

WISCONSIN HOSPITAL ASSOCIATION, INC.



June 16, 2010

Sujathi Kailas, MD
Chair, Medical Examining Board
Medical Examining Board Members
Wisconsin Department of Regulation and Licensing
1400 East Washington Avenue
Madison, WI 53708

Subject: Comments on 2009 Wis. Act 382, Physician Duty to Report

Dear Dr. Kailas and Members of the Medical Examining Board:

The Wisconsin Hospital Association appreciates and supports the Medical Examining Board's efforts to improve the reporting of Wisconsin licensed physicians who have engaged in a pattern of unprofessional conduct or who have not or cannot engage safely in the practice of medicine. WHA thanks you, Dr. Kailas, Dr. Gene Musser, and the MEB staff for listening to and discussing the joint concerns presented by physicians representing WHA and the Wisconsin Medical Society.

Wisconsin hospitals, health systems, and physicians have been at the forefront of efforts to improve the quality of health care in Wisconsin and firmly believe that encouraging an effective regulatory system is an important part of those efforts. Beyond the regulatory system, physicians and hospitals have established a peer review system that is necessarily the front line of quality improvement and patient safety efforts. The peer review committees and their processes that exist in every Wisconsin hospital have evolved over the last several decades. State and federal law, accrediting organizations, and private payers recognize the peer review system as a crucial part of the quality improvement system. The peer review system relies on volunteer physicians reviewing their colleagues in an effort to ensure patient safety and the provision of high quality health care. When implementing Act 382 to improve the regulatory oversight process, we ask the MEB to protect the peer review process.

In order to protect the peer review process, WHA respectfully asks the MEB to provide the following guidance concerning how the MEB intends to enforce Act 382:

- Clarify that a physician who learns about a potential dangerous act, pattern of practice that constitutes unprofessional conduct, or other reportable situation through the peer review process does not have an individual duty to report. Instead, when a physician is part of a peer review committee or otherwise part of the peer review process, the physician's duty is to ensure that that process includes a report to the MEB when the committee has concluded that the physician's conduct, practice, or competence requires a report under Act 382 or otherwise.
- Specify the reporting requirements for a physician who is treating another physician for a substance abuse, psychiatric, or other issue that may affect the patient physician's practice. We ask that this duty be interpreted like the "duty to warn" under current law. In other words, the treating physician would have a duty to report if the treating physician believes that there is an ongoing danger to the physician's patients. The duty to report would not be triggered because the treating physician learns of a past situation. It is

important to encourage physicians to seek treatment; requiring the treating physician to report past acts would serve to discourage treatment.

As with the implementation of any significant new policy, questions will continue to emerge. As we discussed, we have received questions about the MEB's interpretation of when a physician would have "a reason to believe" that a physician engaged or is engaging in certain conduct or cannot safely practice medicine. In addition, there have been questions about what constitutes a "pattern of unprofessional conduct," and when a physician would have "reason to believe" that someone "*may be* medically incompetent" or "*may be* mentally or physically unable to engage safely in the practice of medicine."

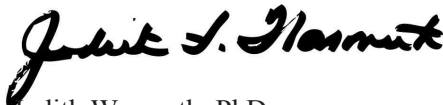
We ask that you understand and appreciate the high stakes nature of the new reporting requirements. While you are seeking reports of certain bad actors, the legislation puts a new requirement on all physicians. Physicians are concerned that their licenses are at risk not only if they inadvertently do not report a colleague but also if they disagree with the position of the MEB and do not report a colleague. It is important that MEB licensees are confident that they know the standards to which they are being held. With that confidence, the new requirement has the potential to improve the regulatory oversight of physician licenses in Wisconsin. Without that confidence, the system will be viewed as placing physicians at risk and they could become reluctant to take the regulatory chance on Wisconsin, exacerbating the physician shortage already felt throughout the state.

Thank you for considering our comments. We look forward to continuing to work with you on the implementation of this important new law.

Sincerely,



Charles Shabino, MD
Senior Medical Advisor



Judith Warmuth, PhD
Vice President, Workforce Development