

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Sandy Nowack Board Legal Counsel	2) Date When Request Submitted: June 6, 2012 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 the meeting for all others
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3) Name of Board, Committee, Council, Sections:
 Medical Examining Board

4) Meeting Date: June 20, 2012	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? PHYSICIAN DELEGATION OF TASKS CONSTITUTING THE PRACTICE OF RADIOGRAPHY
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7) Place Item in: <input type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input checked="" type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: FAQ LIASIONS MEB: Dr. Tim Swan, Dr. Ray Mager Radigraphy Examining Board, Dr. Greg Bogost
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10) Describe the issue and action that should be addressed:

With the creation of the Radiography Examining Board, the legislature authorized new licensing requirements for radiography technicians and permit requirements for limited scope x-ray operators. Although credentials are generally required for practice in the field of radiography, the new law did not divest physicians of their authority to delegate medical acts per sec. 448.03(2). The Department has received multiple questions concerning delegation of medical acts that also constitute the practice of radiography. It is currently possible to avoid credentialing and continue to perform under the delegation and supervision of a physician. The Radiography Examining Board has expressed serious concern about the safety of this practice

To address the frequently asked question, the FAQ liasions from the MEB and the Radiography Examining Board worked together to draft this advisory FAQ/admonishment.

The Board will review, discuss and potentially vote on whether or not to recommend the Department adopt the FAQ, post it to the website, amend it, and or publicize it in the newsletter.

11) Authorization

Signature of person making this request	Date
Supervisor (if required)	Date
Bureau 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 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.



State of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES
CORRESPONDENCE / MEMORANDUM

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DATE: ~~May 29, 2012~~ September 4, 2012
TO: Medical Examining Board
FROM: Sandy Nowack
Board Legal Counsel
RE: CAUTION: LEGAL PRINCIPALS CONCERNING DELEGATION OF MEDICAL ACTS CONSTITUTING THE PRACTICE OF RADIOGRAPHY

The competent use of x-rays provides a generally safe and effective diagnostic tool. Conversely, because it relies on the use of radioactivity, the incompetent practice of radiography can result in unnecessary exposure to x-rays and repeat x-rays. With unnecessary exposure to x-rays, patients unnecessarily face increased risk of cancer(s) and other medical risks. Of course, patient care is further compromised when an incompetently performed x-ray fails to adequately depict the area of concern.

Under the law, persons who perform radiography are now required to be licensed or permitted by the Radiography Examining Board—, Wis. Stat. § 462.02. There is an exception to the credential requirement for physicians who are licensed to practice medicine and surgery if the act of radiography also constitutes the practice of medicine and surgery. Wis. Stat. §§ 462.02(2)(a) and 448.03(2)(e).

Technically in Wisconsin, under Technically Wisconsin Stat. § 448.03(2)(e) permits, in Wisconsin physicians ~~may to may to~~ delegate any medical act to any person who the physician knows has the necessary credential, education, training or experience to competently perform the delegated act— with adequate supervision, who the physician knows to be competent — at the level of minimal competence to be competent to perform the act undertaken. The physician must be minimally competent to perform the act in question and must assume responsibility for supervision of the delegated act. See also Gilbert v. Medical Examining Board, 119 Wis. 2d 168, 349 N.W.2d 68 (1984); Gimenez v. Medical Examining Board, 203 Wis. 2nd, 552 N.W.2d 863 (Ct. App. 1996). Therefore, subject to the requirement of minimal competence, physicians are authorized to delegate acts constituting the practice of radiography if the act is accomplished without creating unacceptable risk of harm to the patient or the public. For other requirements of physician delegation generally, see Memo, Physician Delegation, May 29, 2012.

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~~In practice, P however, Wisconsin Stat. § 462 sets a new standard for the practice of radiography in Wisconsin. In practice, however, the The Medical Examining Board CAUTIONS that physicians without specialized training and/or experience are may be generally incompetent to perform medical acts that also constitute the practice of radiography.~~ The practice of radiography is not generally within the scope of graduate or postgraduate medical education. Most physicians, therefore, require specialized training before they are competent to practice or to supervise the practice of radiography. Specialized training includes may include training in the physics of diagnostic radiography, the biological effects of ionizing radiation, and the proper positioning and exposure needed to achieve diagnostic quality radiographs to avoid missed diagnosis. To delegate an act that constitutes radiography, the supervising physician must know ~~and how to safely operate relevant equipment to a level beyond more than just merely simply knowing "which button to push".~~ Minimum competence may also requires continuing medical education in the field.

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GENERAL PROVISIONS GUIDANCE FOR PHYSICIANS WHO ELECT TO DELEGATE ACTS CONSTITUING THE PRACTICE OF RADIOGRAPHY:

- Delegating physicians must adhere to the standard of minimal competence in the medical care they or their delegates provide. Wisconsin Admin Code § 10.02(2)(h); *Gilbert v. Medical Examining Board*, 119 Wis. 2d 168, 349 N.W.2d 68 (1984); *Gimenez v. Medical Examining Board*, 203 Wis. 2nd, 552 N.W.2d 863 (Ct. App. 1996). Although exceptions exist, for MEB's purposes, delegating physicians are responsible for the delegated act as if the physician performed the act in question. *Physicians may not delegate the act in question unless the physician is adequately educated about practice standards for the procedure undertaken, and/or justification for departure from the standards.* In addition to the usual sources of medical education, resources include, but are not limited to: the American College of Radiology, the Wisconsin Radiological Society, the U.S. Food and Drug Administration's Center for Devices and Radiological Health (Initiative to Reduce Unnecessary Radiation Exposure from Medical Imaging), the American Registry of Radiologic Technologists, and the American Society of Radiologic Technicians.
- The law requires that delegating physicians know the specific basis upon which they determined that the delegate was competent to perform the radiography tasks. The legislature and the Radiography Examining Board have established minimum requirements for licensure as a radiographer or permit to practice as a limited scope x-ray operator (EXMO). Although unlicensed delegated employees may not be required to meet the same requirements as licensed radiographers, in assessing competence of unlicensed staff, delegating physicians may wish to should be familiar familiar with requirements for these credentials. If the delegating physician has concluded that the delegate is competent to perform the radiography task, the delegating physician should consider why the delegate does not have need a license or permit. The delegating physicians should be prepared to articulate the specific basis upon which they determined that the delegate was competent to perform the radiography tasks The in light of the requirements. Requirements for credentials issued by the Radiography Examining Board which may can be found here: <http://drl.wi.gov/profession.asp?profid=130&locid=0>

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~~Delegating physicians should carefully review their own credentials concerning the practice of radiography since the practice of radiography is not generally part of routine medical or post-graduate training.~~ If the Medical Examining Board receives complaints involving delegation of tasks constituting radiography to non-licensed or non-permitted persons, the Board is authorized to will require proof of the assume the physician's general incompetence in performing the act in question. See generally, Wis. Stat. § 448.02(3). Proof of competence could include, but is not limited to, documentation of completion of for the performance of radiography and may ask the physician for specific documentation of evidence of evidencing the physician's own competence and specialized training specifically in radiography and/or the act in question, including the training sponsor and the instructor's qualifications to perform the task in question.

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~~There are no statutes or rules that specify requirements for competence to supervise acts constituting the practice of radiography. The Board will ordinarily look to professional standards of minimal competence.~~ Although not required, physicians may wish to consult

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• The American College of Radiologists Radiology, which has recommended that physicians who supervise the use of radiation for medical diagnosis must be board certified, in radiology or diagnostic radiology, or have completed an ACGME approved residency program and six months of dedicated training in the interpretation and formal reporting of general radiographs—for persons of all ages, and that includes training on all areas of the body-area. In either case, supervising physicians should have documented training in the physics of diagnostic radiography, along with safely operating relevant equipment. Continuing education is also recommended. In most cases, the supervising physician will be expected to understand the equipment beyond simply knowing "which button to push".

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• Delegating physicians must adhere to the standard of minimal competence in the medical care they or their delegates provide. Although exceptions exist, for MED's purposes, delegating physicians are responsible for the delegated act as if the physician performed the act in question. ~~Delegating physicians therefore, should consider whether or not they are adequately educated about standards in the field of radiography, and/or justification for departure from the standards.~~ In addition to the usual sources of medical education, resources include, but are not limited to: the American College of Radiology, the Wisconsin College of Radiology Radiological Society, the U.S. Food and Drug Administration's Center for Devices and Radiological Health (Initiative to Reduce Unnecessary Radiation Exposure from Medical Imaging), the American Registry of Radiologic Technologists, and the American Society of Radiologic Technicians.

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• Written policies can help insure that the physician and the delegate have a mutual understanding of the scope of delegation. Absence of such policies could constitute evidence that the physician did not use reasonable care in delegating the radiography task.

- Physicians must insure that equipment in use by them and their delegates is functioning properly, i.e., accurately and safely.

Legal Explanation: Wisconsin Stat. § 462.02(2)(a) specifically exempts physicians from licensure when performing acts constituting the practice of radiography:

[Subsection 462.02(1)(a), which requires licensure for the practice of radiography] does not apply to any of the following:

- (a) A physician.

The practice of radiography is defined at Wis. Stat. § 462.0(5) as follows:

the imaging of anatomical structures, produced by the combined application of X-rays to the human body and the application of knowledge in the fields of anatomy, radiographic positioning, and radiographic technique, and knowledge of principles of radiation protection, for the purpose of medical diagnosis except that "practice of radiography" does not include bone densitometry.

A license to practice medicine and surgery authorizes physicians to diagnose the patient conditions by any means or instrumentality. Section 448.01(9) defines the practice of medicine and surgery as follows:

- (a) *To examine into the fact, condition or cause of human health or disease, or to treat, operate, prescribe or advise for the same, by any means or instrumentality.*
- (b) *To apply principles or techniques of medical sciences in the diagnosis or prevention of any of the conditions described in par. (a) and in sub. (2).*
- (c) To penetrate, pierce or sever the tissues of a human being.
- (d) To offer, undertake, attempt or do or hold oneself out in any manner as able to do any of the acts described in this subsection.

The practice of radiography includes use of x-rays for medical diagnosis. Therefore, licensed physicians may perform acts constituting the practice of radiography under the physician's license to practice medicine and surgery.

A licensed physician may delegate acts constituting the practice of medicine and surgery to unlicensed persons. Wisconsin Stat. § 448.03(2)(e) says that a license to practice medicine and surgery is not required for anyone performing medical acts delegated by a physician. It states:

[A license to practice medicine is not required of] any person other than a physician assistant who is providing patient services as directed, supervised and inspected by a physician who has the power to direct, decide and oversee the implementation of the patient services performed.

While § 462.02(2)(a) does not specifically authorize physicians to delegate medical acts constituting both radiography and the practice of medicine and surgery, neither does § 462.02(2)(a) divest physicians of their authority to delegate medical acts under § 448.03(2)(e).

Therefore, physicians who are **competent** to perform acts constituting radiography may delegate those acts to unlicensed persons. The ~~physician delegate~~ must also be **competent** to do the act under the physician's supervision. Through principals of agency, the physician assumes responsibility for the delegation and for supervision of the delegated act. The physician must insure that the delegate is competent to perform the act and that the level of supervision is such that the quality of patient care is not compromised.

It is misconduct for physicians to aid and abet the unlicensed practice of medicine by failing to tell patients that the delegate is not a physician and that the delegate is acting under the physician's supervision. See Wis. Stat. Admin Code § MED 10.02(t). Therefore, physicians need to ~~must~~ insure that patients are appropriately informed that a non-physician delegate is performing the medical act under the direction, supervision and inspection of a qualified physician. This aspect of informed consent should be documented within the medical record.

In addition to delegation by a physician, an unlicensed person may perform acts constituting the practice of radiography if the person is assisting a physician. See Wis. Stat. § 448.03(2)(k). ~~Generally, exemption~~ Exemption from licensure under this provision will require the physician's presence when the act is undertaken.

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