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Comments submitted via email to jameson.whitney@wisconsin.gov

RE: Invitation to provide comment on the economic impact of the proposed rule of the Medical Examining Board relating to physical examinations dated August 25, 2022

Dear Mr. Whitney and members of the Wisconsin Medical Examining Board:

The Medical Examining Board invited stakeholders to comment on the economic impact of the Medical Examining Board's revised proposed rule dated August 25, 2022, relating to physical examinations pursuant to statement of scope SS 012-21. The Wisconsin Hospital Association appreciates that invitation. We offer the following limited comments in the context of aiding the Board's preparation of its Economic Impact Analysis as it develops the proposed rule. Additional comments on the proposed rule are reserved for the full s. 227.17 public hearing following publication of a proposed rule in the Administrative Register.

WHA's membership includes over 140 member hospitals and integrated health systems working directly with their physicians and the support staff for those physicians. Our mission is to advocate for the ability of our members to lead in providing high quality, affordable, and accessible health care services, resulting in healthier communities.

To help aid the Board as it develops its economic impact analysis of the rule as drafted or contemplates changes to the rule, we encourage the Board to include the following considerations in its analysis. These comments should not be construed as support for or opposition to the rule, but are offered in response to the Board's solicitation for information from entities that may be affected by the proposed rule as the Board prepares its economic impact analysis of the draft proposed rule.

Establishment of a licensure obligation on physicians to comply with hospital or employer policies regarding chaperones or other observers in patient examinations.

As a consequence of creating an obligation in the Wisconsin Administrative Code and enforceable by the Board that a physician "shall comply" with the physician's hospital or employer's "rules" regarding chaperones or other observers in patient examinations, it is likely that hospitals and employers of physicians will undertake a review and potential modification of their "rules" to ensure that their policies are clear and not capable of being interpreted by the Medical Examining Board differently than the hospital, employer or their physicians. Such a review will likely be demanded by physician employees and hospital staff given that the proposed rule appears to give the Medical Examining Board authority to investigate compliance with, and interpret, such internal employer or hospital "rules."

Thus, such a review and potential modification of hospital and employer "rules" resulting from the proposed rule will require internal hospital or employer staff time, potentially including organized medical staff input or action, as well as potentially external legal review costs. While indeterminate and likely variable across organizations, the proposed rule

change to the MED 10 - Unprofessional Conduct will result in cost to hospitals and physician employers that the Board should incorporate into its Economic Impact Analysis of the proposed rule.

Provision and posting of chaperone “rules and procedures”

It is unclear based on the discussion at the Board’s August 17 meeting and from the language of the proposed rule if the last sentence of proposed Med 10.03(2)(f)(4) requiring that a copy and posting of rules and procedures regarding the physician’s use of chaperones or other observers applies only to the physicians specified in the second sentence – those physicians who are self-employed or are in other practice settings that do not involve hospitals or employers – or to all physicians including employed physicians and physicians practicing in hospitals.

If the third sentence of Med 10.03(2)(f)(4) does apply to physicians providing care in hospitals or facilities not operated by the physician, then the requirement for the posting of the hospital or employer’s rules and processes regarding chaperones and observers will result in a cost borne solely by the hospital or facility and not the regulated physician. Such cost to the hospital or facility would include not only the material and labor costs to post the rules and processes, but likely additional compliance costs, including potential external legal advice, to determine where in the facility such posting would be required under the rule. In such hospitals and facilities, it is also likely that the printing and provision of the copy of the hospital or facility’s rules and processes regarding chaperones to all patients would not be borne by the physician but by hospital and facility staff not employed by the physician.

While these costs are indeterminate and likely variable across organizations, the proposed rule change to the MED 10 - Unprofessional Conduct will result in cost to hospitals and physician employers that the Board should incorporate into its Economic Impact Analysis of the proposed rule.

Additional costs to interpret the proposed rule

Based on Board member discussions at the Board’s August 17 meeting and other input received by WHA, it seems likely that physicians, hospitals, and physician employers will have questions about how the rule applies in specific factual situations. For example, how does the rule and the posting requirements apply if a hospital or employer “rule” varies by department or scenario? How does the rule apply in an inpatient setting where multiple physicians round on the same patient? If a physician providing care in a hospital is employed by an entity different than the hospital, what must be provided or posted? There will also likely be questions about how to interpret the rule generally. For example, is posting or provision of a document required if the hospital or employer does not have a specific written rule or process regarding chaperones?

As a result, hospitals and physician employers will likely spend compliance staff time, and potentially spend resources on external legal review and opinions, to attempt to interpret what is and is not required by the rule as currently written. Like the other identified costs, while these costs are indeterminate and likely variable, the proposed rule change to the MED 10 - Unprofessional Conduct will result in cost to hospitals and physician employers that the Board should incorporate into its Economic Impact Analysis of the proposed rule.

Again, we offer the above limited comments in the context of aiding the Board’s preparation of its Economic Impact Analysis as it develops the proposed rule. Additional comments on the proposed rule are reserved for the full s. 227.17 public hearing following publication of a proposed rule in the Administrative Register. We hope that the information provided in this response to the Board’s solicitation for comment on economic impact will be useful to the Board in its development of its Economic Impact Analysis.

Sincerely,

/s/

Ann Zenk

Senior Vice President, Workforce & Clinical Practice

Cc: Dan Hereth, Secretary-designee, Department of Safety and Professional Services