



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-5840/1
KMS&MJW:klm

2023 SENATE BILL 1020

February 13, 2024 - Introduced by Senator CABRAL-GUEVARA, cosponsored by Representatives SORTWELL, MOSES, ALLEN, ARMSTRONG, BEHNKE, BODDEN, DITTRICH, GOEBEN, S. JOHNSON, MAGNAFICI, MURPHY, O'CONNOR, PENTERMAN, ROZAR, SCHMIDT, SCHRAA and SCHUTT. Referred to Committee on Health.

1 AN ACT *to amend* 448.02 (3) (a); and *to create* 146.85 and 321.12 (3) of the
2 statutes; **relating to:** informed consent for medical research.

Analysis by the Legislative Reference Bureau

This bill prohibits health care providers from subjecting a patient to medical research without the express and informed consent of the patient or the patient's authorized representative. The bill defines an "authorized representative" as a health care agent acting under an activated power of attorney for health care, a guardian, or, for a patient who is under 14 years of age, a parent or legal custodian. Under the bill, an allegation that a physician subjected a patient to medical research without consent is considered an allegation of unprofessional conduct. Under current law, the Medical Examining Board must investigate any allegation of a physician's unprofessional conduct and, upon finding a physician guilty of unprofessional conduct, may warn or reprimand that physician or limit, suspend, or revoke any licensed granted by the board to that physician.

The bill also requires the chief surgeons of the army and air national guard to ensure that no army or air force medical personnel subjects a patient to medical research without the express and informed consent of the patient or the patient's authorized representative.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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1 **SECTION 1.** 146.85 of the statutes is created to read:

2 **146.85 Medical research consent requirement. (1) DEFINITIONS.** In this
3 section:

4 (a) “Authorized representative” has the meaning given in s. 252.15 (1) (ac).

5 (b) “Health care provider” has the meaning given in s. 146.81 (1).

6 **(2) PROHIBITION.** No health care provider may subject a patient to medical
7 research without the express and informed consent of the patient or the patient’s
8 authorized representative.

9 **SECTION 2.** 321.12 (3) of the statutes is created to read:

10 **321.12 (3)** The chief surgeons for the army and the air national guard shall
11 ensure that no army or air force medical personnel subjects a patient to medical
12 research without the express and informed consent of the patient or the patient’s
13 authorized representative, as defined in s. 252.15 (1) (ac).

14 **SECTION 3.** 448.02 (3) (a) of the statutes is amended to read:

15 **448.02 (3) (a)** The board shall investigate allegations of unprofessional conduct
16 and negligence in treatment by persons holding a license or certificate granted by the
17 board. An allegation that a physician has violated s. 146.85 (2), 253.10 (3), 448.30
18 or 450.13 (2) or has failed to mail or present a medical certification required under
19 s. 69.18 (2) within 21 days after the pronouncement of death of the person who is the
20 subject of the required certificate or that a physician has failed at least 6 times within
21 a 6-month period to mail or present a medical certificate required under s. 69.18 (2)
22 within 6 days after the pronouncement of death of the person who is the subject of
23 the required certificate is an allegation of unprofessional conduct. Information
24 contained in reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b),
25 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board.

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1 Information contained in a report filed with the board under s. 655.045 (1), as created
2 by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with
3 the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the
4 basis of an investigation of a person named in the report. The board may require a
5 person holding a license or certificate to undergo and may consider the results of one
6 or more physical, mental or professional competency examinations if the board
7 believes that the results of any such examinations may be useful to the board in
8 conducting its investigation.

9 **SECTION 4. Initial applicability.**

10 (1) This act first applies to medical research that is scheduled to begin after the
11 effective date of this subsection.

12 (END)