

New Wisconsin Law Creates Reporting Obligations for Physicians - And Concerns for Peer Reviewers, Managers, and Treatment Providers for Physicians

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On June 2, 2010, a new Wisconsin law became effective that expands reporting obligations for providers licensed by the Medical Examining Board ("MEB"). 2009 Wisconsin Act 382 created a new statute under Wisconsin Chapter 448 ("Medical Practices") requiring a person licensed by the MEB to "promptly" submit a report to the MEB when the person has reason to believe any of the following about another physician:

1. The other physician is engaged in acts that constitute a pattern of unprofessional conduct.
2. The other physician is engaged in an act that creates an immediate or continuing danger to one or more patients or to the public.
3. The other physician is or may be medically incompetent.
4. The other physician is or may be mentally or physically unable to engage in the practice of medicine or surgery.

The law further expands the definition of "unprofessional conduct" under Wisconsin Stat. § 448.015(4) to include failure by a physician to make such a report. Previously, Wisconsin physicians had only an ethical, not legal, duty to make such reports under the American Medical Association's and Wisconsin Medical Society's codes of ethics. The new Wisconsin law further provides that physicians who make such reports to the MEB "in good faith" may not be held civilly or criminally liable or guilty of unprofessional conduct.

This law raises several serious questions for physicians who have dual roles as peer reviewers, medical managers, and providers for physicians, since failure to report can lead to discipline for unprofessional conduct by the MEB. Unfortunately, the new law does not address the dual role certain physicians play as managers of medical staff and employed physicians. It also does not address the scenario of a physician treating another physician, for example, for mental health or substance abuse issues. Finally, and perhaps most importantly, there is the issue of how this law will interact with the privileges, immunities, and obligations of the Wisconsin peer review law as well as the federal Health Care Quality Improvement Act. We are told that guidance on these issues from the MEB is forthcoming, perhaps in the form of regulations.

Other provisions of 2009 Wisconsin Act 382 grant the Chair of the MEB or his or her designee and two other MEB members the power to summarily suspend a credential without the previous 30-day and 72-hour limitation. The law also includes a provision allowing physicians holding a temporary educational permit to practice medicine and surgery the ability to prescribe narcotics, as well as a provision allowing the MEB to change Continuing Medical Education (CME) requirements by rule rather than by legislation.

von Briesen's medical staff lawyers will provide updates on these issues as the MEB's interpretation of the law is developed.

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