

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on
Agriculture and
Insurance
(SC-AI)**

File Naming Example:

Record of Comm. Proceedings ... RCP

- > 05hr_AC-Ed_RCP_pt01a
- > 05hr_AC-Ed_RCP_pt01b
- > 05hr_AC-Ed_RCP_pt02

COMMITTEE NOTICES ...

> Committee Hearings ... CH (Public Hearing Announcements)

> **

> Committee Reports ... CR

> **

> Executive Sessions ... ES

> **

> Record of Comm. Proceedings ... RCP

> **

INFORMATION COLLECTED BY COMMITTEE
CLERK FOR AND AGAINST PROPOSAL

> Appointments ... Appt

> **

> Clearinghouse Rules ... CRule

> **

> Hearing Records ... HR (bills and resolutions)

> **05hr_ab1071_SC-AI_pt01**

> Miscellaneous ... Misc

> **

Vote Record
Committee on Agriculture and Insurance

Date: 3-8-06

Moved by: Olsen

Seconded by: Kapanke

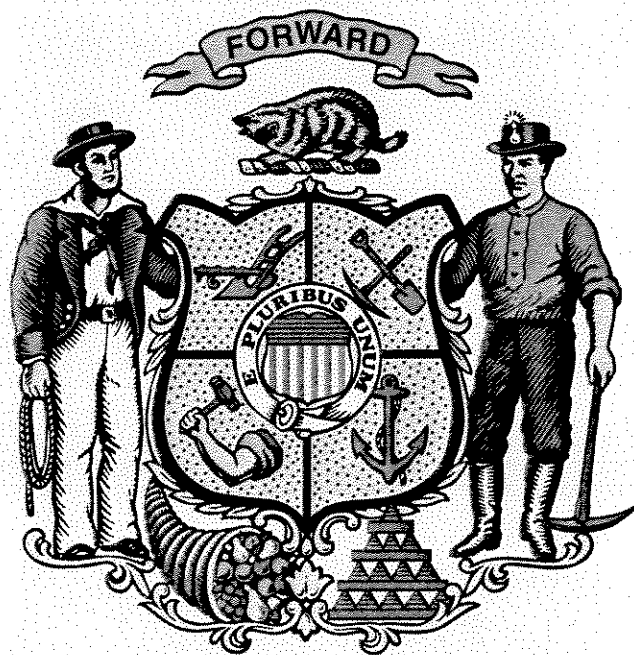
AB 1071 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Dan Kapanke, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ronald Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Luther Olsen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Jon Erpenbach	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator David Hansen	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Mark Miller	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>4</u>	<u>3</u>	_____	_____

Motion Carried Motion Failed



Perlich, John H.

From: Rep.Gielow
Sent: Friday, March 03, 2006 11:32 AM
To: Sen.Kapanke
Cc: Perlich, John H.; Michaelsen, Mark
Subject: AB 1021

1071

Senator: I learn that you expect to receive in your committee the medical malpractice bills passed last night by the Assembly. I am pleased to learn that you plan to act on these bills.

I'd like to ask if you could add AB 1021 to the list of bills you will act on. AB 1021, the physician apology law, is closely related to issues of medical malpractice litigation and should be an easy vote for the committee and the Senate. I attach my Assembly committee testimony on AB 1021 for your review.

Thank you for your consideration of this issue.

Rep. Curt Gielow

Testimony on AB 1021 – Physician Apology Law

Assembly Committee on Judiciary

February 23rd, 2005

Thank you for taking time to hear AB 1021, the Physician Apology Law.

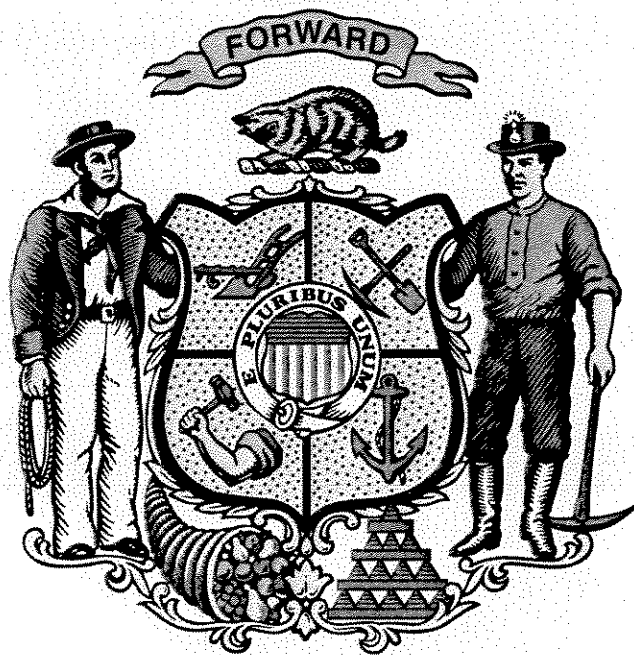
One conclusion that I have reached after years of work in medical management – and after chairing the Speaker's Task Force on Medical Malpractice this session – is that when a medical outcome is not fully successful, it should be possible for a physician or other medical professional to express sympathy to the patient and the patient's family without that human gesture being used against the practitioner in a future court proceeding. Therefore I have introduced AB 1021, a proposal to create an apology law, or an "I'm sorry law" in Wisconsin.

The purpose of an "I'm sorry law" or "apology law" is to encourage open communication between patients and physicians without fear of reprisal. "I'm sorry" laws protect health care providers who express sympathy to a patient for an unanticipated outcome from having such a statement used against the physician in a subsequent lawsuit.

At least sixteen states have enacted an "I'm Sorry" law for health care providers, including Arizona, Colorado, Georgia, Louisiana, Maine, Maryland, Missouri, Montana, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Virginia, West Virginia, and Wyoming.

This bill provides that a statement or conduct of a health care provider that expresses apology, condolence, or sympathy to a patient or patient's relative or representative is not admissible into evidence or subject to discovery in any civil action or administrative hearing regarding the health care provider as evidence of liability or as an admission against interest.

I believe AB 1021 is necessary to humanize medicine; the goal is to not hold physicians automatically culpable when all they are doing is expressing sympathy. I hope you will see this legislation as I do, and will vote to





Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Senate Committee on Agriculture and Insurance
Senator Dan Kapanke, Chair

FROM: Mark Grapentine, JD – Senior Vice President, Government Relations
Jeremy Levin – Government Relations Specialist

DATE: March 8, 2006

RE: **Support** for Assembly Bill 1071

On behalf of nearly 11,000 members statewide, thank you for this opportunity to provide written testimony supporting Assembly Bill 1071, creating statutes of limitations in medical liability cases dealing with developmentally disabled minors.

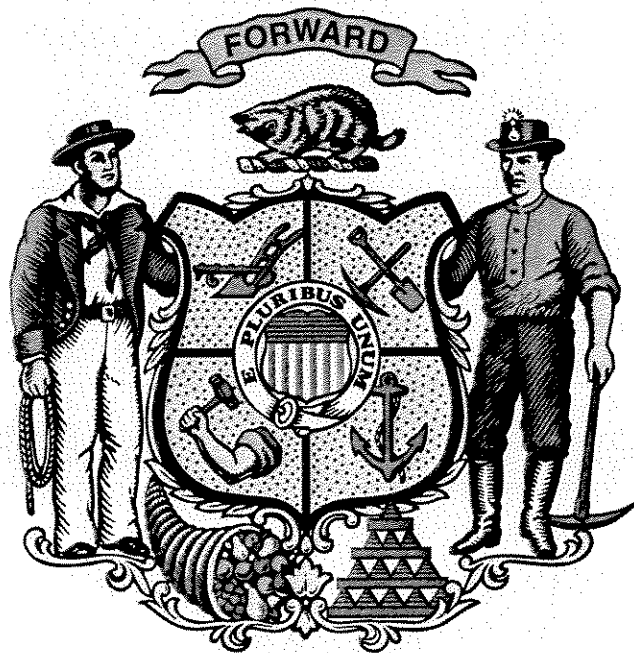
The Society supports this bill, as it is a reasonable way to respond to the Wisconsin Supreme Court's concerns in *Haferman v. St. Claire Healthcare Foundation*, which ruled that Wisconsin statutes do not contain a statute of limitations for developmentally disabled, mentally ill and imprisoned minors in medical liability cases, as those minors were specifically exempted from the statute of limitations applicable to other minors in Wis. Stat. sec. 893.56.

The legislative findings that accompanied sec. 839.56 at the time of its original enactment seem applicable to the proposed bill to give all minors the same statute of limitations. Specifically, the interests of mentally ill, developmentally disabled and imprisoned minors can be adequately and fully protected by adopting the same time limits as applies to adults, except in the case of very young developmentally disabled or mentally ill children. Those young children who are mentally ill, developmentally disabled or imprisoned would have until age 10 to bring a claim.

While the majority opinion in *Haferman* declined to rewrite the statutes or act in the place of the Legislature to provide a statute of limitations, it did not suggest that developmentally disabled minors require a longer statute of limitations than other minors. Meanwhile, the dissent concluded that developmentally disabled minors should have the same statute of limitations as other minors in sec. 893.56.

AB 1071 is a legislative fix that achieves the same result that the dissent in *Haferman* believed was reasonable. This solution will also eliminate a potential equal protection problem between developmentally disabled minors and other minors in medical liability cases, because all minors are treated the same. We ask for your support.

Thank you for your time and consideration. Please contact Mark Grapentine (markg@wismed.org) or Jeremy Levin (jeremyl@wismed.org) at (608) 442-3800 for further information.





CURT GIELOW

State Representative

Testimony on AB 1071 (LRB 4541)

Caps on Noneconomic Damages in Medical Malpractice

Senate Committee on Agriculture and Insurance – March 8th, 2006

Mr. Chair and members: Thank you for hearing this proposal this morning.

One issue briefly discussed during the course of this session's Speaker's Task Force on Medical Malpractice Reform was a 2005 decision of the Wisconsin Supreme Court regarding actions against healthcare providers when the plaintiff is developmentally disabled and is under the age of 18 at the time of the medical incident that is the basis of a lawsuit for malpractice. In the decision (*Haferman v St. Clare Healthcare Foundation Inc.*, 2005 WI 171) the court found that conflicts existed in the law regarding statutes of limitations in such cases.

The effect of *Haferman* has been to introduce uncertainty on the issue of statutes of limitation in cases where medical malpractice occurred AND the victim is under the age of 18 at the time of the medical incident AND is impaired in the ability to file suit, either through developmental disability or through imprisonment. This may be a small population of potential victims, but these people – these children – deserve the clarity of law.

AB 1071 would establish that all persons under age 18 seeking to bring action for medical malpractice must do so at whatever date of the following dates is latest:

- The person reaches age ten
- Within three years after the date of the injury (same as for all persons)
- Within one year after the injury was discovered or should have been discovered, but not more than five years after the date of the act or omission that caused the injury (same as for all persons)
- If the healthcare provider concealed from the person a prior act or omission that resulted in the injury, action must be brought within one year from the date that the patient discovers the concealment or should have discovered the concealment (same as for all persons)
- When a foreign object that has no therapeutic purpose has been left in a patient's body, action (if desired) must be brought within one year after the patient is aware or should have been aware of the presence of the foreign body (same as for all persons)

As you know, AB 1071 passed the State Assembly last week on a final vote of 59-37 with 2 paired. I hope the committee will recommend AB 1071 for passage. I'd be happy to take any questions. Thank you.