



2005 ASSEMBLY BILL 765

October 17, 2005 - Introduced by Representatives GIELOW, HUEBSCH, NISCHKE and GARD, cosponsored by Senators S. FITZGERALD and KAPANKE. Referred to Committee on Insurance.

1 **AN ACT to amend** 448.03 (2) (c) and 448.04 (1) (c); and **to create** 655.001 (7m)
2 and 655.002 (2) (c) of the statutes; **relating to:** coverage under the injured
3 patients and families compensation fund of medical school graduates engaged
4 in postgraduate training.

Analysis by the Legislative Reference Bureau

Under current law, certain health care providers are required to carry health care liability insurance with liability limits of at least \$1,000,000 for each occurrence and at least \$3,000,000 for all occurrences in a policy year and to pay assessments to fund the injured patients and families compensation fund (fund). If a medical malpractice claim is made against a health care provider who is subject to the health care liability insurance requirements, or against an employee of a health care provider who is subject to the health care liability insurance requirements, the portion of the claim that exceeds the limits of the provider's health care liability insurance is paid on behalf of the provider or provider's employee by the fund. In addition, the limit (cap) under current law that applies to the amount of noneconomic damages that a claimant may recover in a medical malpractice action applies if the claim is against a health care provider who is subject to the health care liability insurance requirements, or against an employee of such a health care provider.

Health care providers who are currently subject to the health care liability requirements are licensed physicians and licensed nurse anesthetists who practice in this state for more than 240 hours in a fiscal year, partnerships composed of physicians or nurse anesthetists, corporations or other organizations or enterprises

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that are organized in this state and that operate for the primary purpose of providing the medical services of physicians or nurse anesthetists, cooperative sickness care associations, hospitals and their affiliates, ambulatory surgery centers, and nursing homes whose operations are combined as a single entity with a hospital. Licensed physicians and licensed nurse anesthetists who practice in this state for fewer than 241 hours in a fiscal year, or for whom this state is not a principal place of practice, may elect to be subject to the health care liability insurance requirements for practice in this state.

In *Phelps v. Physicians Ins. Co.*, 2005 WI 85, the Wisconsin Supreme Court determined that a medical resident was not a health care provider, as that term is defined for purposes of the statutory health care liability insurance requirements, because the medical resident, although a physician, was not licensed. Therefore, in the medical malpractice action against the medical resident, the cap on the amount of noneconomic damages that the plaintiff could recover did not apply, and the fund was not responsible for paying any damages amount that exceeded the limits of health care liability insurance covering the medical resident. In *Phelps*, although this issue was not addressed in the majority opinion and did not appear to be a factor on which the court's decision was based, the medical resident was considered to be an employee of the Medical College of Wisconsin, rather than of the hospital in which he was practicing when the claim arose.

This bill creates a definition for a graduate medical education program, such as the one involved in *Phelps*, and provides that a graduate medical education program may elect to be subject to the statutory health care liability insurance requirements. Thus, if a medical malpractice claim is made against a medical resident who is determined to be an employee of a graduate medical education program that has elected to be subject to the health care liability insurance requirements, the cap on noneconomic damages that may be recovered by the claimant would apply and the fund would be responsible for paying any amount exceeding the limits of health care liability insurance covering the medical resident.

Currently, with certain exceptions, a person may not practice medicine and surgery without a license granted by the Medical Examining Board (board). Among other exceptions, current law does not require a license for the activities of a medical school graduate obtaining the 12 months of postgraduate training (first year medical residency) currently required for admission by the board to take an examination for a license to practice medicine and surgery.

Current law authorizes the board to grant a temporary educational permit (permit) to practice medicine and surgery to a medical school graduate who successfully completes the first year of medical residency. A person who holds a permit is authorized to take postgraduate training in a facility approved by the board, may perform services under the direction of a person licensed to practice medicine and surgery, and is authorized to prescribe drugs other than narcotics. A permit is issued for a period of one year, and may be renewed annually for not more than four years.

This bill deletes the exception to the licensure requirement for first year medical residency. Under the bill, the board may grant a permit to any person who

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is enrolled in a graduate medical education program at a facility approved by the board, including a first year medical resident. The bill provides that a permit is valid for two years and may be renewed once for an additional two years.

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.** 448.03 (2) (c) of the statutes is amended to read:

2 448.03 **(2)** (c) The activities of a medical student, respiratory care student,
3 perfusion student, or physician assistant student required for such student's
4 education and training, ~~or the activities of a medical school graduate required for~~
5 ~~training as required in s. 448.05 (2).~~

6 **SECTION 2.** 448.04 (1) (c) of the statutes is amended to read:

7 448.04 **(1)** (c) *Temporary educational permit to practice medicine and surgery.*
8 Application for a temporary educational permit to practice medicine and surgery
9 may be made to the board by a person who ~~meets the requirements of s. 448.05 (2)~~
10 is enrolled in a graduate medical education program at a facility approved by the
11 board. Such permit may be issued for a period not to exceed ~~one year~~ 2 years and may
12 be renewed ~~annually for not more than 4~~ once for an additional 2 years. Such permit
13 shall entitle the holder to take postgraduate educational training in a facility
14 approved by the board. The holder of such permit may, under the direction of a
15 person licensed to practice medicine and surgery in this state, perform services
16 requisite to the training authorized by this section. Acting under such direction, the
17 holder of such permit shall also have the right to prescribe drugs other than narcotics
18 and to sign any certificates, reports or other papers for the use of public authorities
19 which are required of or permitted to persons licensed to practice medicine and

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1 surgery. The holder of such permit shall confine training and practice to the facility
2 in which the holder is taking the training. The purpose of this paragraph is solely
3 to provide opportunities in this state for the postgraduate education of certain
4 persons having training in medicine and surgery satisfactory to the board, without
5 compliance with the licensure requirements of this subchapter. Nothing in this
6 paragraph changes in any respect the requirements for licensure to practice
7 medicine and surgery in this state. The violation of this paragraph by the holder of
8 such permit shall constitute cause for the revocation of the permit. All holders of
9 such permits shall be subject to such provisions of this subchapter as the board, by
10 rule, determines are appropriate and to any penalties applicable to those with a
11 temporary or regular license to practice medicine and surgery. The board may
12 require an applicant for licensure under this paragraph to appear before a member
13 of the board for an interview and oral examination.

14 **SECTION 3.** 655.001 (7m) of the statutes is created to read:

15 655.001 **(7m)** "Graduate medical education program" means a program
16 approved by the medical examining board that provides postgraduate medical
17 education and training for a person who possesses a diploma from a medical or
18 osteopathic college or who has the equivalent education and experience from a
19 foreign medical school recognized by the Education Commission for Foreign Medical
20 Graduates.

21 **SECTION 4.** 655.002 (2) (c) of the statutes is created to read:

22 655.002 **(2)** (c) A graduate medical education program that operates in this
23 state. For a graduate medical education program that elects to be subject to this
24 chapter under this paragraph, this chapter applies only to claims arising out of

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1 practice that is in this state and that is outside the scope of an exemption under s.

2 655.003 (1) or (3).

3 (END)