

1999 ASSEMBLY BILL 98

February 4, 1999 – Introduced by Representatives WASSERMAN, SYKORA, MUSSER, BERCEAU, GRONEMUS, J. LEHMAN and REYNOLDS. Referred to Committee on Judiciary and Personal Privacy.

1 **AN ACT to amend** 448.015 (4); and **to create** 448.03 (5) (d) of the statutes;
2 **relating to:** providing immunity from civil liability for a physician who
3 prescribes an antibiotic drug for treatment of sexually transmitted disease to
4 a patient for use by another.

Analysis by the Legislative Reference Bureau

Currently, a physician must inform a patient about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments. A physician's prescription orders must specify, among other things, the name and address of the patient. The medical examining board may define a physician's acts or attempted acts, whether committed or omitted, as unprofessional conduct and may warn or reprimand a physician found guilty of unprofessional conduct or limit, suspend or revoke his or her license to practice medicine and surgery. Currently, a "sexually transmitted disease" means syphilis, gonorrhea, chlamydia or other diseases that the department of health and family services defines by rule.

This bill provides immunity from liability for civil damages for a physician who, in good faith, prescribes antibiotic drugs, other than controlled substances, for treatment of a sexually transmitted disease to a patient for use by a person with whom the patient has sexual intercourse. The bill excepts this practice from the definition of "unprofessional conduct". The bill also makes the practice inapplicable to requirements concerning informing a patient of all alternate medical modes of treatment and specifying the name and address of a patient on a prescription order.

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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.** 448.015 (4) of the statutes, as affected by 1997 Wisconsin Act 67,
2 is amended to read:

3 448.015 (4) “Unprofessional conduct” means those acts or attempted acts of
4 commission or omission defined as unprofessional conduct by the board under the
5 authority delegated to the board by s. 15.08 (5) (b) and any act by a physician or
6 physician assistant in violation of ch. 450 or 961. “Unprofessional conduct” does not
7 include the prescribing of an antibiotic drug as described in s. 448.03 (5) (d).

8 **SECTION 2.** 448.03 (5) (d) of the statutes is created to read:

9 448.03 (5) (d) 1. In this paragraph:

10 a. “Antibiotic drug” means a drug approved by the federal food and drug
11 administration for human use that has the capacity to inhibit or destroy
12 microorganisms in dilute solution and that is composed wholly or partially of any
13 kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin or
14 other drug intended for human use that contains a chemical substance produced by
15 a microorganism or that contains a chemically synthesized equivalent of the
16 substance; or any derivative of the drug.

17 b. “Sexual intercourse” means the genital contact by one person with the
18 genitalia of another or cunnilingus, fellatio or anal intercourse between persons.

19 2. Notwithstanding the requirements of s. 448.30 and the requirement to
20 provide the name and address of the patient in s. 450.11 (1), a physician who in good
21 faith prescribes an antibiotic drug for treatment of a sexually transmitted disease to

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1 a patient for use by a person with whom the patient has sexual intercourse is immune
2 from liability for any damage that results from any act or omission in prescribing the
3 antibiotic drug. In any administrative or court proceeding, the good faith of a
4 physician who prescribes such an antibiotic drug shall be presumed. This
5 subdivision does not apply to the prescribing of a substance listed in the schedules
6 in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 or substances added by the controlled
7 substances board acting under s. 961.11 (1).

8 **SECTION 3. Effective date.**

9 (1) This act takes effect on February 1, 1999, or on the day after publication,
10 whichever is later.

11 (END)