

**2001 DRAFTING REQUEST**

**Bill**

Received: **02/22/2001**

Received By: **nelsorp1**

Wanted: **As time permits**

Identical to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **Leslie Travis**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Addl. Drafters:

Subject: **Courts - civil procedure**

Extra Copies:

Submit via email: **NO**

Requester's email:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Notice of claim against state employee in medical malpractice action

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	nelsorp1 03/02/2001	jdyer 03/05/2001	rschluet 03/05/2001	_____	lrb_docadmin 03/05/2001	lrb_docadminState 04/03/2001	

FE Sent For:

<END>

**2001 DRAFTING REQUEST**

**Bill**

Received: **02/22/2001**

Received By: **nelsorp1**

Wanted: **As time permits**

Identical to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **Leslie Travis**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Addl. Drafters:

Subject: **Courts - civil procedure**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Notice of claim against state employee in medical malpractice action

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	nelsorp1 03/02/2001	jdye 03/05/2001	rschluet 03/05/2001	_____	lrb_docadmin 03/05/2001		State

FE Sent For:

<END>

**2001 DRAFTING REQUEST**

**Bill**

Received: **02/22/2001**

Received By: **nelsorp1**

Wanted: **As time permits**

Identical to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **Leslie Travis**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Courts - civil procedure**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Notice of claim against state employee in medical malpractice action

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/?	nelsorp1	1 3/5 jld	33-1	5-1			

FE Sent For:

<END>

**Miller, Steve**

---

**From:** Travis, Leslie  
**Sent:** Wednesday, February 21, 2001 3:45 PM  
**To:** Miller, Steve  
**Subject:** draft request

Hi Steve,

Fred has another drafting request. Would you please assign it to the appropriate attorney.

Presently to pursue a medical malpractice action against a state employee, the claimant must notify the state of a possible suit within 180 days after the discovery of the injury. Fred would like a bill drafted to remove this state immunity, and allow the claimant to bring an action for medical malpractice for personal injury or death within the time constraints of other medical malpractice actions. Thank you again.

*City, County, etc ?*



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-2616/1

RPN:.....

JLD

2001 BILL

1 AN ACT <sup>gen</sup> ...; relating to: notification of the state regarding a medical malpractice  
2 claim.

*Analysis by the Legislative Reference Bureau*

Under current law, if a person is injured as the result of medical malpractice, he or she must commence an action to recover his or her damages within three years from the date of the injury or within one year from the date that the injury was discovered or should have been discovered, but not more than five years after the date of the injury. Currently, if a health care provider conceals an act from the patient that resulted in the injury, ~~currently~~ the injured patient must commence the action within one year from the date that the concealment was discovered or should have been discovered, within three years from the date of the injury, or within one year from the date that the injury was discovered, whichever is later. Currently, if a foreign object is left in a patient's body, ~~he or she~~ <sup>the patient</sup> must commence the medical malpractice action within one year from the date that the person was aware of the object or should have been aware, within three years from the date of the injury, or within one year from the date that the injury was discovered, whichever is later.

Also under current law, if a person wants to bring a civil action against an officer, employee, or agent of the state for an act committed in the course of the officer's, employee's, or agent's duties, the person must first serve a notice of the claim with the attorney general within 120 days after the act. The claim must include the time, date, location, and circumstances of the act that gave rise to the claim, plus the names of the persons involved in the act. If the claim is to recover damages for medical malpractice, the 120-day period is extended to 180 days after the injury was discovered or should have been discovered.

the date of

**BILL**

This bill removes the requirement that a person must serve a notice of a claim for medical malpractice involving a state officer, employee, or agent<sup>✓</sup> on the attorney general within 180<sup>✓</sup> days after the injury. Instead, the bill requires a person who was injured as the result of medical malpractice by an<sup>✓</sup> officer, employee, or agent ~~of the state~~<sup>state</sup> ~~to~~ to commence that action within the same time period that is required when the claim is against a private medical provider.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 893.82 (5m)<sup>✓</sup> of the statutes is amended to read:

2 893.82 (5m) With regard to a claim to recover damages for medical malpractice,  
3 the time periods under subs. (3), (3m), and (4)<sup>✓</sup> shall be 180 days after discovery of the  
4 injury or the date on which, in the exercise of reasonable diligence, the injury should  
5 have been discovered, rather than 120 days after the event causing the injury<sup>✓</sup> for  
6 servng a notice of a claim upon the attorney general do not apply. The time period  
7 for commencing an action against a state officer, employee, or agent for damages for  
8 medical malpractice are the same as the time periods under s. 893.55 (1), (2)<sup>✓</sup>, and (3)<sup>✓</sup>.

History: 1973 c. 333; 1977 c. 29; 1979 c. 221; 1979 c. 323 s. 30; 1979 c. 355; Stats. 1979 s. 893.82; 1983 a. 27; 1985 a. 66, 340; 1987 a. 342; 1987 a. 403 s. 256; 1989 a. 187, 206, 359; 1991 a. 39, 269; 1993 a. 27, 28; 1995 a. 158, 201; 1997 a. 133.

9

(END)



STEPHEN R. MILLER  
CHIEF

# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
5TH FLOOR  
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

MAR 05 2001

March 5, 2001

### MEMORANDUM

To: Senator Risser

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-2616 Notice of claim against state employee in medical malpractice action

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY  JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-7511 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.

## **Barman, Mike**

---

**From:** Barman, Mike  
**Sent:** Friday, April 06, 2001 9:43 AM  
**To:** Travis, Leslie  
**Subject:** LRB-2616/1 (attached - per your request)

Mike Barman - Senior Program Asst. (PH. 608-266-3561)  
(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

State of Wisconsin  
Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703

04/06/2001