

2005 DRAFTING REQUEST

Bill

Received: 10/10/2005

Received By: rnelson2

Wanted: As time permits

Identical to LRB:

For: John Gard (608) 266-3387

By/Representing: Ellen

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - evidence

Extra Copies:

Submit via email: YES

Requester's email: Rep.Gard@legis.state.wi.us

Carbon copy (CC:) to: Rep.Gielow@legis.state.wi.us
Rep.Huebsch@legis.state.wi.us
richard.sweet@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Use of collateral source information

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>
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/1	rnelson2 10/11/2005	kfollett 10/11/2005	pgreensl 10/11/2005	_____	mbarman 10/11/2005	lnorthro 10/14/2005	S&L

FE Sent For:

10-17-2005
(1/1")

see attached

<END>

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May Contact:

*LFB, LC, Jodi in
Huesbeck's office,
Gielow-Julie*

Addl. Drafters:

Subject: **Courts - evidence**

Extra Copies:

*Rep. Gielow
Rep. Huesbeck
Dick Sweet, LC*

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/?	rnelson2						
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*10/10/05
10/11/05*

FE Sent For:

<END>

Miller, Steve

From: Nowak, Ellen
Sent: Saturday, October 08, 2005 11:03 AM
To: Miller, Steve
Cc: Jensen, Jodi
Subject: Medical residents & collateral source

Attachments: MedResidents-Collateral Source drafting.doc

Steve:

Attached are drafting instructions for 2 more bills that the Medical Malpractice Task Force recommended. We would like them as individual bills so that in the end we have a total of 3 bills: (1) med mal caps; (2) coverage of medical residents under the statutory cap on noneconomic damages; and (3) address the Supreme Court's concern raised in *Lagerstrom v. Myrtle Werth Hospital*, 2005 WI 124 about evidence of collateral source payments .

Drafting instructions for #2 and #3 are attached. Instructions for #1 will be sent in a separate document. Please call Jodi Jensen from Rep. Huebsch's office or me if you have any questions.



MedResidents-Colla
teral Source...

Coverage of medical residents under the cap on noneconomic damages

In June 2005, the Wisconsin Supreme Court decided *Phelps v. Physicians Insurance Company of Wisconsin, Inc.*, 2005 WI 85 (2005). In that case, the court held that the statutory cap on noneconomic damages did not apply to a person during his or her medical residency who was not yet a licensed physician and, in the circumstances of the particular case, was not an employee of a hospital. However, the Supreme Court sent the case back to a lower court for a determination of whether or not the medical resident can be considered to be a "borrowed employee" of a hospital.

In response to the *Phelps* decision, the Legislature desires to enact a statute that requires all unlicensed medical residents to have a temporary educational permit starting in their first year, so that they may be considered health care providers.

Collateral Sources (see Wis. Stat. Sec. 893.55(7))

In July 2005, the Wisconsin Supreme Court decided *Lagerstrom v. Myrtle Werth Hospital-Mayo Health System*, 2005 WI 124 (2005). In that case, the court noted that current statutes provide that a jury may receive information about other sources of payments for the injured patient's injuries, in addition to payments from the defendant, but the statutes are silent on how the jury is to use that information. The court held that the jury may not use the information about collateral sources to reduce the award to the injured patient, but may use the information to determine the value of medical services rendered.

In response to the *Lagerstrom* decision, the Legislature desires to enact a statute that requires the jury to reduce the injured patient's award by any collateral source payments received. This reduction would be offset by any amount of obligations that the injured patient must reimburse the collateral sources.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3820/1

RPN: *kgf*

wanted 10/13/02

2005 BILL

Gen

1 **AN ACT ...; relating to:** awards to persons suffering damages as the result of
2 medical malpractice and evidence of compensation for those damages.

Analysis by the Legislative Reference Bureau

X *(D)* Under current law, as recently interpreted by the supreme court in Lagerstrom v. Myrtle Werth Hospital-Mayo Health System, 2005 WI 124 (2005), in a medical malpractice case, evidence of payments made to compensate a person for injury or death from persons other than the defendant (collateral source payments) are allowed. The court also held that the current law permitted the introduction of evidence of the injured or dead person's obligations of subrogation or reimbursement resulting from those collateral source payments for medical services. But, the court held that the obligation evidence can only be used to determine the reasonable value of those medical services, not to reduce the value of those medical services for the purpose of determining the amount of the damage award for those medical services.

X This bill allows the introduction of collateral source payments in a medical malpractice case and the introduction of evidence of the injured or dead person's obligations of subrogation or reimbursement resulting from those collateral source payments. The bill requires the finder of fact to determine the amount of collateral source payments made to compensate the claimant for the injury or death resulting from the medical malpractice and ^{the} amount that the claimant is obligated to reimburse the persons who made the collateral source payments. The bill requires the court to subtract the amount the claimant is obligated to reimburse the persons who made the collateral source payments from the amount of those collateral source payments, and reduce the amount of damages awarded to the claimant by that difference.

BILL

For further information see the *state and local* 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.** 893.55 (7) of the statutes is amended to read:

2 893.55 (7) Evidence of any compensation for bodily injury or death received
3 from sources other than the defendant to compensate the claimant for the injury or
4 death is admissible in an action to recover damages for medical malpractice.
5 Evidence of the injured or dead person's obligations of subrogation or reimbursement
6 resulting from payments made by sources other than the defendant to compensate
7 the claimant for the injury or death is admissible in an action to recover damages for
8 medical malpractice. This section does not limit the substantive or procedural rights
9 of persons who have claims based upon subrogation.

History: 1979 c. 323; 1985 a. 340; 1995 a. 10; 2003 a. 111.

10 **SECTION 2.** 893.55 (8) of the statutes is created to read:

11 893.55 (8) (a) If medical malpractice did occur, the finder of fact shall determine
12 all of the following:

13 1. The amount that was provided from sources other than the defendant to
14 compensate the claimant for the injury or death resulting from the medical
15 malpractice.

16 2. The amount that the claimant is obligated to reimburse the sources under
17 subd. 1. for the compensation provided by those sources under subd. 1.

18 (b) The court shall subtract the amount determined under par. (b) 2. from the
19 amount determined under par. (b) 1. and reduce the amount of damages awarded to
20 the claimant under ch. 655 by that difference.

21 **SECTION 3. Initial applicability.**

Northrop, Lori

From: Nowak, Ellen
Sent: Friday, October 14, 2005 1:11 PM
To: LRB.Legal
Subject: Draft review: LRB 05-3820/1 Topic: Use of collateral source information

It has been requested by <Nowak, Ellen> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-3820/1 Topic: Use of collateral source information

Barman, Mike

From: Nelson, Robert P.
Sent: Monday, October 17, 2005 9:40 AM
To: Barman, Mike
Subject: FW: FE for LRB 3820/1

From: Nowak, Ellen
Sent: Monday, October 17, 2005 9:25 AM
To: Nelson, Robert P.
Cc: Jensen, Jodi; Sawyer, Julie
Subject: FE for LRB 3820/1

Robert:
I am requesting that you ask DOA to prepare a FE on LRB 3820/1 (relating to collateral source payments) as soon as possible.
Thanks.
Ellen



from
Gard's office