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**MEDICAL EXAMINING BOARD**  
**Room 121A, 1400 East Washington Avenue, Madison**  
**Contact: Tom Ryan (608) 266-2112**  
**May 18, 2016**

*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 record of the actions of the Board.*

**AGENDA**

**8:00 A.M.**

**OPEN SESSION – CALL TO ORDER – ROLL CALL**

- A) Adoption of Agenda (1-4)**
- B) Minutes of April 20, 2016 – Review and Approval (5-10)**
- C) Administrative Updates**
  - 1) Department and Staff Updates
  - 2) Board Members – Term Expiration Dates
    - a) Mary Jo Capodice – 07/01/2018
    - b) Greg Collins – 07/01/2016
    - c) Rodney Erickson – 07/01/2015 (Appointed for Second Term)
    - d) Suresh Misra – 07/01/2015
    - e) Carolyn Ogland Vukich – 07/01/2017
    - f) Michael Phillips – 07/01/2017
    - g) David Roelke – 07/01/2017
    - h) Kenneth Simons – 07/01/2018
    - i) Sridhar Vasudevan – 07/01/2016
    - j) Timothy Westlake – 07/01/2016
    - k) Russel Yale – 07/01/2016
    - l) Robert Zondag – 07/01/2018
    - m) Bradley Kudick – Effective 07/01/2016 (Public Member)**
    - n) Michael Carton – Effective 07/01/2016 (Public Member)**
  - 3) Introductions, Announcements and Recognition
  - 4) Wis. Stat. § 15.085 (3)(b) – Affiliated Credentialing Boards’ Biannual Meeting with the Medical Examining Board to Consider Matters of Joint Interest
  - 5) Informational Items
- D) Appointments, Reappointments, Confirmations, and Committee, Panel and Liaison Appointments**
  - 1) Screening and Examination Panels Roster
  - 2) Consider an Appointment to the Vacancy of Dr. Vasudevan in the Controlled Substances Committee
- E) Committee Reports**
  - 1) Controlled Substances Committee
    - a) Board and Committee Roles
  - 2) Telemedicine Rule Committee

- F) Legislation and Rule Matters – Discussion and Consideration (11-17)**
  - 1) Revised Scope Statement for Med 1 and 14 Relating to General Update and Cleanup of Rules
  - 2) Update on Pending Legislation and Possible and Pending Rulemaking Projects
- G) Interstate Medical Licensure Compact Commission – Report from Wisconsin’s Commissioners**
- H) Federation of State Medical Boards (FSMB) Matters (18-20)**
  - 1) Report from the 2016 FSMB Annual Meeting
- I) Speaking Engagement(s), Travel, or Public Relation Request(s), and Report(s)**
- J) Screening Panel Report**
- K) Newsletter Matters (21-23)**
  - 1) Spring 2016 Newsletter Content
- L) Informational Items**
  - 1) Medical Errors Article (24-27)
- M) Items Added After Preparation of Agenda**
  - 1) Introductions, Announcements and Recognition
  - 2) Administrative Updates
  - 3) Elections, Appointments, Reappointments, Confirmations, and Committee, Panel and Liaison Appointments
  - 4) Education and Examination Matters
  - 5) Credentialing Matters
  - 6) Practice Matters
  - 7) Future Agenda Items
  - 8) Legislation/Administrative Rule Matters
  - 9) Liaison Report(s)
  - 10) Newsletter Matters
  - 11) Annual Report Matters
  - 12) Informational Item(s)
  - 13) Disciplinary Matters
  - 14) Presentations of Petition(s) for Summary Suspension
  - 15) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
  - 16) Presentation of Proposed Decisions
  - 17) Presentation of Interim Order(s)
  - 18) Petitions for Re-Hearing
  - 19) Petitions for Assessments
  - 20) Petitions to Vacate Order(s)
  - 21) Petitions for Designation of Hearing Examiner
  - 22) Requests for Disciplinary Proceeding Presentations
  - 23) Motions
  - 24) Petitions
  - 25) Appearances from Requests Received or Renewed
  - 26) Speaking Engagement(s), Travel, or Public Relation Request(s), and Reports
- N) Future Agenda Items**
- O) Public Comments**

**CONVENE TO CLOSED SESSION to deliberate on cases following hearing (§ 19.85 (1) (a), Stats.); to consider licensure or certification of individuals (§ 19.85 (1) (b), Stats.); to consider closing disciplinary investigations with administrative warnings (§ 19.85 (1) (b), Stats. and § 448.02 (8), Stats.); to consider individual histories or disciplinary data (§ 19.85 (1) (f), Stats.); and to confer with legal counsel (§ 19.85 (1) (g), Stats.).**

- P) Full Board Review**
- 1) Kent Brockmann, M.D. **(28-212)**
- Q) Full Board Review for Visiting Physician Licensure**
- 1) Viktor Hraska, M.D. **(213-271)**
- R) Deliberation on Division of Legal Services and Compliance (DLSC) Matters**
- 1) Monitoring (272-363)**
    - a) Roman Berezovski, M.D. – Requesting Full Licensure **(274-310)**
    - b) Stephen Haughey, M.D. – Requesting Access to Controlled Substances and Reduction of Drug Screens **(311-348)**
    - c) Devinder Sidhu, M.D. – Requesting Reduction of Drug Screens **(349-363)**
  - 2) Complaint**
    - a) 15 MED 178 – Christopher S. Wilson, M.D. **(364-368)**
  - 3) Administrative Warnings**
    - a) 15 MED 147 – D.P.H. **(369-370)**
    - b) 15 MED 171 – L.M.A. **(371-372)**
    - c) 15 MED 371 – J.F.D. **(373-374)**
  - 4) Proposed Stipulations, Final Decisions and Orders**
    - a) 14 MED 127 – Bradley S. Boettcher, M.D. **(375-380)**
    - b) 14 MED 220 – Virendra K. Misra, M.D. **(381-386)**
    - c) 14 MED 412 – Kenechi Anuligo, M.D. **(387-395)**
    - d) 15 MED 011 – Michael J. Flanigan, M.D. **(396-401)**
    - e) 15 MED 150 and 15 MED 151 – Troy D. Schrock, D.O. **(402-411)**
    - f) 15 MED 273 – Scott C. Hicks, M.D. **(412-418)**
  - 5) Case Closings**
    - a) 14 MED 523 **(419-427)**
    - b) 14 MED 617 **(428-431)**
    - c) 15 MED 121 **(432-436)**
    - d) 15 MED 159 **(437-443)**
    - e) 15 MED 411 **(444-447)**
- S) Order Fixing Costs in the Matter of Disciplinary Proceedings Against Giuditta Angelini, M.D. – Discussion and Consideration (448-455)**
- T) Open Cases**
- U) Consulting With Legal Counsel (456-458)**
- 1) Limited Licenses
  - 2) Non-Disciplinary Voluntary Surrender
  - 3) PLANNED PARENTHOOD OF WISCONSIN, INC., et al., Plaintiffs-appellees, v. BRAD D. SCHIMEL, Attorney General of Wisconsin, et al., Defendants-Appellants
- V) Deliberation of Items Added After Preparation of the Agenda**
- 1) Education and Examination Matters
  - 2) Credentialing Matters
  - 3) Disciplinary Matters
  - 4) Monitoring Matters
  - 5) Professional Assistance Procedure (PAP) Matters
  - 6) Petition(s) for Summary Suspensions
  - 7) Proposed Stipulations, Final Decisions and Orders
  - 8) Administrative Warnings

- 9) Proposed Decisions
- 10) Matters Relating to Costs
- 11) Complaints
- 12) Case Closings
- 13) Case Status Report
- 14) Petition(s) for Extension of Time
- 15) Proposed Interim Orders
- 16) Petitions for Assessments and Evaluations
- 17) Petitions to Vacate Orders
- 18) Remedial Education Cases
- 19) Motions
- 20) Petitions for Re-Hearing
- 21) Appearances from Requests Received or Renewed

**RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION**

- W) Open Session Items Noticed Above not Completed in the Initial Open Session
- X) Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate
- Y) Delegation of Ratification of Examination Results and Ratification of Licenses and Certificates

**ADJOURNMENT**

**ORAL EXAMINATION OF CANDIDATE(S) FOR LICENSURE**

**ROOM 124D/E**

**10:30 A.M., OR IMMEDIATELY FOLLOWING THE FULL BOARD MEETING**

**CLOSED SESSION** – Reviewing Applications and Conducting Oral Examinations of three (3) Candidates for Licensure –Dr. Erickson & Dr. Capodice

**NEXT MEETING DATE JUNE 15, 2016**

**MEDICAL EXAMINING BOARD  
MEETING MINUTES  
APRIL 20, 2016**

**PRESENT:** Mary Jo Capodice, D.O; Greg Collins; Rodney Erickson, M.D.; Suresh Misra, M.D.; Carolyn Ogland Vukich, M.D.; Michael Phillips, M.D.(*arrived at 8:01 a.m. via GoToMeeting;*) David Roelke, M.D.; Kenneth Simons, M.D.; Sridhar Vasudevan, M.D.; Timothy Westlake, M.D.; Russell Yale, M.D.; Robert Zondag (*via GoToMeeting*)

**STAFF:** Tom Ryan, Executive Director; Nifty Lynn Dio, Bureau Assistant; and other Department staff

**CALL TO ORDER**

Kenneth Simons, Chair, called the meeting to order at 8:00 a.m. A quorum of eleven (11) members was confirmed.

**ADOPTION OF AGENDA**

**Amendments to the Agenda:**

- *Added: Item U) Waiver Request – Robert Ealy*
- *Added: 2 Person Oral Interview Documents for Item Q.1) Douglas Calvin*
- *Replaced: Item V.6.1) Case Closing – 14 MED 331 to correct errors*

**MOTION:** Suresh Misra moved, seconded by David Roelke, to adopt the agenda as amended. Motion carried unanimously.

**MINUTES OF MARCH 16, 2016 – REVIEW AND APPROVAL**

**Amendments to the Minutes:**

**MOTION:** David Roelke moved, seconded by Sridhar Vasudevan, to approve the minutes of March 16, 2016 as published. Motion carried unanimously.

*(Michael Phillips joined the meeting via GoToMeeting at 8:01 a.m.)*

**LEGISLATIVE/ADMINISTRATIVE RULE MATTERS**

**Proposals for MED 1 and 14 Relating to General Update and Cleanup of Rules**

**MOTION:** Greg Collins moved, seconded by David Roelke, to request DSPS staff draft a revised Scope Statement amending Chapters Med 1 and 14 relating to general update and cleanup of rules. Motion carried unanimously.

**CLOSED SESSION**

**MOTION:** David Roelke moved, seconded by Sridhar Vasudevan, to convene to Closed Session to deliberate on cases following hearing (§ 19.85 (1) (a), Stats.); to consider licensure or certification of individuals (§ 19.85 (1) (b), Stats.); to consider closing disciplinary investigations with administrative warnings (§ 19.85 (1) (b), Stats. and § 448.02 (8), Stats.); to consider individual histories or disciplinary data (§ 19.85 (1) (f), Stats.); and to confer with legal counsel (§ 19.85

(1) (g), Stats.). The Chair read the language of the motion aloud for the record. The vote of each member was ascertained by voice vote. Roll Call Vote: Mary Jo Capodice – yes; Greg Collins – yes; Rodney Erickson – yes; Suresh Misra – yes; Carolyn Oglan Vukich – yes; Michael Phillips – yes; David Roelke – yes; Kenneth Simons – yes; Sridhar Vasudevan – yes; Timothy Westlake – yes; Russell Yale – yes; and Robert Zondag – yes. Motion carried unanimously.

The Board convened into Closed Session at 8:38 a.m.

### **RECONVENE TO OPEN SESSION**

**MOTION:** Timothy Westlake moved, seconded by David Roelke, to reconvene in Open Session at 11:57 a.m. Motion carried unanimously.

### **VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION**

**MOTION:** Sridhar Vasudevan moved, seconded by Greg Collins, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

### **CONSIDER MODIFYING 9/17/2014 MOTION REGARDING IN PERSON APPEARANCES FOR ALL EXAMINATIONS**

**MOTION:** Timothy Westlake moved, seconded by Russell Yale, to require all oral examinations of applicants for a license to practice Medicine and Surgery in Wisconsin to be in person. The Board, its chief presiding officer, or the longest serving member of the Board, may waive this requirement at their discretion. Motion carried. Opposed: Greg Collins

### **FULL BOARD ORAL INTERVIEW OF CANDIDATES FOR LICENSURE**

#### **9:05 A.M. APPEARANCE – Douglas Calvin, M.D.**

**MOTION:** Carolyn Oglan Vukich moved, seconded by Timothy Westlake, to grant the application of Douglas Calvin, M.D., for a license to practice medicine and surgery, once all requirements are met. Motion carried unanimously.

#### **9:10 A.M. APPEARANCE – Henry Bikhazi, M.D.**

**MOTION:** Russell Yale moved, seconded by David Roelke, to find the scope and passing grades of the California FLEX examination (June 1970) is substantially equivalent to those of Wisconsin during June 1970. The Board therefore accepts Henry Bikhazi's California FLEX examination in lieu of requiring further written or computer-based examinations. The Board grants a license once all requirements are met. Motion carried unanimously.

### **FULL BOARD REVIEW FOR VISITING PHYSICIAN LICENSURE**

#### **Shivashankar Damodaran, M.D.**

**MOTION:** Sridhar Vasudevan moved, seconded by Timothy Westlake, to table the application of Shivashankar Damodaran, M.D., for a visiting physician license, pending receipt of additional information. Motion carried unanimously.

## VOLUNTARY SURRENDER REQUESTS

**MOTION:** Sridhar Vasudevan moved, seconded by Greg Collins, to table the voluntary surrender requests of Ileen Gilbert, M.D., Wayne Belling, D.O., and Kendall Capecci, M.D. until the June meeting. Motion carried unanimously.

## REQUEST FOR WAIVER OF 24 MONTHS OF ACGME/AOA APPROVED POST GRADUATE TRAINING

### Robert Ealy, M.D.

**MOTION:** Timothy Westlake moved, seconded by Rodney Erickson, to grant a waiver of the 24 months of ACGME/AOA approved post-graduate training per Wis. Stat. §448.05(2)(c). Motion carried. Abstained: 1

## DELIBERATION ON DIVISION OF LEGAL SERVICES AND COMPLIANCE (DLSC) MATTERS

### Petition for Extension of Time

**MOTION:** David Roelke moved, seconded by Timothy Westlake, to grant the Petition and Request for an Extension of Time in the matter of DLSC Case No. 15 MED 177 against Robb A. Edwards, M.D. Motion carried unanimously.

### Monitoring

*(Suresh Misra excused himself from the meeting at 11:18 a.m.)*

*John Hale, M.D.*

**MOTION:** Rodney Erickson moved, seconded by Sridhar Vasudevan, to grant the request of John Hale, M.D. for full unrestricted licensure. Motion carried unanimously.

*Westscot Krieger, M.D.*

**MOTION:** Timothy Westlake moved, seconded by David Roelke, to grant the request of Westscot Krieger, M.D. for reduction of drug screens to 36 per year and one hair test. Motion carried unanimously.

*Joel Lueskow, P.A.*

**MOTION:** Timothy Westlake moved, seconded by Greg Collins, to grant the request of Joel Lueskow, P.A. for full licensure. Motion carried unanimously.

### Complaints

*15 MED 420 – B.S.B.*

**MOTION:** Timothy Westlake moved, seconded by Suresh Misra, to find probable cause to believe that B.S.B., DLSC Case No. 15 MED 420, has committed unprofessional conduct, and therefore to issue the Complaint and hold a hearing on such conduct pursuant to Wis. Stat. § 448.02(3)(b). Motion carried unanimously.

**Administrative Warning**

*15 MED 273 – S.C.H.*

**MOTION:** Russell Yale moved, seconded by Suresh Misra, reject the Administrative Warning in the matter of DLSC case number 15 MED 273 against S.C.H. Motion carried unanimously.

*(Sridhar Vasudevan recused himself and left the room for deliberation and voting in the matter concerning S.C.H., DLSC Case No. 15 MED 273)*

**Proposed Stipulations, Final Decisions and Orders**

*14 MED 169 – Jan A. Doose, M.D.*

**MOTION:** David Roelke moved, seconded by Russell Yale, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Jan A. Doose, DLSC Case No. 14 MED 169. Motion carried unanimously.

*14 MED 270 – Abel A. Garibaldi, M.D.*

**MOTION:** David Roelke moved, seconded by Greg Collins, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Abel A. Garibaldi, M.D., DLSC Case No. 14 MED 270. Motion carried unanimously.

*14 MED 281 – Bruce Cardone, M.D.*

**MOTION:** David Roelke moved, seconded by Carolyn Ogland Vukich, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Bruce Cardone, M.D., DLSC Case No. 14 MED 281. Motion carried unanimously.

*(Michael Phillips recused himself for deliberation and voting in the matter concerning Bruce Cardone, M.D., DLSC Case No. 14 MED 281.)*

*14 MED 331 – David Andrews, P.A.C.*

**MOTION:** Sridhar Vasudevan moved, seconded by David Roelke, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against David Andrews, P.A.C., DLSC Case No. 14 MED 331. Motion carried unanimously.

*15 MED 264 – Michael D. Plooster, M.D.*

**MOTION:** Timothy Westlake moved, seconded by David Roelke, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Michael D. Plooster, M.D., DLSC Case No. 15 MED 264. Motion carried unanimously.

*15 MED 439 – Tammy A. Johnson, M.D.*

**MOTION:** Greg Collins moved, seconded by Timothy Westlake, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Tammy A. Johnson, M.D., DLSC Case No. 15 MED 439. Motion carried unanimously.

### Case Closings

#### **CASE CLOSING(S)**

**MOTION:** Sridhar Vasudevan moved, seconded by Carolyn Ogland Vukich, to close the following cases according to the recommendations by the Division of Legal Services and Compliance:

1. 14 MED 331 – *No Violation*
2. 14 MED 589 – *No Violation*
3. 15 MED 311 – *No Violation*
4. 15 MED 433 – *No Violation*

Motion carried unanimously.

#### **PROPOSED FINAL DECISIONS AND ORDERS**

*(Kenneth Simons recused himself and left the room for deliberation and voting in the matters concerning Dale R. Tavis, M.D., DLSC Case No. 14 MED 487 and Victor Ruiz, M.D. DLSC Case No. 14 MED 473.)*

#### **Dale R. Tavis, M.D.**

**MOTION:** David Roelke moved, seconded by Mary Jo Capodice, to adopt the Proposed Final Decision and Order in the matter of disciplinary proceedings against Dale R. Tavis, M.D., Respondent, DHA Case No. SPS-16-0001, DLSC Case No. 14 MED 487. Motion carried unanimously.

#### **Victor Ruiz, M.D.**

**MOTION:** David Roelke moved, seconded by Rodney Erickson, to adopt the Proposed Final Decision and Order in the matter of disciplinary proceedings against Victor Ruiz, M.D., Respondent, DHA Case No. SPS-16-0014, DLSC Case No. 14 MED 473. Motion carried unanimously.

#### **CONSULTING WITH LEGAL COUNSEL**

*(Rodney Erickson and Sridhar Vasudevan excused themselves and left the room during an update regarding Dr. Houlihan, M.D.)*

#### **RULE WRITING DELEGATION**

**MOTION:** Sridhar Vasudevan moved, seconded by Russell Yale, to delegate David Roelke to work with DSPS staff to revise Wis. Admin. Code Chapters Med 1 and 14 relating to general update and cleanup or rules. Motion carried unanimously.

#### **DELEGATION OF RATIFICATION OF EXAMINATION RESULTS AND RATIFICATION OF LICENSES AND CERTIFICATES**

**MOTION:** Mary Jo Capodice moved, seconded by David Roelke, to delegate ratification of examination results to DSPS staff and to ratify all licenses and certificates as issued. Motion carried unanimously.

### **ADJOURNMENT**

**MOTION:** Sridhar Vasudevan moved, seconded by Carolyn Ogland Vukich, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 11:59 a.m.

DRAFT

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

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  <b>Dale Kleven</b> <b>Administrative Rules Coordinator</b>		2) Date When Request Submitted:  <b>5/6/16</b> Items will be considered late if submitted after 12:00 p.m. on the deadline date: ▪ 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections:  <b>Medical Examining Board</b>			
4) Meeting Date:  5/18/16	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? <b>Legislation and Rule Matters – Discussion and Consideration</b> <b>1. Revised Scope Statement for Med 1 and 14 Relating to General Update and Cleanup of Rules</b> <b>2. Update on Pending Legislation and Possible and Pending Rulemaking Projects</b>	
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 ( <a href="#">Fill out Board Appearance Request</a> ) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:  1. The Board will consider approval of a revised scope statement for Med 1 and 14 relating to general update and cleanup of rules			
11) <i>Dale Kleven</i> Signature of person making this request		Authorization  <i>May 6, 2016</i> 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.			

# **REVISED STATEMENT OF SCOPE**

## **Medical Examining Board**

**Rule No.:** Chapters Med 1, Med and 14

**Relating to:** General update and cleanup of rules

**Rule Type:** Permanent

### **1. Finding/nature of emergency (Emergency Rule only):**

None.

### **2. Detailed description of the objective of the proposed rule:**

The objective of the proposed rule is to modernize and cleanup the administrative rules in Chapters Med 1 and Med 14 relating to licenses to practice medicine and surgery and biennial registration. The proposed rules will better align with statute, reflect current practices, and provide a clearer regulatory landscape for applicants.

### **3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Current administrative rules contain provisions relating to the Department-administered statutes and rules examination. ~~2013 WI Act 240 limited examinations for licensure to practice medicine and surgery to those administered by national organizations. The As the Board no longer requires an applicant for licensure to practice medicine and surgery to take the statutes and rules examination, the~~ proposed rule would remove all references to ~~the statutes and rules examination~~.

~~2015 Wisconsin Act 269 removed a requirement that examinations for licensure to practice medicine and surgery be limited to those administered by national organizations. As a result, the Board is conducting an oral examination in lieu of the oral interview referenced in current administrative rules. The proposed rule would replace references to the oral interview with the oral examination, specify how the oral examination is administered, and list the criteria the Board may use to determine if an applicant is required to take the oral examination.~~

Current administrative code does not address the "COMLEX-USA" Comprehensive Osteopathic Medical Licensing Examination. The proposed rule would add the COMLEX exam under the definitions section of Med 1 and detail the Board requirements and procedures for the COMLEX examination.

The proposed rule would update the list of board recognized accrediting agencies to include prominent accrediting agencies that are not listed in the current code.

The proposed rule would also more explicitly refer to section 448.05 (2) (c) of the Wisconsin Statutes as the Board's authority to grant waivers from the required 24 months of postgraduate training in programs accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association for applicants who demonstrate substantially equivalent education and training as provided in section Med 1.02 (3) (c).

Current administrative code contains provisions in which the Board administers and determines eligibility for the USMLE Step 3 which do not reflect current practices. In addition, the USMLE Step 2 is administered in 2 parts, which is not reflected in current administrative code. The proposed rule would modify or repeal these sections to reflect current practices.

The renewal date in Chapter Med 14 for doctor of osteopathy does not match the renewal date in statute. The proposed rule would align the renewal date in administrative code with the statute. Additionally, the biennial registration requirements in Chapter Med 14 have not been updated for at least 10 years. The proposed rule would update Chapter Med 14 to reflect common, contemporary renewal requirements in the field.

Throughout Med 1 and Med 14, many provisions do not specify the type of exam to which the provision applies. The proposed rule would clarify references to all exams.

The proposed rule package may also include other non-substantive rule changes.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Section 15.08 (5) (b), Stats., provides examining boards, “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 227.11 (2) (a), Stats., sets forth the parameters of an agency’s rule-making authority, stating an agency, “may promulgate rules interpreting provisions of any statute enforced or administered by the agency. . .but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 448.40 (1), Stats. “The board may promulgate rules to carry out the purposes of this subchapter, including rules requiring the completion of continuing education, professional development, and maintenance of certification or performance improvement or continuing medical education programs for renewal of a license to practice medicine and surgery.”

Section 448.05 (2) (c), Stats. “The board may promulgate rules specifying circumstances in which the board, in cases of hardship or in cases in which the applicant possesses a medical license issued by another jurisdiction, may grant a waiver from any requirement under par. (a) or (b). The board may grant such a waiver only in accordance with those rules.”

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

State employees will spend approximately 80 hours developing the proposed rule.

**6. List with description of all entities that may be affected by the proposed rule:**

The proposed rule will impact initial and renewal applicants for licensure to practice medicine and surgery.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

None.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The proposed rule is likely to have minimal to no economic impact on small businesses.

**Contact Person:** ~~Katie Vieira (Paff)~~Dale Kleven, ~~Kathleen.Vieira~~Dale2.Kleven@wisconsin.gov, (608) 261-4472

Approved for publication:

Approved for implementation:

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Authorized Signature

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Authorized Signature

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Date Submitted

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Date Submitted

# REVISED STATEMENT OF SCOPE

## Medical Examining Board

**Rule No.:** Chapters Med 1 and 14

**Relating to:** General update and cleanup of rules

**Rule Type:** Permanent

**1. Finding/nature of emergency (Emergency Rule only):**

None.

**2. Detailed description of the objective of the proposed rule:**

The objective of the proposed rule is to modernize and cleanup the administrative rules in Chapters Med 1 and Med 14 relating to licenses to practice medicine and surgery and biennial registration. The proposed rules will better align with statute, reflect current practices, and provide a clearer regulatory landscape for applicants.

**3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Current administrative rules contain provisions relating to the Department-administered statutes and rules examination. As the Board no longer requires an applicant for licensure to practice medicine and surgery to take the statutes and rules examination, the proposed rule would remove all references to it.

2015 Wisconsin Act 269 removed a requirement that examinations for licensure to practice medicine and surgery be limited to those administered by national organizations. As a result, the Board is conducting an oral examination in lieu of the oral interview referenced in current administrative rules. The proposed rule would replace references to the oral interview with the oral examination, specify how the oral examination is administered, and list the criteria the Board may use to determine if an applicant is required to take the oral examination.

Current administrative code does not address the "COMLEX-USA" Comprehensive Osteopathic Medical Licensing Examination. The proposed rule would add the COMLEX exam under the definitions section of Med 1 and detail the Board requirements and procedures for the COMLEX examination.

The proposed rule would update the list of board recognized accrediting agencies to include prominent accrediting agencies that are not listed in the current code.

The proposed rule would also more explicitly refer to section 448.05 (2) (c) of the Wisconsin Statutes as the Board's authority to grant waivers from the required 24 months of postgraduate training in programs accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association for applicants who demonstrate substantially equivalent education and training as provided in section Med 1.02 (3) (c).

Current administrative code contains provisions in which the Board administers and determines eligibility for the USMLE Step 3 which do not reflect current practices. In addition, the USMLE Step 2 is administered in 2 parts, which is not reflected in current administrative code. The proposed rule would modify or repeal these sections to reflect current practices.

The renewal date in Chapter Med 14 for doctor of osteopathy does not match the renewal date in statute. The proposed rule would align the renewal date in administrative code with the statute. Additionally, the biennial registration requirements in Chapter Med 14 have not been updated for at least 10 years. The proposed rule would update Chapter Med 14 to reflect common, contemporary renewal requirements in the field.

Throughout Med 1 and Med 14, many provisions do not specify the type of exam to which the provision applies. The proposed rule would clarify references to all exams.

The proposed rule package may also include other non-substantive rule changes.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Section 15.08 (5) (b), Stats., provides examining boards, “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 227.11 (2) (a), Stats., sets forth the parameters of an agency’s rule-making authority, stating an agency, “may promulgate rules interpreting provisions of any statute enforced or administered by the agency. . .but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 448.40 (1), Stats. “The board may promulgate rules to carry out the purposes of this subchapter, including rules requiring the completion of continuing education, professional development, and maintenance of certification or performance improvement or continuing medical education programs for renewal of a license to practice medicine and surgery.”

Section 448.05 (2) (c), Stats. “The board may promulgate rules specifying circumstances in which the board, in cases of hardship or in cases in which the applicant possesses a medical license issued by another jurisdiction, may grant a waiver from any requirement under par. (a) or (b). The board may grant such a waiver only in accordance with those rules.”

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

State employees will spend approximately 80 hours developing the proposed rule.

**6. List with description of all entities that may be affected by the proposed rule:**

The proposed rule will impact initial and renewal applicants for licensure to practice medicine and surgery.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

None.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The proposed rule is likely to have minimal to no economic impact on small businesses.

**Contact Person:** Dale Kleven, Dale2.Kleven@wisconsin.gov, (608) 261-4472

Approved for publication:

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Authorized Signature

\_\_\_\_\_  
Date Submitted

Approved for implementation:

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## Allergy and Immunology

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April 18, 2016

Wisconsin Medical Examining Board

Tom H. Ryan, JD, MPA, Executive Director

1400 E. Washington Avenue Room 178

Madison, WI 53703-3041

RE: Compounding for Allergen Immunotherapy

Dear Mr. Ryan:

We are reaching out to you regarding a Federation of State Medical Boards resolution that says that physicians should refrain from conducting any sterile compounding in the office setting. As allergists/immunologists, the implications of this resolution for the care of our patients compels us to contact you to ask that the Wisconsin Medical Examining Board reject this resolution.

Compounding allergen extract to provide allergen immunotherapy, specific to the needs of each patient individually according to the results of their allergy tests, their condition and their needs, has been done in the offices of allergists for more than one hundred years, and for millions of patients. This disease-modifying treatment treats symptoms and changes the course of allergic disease in our patients. This can include stopping the development of allergic asthma, and providing life-saving protection to patients allergic to certain allergens with a very high risk of deadly anaphylactic reactions, such as stinging insect venom (e.g., bees or fire ants). The savings to the healthcare infrastructure are immeasurable, and the positive outcomes of our patients have been proven, again and again, for more than a century. This effective therapy has been administered millions of times without a single infectious event linked to an allergen immunotherapy injection, sterilely compounded in allergists' offices.

Allergy, Asthma, and Clinical Immunology  
Department of Pediatrics and Medicine  
9000 West Wisconsin Avenue • P.O. Box 1997  
Milwaukee, Wisconsin 53201

Administrative Office: (414) 266-6840 • Administration Fax: (414) 266-6437 • Clinic Appointments: (414)607-5280 • Clinic Front Desk: (414) 266-6450

A study released this month showed that in more than 135,000 injections given to over 3,200 patients over a 10 year time frame, there were zero soft tissue or systemic infectious adverse events related to the allergy injections (Balekian, Diana S. et al. Allergen Immunotherapy: No Evidence of Infectious Risk. J Allergy Clin Immunol. <http://www.jacionline.org/article/S0091-6749%2816%2930081-1/abstract>).

In 2008, the professional societies representing allergists and other related organizations worked directly with the USP to develop the existing standards, published in Chapter 797 of the USP, to ensure the continued safety of compounding allergen immunotherapy in the office setting. Those standards provide the basis for the compounding in our practices.

However, in late 2015, USP released a draft update to the entire Chapter 797 that fundamentally changes a series of procedures that was based on three levels of risk, with a separate exception to those three levels that applied specifically to allergen immunotherapy as described above.

The update creates a new set of procedures that treats every instance of sterile compounding as equally and inherently risky. While we all support and applaud the USP's endeavors on behalf of patient safety, this approach of treating all sterile compounding evenly ignores fundamental differences in the risk benefit analysis that relates to all medical procedures. Our professional societies have asked USP to reinstate the existing procedures specifically designed for allergen immunotherapy.

Specifically in regards to allergen immunotherapy, the proposed procedures would make it essentially impossible for patients to continue to have access to immunotherapy to potentially prevent the development of new allergic sensitivities, prevent progression of allergic diseases, and significantly reduce healthcare costs for A/I patients. The proposal eliminates the ability of allergists to continue to prepare patient-specific allergen immunotherapy vials in their offices, or to change or dilute those vials in response to changes in a patient's condition or treatment progression. This means that hundreds of thousands of current patients would lose access to this proven effective therapy. Further, if allergists are forced to order mixed compounds from another source, and at significantly more frequent intervals due to the very short by-use dates in the proposal, the changes in source lot create a significantly increased risk of dangerous and potentially deadly anaphylactic reactions in our patients. Finally, because changing vials would happen much more frequently, and patient safety dictates that every vial change requires a reduction in the amount of extract administered, it would be nearly impossible to ever reach the effective dosage necessary to achieve maintenance level, meaning that the therapy will likely be rendered ineffective.

In short, the proposed USP changes to allergen extract compounding in the office will place patients at significantly increased risk for allergic reactions, negatively impact their healthcare outcomes, and increase the cost of care of A/I patients -- all in an effort to "prevent" an event that has not been documented to have occurred.

The Federation of State Medical Boards is considering a policy statement that similarly treats all sterile compounding as equally and inherently risky. However, the resolution itself raises considerable concern from the outset by drawing on a factually incorrect example of compounding performed by an allergist/immunologist. Our professional organizations are not aware of any legitimate allergy practice that reconstitutes a pill into a nasal mist or eye drops. The safety and healthcare needs of allergy patients are not protected by this resolution, and are indeed harmed by it. In fact, the inevitable result of this effort would be to grossly interfere with my patient/physician relationships, and places my patients in significant harm by calling for the outsourcing of a very patient-centered medical service and treatment.

Please do all that you can to keep this position statement draft from moving forward. If there is anything more that we can do to provide additional feedback, or perhaps to facilitate a conversation with our professional societies, we would be very happy to do so.

Sincerely,



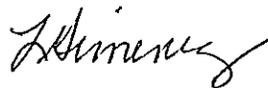
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Professor and Division Chief



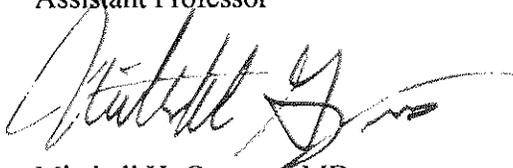
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## **Spring 2016 MEB Newsletter Content**

### **Transitioning to An Administrative License**

The October 2015 MEB Newsletter reported on the passage of [2013 WI Act 240](#). Among other changes, the Act created an Administrative License option for physicians in order to allow physicians to hold a medical license in a non-clinical capacity if the physician's primary responsibilities are of an administrative or academic nature.

In order for a current unrestricted MD or DO license holder to transition to an Administrative License, the physician must complete a License Transition Addendum, Form 3074, located on the Physician Application page of the Department of Safety and Professional Services website:

<http://dsps.wi.gov/LicensesPermitsRegistrations/Credentialing-Division-Home-Page/Health-Professions/Physician/Physician-Application-Forms/>. Once completed, the form must be returned to the Department for review and processing. License changes will be made when all requirements for the Administrative License are met. The physician maintains the same license number.

### **Current Name and Address Required**

All applicants and recipients of a credential are required by Wisconsin statutes to notify the Department of Safety and Professional Services when they change their name or address from that most recently provided to the Department (most likely the name and address you included on your application for credential). The applicant or credential holder has 30 days to notify the Department from the date the change is made. Failure to comply in a timely manner may result in a \$50 forfeiture. You can update your name or address via the Department website at <http://dsps.wi.gov>.

Bear in mind that if you do not provide the Department with name or address changes, you may not receive important information such as complaint and investigation notices concerning your credential. The Department is only legally required to try to contact you at your last known address as indicated in Department records.

**CAUTION: It is considered “unprofessional conduct” if a license holder fails to cooperate in a timely manner with a Board investigation, and failure to timely cooperate may result in disciplinary action. See Wis. Stat. §§ [440.20\(5\)](#), [440.11](#) and Wis. Admin. Code § Med [10.03\(3\)\(g\)](#).**

## **Physician Continuing Education Compliance Audit** **(M.D. 2011-2013, D.O. 2012-2014)**

### **M.D. Audit**

The Department conducted continuing medical education audits on behalf of the Board for the licensing period 2011-2013 (MD) and 2012-2014 (DO). Of 1,135 licensees audited, 94 were not in compliance, representing a 91.7 % compliance rate. Results from the audits include the following:

- 29 licensees returned the certified mail receipt, but did not submit any of the requested audit

materials

- 21 licensees submitted CME hours that occurred outside of the acceptable time period of 1/1/2012-12/31/2013
- 18 licensees had the final notices returned as ‘undeliverable’ by the post office
- 11 licensees submitted less than 30 hours of acceptable CME
- 4 licensees submitted no CME
- 3 licensees submitted no audit materials. The Department received no reply, or an ‘undeliverable’ returned final notice was sent to the Department by the post office
- 2 licensees submitted a table that listed the required CME, but submitted no supporting documentation to verify it
- 2 licensees claimed medical hardship and requested a waiver
- 1 licensee claimed all documents had been lost and claimed medical hardship
- 1 licensee claimed retirement
- 1 licensee was living abroad. Two notices were sent via regular mail with no response to either
- 1 licensee submitted hours that were not acceptable under Med [13.03](#)

### **D.O. Audit**

Of 81 licensees audited, 7 were not in compliance, representing a 91.3 % compliance rate. The following are reasons for noncompliance:

- 3 licensees returned the certified mail receipt, but did not submit any materials
- 2 licensees submitted CME hours that occurred outside of the acceptable time period of 1/1/2012-12/31/2013
- 1 licensee submitted a table with no CME hours and requested a refund of the paid license renewal fee
- 1 licensee had the final notice returned as ‘undeliverable’ by the post office

Of the 101 cases that were referred to the Division of Legal Services and Compliance for enforcement action, 52 were administratively closed for no violation as additional investigation revealed that the licensee satisfied the continuing education requirements for the biennium. Additionally, 2 cases were closed because the respondent had either passed away or requested a refund of the renewal fee during the initial stages of the audit.

Of the remaining 47 cases, 7 respondents were issued administrative warnings for failing to comply with the CME requirements for the biennium. Forty respondents were disciplined by the Medical Examining Board as follows: 2 indefinite license suspensions; 19 reprimands; 7 reprimands with license limitations; and 12 surrenders of license.

## **Pain Management and Safe Prescribing**

Several new laws relating to opioid prescribing and reporting were recently passed by the legislature and signed into law by the Governor. [2015 Wisconsin Act 266](#) changes the Prescription Drug Monitoring Program (PDMP) reporting period from 7 days to 24 hours. [2015 Wisconsin Act 267](#) creates reporting requirements for the PDMP to determine the program’s effectiveness. [2015 Wisconsin Act 268](#) requires law enforcement to report instances of inappropriate use of opioids to the PDMP. [2015 Wisconsin Act 269](#) allows the Medical Examining Board, the Podiatry Affiliated Credentialing Board, the Board of

Nursing, the Dentistry Examining Board, and the Optometry Examining Board to issue guidelines regarding best practices in prescribing controlled substances, as defined in [§ 961.01 \(4\)](#), for persons credentialed by that Board who are authorized to prescribe controlled substances. The Medical Examining Board has created a committee to consider guidelines. For complete copies of the Acts, go to ‘2015-16 Session Acts’ at <http://legis.wisconsin.gov/2015/related/acts>.

### **Chair’s Corner**

Michelangelo said it best, “Ancora imparo” which translates to I’m still learning. This is something we as physicians commit to when we enter this august profession and that is to be lifelong learners for the benefit of those for whom we have the honor to serve, our patients. Recently, I had the opportunity to learn as well as the privilege of serving/representing our great state as the voting delegate to the Annual Meeting of the Federation of State Medical Boards (FSMB). This annual meeting is an opportunity for the 70 member boards to learn about the issues facing medical regulators across the country and across the globe as there are many guests from many other nations in attendance as well. Wisconsin is extremely fortunate to have Mr. Greg Collins, one of our public members, as a member of the FSMB’s Nominating Committee. When Mr. Collins ran for this, he was unanimously elected by the House of Delegates. This year, there were a number of outstanding presentations that the assembled were privileged to hear and will bring back to our boards in an effort to enhance our understanding and better our practices. Surgeon General Vivek Murthy, MD gave an outstanding talk about the issues of paramount importance to our nation’s public health including the opioid epidemic. We in Wisconsin are unfortunately all too familiar with this. Fortunately, our Board is taking a deep look at this issue and is working with our state elected officials to develop best practices in combatting this scourge. Current Board members, Drs. Capodice, Ogland-Vukich, Vasudevan and Westlake are spearheading our efforts, and we should all be grateful that they are applying their skills to this. The meeting also provided a wonderful update on the many significant changes and innovations occurring in undergraduate and graduate medical education. One in particular is the decision to have a unified Graduate Medical Education accreditation system. As a result, all graduates of both US osteopathic and allopathic medical schools will be entering ACGME accredited residencies. This will phase in over the next four years and is expected to be completed in 2020 and several programs are already in the pre-accreditation phase with many more to follow. In order to not lose osteopathic principles, all programs will be able to obtain osteopathic recognition if they choose, not just programs that were formally accredited by the American Osteopathic Association. There was also a focus on patient safety and errors at the meeting, an issue that we all as physicians take very seriously. One session in particular involved a 360 degree view wherein a case study was presented and then discussed by three panelists; representing medical regulation, practicing physician and most importantly, patient. This was an extremely engaging conversation and resulted in robust discussion. All in all, the attendees learned a great deal and I will be sharing what was learned with the Wisconsin Medical Examining Board and you, our colleagues, in the times to come. In closing, I want to thank you for your continued efforts at learning on behalf of the public we serve and for upholding the commitments you made to appropriately care for the citizens of our great state.

# Researchers: Medical errors now third leading cause of death in United States

By [Ariana Eunjung Cha](#) May 3 at 6:30 PM

These common medical errors are major killers

Nightmare stories of nurses giving potent drugs meant for one patient to another and surgeons removing the wrong body parts have dominated recent headlines about medical care. Lest you assume those cases are the exceptions, a new study by patient safety researchers provides some context.

Their analysis, published in the BMJ on Tuesday, shows that "medical errors" in hospitals and other health care facilities are incredibly common and may now be the third leading cause of death in the United States -- claiming 251,000 lives every year, more than respiratory disease, accidents, stroke and Alzheimer's.

Martin Makary, a professor of surgery at the Johns Hopkins University School of Medicine who led the research, said in an interview that the category includes everything from bad doctors to more systemic issues such as communication breakdowns when patients are handed off from one department to another.

"It boils down to people dying from the care that they receive rather than the disease for which they are seeking care," Makary said.

The issue of patient safety has been a hot topic in recent years, but it wasn't always that way. In 1999, an [Institute of Medicine \(IOM\) report](#) calling preventable medical errors an "epidemic" shocked the medical establishment and led to significant debate about what could be done.

The IOM, based on one study, estimated deaths because of medical errors as high as 98,000 a year. Makary's research involves a more comprehensive analysis of four large studies, including ones by the Health and Human Services Department's Office of the Inspector General and the Agency for Healthcare Research and Quality that took place between 2000 to 2008. His calculation of 251,000 deaths equates to nearly 700 deaths a day -- about 9.5 percent of all deaths annually in the United States.

Makary said he and co-author Michael Daniel, also from Johns Hopkins, conducted the analysis to shed more light on a problem that many hospitals and health care facilities try to avoid talking about.

Though all providers extol patient safety and highlight the various safety committees and protocols they have in place, few provide the public with specifics on actual cases of harm due to mistakes. Moreover, the Centers for Disease Control and Prevention doesn't require reporting of errors in the data it collects about deaths through billing codes, making it hard to see what's going on at the national level.

The CDC should update its vital statistics reporting requirements so that physicians must report whether there was any error that led to a preventable death, Makary said.

"We all know how common it is," he said. "We also know how infrequently it's openly discussed."

Kenneth Sands, who directs health care quality at Beth Israel Deaconess Medical Center, an affiliate of Harvard Medical School, said that the surprising thing about medical errors is the limited change that has taken place since the IOM report came out. Only hospital-acquired infections have shown improvement. "The overall numbers haven't changed, and that's discouraging and alarming," he said.

Sands, who was not involved in the study published in the BMJ, the former British Medical Journal, said that one of the main barriers is the tremendous diversity and complexity in the way health care is delivered.

"There has just been a higher degree of tolerance for variability in practice than you would see in other industries," he explained. When passengers get on a plane, there's a standard way attendants move around, talk to them and prepare them for flight, Sands said, yet such standardization isn't seen at hospitals. That makes it tricky to figure out where errors are occurring and how to fix them. The government should work with institutions to try to find ways improve on this situation, he said.

Makary also used an airplane analogy in describing how he thinks hospitals should approach errors, referencing what the Federal Aviation Administration does in its accident investigations.

"Measuring the problem is the absolute first step," he said.

"Hospitals are currently investigating deaths where medical error

could have been a cause, but they are under-resourced. What we need to do is study patterns nationally."

He said that in the aviation community every pilot in the world learns from investigations and that the results are disseminated widely.

"When a plane crashes, we don't say this is confidential proprietary information the airline company owns. We consider this part of public safety. Hospitals should be held to the same standards," Makary said.

Frederick van Pelt, a doctor who works for The Chartis Group, a health care consultancy, said another element of harm that is often overlooked is the number of severe patient injuries resulting from medical error.

"Some estimates would put this number at 40 times the death rate," van Pelt said. "Again this gets buried in the daily exposure that care providers have around patients who are suffering or in pain that is to be expected following procedures."