STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

GENE MUSSER, M.D.
June 28, 2012

MEDICAL EXAMINING BOARD

• Established in statute
• Sets standards of professional competence and conduct
• Examines prospective new practitioners
• Investigates complaints of alleged professional misconduct
• Housed in DSPS as “distinct unit”
• MEB: rule making, licensing, regulation
• DSPS: budget, program coordination, management
Composition

• 9 M.D.s
• 1 D.O.
• 3 Public Members
• (Chair, PCF Peer Review Committee)
• Appointed by the Governor, confirmed by the Senate
• 2 consecutive 4 year terms
• 1 approximately 5 hour meeting in Madison per month – paid $25.00 plus mileage

Wisconsin Medical Examining Board Members

Carolyn Bronston
Public Member
Wausau, WI

Rodney Erickson, MD
Family Practice
Tomah, WI

LaMarr Franklin
Public Member
Milwaukee, WI

Jude Genereaux
Public Member
Ellison Bay, WI

Sujatha Kailas, MD
Gastroenterology
Fond du Lac, WI

Raymond Mager, DO
Surgery
Bayside, WI

Suresh Misra, MD
Family Practice
Milwaukee, WI

Gene Musser, MD
Cardiology
Madison, WI

Sandra Osborn, MD
Pediatrics
Madison, WI

Kenneth Simons, MD
Ophthalmology
Milwaukee, WI

Timothy Swan, MD
Radiology
Marshfield, WI

Sridhar Vasudevan, MD
Physical Medicine and Rehabilitation Pain
Milwaukee, WI

Sheldon Wasserman, MD
Obstetrics/
Gynecology
Milwaukee, WI
### Medical Licensure Fees

<table>
<thead>
<tr>
<th>State</th>
<th>Initial License</th>
<th>Renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wisconsin</td>
<td>$150</td>
<td>$140/2 years</td>
</tr>
<tr>
<td>California</td>
<td>$600</td>
<td>$800/2 years</td>
</tr>
<tr>
<td>Illinois</td>
<td>$400</td>
<td>$300/3 years</td>
</tr>
<tr>
<td>Iowa</td>
<td>$500</td>
<td>$450/2 years</td>
</tr>
<tr>
<td>Minnesota</td>
<td>$200</td>
<td>$192/ year</td>
</tr>
<tr>
<td>Michigan</td>
<td>$200</td>
<td>$285/3 years</td>
</tr>
<tr>
<td>Texas</td>
<td>$1000</td>
<td>$800/2 years</td>
</tr>
<tr>
<td>Colorado</td>
<td>$425</td>
<td>$440/2 years</td>
</tr>
</tbody>
</table>

### Source of Complaints

- Consumer: 40%
- Family: 11%
- Licensee: 9%
- Medical Malpractice Report/Adverse Action Report: 8%
- Professional Organization: 7%
- Government agency: 7%
- Inmate: 6%
- Self: 4%
- Employer/Employee: 3%
- Anonymous: 2%
Wisconsin Administrative Code § MED 10.02(2)

Med 10.02 Definitions. (2) The term “unprofessional conduct” is defined to mean and include but not be limited to the following, or aiding or abetting the same:

(a) Violating or attempting to violate any provision or term of ch. 448, Stats, or of any valid rule of the board.
(b) Violating or attempting to violate any term, provision, or condition of any order of the board.
(c) Knowingly making or presenting or causing to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing in connection with any application for license.
(d) Practicing fraud, forgery, deception, collusion, or conspiracy in connection with any examination for license.
(e) Giving, selling, buying, bartering, or attempting to give, sell, buy, or barter any license.
(f) Engaging or attempting to engage in practice under any license under any given name or surname other than that under which originally licensed or registered to practice in this or any other state. This subsection does not apply to change of name resulting from marriage, divorce, or order by a court of record.
(g) Engaging or attempting to engage in the unlawful practice of medicine and surgery or treating the sick.
(h) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.
(i) Practicing or attempting to practice under any license when unable to do so with reasonable skill and safety to patients.
(j) Practicing or attempting to practice under any license beyond the scope of that license.
(k) Offering, undertaking, or agreeing to treat or cure a disease or condition by a secret means, method, device, or instrumentality; or refusing to divulge to the board upon demand the means, method, device, or instrumentality used in the treatment of a disease or condition.
(l) Representing that a manifestly incurable disease or condition can be or will be permanently cured; or that a curable disease or condition can be cured within a stated time, if such is not the fact.
(m) Knowingly making any false statement, written or oral, in practicing under any license, with fraudulent intent, or obtaining or attempting to obtain any professional fee or compensation of any form by fraud or deceit.
(n) Willfully divulging a privileged communication or confidence entrusted by a patient or confidence in the character of patients observed in the course of professional attendance, unless lawfully required to do so.
(o) Engaging in unethical, in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence; or engaging in false, misleading or deceptive advertising.
(p) Administering, dispensing, prescribing, supplying, or obtaining controlled substances as defined in s. 961.01(4), Stats, otherwise than in the course of legitimate professional practice, or as otherwise prohibited by law.
(q) Having a license, certificate, permit, registration, or other practice credential granted by another state or by any agency of the federal government to practice medicine and surgery or treat the sick, which becomes limited, restricted, suspended, or revoked, or having been subject to other adverse action by the state licensing authority or by any agency of the federal government, including but not limited to the denial or limitation of an original credential, or the surrender of a credential, whether or not accompanied by findings of negligence or unprofessional conduct.
(r) Commission of any crime which may relate to practice under any license, or of violation of any federal or state law regulating the possession, distribution, or use of controlled substances as defined in s. 961.01(4), Stats. A certified copy of a judgment of a court of record showing such conviction, within this state or without, shall be presumptive evidence thereof.
Wisconsin Administrative Code § MED 10.02(2)(h)

Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

Wisconsin Administrative Code § MED 10.02(2)(u)

Failure to inform a patient about the availability of all alternate, viable Medical modes of treatment and about the benefits and risks of these treatments, including the benefits and risks associated with the use of extended wear contact lenses.
The Gilbert Analysis

1) what course of treatment the physician provided;
2) what the minimum standards of treatment required;
3) how the physician’s treatment deviated from the standards;
4) how the treatment created an unacceptable level of risk; and
5) what course of treatment a minimally competent physician would have taken.

Board Actions

Elements of a Non-Disciplinary Action
- Settlement Conference
- Administrative Warning
- Remedial Education Order

Elements of a Disciplinary Action
- Reprimand
- Limitations on License
- Suspend License
- Revoke License
- Surrender License
- Monitoring
- Costs
### Basis for Board Actions

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Negligence</td>
<td>7%</td>
<td>38%</td>
<td>50%</td>
<td>45%</td>
</tr>
<tr>
<td>Alcohol/Drug Use</td>
<td>21%</td>
<td>10%</td>
<td>8%</td>
<td>9%</td>
</tr>
<tr>
<td>Sex Violations</td>
<td>4%</td>
<td>8%</td>
<td>8%</td>
<td>9%</td>
</tr>
<tr>
<td>Diversion</td>
<td>14/7%</td>
<td>9%</td>
<td>13%</td>
<td>8%</td>
</tr>
<tr>
<td>Fraud</td>
<td>4%</td>
<td>8%</td>
<td>1%</td>
<td>6%</td>
</tr>
<tr>
<td>Other State</td>
<td>15%</td>
<td></td>
<td></td>
<td>7+%</td>
</tr>
<tr>
<td>Psych Illness</td>
<td>6%</td>
<td>2%</td>
<td></td>
<td>4%</td>
</tr>
<tr>
<td>Violation of Board Order</td>
<td></td>
<td></td>
<td></td>
<td>3%</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td></td>
<td></td>
<td></td>
<td>8%</td>
</tr>
</tbody>
</table>

### Rates and Ranking of the Rate of State Medical Boards’ Serious Disciplinary Actions, 2009-2011

<table>
<thead>
<tr>
<th>Rank 2009-2011</th>
<th>State</th>
<th>Number of Serious Actions, 2011</th>
<th>Number of Physicians, 2011</th>
<th>Serious Actions per 1,000 Physicians, 2009-2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Wyoming</td>
<td>12</td>
<td>1,340</td>
<td>6.79</td>
</tr>
<tr>
<td>2</td>
<td>Louisiana</td>
<td>56</td>
<td>13,767</td>
<td>5.58</td>
</tr>
<tr>
<td>3</td>
<td>Ohio</td>
<td>294</td>
<td>40,569</td>
<td>5.52</td>
</tr>
<tr>
<td>4</td>
<td>Delaware</td>
<td>18</td>
<td>2,858</td>
<td>5.32</td>
</tr>
<tr>
<td>5</td>
<td>New Mexico</td>
<td>28</td>
<td>5,759</td>
<td>5.28</td>
</tr>
<tr>
<td>6</td>
<td>Nebraska</td>
<td>23</td>
<td>5,347</td>
<td>4.70</td>
</tr>
<tr>
<td>7</td>
<td>Alaska</td>
<td>7</td>
<td>1,990</td>
<td>4.68</td>
</tr>
<tr>
<td>8</td>
<td>Oklahoma</td>
<td>33</td>
<td>7,619</td>
<td>4.55</td>
</tr>
<tr>
<td>9</td>
<td>Washington</td>
<td>109</td>
<td>21,795</td>
<td>4.45</td>
</tr>
<tr>
<td>10</td>
<td>West Virginia</td>
<td>22</td>
<td>4,922</td>
<td>4.32</td>
</tr>
</tbody>
</table>
## Ranking of Serious Doctor Disciplinary Action Rates by State Medical Licensing Boards, 2007-2009 (Cont.)

<table>
<thead>
<tr>
<th>Rank 2007-2009</th>
<th>State</th>
<th>Number of Serious Actions, 2009</th>
<th>Number of Physicians, 2008</th>
<th>Serious Actions per 1,000 Physicians, 2007-2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>41</td>
<td>Idaho</td>
<td>11</td>
<td>3,504</td>
<td>2.43</td>
</tr>
<tr>
<td>42</td>
<td>Florida</td>
<td>171</td>
<td>58,026</td>
<td>2.28</td>
</tr>
<tr>
<td>43</td>
<td>New Jersey</td>
<td>78</td>
<td>33,991</td>
<td>2.26</td>
</tr>
<tr>
<td>44</td>
<td>Nevada</td>
<td>10</td>
<td>5,899</td>
<td>2.07</td>
</tr>
<tr>
<td>45</td>
<td>Rhode Island</td>
<td>13</td>
<td>4,869</td>
<td>2.02</td>
</tr>
<tr>
<td>46</td>
<td>Wisconsin</td>
<td>43</td>
<td>18,160</td>
<td>1.90</td>
</tr>
<tr>
<td>47</td>
<td>Connecticut</td>
<td>34</td>
<td>15,747</td>
<td>1.82</td>
</tr>
<tr>
<td>48</td>
<td>Massachusetts</td>
<td>53</td>
<td>36,128</td>
<td>1.66</td>
</tr>
<tr>
<td>49</td>
<td>Minnesota</td>
<td>28</td>
<td>18,721</td>
<td>1.49</td>
</tr>
<tr>
<td>50</td>
<td>District of Columbia</td>
<td>2</td>
<td>5,896</td>
<td>1.47</td>
</tr>
<tr>
<td>51</td>
<td>South Carolina</td>
<td>20</td>
<td>12,774</td>
<td>1.33</td>
</tr>
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</table>

### What Makes the Better Boards “Better”?

Boards are likely to be able to do a better job in disciplining physicians if the following conditions are met:

- Adequate funding (all money from license fees going to fund board activities instead of going into the state treasury for general purposes)
- Adequate staffing
- Proactive investigations rather than only reacting to complaints
- The use of all available/reliable data from other sources, such as Medicare and Medicaid sanctions, hospital sanctions, malpractice payouts, and the criminal justice system
- Excellent leadership
- Independence from state medical societies
- Independence from other parts of the state government so that the board has the ability to develop its own budgets and regulations
- A reasonable legal standard for disciplining doctors (“preponderance of the evidence” rather than “beyond a reasonable doubt” or “clear and convincing evidence”)
### Summary of 2011 Board Actions
#### Wisconsin Medical Examining Board

#### Board Actions

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<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Total Actions</td>
<td>119</td>
<td>71</td>
<td>71</td>
<td>73</td>
<td>85</td>
</tr>
<tr>
<td>Loss of License or Licensed Privilege</td>
<td>30</td>
<td>22</td>
<td>22</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Restriction of License or Licensed Privilege</td>
<td>13</td>
<td>8</td>
<td>7</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>Other Prejudicial Actions</td>
<td>58</td>
<td>27</td>
<td>34</td>
<td>37</td>
<td>43</td>
</tr>
<tr>
<td>Total Prejudicial Actions</td>
<td>101</td>
<td>57</td>
<td>63</td>
<td>62</td>
<td>71</td>
</tr>
<tr>
<td>Non-Prejudicial Actions</td>
<td>18</td>
<td>16</td>
<td>8</td>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>Number of Physicians with Prejudicial Actions</td>
<td>92</td>
<td>52</td>
<td>54</td>
<td>47</td>
<td>55</td>
</tr>
<tr>
<td>Number of Physicians with Non-Prejudicial Actions</td>
<td>18</td>
<td>15</td>
<td>8</td>
<td>12</td>
<td>14</td>
</tr>
<tr>
<td>Total Number of Physicians with Actions</td>
<td>99</td>
<td>62</td>
<td>56</td>
<td>55</td>
<td>63</td>
</tr>
</tbody>
</table>


#### Physician Population

<table>
<thead>
<tr>
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<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Total Number of Licensed Physicians</td>
<td>23,335</td>
<td>24,034</td>
<td>22,285</td>
<td>22,948</td>
<td>21,220</td>
</tr>
<tr>
<td>Total Number of Licensed Physician Practicing In-State</td>
<td>16,017</td>
<td>16,037</td>
<td>15,347</td>
<td>15,389</td>
<td>14,646</td>
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#### Composite Action Index

<table>
<thead>
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</thead>
<tbody>
<tr>
<td>Total Actions/Total Licensed Physicians</td>
<td>5.10</td>
<td>3.04</td>
<td>3.19</td>
<td>3.18</td>
<td>4.01</td>
</tr>
<tr>
<td>Total Actions/Practicing In-State Physicians</td>
<td>7.43</td>
<td>4.55</td>
<td>4.63</td>
<td>4.74</td>
<td>5.80</td>
</tr>
<tr>
<td>Total Prejudicial Actions/Total Licensed Physicians</td>
<td>4.33</td>
<td>2.37</td>
<td>2.83</td>
<td>2.70</td>
<td>3.35</td>
</tr>
<tr>
<td>Total Prejudicial Actions/ Practicing In-State Physicians</td>
<td>6.31</td>
<td>3.55</td>
<td>4.11</td>
<td>4.03</td>
<td>4.85</td>
</tr>
<tr>
<td>Composite Action Index</td>
<td>5.79</td>
<td>3.38</td>
<td>3.69</td>
<td>3.66</td>
<td>4.50</td>
</tr>
</tbody>
</table>

Wisconsin's CAI Rank

- 22 states with higher rank
- 35 with lower rank

Medical Examining Board Policy Initiatives

- Duty to Report
- Criminal Background Checks (failed)
- Maintenance of Licensure
- New Med 10
- New Med 8
- GME requirements for Licensure
Wis. Stat. § 448.115 Duty to Report

448.115 Duty to Report (1) A physician who has reason to believe any of the following about another physician shall promptly submit a written report to the board that shall include facts relating to the conduct of the other physician:

(a) The other physician is engaging or has engaged in acts that constitute a pattern of unprofessional conduct.

(b) The other physician is engaging or has engaged in an act that creates an immediate or continuing danger to one or more patients or to the public.

(c) The other physician is or may be medically incompetent.

(d) The other physician is or may be mentally or physically unable safely to engage in the practice of medicine or surgery.

(2) No physician who reports to the board under sub. (1) may be held civilly or criminally liable or be found guilty of unprofessional conduct for reporting in good faith.

History: 2009 a. 382.

What is being proposed by FSMB?

Following seven years of study, the FSMB House of Delegates in April 2010 adopted a framework by which actively licensed physicians in the United States will over time be expected to provide evidence every 5-6 years of participation in professional development and lifelong learning activities specific to their practice as a condition for medical licensure renewal. Through the work of a Special Committee and an Advisory Group during the last few years, the FSMB has developed recommendations to guide state medical and osteopathic boards in developing and implementing a framework for MOL:

As a condition of licensure renewal, physicians should provide evidence of participating in a program of professional development and lifelong learning that is based on the general competencies model:

- medical knowledge
- patient care
- interpersonal and communication skills
- practice-based learning and improvement
- professionalism
- systems based practice
What is being proposed by FSMB? (Cont.)

The following requirements reflect the three major components of what is known about effective lifelong learning in medicine:

1. **Reflective Self Assessment (What improvements can I make?)**
   Physicians must participate in an ongoing process of reflective self-evaluation, self-assessment and practice assessment, with subsequent successful completion of tailored educational or improvement activities.

2. **Assessment of Knowledge and Skills (What do I need to know and be able to do?)**
   Physicians must demonstrate the knowledge, skills and abilities necessary to provide safe, effective patient care within the framework of the six general competencies as they apply to their individual practice.

3. **Performance in Practice (How am I doing?)**
   Physicians must demonstrate accountability for performance in their practice using a variety of methods that incorporate reference data to assess their performance in practice and guide improvement.

What is being proposed by FSMB? (Cont.)

The FSMB has also adopted five important principles to guide the work of MOL:

- MOL should support physicians’ commitment to lifelong learning and facilitate improvement in physician practice.

- MOL systems should be administratively feasible and should be developed in collaboration with other stakeholders. The authority for establishing MOL requirements should remain within the purview of state medical and osteopathic boards.

- MOL should not compromise patient care or create barriers to physician practice.

- The infrastructure to support physician compliance with MOL requirements must be flexible and offer a choice of options for meeting requirements.

- MOL processes should balance transparency with privacy protections.

http://www.fsmb.org/im_mol_faqs.html#4
EMC-003
Continuing Medical Education Hours:
The Wisconsin Medical Society supports maintaining the current number of continuing medical education hours required to maintain a license to practice medicine in Wisconsin and supports random audits by the Medical Examining Board for physician compliance with CME credit requirements. (BOD, 0610)

The End