To: Legislative Council Study Committee on the Use of Artificial Intelligence in Health Care
From: Erin Kennon, Legislative Liaison, DSPS; **Tom Ryan**, Executive Director, Medical Examining Board; **Dr. Gregory Schmeling,** Chair, Wisconsin Medical Examining Board
Re: Role of the Wisconsin Department of Safety and Professional Services (DSPS) and the Wisconsin Medical Examining Board (MEB) in Regulating Artificial Intelligence Use in the Practice of Medicine

Executive Summary

Wisconsin's existing regulatory framework provides the Wisconsin Medical Examining Board (MEB) with authority to oversee healthcare professionals use of artificial intelligence (AI) in the practice of medicine through its existing regulation of physician licensure, professional conduct, competence, and patient safety. Although Wisconsin has not adopted AI-specific standards of professional conduct or granted the MEB authority to regulate AI technology itself, existing statutes and rules generally apply regardless of the technology used and require healthcare professionals to remain responsible for the care they provide. The MEB may investigate complaints related to AI-assisted practice and may take disciplinary or remedial action when warranted. To date, DSPS has not received any complaints involving AI use by a healthcare professional that resulted in substandard care. The MEB is nevertheless monitoring the rapid development and adoption of AI, including emerging national guidance and regulatory efforts, and recognizes that increasingly autonomous AI systems may present issues that existing law does not fully address. The MEB will continue to assess whether AI-related developments warrant additional guidance or rulemaking action to protect patient safety and ensure appropriate professional accountability.

MEB and DSPS Authority and Regulatory Roles

The Wisconsin MEB is created under Wis. Stat. § 15.405(7). Its authority derives from both the general provisions governing examining boards in Wis. Stat. ch. 440 and the profession-specific provisions of ch. 448. The Board is responsible for licensing physicians, establishing and enforcing professional standards, investigating allegations of unprofessional conduct and negligence, and taking disciplinary action when warranted. DSPS provides administrative, investigative, and legal support to the Board, while substantive regulatory authority rests principally with the Board.

Voting members of the MEB are identified in Wis. Stat. § 15.405(7): nine physicians licensed as M.D.s, one D.O., and three public members. The chairperson of the Injured Patients and Families Compensation Fund Peer Review Council also serves as a nonvoting member.

How Existing Law Applies to AI-Assisted Practice

The MEB's authority concerning AI is best understood as regulation of licensed professionals and the practice of medicine, rather than regulation of AI technology itself. Within that framework, the Board's existing authority relevant to AI principally operates through enforcement, rulemaking, and physician licensure. The central regulatory principle is that the use of AI does not displace the physician's professional responsibility for the care provided.

Enforcement. Under Wis. Stat. § 448.02, complaints may lead to investigation by the Department on behalf of the Board. The Board's enforcement process is generally complaint driven, meaning that in most instances an investigation is initiated in response to a complaint or other allegation concerning the conduct of a licensed professional. The Board may reprimand a licensee or limit, suspend, or revoke a license. Section 448.02(8) also permits an administrative warning in appropriate matters involving minor misconduct when the Board determines that no further action is warranted and the warning adequately protects the public. License limitations can provide flexibility to address deficiencies through conditions such as additional education, training, or supervision rather than necessarily prohibiting continued practice. DSPS and the MEB have not received any complaints regarding AI usage by a healthcare professional leading to substandard care.

Rulemaking. Wis. Stat. §§ 15.08(5)(b) and 448.40 authorize the Board to promulgate rules governing the practice of medicine and professional conduct. Existing rules, particularly Wisconsin Administrative Code Chapter Med 10, Unprofessional Conduct, establish professional standards that apply regardless of the technology used to provide care. The Board could consider additional guidance or rulemaking if experience with AI demonstrates that existing standards do not adequately address patient-safety concerns.

Physician Licensure. Wis. Stat. §§ 448.03 and 448.05, together with the physician licensure requirements in Wis. Admin. Code ch. MED 1, establish who may practice medicine and the qualifications required for licensure. These provisions give the Board authority over the qualifications and licensure of physicians, but do not give the Board general authority to license or regulate AI software as a product or the institutions in which physicians practice.

Application of Wisconsin Law to AI-Related Medical Practice

Wisconsin has not adopted a separate category of professional conduct specifically addressing artificial intelligence. Instead, the MEB's existing statutes and rules generally apply to physician conduct regardless of the technology used. Accordingly, the regulatory question is whether the physician's use of AI results in conduct that falls within an existing statutory or regulatory standard that the MEB has authority to enforce.

The following examples illustrate how Wisconsin's existing regulatory framework may apply to foreseeable AI-related concerns.

Clinical evaluation, Judgment, and Treatment

AI may assist with patient evaluation, diagnosis, risk assessment, treatment recommendations, prescribing, and other clinical functions. A concern arises when a physician relies on AI-generated information without adequately evaluating its accuracy, limitations, or appropriateness for the individual patient, or otherwise allows AI to substitute for the physician's own clinical judgment and responsibility for patient care.

Wis. Admin. Code §§ Med 10.01 and 10.03 establish existing standards of minimally competent medical practice, including requirements that physicians put patient care first, exercise reasonable judgment and competence, and provide care with reasonable skill and safety. Section Med 10.03(2)(b) identifies as unprofessional conduct a departure from the standard of minimally competent medical practice that creates an unacceptable risk of harm to a patient or the public. Section Med 10.03(2)(c) applies the standard of minimal competence specifically to prescribing and other activities involving prescription medication.

These provisions provide an existing basis for evaluating AI-assisted clinical decisions. For example, if a physician accepts an AI-generated diagnosis, treatment recommendation, or medication recommendation without adequately evaluating whether it is appropriate for the patient, and the physician's conduct falls below the applicable standard or creates an unacceptable risk of harm, the conduct may constitute unprofessional conduct. The regulatory focus is therefore whether the physician exercised appropriate professional judgment and remained responsible for the care provided. Wis. Stat. § 448.02 provides the MEB's disciplinary authority when such conduct is alleged.

Misrepresentation and AI-assisted Mental Health Care

AI systems may interact with patients in ways that create the impression that the system itself is a physician or other licensed health care professional. Wisconsin's existing definition of the practice of medicine, Wis. Stat. § 448.01 (9), includes advising patients and holding oneself out as able to perform medical services. Wis. Admin. Code § Med 10.03(1)(e) identifies as unprofessional conduct knowingly, negligently, or recklessly making a false statement, written or oral, in the practice of medicine and surgery that creates an unacceptable risk of harm to a patient or the public. Section Med 10.03(1)(f) also identifies fraud, deceit, or misrepresentation as unprofessional conduct, while § Med 10.03(1)(k) addresses false, misleading, or deceptive advertising. In addition, the rule addresses aiding or abetting specified conduct. These provisions could provide an existing basis for evaluating a physician's conduct when the physician knowingly, negligently, or recklessly uses, directs, or permits an AI system to misrepresent its professional status or create a misleading impression about who is providing medical care.

Mental health applications may present additional patient-safety concerns when an AI system provides individualized mental health assessment, diagnosis, treatment advice, or crisis support without clearly identifying that it is not a licensed clinician. Such systems may create a risk that patients rely on the system as though they were interacting with a licensed professional, particularly when the AI system uses human-like language or presents itself as a therapist or clinician. Where a physician deploys, directs, supervises, or relies upon such a system in the practice of medicine, the MEB could evaluate the physician's conduct under existing standards governing competence, patient safety, professional responsibility, and unprofessional conduct.

The MEB may inquire whether a physician's conduct causes or permits patients to be misled about who is providing medical care, whether that person is licensed to provide the care being provided, or who is responsible for clinical decisions.

Documentation and Patient Health Care Records

AI-generated or AI-assisted documentation may contain inaccurate, incomplete, or misleading information, particularly if the physician does not review the resulting record before it becomes part of the patient's medical record.

Wis. Admin. Code ch. Med 21 establishes requirements for patient health care records. Section Med 21.03 requires physicians to maintain records containing required clinical information and to identify the practitioner responsible for entries.

These requirements apply to medical records regardless of how the information is generated. The use of AI to create or assist with documentation therefore does not alter the physician's existing obligations concerning the accuracy and adequacy of the medical record. If AI-assisted documentation fails to satisfy existing recordkeeping requirements, the MEB can evaluate the physician's conduct under those existing requirements.

Informed Consent and Disclosure

Questions may arise concerning whether and when a physician should disclose the use of AI to a patient, particularly when AI use is material to the patient's understanding of the care being provided.

Wis. Stat. § 448.30 and ch. Med 18 establish Wisconsin's existing requirements concerning informed consent. These provisions do not currently establish an AI-specific disclosure requirement. Whether disclosure of AI involvement is necessary would depend upon the circumstances and the information material to the patient's decision. AI use that materially affects the nature of the care, risks, alternatives, or the physician's role may raise informed consent concerns under existing law.

Privacy and Confidentiality

AI systems may involve the collection, processing, storage, or transmission of patient health information. Physicians therefore must consider applicable federal and state privacy and confidentiality requirements, including HIPAA and Wisconsin's patient health care record confidentiality law, Wis. Stat. § 146.82.

For purposes of MEB oversight, the relevant question would be whether the physician's use or disclosure of patient information through an AI system complies with applicable confidentiality requirements and the physician's existing professional obligations.

Current MEB Oversight and National Developments

The MEB has not created a new AI-specific category of unprofessional conduct. The Board expects physicians to apply existing professional standards to their use of AI and will continue to monitor technological and regulatory developments to determine whether additional regulatory action is warranted.

The regulatory experience with rapidly developing technologies demonstrates the consequences of allowing technological adoption to substantially outpace regulatory oversight. Social media provides a prominent example: the technology became deeply embedded in society before policymakers and regulators fully understood or addressed many of its significant impacts, and regulatory efforts have subsequently been largely reactive. The lesson for medical professional regulators is to not simply assume that existing frameworks will prove sufficient and wait for problems to emerge. The Board is wise to learn from that experience rather than repeat it, monitoring AI proactively and identifying emerging risks and regulatory gaps before they become deeply embedded in medical practice.

The MEB continues to assess national progress concerning AI regulation, including the work of the Federation of State Medical Boards (FSMB). The FSMB adopted an AI policy in 2024 emphasizing transparency and disclosure, human accountability, patient safety, informed consent, equity and access, privacy and data security, and appropriate oversight and regulation. In May 2026, the FSMB announced a new workgroup focused on developing practical, model regulatory guidance for state medical boards concerning AI in clinical practice, including AI tools performing clinical functions with limited or no physician supervision, patient safety, accountability, standards of care, informed consent, and potential regulatory gaps. Independently licensing AI as it becomes more autonomous is increasingly a concern of regulators. The FSMB also maintains a legislative tracker concerning AI-related state legislation.

Telemedicine: An Example of Technology-Specific Regulation

Wisconsin's experience with telemedicine provides a useful example of how the regulatory framework can evolve as new technology becomes integrated into medical practice. The MEB initially applied existing standards of professional conduct to telemedicine, then subsequently adopted technology-specific requirements in ch. Med 24, addressing issues such as patient evaluation, informed consent, licensure, and medical records. For example, Wis. Admin. Code § Med 24.07 requires a documented patient evaluation for treatment recommendations made through a website and provides that treatment recommendations based only on a static electronic questionnaire do not meet the standard of minimally competent medical practice.

Telemedicine therefore illustrates one possible regulatory progression: existing professional standards may initially address a new technology, while experience with the technology may later demonstrate a need for more specific regulatory requirements.

Regulation Beyond Medicine

The MEB does not regulate all health professions. Other clinicians are regulated via similarly structured regulatory boards composed of both professional and public members (as is the MEB). Each of those boards has similarly established responsibility for the oversight of licensed professionals, and those standards would apply to AI use as well. Each board also has licensing and enforcement authority, as well as the authority to issue guidance or to promulgate rules as necessary.

Further, the Department established the Interdisciplinary Advisory Committee as a forum to consider and develop guidance for issues that span multiple professions. The IAC could consider developing guidance for responsible and ethical AI use, and that guidance could be formally adopted by multiple professional boards. This approach would yield greater consistency across professions and practice.

Most professions also have a national regulatory association (e.g. the Federation of State Medical Boards, or the Federation of State Boards of Physical Therapy) that supports jurisdictional regulatory boards with resources and other services. Many of these are monitoring AI use in specific professions and provide educational materials and learning opportunities for regulators. Other national organizations, such as the Council on Licensure, Enforcement and Regulation (CLEAR) and the Federation of Associations of Regulatory Boards (FARB) provide education and resources related to AI use by regulated professions. The Department is an active member of both CLEAR and FARB, and these engagements help prepare leadership to address AI issues as they arise.