically as prescribed in Paragraph I.4. of this Executive Order within seven calendar days of the notification.
 - b. If neither a revised statement of scope nor a revised EIA is required, the agency shall submit the final draft rule to the Governor's Office of Regulatory Compliance for approval within thirty calendar days of the close of the public comment period following the public hearing if it intends to proceed with rulemaking, unless the agency has a policy making board that is required to approve the final rule language before it is submitted to the Governor's Office of Regulatory Compliance.

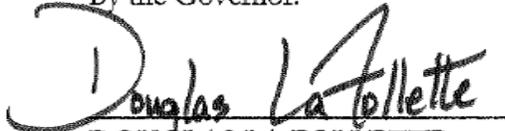
V. Final Draft Rule

1. A final draft rule shall be submitted electronically as prescribed in Paragraph I.4. of this Executive Order to the Governor's Office of Regulatory Compliance for approval by the head of the agency proposing a permanent or emergency rule or by a deputy or executive assistant who has been authorized to do so by the agency head under Wis. Stat. §§15.04(2) or 15.05(3).
2. For each non-emergency rule, the final draft rule submitted to the Governor's Office of Regulatory Compliance shall contain the following information:
 - a. The documents required under Wis. Stat. § 227.15(1), with any necessary updates;
 - b. A statement describing how the rule complies with any applicable requirement under Wis. Stat. § 227.116;
 - c. The final EIA required under Wis. Stat. § 227.137(2);
 - d. The report of the Department of Administration if required under Wis. Stat. § 227.137(6);
 - e. Any energy impact report completed under Wis. Stat. § 227.117(2), and a statement describing the agency's consideration of the energy impact report in accordance with Wis. Stat. § 227.117(3);
 - f. The report of the Small Business Regulatory Review Board required under Wis. Stat. § 227.14(2g);
 - g. Any regulatory flexibility analysis completed under Wis. Stat. § 227.114;
 - h. A list of persons who appeared or registered for or against the rule at the hearing;
 - i. A summary of public comments to the proposed rule and the agency's response to those comments;
 - j. An explanation of any modifications made in the proposed rule as a result of public comments or testimony received at the public hearing; and
 - k. The Legislative Council Rule Clearinghouse report completed under Wis. Stat. § 227.15 and the agency's response to the report as required by Wis. Stat. § 227.19(3)(d).
3. For each emergency rule, the final draft rule submitted to the Governor's Office of Regulatory Compliance shall contain the following information:
 - a. A fiscal estimate in the format required by Wis. Stat. § 227.14(4); and

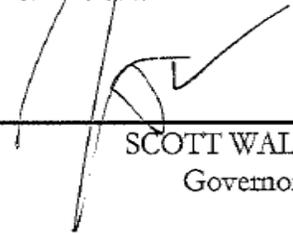
- b. A plain language analysis of the rule in the format required under Wis. Stat. § 227.14(2).
4. Following a review of the final draft rule, the Governor's Office of Regulatory Compliance shall notify the agency in writing whether the rule is approved or disapproved. A disapproval may be accompanied by suggested modifications. The agency may submit a revised rule for approval under the statement of scope that was previously approved by the Governor.



By the Governor:


DOUGLAS LA FOLLETTE
Secretary of State

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this second day of November, in the year two thousand eleven.


SCOTT WALKER
Governor



STATE OF WISCONSIN

Department of Safety and Professional Services
1400 E Washington Ave.
Madison WI 53703

Mail to:
PO Box 8935
Madison WI 53708-8935

Email: dsps@wisconsin.gov
Web: <http://dsps.wi.gov>
Phone: 608-266-2112

Governor Scott Walker Secretary Dave Ross

Positions Statements Related to Respiratory Care Issued by the Respiratory Care Practitioners Examining Council

WHAT IS THE LEVEL OF PHYSICIAN SUPERVISION FOR DELEGATED MEDICAL ACTS? DOES IT DEPEND ON THE LEVEL OF LICENSURE OF THE PERSON TO WHOM THE MEDICAL ACT IS DELEGATED?

For persons who are unlicensed, the performance of a delegated medical act must be “*directed, supervised and inspected*” by the physician. The unlicensed person presumably does not have the degree of knowledge, training or education as licensed health care professionals, such as a nurse, physician assistants, or advance nurse practice prescribers, therefore, the supervision requirement is heightened. Wis. Stats. 448.03 (2)(e).

The level of supervision for delegated medical acts performed by a RN is “*general supervision*”. However, the RN may only accept those delegated medical acts for which there are written protocols or verbal or written orders. Also, the RN must be competent to perform the delegated acts based upon his or her nursing education, training or experience. Chapter N6.03(2), Wis. Admin. Code.

The level of supervision for delegated medical acts, performed by a LPN, which is beyond basic nursing care, is “*direct supervision*” of the physician. Chapter N6.04(2)(b), Wis. Admin. Code.

The level of supervision for delegated medical acts, performed by an APNP, is described as a “*collaborative relationship*” with a physician. Chapter N8.10 (7), Wis. Admin. Code. The collaborative relationship is a process in which an APNP is working with a physician, in each other's presence when necessary, to deliver health care services within the scope of the APNP's professional expertise.

The supervision requirement for delegated medical acts performed by a Physician Assistant is “*general supervision*,” although limited by the scope of the PA's education, training and experience, and the scope of practice of the supervising physician. Chapter MED 8.07(1) and (2). Also, the supervising physician shall be available to the PA at all times for consultation either in person or within 15 minutes of contact by phone or electronic communication. Chapter MED 8.10(3)

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, the Board has not officially adopted or issued any specific guidelines *per se*; however, the Board has indicated that if a physician follows the Model Guidelines for Use of Controlled Substances for Treatment of Pain adopted by the Federation of State Medical Board (FSMB), the physician would be practicing within the standard of care of a competent physician.

[The current FSMB guidelines](#)

ARE THERE SIMILAR RESTRICTIONS ON A RESPIRATORY CARE PRACTITIONER PRACTICING UNDER A LLC OR LLP?

Under Wisconsin law, physicians are prohibited from practicing medicine under a LLC or LLP form of business. Sec. 448.08(4), Wis. Stats., provides that two or more physicians may enter into professional partnerships or service corporations to practice medicine. The allowable form of business entity for physicians has been reviewed by the Wisconsin Attorney General and it was determined that physicians may not organize as business corporations. 75 Op. Att'y Gen. 200 (1986) Although LLC's and LLP's did not exist at the time of the A.G.'s opinion, the rationale for the opinion would apply equally to those business entities: Physicians are considered members of a learned profession, and their responsibilities for patient health and safety cannot be subordinated to the interests of shareholders or limited by a business entity.

A respiratory care practitioner is not a physician and cannot practice independently without supervision of a physician. There is no prohibition against a RCP organizing as a LLC or LLP business entity. The RCP may, therefore, practice under a LLC or LLP, provided that they are supervised by a physician.

WHAT ARE THE REQUIREMENTS FOR A PHYSICIAN ADVERTISING AS “BOARD CERTIFIED”?

Chapter MED 10.02(w) requires that use of the term “board certified” (or a similar phrase of like meaning) in advertising must include disclosure of the complete name of the specialty board which conferred the certification. Advertising in such a manner is prohibited if the physician is not in fact certified. Failure to make the required disclosure or advertising in an untruthful or inaccurate manner constitutes unprofessional conduct

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

Chapter MED 21.03 of the Wisconsin Administrative Code, **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. The rule also describes what type of information that should be maintained in the patient's records.

DOES A RESPIRATORY CARE PRACTITIONER WHO IS TRANSFERRING PATIENTS ACROSS STATE LINES NEED TO BE LICENSED IN BOTH STATES?

Per the interpretation of the Board, a respiratory care therapist who is licensed in another state and who accompanies a patient across state lines into Wisconsin, is under the direction of the Wisconsin licensed physician and the respiratory care therapist does not need to be licensed in Wisconsin.

MAY NON-RCP HEALTHCARE STAFF PERFORM SPIROMETRY TESTING (THE MEASURING OF BREATH)?

It depends. If performed under the order and supervision of a physician, this would be considered a delegated medical act. Per [Wis Stat 448.03\(2\)\(e\)](#), the physician may delegate an act to someone assisting the physician provided that the act is directed, supervised and inspected by the physician and that the delegating physician has the power to direct, decide and oversee the implementation of the patient services rendered. The delegate should also have the education and training necessary to carry out delegated acts. Given that these provisions are met, the performance of spirometry testing by non-RCP staff would be acceptable.

RECENT MEDICARE PROVISIONS HAVE INCLUDED THE COVERAGE OF IN-HOME SLEEP STUDY TESTING. IS THERE ANYTHING IN THE WISCONSIN STATUTES OR CODE THAT WOULD PROHIBIT RCP LICENSED PROFESSIONALS FROM PROVIDING IN-HOME TREATMENT?

There is nothing in the law that specifically prohibits a licensed RCP from entering a patient's home to perform a sleep study. However, the RCP should be working pursuant to a medical order from a licensed physician as required under the definition of respiratory care in [Wis Stat 448.015\(2\)](#).

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**State of Wisconsin
Department of Safety and Professional Services**

AGENDA REQUEST FORM

Name and Title of Person Submitting the Request: Mitali Chatterjee, Paralegal On behalf of Attorney Sandra L. Nowack Division Of Legal Services & Compliance	Date When Request Submitted: August 30, 2013 Items will be considered late if submitted after 4:30 p.m. and less than: ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before meeting for all other boards
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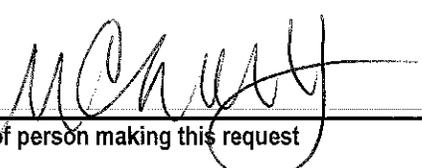
Name of Board, Committee, Council:
Respiratory Care Practitioners Examining Council

Board Meeting Date: September 10, 2013	Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	How should the item be titled on the agenda page? Case Advisor Training Overview
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Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	Is an appearance before the Board being scheduled? If yes, by whom? <input checked="" type="checkbox"/> Yes by <u>Attorney Sandra L. Nowack</u> (name) <input type="checkbox"/> No	Name of Case Advisor(s), if required: N/A
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Describe the issue and action the Board should address:

Authorization:

	8/30/13
Signature of person making this request	Date
Supervisor signature (if required)	Date
Bureau Director signature (indicates approval to add late items to agenda)	Date

Directions for including supporting documents:

1. This form should be attached to any documents submitted to the agenda.
2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director.
3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.

BOARD APPEARANCE REQUEST FORM

Board Name: Respiratory Care Practitioners Examining Council

Board Meeting Date: 09/10/2013

Person Submitting Agenda Request: Mitali Chatterjee, Paralegal

Person requesting an appearance: Attorney Sandra L. Nowack

Mailing address: Division of Legal Services and Compliance

Email address: sandra.nowack@wisconsin.gov

Telephone #: 608-266-8098

Reason for Appearance: Attorney Nowack will give an overview of the Case Advisor Training to the Board members.

Is the person represented by an attorney? If so, who?

Attorney's mailing address:

Attorney's e-mail address:

Phone Attorney:



**OVERVIEW OF
DSPS REGULATORY
STRUCTURE**

THE CASE HANDLING PROCESS

The Department and the Boards.

The Department of Safety and Professional Services (**Department**) and the attached Boards are distinct legal entities with different functions, working toward the same goal.

The Department was created to perform a wide range of duties, including providing legal expertise and administrative support to the Boards. Legal expertise is provided to the Boards in three ways: by a legal counsel; who has a fiduciary responsibility to provide legal advice to the Board in exercising its duties and responsibilities; by the assignment of an administrative law judge when disciplinary action goes to a formal hearing; and by the prosecutor of each case opened for investigation.

The Department provides administrative support by the assignment of an Executive Director, Bureau Assistant and Rules Coordinator to each Board. These staff members manage Board meeting agendas, handle a range of Board related business and serve as a liaison between the Board and the Department.

The Division of Legal Services and Compliance (**DLSC**) is the part of the Department tasked with the responsibility of enforcing licensee compliance with State laws and professional codes. DLSC is the physical extension of Boards' authority in disciplining misconduct. DLSC works collaboratively as the Board's partner in ensuring that fair and just discipline is imposed on violators of professional rules in a way that accomplishes the State's goals of *protection, deterrence and rehabilitation*.

Boards are established to perform many functions, including setting entry and practice standards through rule-making and regulating the professions through disciplinary actions. Within disciplinary actions, individual Board members may have two roles: the judicial role of a final decision-maker and the consultant role of case advisor.

As a consultant, the case advisor of a particular case assists DLSC's prosecuting attorney with professional expertise on the licensee's misconduct and necessary discipline to bring the licensee into compliance. If the attorney and licensee reach an informal resolution, the Board as a whole (including the case advisor of that case) will hear relevant facts, as the judge, and determine whether the agreed-upon resolution is sufficient. The consulting and judicial roles must be kept distinct and separate. To blur the line between the roles violates due process. Many of the safeguards and specific prohibitions are discussed below.

THE CASE HANDLING PROCESS

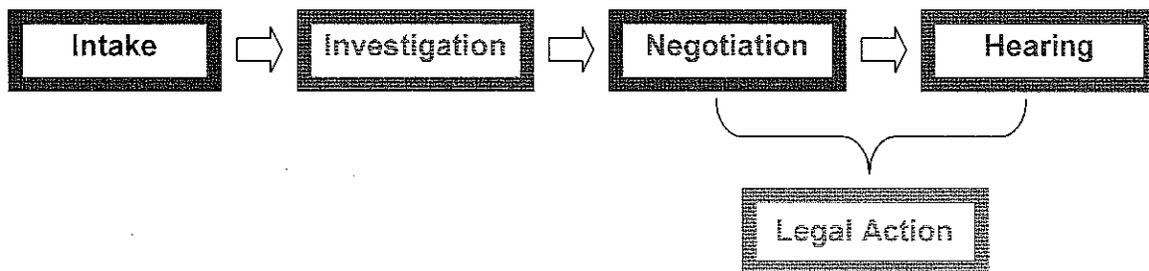
The Disciplinary Process.

The Department operates on a complaint-driven process, meaning all compliance actions are results of submitted complaints against alleged licensee misconduct, not from the Department's active search for misconduct. The Complaint itself may come from a variety of sources, such as consumers, professionals, or other cases that alerted us to misconduct of another licensee.

The State of Wisconsin recognizes and respects an individual's interest in earning a living. However, the individual's interest must be balanced with the public's interest in obtaining services that are safe and effective. In disciplining licensees, the State has three goals:

1. **Protect the public;**
2. **Deter the conduct; and**
3. **Rehabilitate the respondent.**

The State does not punish licensees for misconduct, but provides them with the necessary tools and opportunities to regain compliance. This protects both the public's and the individual's interests.



Intake Process.

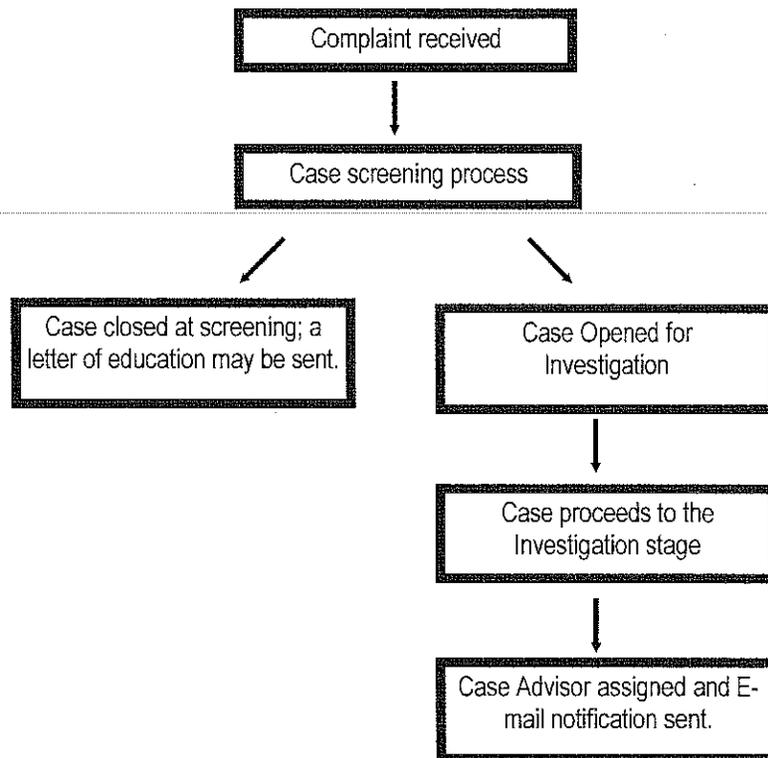
The Intake stage is the first stage in the case handling process.

As a complaint is received by the Department, Intake Staff collects relevant information (such as records, follow-up from the Complainant if the information is incomplete or an initial response from the accused licensee) and send the complaint to the Screening Panel, which may consist of several Board members and a DLSC attorney. The Screening panel, at a predetermined time, will confer and determine whether, from the information provided, a violation may have occurred. The panel may consider many factors, such as the seriousness of the allegations, the harm or threat of harm, whether the dispute is already resolved, and whether the matter is primarily a civil or private dispute. If a complaint does not warrant further action, it is closed under appropriate codes depending on the facts of the case, and a letter is sent out to the parties. If a

THE CASE HANDLING PROCESS

complaint does have merit, or requires further investigation, the case is opened and goes on to the Investigation stage.

The Intake stage is especially important as a gatekeeper against trivial complaints and cases without proof. This stage protects licensed professionals from meritless attacks on their reputation and livelihood. In certain circumstances, a licensee may be close to violating a professional standard, but did not violate it. Through the Screening process, the Panel may choose to issue a letter of education that warns the licensee of the risks of his conduct to prevent future violations.



Case Assigning.

When a case is opened, a case advisor will be assigned, along with an investigator, paralegal and attorney. The advisor can be assigned to a particular case by:

1. The screening panel - initial assignment made by screening panel during screening.
2. DLSC staff - when a conflict is identified or replacement for a previous case advisor is necessary, another case advisor will be assigned.

THE CASE HANDLING PROCESS

3. Expertise - in some cases the case advisor is assigned (either by the screening panel or DLSC) based on his or her expertise in a particular area relevant to the case. In cases where professional expertise is not required, a public member may be assigned as the advisor.
4. General rotation - case advisor assignments are made generally based on a rotation system so that the caseload is distributed as evenly as possible among Board members.
5. Geographical area – case advisor is assigned based on *not* being in the same geographical area as Respondent [Exception: Real Estate Appraisers are assigned by geographical area due to the importance of local area knowledge].

Once assigned, the advisor will receive an email or letter from Intake staff with notification of the assignment. The notification will include the case number, name of the Complainant, Respondent, original complaint and all supplemental information obtained since the complaint was received. At this time, the assigned advisor should review the materials and determine if there is any conflict of interest or bias that would require reassignment. If a conflict does exist, or if the advisor is uncertain if one exists, the advisor should contact DLSC staff immediately.

Types of “Discipline”.

It is important to understand and remember that almost all professionals hold a certain level of pride in their professional career. The State does not regulate professionals to all operate at the highest standard possible, which is a system better controlled by the market and individual professional's reputation. Instead, we regulate professionals to operate *above the minimum standard*. At times, licensees may be careless, incompetent or reckless. As the embodiment of the profession, Boards must make sure that the imposed discipline is appropriate to address the misconduct when the entire circumstance is taken into account. In addition to formal discipline, Boards also have non-disciplinary options that may more appropriately correct the licensee's failure. The case must always be reviewed and determined case-by-case, taking into account all facts specific to that particular case.

Forms of Informal Discipline: Useful Non-Disciplinary Tools.

1. Case Closure: Prosecutorial Discretion
 - a. Sometimes, the simple act of opening a case against the licensee is enough to alert the licensee to improve his practices.
 - b. Some examples of situations:
 - i. The incident in question was not seriously harmful to the public;
 - ii. Compliance with the statutes or rules has been gained;
 - iii. The expenditure of resources to pursue the violation greatly exceeds the value to the public in pursuing the matter; or

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- iv. The Board has taken action in regard to the licensee that addressed the conduct and no further action is necessary.
2. Remedial Education:
 - a. Requiring licensee to complete education that addresses his failure through a Board Order that does not include specific finding of a violation.
 - b. Remedial education allows the licensee to gain compliance with less embarrassment to his or her professional pride.
3. Administrative Warning:
 - a. Requires that the misconduct is a minor violation, and the misconduct is a first occurrence for the licensee (Wis. Admin. Code ch. SPS 8).
 - b. The fact that the warning was issued is a public record, but the content of the warning is private and confidential.
 - c. Licensee may request review of the warning within 20 days and make an appearance before the Board. If a warning is appealed, the Board may re-examine the case and request DLSC to pursue a different resolution, if warranted.
4. The Professional Assistance Procedure (PAP):
 - a. PAP is an alternative to formal disciplinary process for an impaired professional; it encourages individuals to seek help for their impairment in a non-disciplinary environment.
 - b. If an individual is released from PAP for failure to comply with the program, the Department Monitor at that time may refer the individual to DLSC for formal disciplinary procedures, if appropriate.

Forms of Formal Discipline

If the licensee's misconduct cannot be corrected with a non-disciplinary option, or if the misconduct is common enough that all licensees within the profession must be alerted to its substandard nature, formal discipline may be warranted.

1. **Reprimand:** to "publicly warn the holder of a credential" (Wis. Stat. § 440.01(1)(e)).
2. **Limited License:** to "impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice" (Wis. Stat. § 440.01(1)(d)).
 - a. A credential can be limited in many ways, allowing Boards to creatively and most appropriately address the credential holder's deficiency. For example:
 - i. Education – can the misconduct be resolved by re-education?
 - ii. Testing – can the misconduct be resolved by re-testing?
 - iii. Assessment or Treatment – can the licensee practice safely and competently if AODA impairment is treated?
 - iv. Supervision, Work Reports or Auditing
 - v. Other options by limiting:
 1. Practice scope
 2. Geographic practice area

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3. Types of procedures
4. Types of clients
- b. Time period – can be permanent or for a set period of time (e.g. until education is completed, testing passed, or licensee is deemed safe to practice).
- c. Measurability – when determining the appropriate limitation, please choose limitations that are clearly measurable and enforceable. Establish guidelines on how the licensee can show his or her compliance with the Board's intended restrictions.
3. **Suspension:** to “completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential” (Wis. Stat. § 440.01(h)).
 - a. Suspension should only be used when the conduct was egregious, as it is a form of deterrence rather than rehabilitation.
 - b. Suspensions can be imposed by length of time, completion of other Board requirements, or indefinitely, requiring a successful petition to the Board to lift the suspension.
4. **Revocation or Voluntary Surrender:** to revoke is to “completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential” (Wis. Stat. § 440.01(f)).
 - a. Revocation is only appropriate for the most serious conduct.
 - b. Not all revocations are permanent, licensees may re-apply (but it is up to the Board whether a license will be granted) unless the Order specifically prohibits or limits it.
 - c. Voluntary surrender is essentially identical to a revocation, except that it causes less embarrassment.
5. **Voluntary Surrender or Retirement without a Finding of Violation:**
 - a. There are instances where, regardless of the egregiousness of the conduct, the licensee wishes to stop practicing.
 - b. In these circumstances, the licensee can retire or surrender his or her license without a formal finding of violation.
6. **Forfeiture or Citations:** some Boards have the ability to impose monetary forfeitures or citations, which serve a deterrent function rather than rehabilitative.

The legal team assigned to a case will always assist the case advisor in determining the most appropriate discipline. The legal team may have additional information such as historical data and recent trend or change in discipline for similar conduct. Also, because the legal team has direct interactions with respondents, the team may have important insight as to what may be the most efficient and effective way to bring a particular respondent into compliance.

Summary Suspensions.

Summary suspension is a special tool that allows us to suspend a licensee without a stipulated agreement and before a full hearing. Because this tool circumvents certain due process, it can be used only when the facts establish that the licensee has engaged

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in and/or is likely to engage in conduct that threatens the health, safety or welfare of the public, which requires emergency suspension.

If a Board uses summary suspension, a formal complaint must be filed shortly after and a hearing held promptly. It is critical that all evidence is ready for the hearing.

Obtaining a summary suspension against a licensee does not necessarily mean that licensee has indeed engaged in misconduct; it only means that we have enough reason to believe he did, **AND** that he will continue to do so, placing the public in danger. Without evidence that the dangerous conduct will continue unless the licensee is suspended, summary suspension should not be granted.

Costs.

The Department has the authority to recoup time and money spent on a case if discipline is ultimately imposed. Costs include recovery for investigator, paralegal, attorney time, Administrative Law Judge's time if the matter goes to hearing, witness fees, postage, costs paid out for certified copies of records, court reporter fees, etc.

Case Advisor Role.

The Board member, while acting as a case advisor, has the responsibility to:

1. Review the case materials;
2. Identify additional materials required in order to make a determination;
3. Provide expert and technical advice and assistance to the DLSC staff;
4. Assist the attorney in determining the merits of the case;
5. Assist the attorney in determining whether a violation occurred;
6. Assist the attorney in determining the appropriate discipline if a violation occurred;
and
7. Assist with finding expert witnesses.

The case advisor is the prosecuting attorney's consultant in assessing if a violation occurred, what the exact nature of that violation is, the egregiousness of the violation, and what is necessary to bring the violator back into compliance. While the prosecuting attorney is an expert of the law, without the case advisor's expertise in a particular professional field, the attorney will be unable to adequately determine the facts of the case.

The most important factor in ensuring efficient and effective discipline of a licensee is clear communication between the case advisor and the legal team. With clear direction and expertise, the case advisor can assist the team's investigation and imposition of appropriate discipline. The case advisor and the legal team assigned to a particular case should maintain open communication through telephone, email, fax or regular mail. Complex issues may require telephone discussions. The legal team is always be happy to set up a phone conference at the case advisor's convenience. Communication

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between the case advisor and the legal team is an on-going process, as the case advisor's expertise may be needed each time new information is discovered.

The case advisor should provide the legal team with an opinion or request for additional information within **two (2) weeks** of receiving the investigative materials (**3 days for appraisers**). Timeliness is critical, allowing the legal team to conduct additional investigation or collect evidence as needed. Licensees also wish to have their cases resolved as soon as possible, as any case open against their license may jeopardize their employment or professional pride and reputation. If a case advisor knows there may be a delay, or if an unexpected event occurs, please contact your legal team immediately and we can set a new date for completion or discuss case transfer options.

The case advisor's opinion/communication should be clear and answer each of these questions:

Is additional information required?

- Did a violation occur? What is the violation?
- What would a *minimally competent* licensee have done in the same circumstance?
- How egregious is this conduct?
- What is the root issue?
- What would adequately address this issue and bring the licensee into compliance?

Please keep in mind that the violation often is not as clear to the legal team as to someone within the particular profession. However, the case advisor's analysis should serve to clear up any confusion or lack of understanding.

Being privy to private (oftentimes unproven) information, the case advisor has a duty to maintain confidentiality. Pending cases cannot be discussed with other Board members, colleagues or friends.

Informal Consults with Other Experts.

Occasionally, an issue may arise that is outside the case advisor's specialty or area of expertise. In certain circumstances, the advisor may consult with a colleague in that particular field or specialty in order to form an opinion on the violation and appropriate discipline. However, there are two prohibitions:

1. Consultations may not be with another Board member, and
2. Do not disclose any identifying information specific to the case.

If other questions or concerns arise regarding who may be consulted, the case advisor should discuss those concerns with the legal team assigned to that case.

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Ex-Parte Communication.

As both a Board member (who act as the decision maker or “judge”) and a case advisor (who act as the expert witness), it is essential that all decisions or recommendations are made with objectivity. The advisor must protect against conflicts of interest, as well as the *perception* of a conflict. As such, the Board member/advisor must not communicate with individuals involved in a pending case (including complainant(s), respondent(s) and witness(es)).

If a party of a case (whether it's assigned to you or not) attempts to contact you, please advise him or her that you cannot discuss the case with them, and inform your legal team immediately.

Case Advisor Participation in Board Deliberations.

When a proposed resolution (whether as a result of a stipulated agreement by the respondent or a proposed decision by the Administrative Law Judge) is before the Board for consideration, the Board member that served as advisor for the case may or may not be a part of the deliberation, depending on what type of case it is:

- Proposed stipulations, administrative warnings or case closures – the case advisor may participate in discussions and may vote on the matter. The advisor should be prepared to speak in support of the agreed upon resolution, discipline or closure. The advisor can always contact the DLSC prosecutor prior to the meeting in order to refresh his or her memory on why a particular discipline is the most appropriate one.
- Proposed decision following an evidentiary hearing – the case advisor may not participate in discussions. The advisor likely has access to information that was not presented or admitted as evidence during the hearing, and it would be unfair and unjust to the licensee for the advisor to report on conclusions or information that was not proven at the hearing.

Disposal of Materials.

All materials you receive during the course of the case investigation and disposition are confidential. They should be kept in a secure location and not shared with others. When the case is closed, you may destroy all copies or return them to the Division of Legal Services and Compliance for disposal.

Caution: Please make certain that none of the materials to be destroyed are originals. If they are, please return these items to the Division of Legal Services and Compliance.

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Conclusion.

We are here to assist case advisors and Board members every step of the way to accomplish our joint mission. We thank you for your voluntary service to the State of Wisconsin and your commitment to your profession.

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