Bill

Received: 09/8/98 Received By: kenneda

Wanted: As time permits

Identical to LRB:

For: Sheldon Wasserman (608) 266-7671 By/Representing: Himself

This file may be shown to any legislator: NO Drafter: kenneda

Courts - immunity liablty

May Contact: Alt. Drafters: kunkemd

Subject: Health - miscellaneous Extra Copies: RPN, JEO, TAY

Topic:

Provide civil immunity for physicians who, in good faith, write prescriptions for use by patient's partners for sexually transmitted disease

Instructions:

See Attached; same as 97-5295

Drafting History:								
Vers.	<u>Drafted</u>	Reviewed	<u>Typed</u>	Proofed	Submitted	Jacketed	Required	
/?	kenneda 09/8/98	jgeller 09/9/98					S&L	
/P1	kenneda 10/2/98	gilfokm 10/2/98	lpaasch 09/10/98		lrb_docadmin 09/10/98		S&L	
/1			martykr 10/5/98		lrb_docadmin 10/5/98		S&L	
/2	kenneda 10/28/98	ptellez 10/28/98	hhagen 10/29/98		lrb_docadmin 10/29/98		S&L	
/3	kenneda 01/6/99	gilfokm 01/6/99	ismith 01/7/99		lrb_docadmin 01/7/99	lrb_docadmi 02/1/99	n	

LRB-0031

2/1/99 1:41:09 PM Page 2

<u>Vers.</u> <u>Drafted</u> <u>Reviewed</u> <u>Typist</u> <u>Proofed</u> <u>Submitted</u> <u>Jacketed</u> <u>Required</u>

FE Sent For:

<**END**>

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Courts - immunity liablty

gilfokm

01/6/99

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kenneda 01/6/99

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/P1	kenneda 10/2/98	gilfokm 10/2/98	lpaasch 09/10/98		lrb_docadmin 09/10/98		S&L
/1			martykr 10/5/98		lrb_docadmin 10/5/98		S&L
/2	kenneda 10/28/98	ptellez 10/28/98	hhagen 10/29/98		lrb_docadmin 10/29/98		S&L

lrb_docadmin

01/7/99

ismith

01/7/99

LRB-0031

1/7/99 10:27:56 AM Page 2

<u>Vers.</u> <u>Drafted</u> <u>Reviewed</u> <u>Typist</u> <u>Proofed</u> <u>Submitted</u> <u>Jacketed</u> <u>Required</u>

FE Sent For:

<**END>**

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/1			martykr 10/5/98		lrb_docadmin 10/5/98		S&L
/2	kenneda 10/28/98	ptellez 10/28/98	hhagen 10/29/98	IS/HH	lrb_docadmin 10/29/98		
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/P1	kenneda 10/2/98	gilfokm 10/2/98	lpaasch 09/10/98		lrb_docadmin 09/10/98		S&L	
/1			martykr 10/5/98	#/km10/29	lrb_docadmin 10/5/98			
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Instructions:

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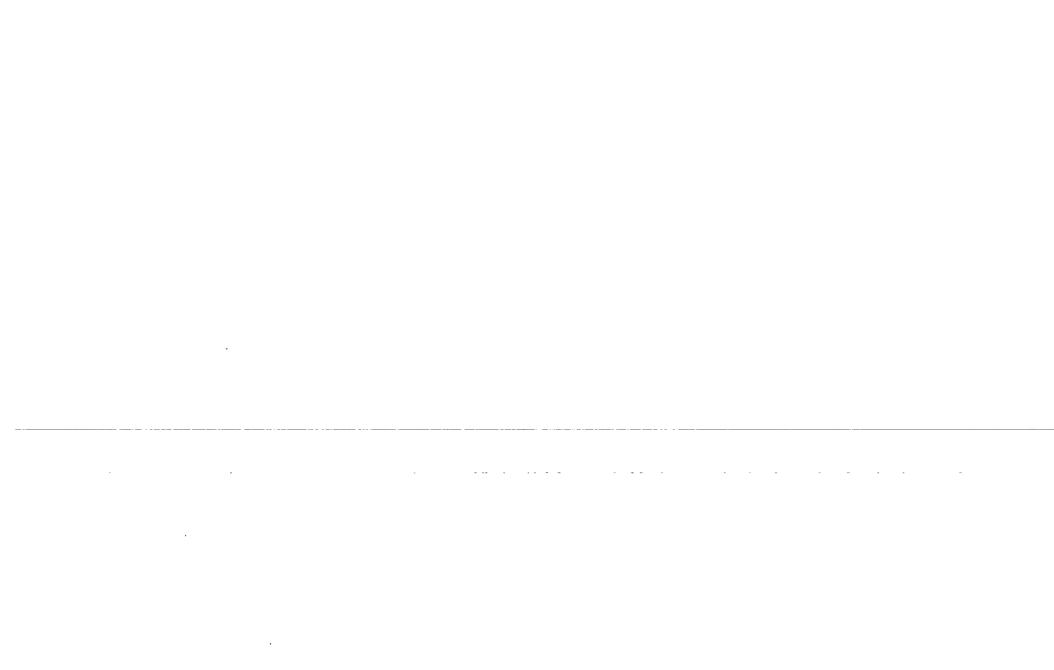
Drafting History:

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 kenneda 09/8/98
 jgeller 09/9/98
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FE Sent For:

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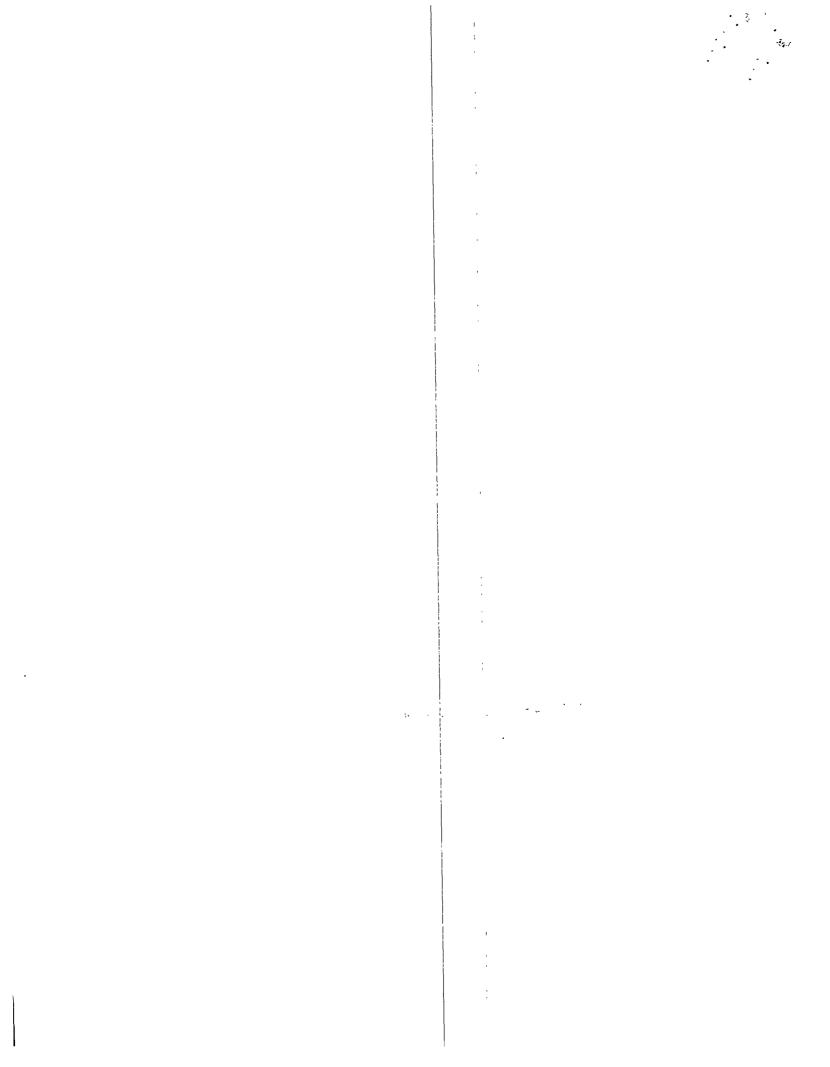
Drafting History:

<u>Vers.</u> <u>Drafted</u> <u>Reviewed</u> <u>Typed</u> <u>Proofed</u> (<u>Submitted</u>) <u>Jacketed</u> <u>Required</u>

PI-9-9-98UG 9/10 9/10LR

FE Sent For: <END>

Courts - immunity liablty



From Sheldon Wasserman

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7/24/98

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Provide civil immunity to physicians who write prescriptions to partners of their patients, if acting in good faith or to patients for use by pattner only for sexually transmitted diseases

May need to except controlled substances provisions that require physician to prescribe for patient

check to see whether I are creminal.

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2 4480! (11) Def of "unprofess conduct" - conduct defined by bd or act in well of the 450 or 961 prannay controlled such
conduct defined by bd or act in
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× 448.12 Practicul W10 a license
448.30 Juso on alternate modes of treatment - need to
450.11 (1) Dispensing - Requies name of pt. D-N; planmacist most Know?
961.01 (21) "hetimate user"
Sexually transmitted disease
D-N: AIDS wu't now, but it is
de dand to be by rule and, this ed authorize do
to dispense préscribe
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Juliantino dei see del D
(Schodule II) (Schedule III). Jutisseting dej see dej of "dispense" 961.01(7)
450.18 Pavalties - misdeme anous
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X D-N may not be considered part of "gractice of medicine"

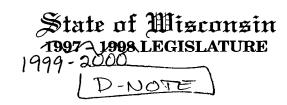


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0031/P LRB-5298/PT DAK&MDK...:_N:....

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT ...; relating to: providing immunity from civil liability for a physician who prescribes a drug for treatment of sexually transmitted disease to 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 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:

SECTION 1. 448.015 (4) of the statutes, as affected by 1997 Wisconsin Acts 67

2 // India, is amended to read:

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

NOTE: NOTE: Sub. (11) is shown as affected eff. 2-1-99 by-two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language is inserted to correct grammar. Correction legislation is pending. Prior to 2-1-99 it reads: NOTE:

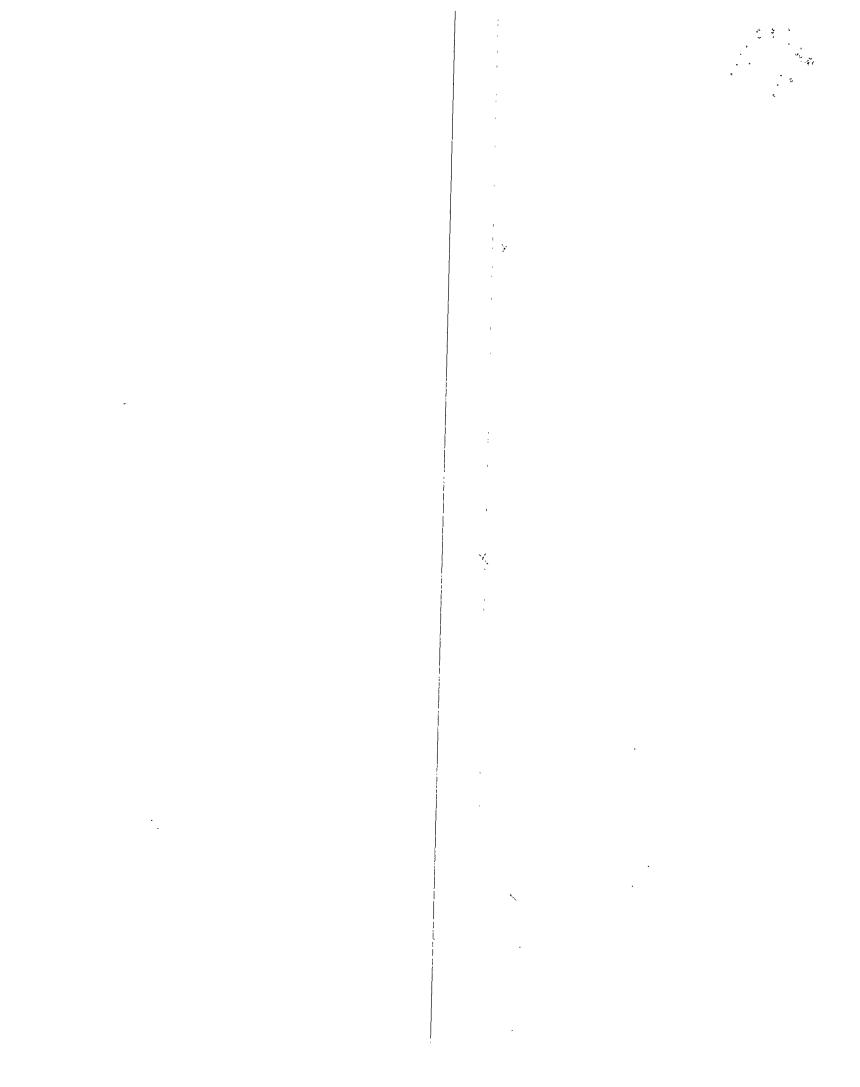
(4) "Unprofessional conduct" means those acts or attempted acts of commission of omission defined as unprofessional conduct by the board under the authority delegated to the board by s. 15.08 (5) (b) and any act by a physician in violation of ch. 450 or 961.

History: 1997 a. 175 ss. 16, 23, 24, 25, 27; s. 13.93 (2) (c).

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

448.03 (5) (d) Notwithstanding the requirements of s. 448.30 and the requirement to provide the name and address of the patient in s. 450.11 (1), a physician who in good faith prescribes a drug for treatment of a sexually transmitted disease to a patient for use by a person with whom the patient has sexual intercourse is immune from liability for any damage that results from any act or omission in prescribing the drug. In any administrative or court proceeding, the good faith of a physician who prescribes such a drug shall be presumed. This paragraph does not apply to the prescribing of a substance listed in the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 or substances added by the controlled substances board acting under s. 961.11 (1).

SECTION 3. Effective date.



1 (1) This act takes effect on February 1, 1999, or on the day after publication, 2 whichever is later.

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DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

0031 | Pldn LRB-5295/Pldn DAK&MDK...:4:...

To Representative Wasserman:

I made several arbitrary decisions in drafting this bill, in order to provide you with proposed legislation that is congruent with other statutes. In particular, note the following:

- 1. I notwithstood s. 448.30, stats., which requires that a physician inform a patient about the availability of all alternate, viable modes of treatment and about the benefits and risks of these treatments. Even though s. 448.30 (7), stats., provides an exception to the requirement for information in cases where the patient is incapable of consenting, I believe that exception would be inadequate to serve the physician who prescribes a drug to a patient for use by another. One of the difficulties that is posed by the draft is, of course, that it is unclear who is the patient—the nominal patient or the person for whose use the drug is intended. For this reason, I also notwithstood s. 450.11 (1), stats., which requires that prescription orders specify the name and address of the patient.
- 2. It seems clear that, under the draft, the physician would not be making a physical examination of the person for whom the drug is intended, obtaining a health history, etc. As ch. 448, stats., is structured, "unprofessional conduct" for a physician is defined as such by the medical examining board, by rule, by statutes specifying unprofessional conduct and, apparently, by case—by—case decisions by the medical examining board. In the Wisconsin Administrative Code, "unprofessional conduct" is defined in the medical examining board's rules to include Med 10.02 (2) (g) (Engaging or attempting to engage in the unlawful practice of medicine and surgery or treating the sick.) and (2) (m) (Knowingly making any false statement, written or oral, in practicing under any license, with fraudulent intent . . .). To avoid charges of unprofessional conduct for the practice proposed in this draft, therefore, I redefined "unprofessional conduct" in s. 448.01 (11), stats., to exclude the practice.
- 3. In creating s. 448.03 (5) to provide civil immunity for physicians who prescribe patients drugs for sexually transmitted diseases for use by another, I excluded the prescribing of drugs that are controlled substances, as regulated by the controlled substances board under ch. 961, stats. If you wish to include these drugs in the prescriptive authority of a physician in this specify instance, please let me know and I will work with Jefren Olsen, the criminal law drafter, to fashion some sort of exception; there may, however, be federal law barriers in this area.

4. Note that the bill has a delayed effective date of February 1, 1999. This is because one of the statutes affected by the bill, s. 448.015 (4), was treated by 1997 Act 67 with this delayed effective date.

Please let me know if I may further assist you with this draft.

Debora A. Kennedy Assistant Chief Counsel 266–0137

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DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

LRB-0031/P1dn DAK&MDK:jlg:lp

September 10, 1998

To Representative Wasserman:

I made several arbitrary decisions in drafting this bill, in order to provide you with proposed legislation that is congruent with other statutes. In particular, note the following:

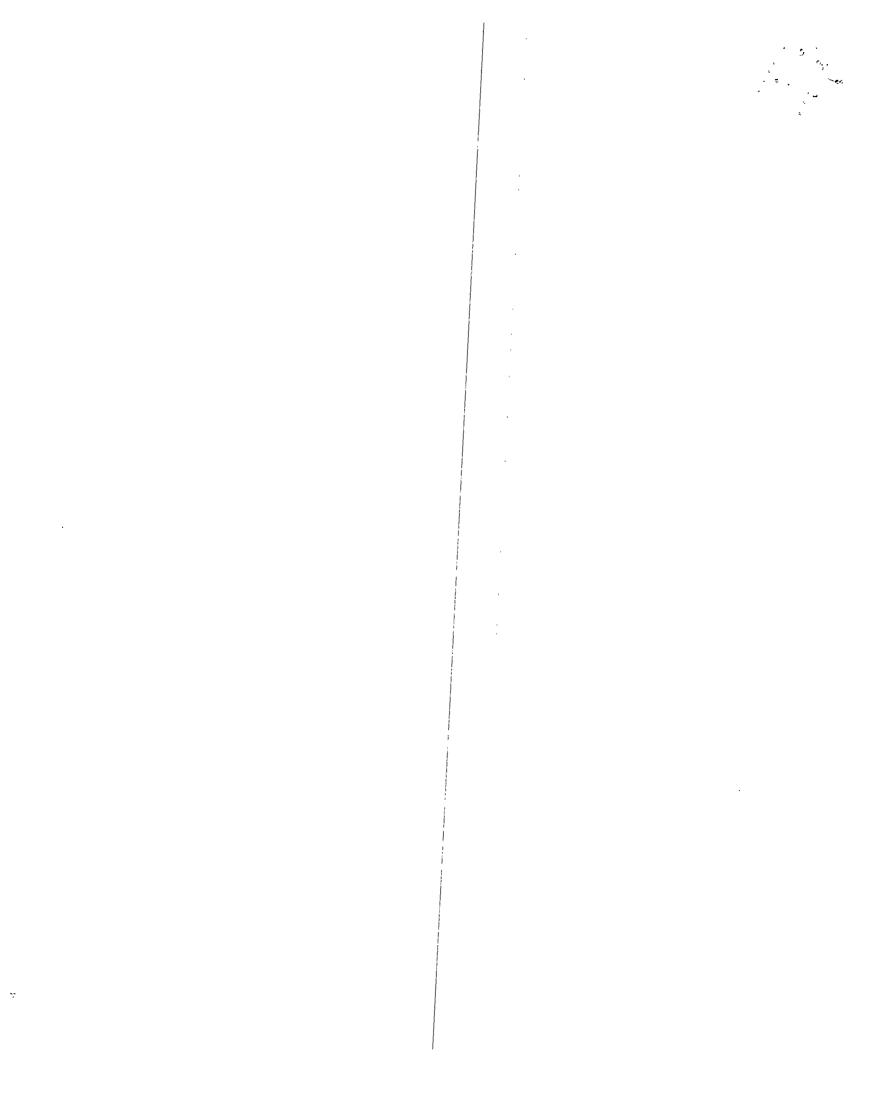
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- 2. It seems clear that, under the draft, the physician would not be making a physical examination of the person for whom the drug is intended, obtaining a health history, etc. As ch. 448, stats., is structured, "unprofessional conduct" for a physician is defined as such by the medical examining board, by rule, by statutes specifying unprofessional conduct and, apparently, by case—by—case decisions by the medical examining board. In the Wisconsin Administrative Code, "unprofessional conduct" is defined in the medical examining board's rules to include Med 10.02 (2) (g) (Engaging or attempting to engage in the unlawful practice of medicine and surgery or treating the sick.) and (2) (m) (Knowingly making any false statement, written or oral, in practicing under any license, with fraudulent intent . . .). To avoid charges of unprofessional conduct for the practice proposed in this draft, therefore, I redefined "unprofessional conduct" in s. 448.01 (11), stats., to exclude the practice.
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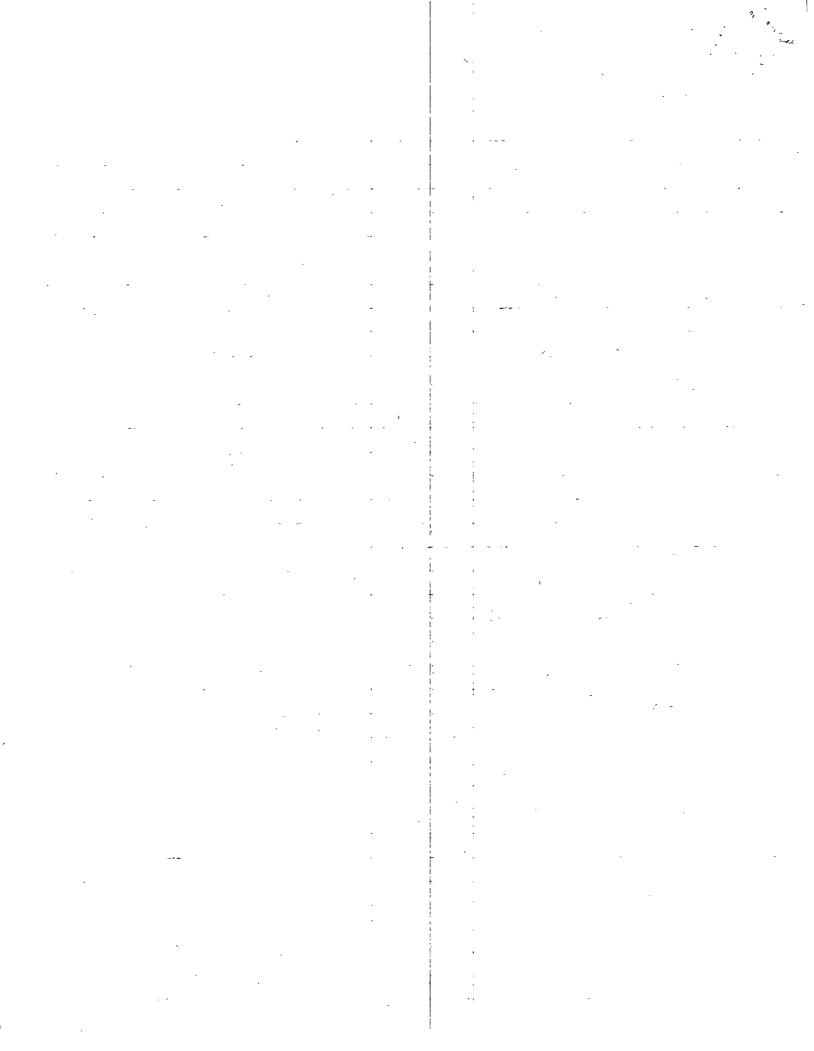
Please let me know if I may further assist you with this draft.

Debora A. Kennedy Assistant Chief Counsel 266–0137



10/1/98: Jelephone conversation with Rep. Wasserman Redraft 99 LRB-0031/PI lese "antibiotic", nather Hran" drug" in 5.448.03 (5)(d) — define "antibiotic" using med dictionary

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State of Misconsin 1999 - 2000 LEGISLATURE

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LRB-0031/EE DAK&MDK:jlg/:lp

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION



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

prescribes during for treatment of sexually transmitted disease to a patient for

use by another.

Analysis by the Legislative Reference Bureau

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

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Section 2. 448.03 (5) (d) of the statutes is created to read:

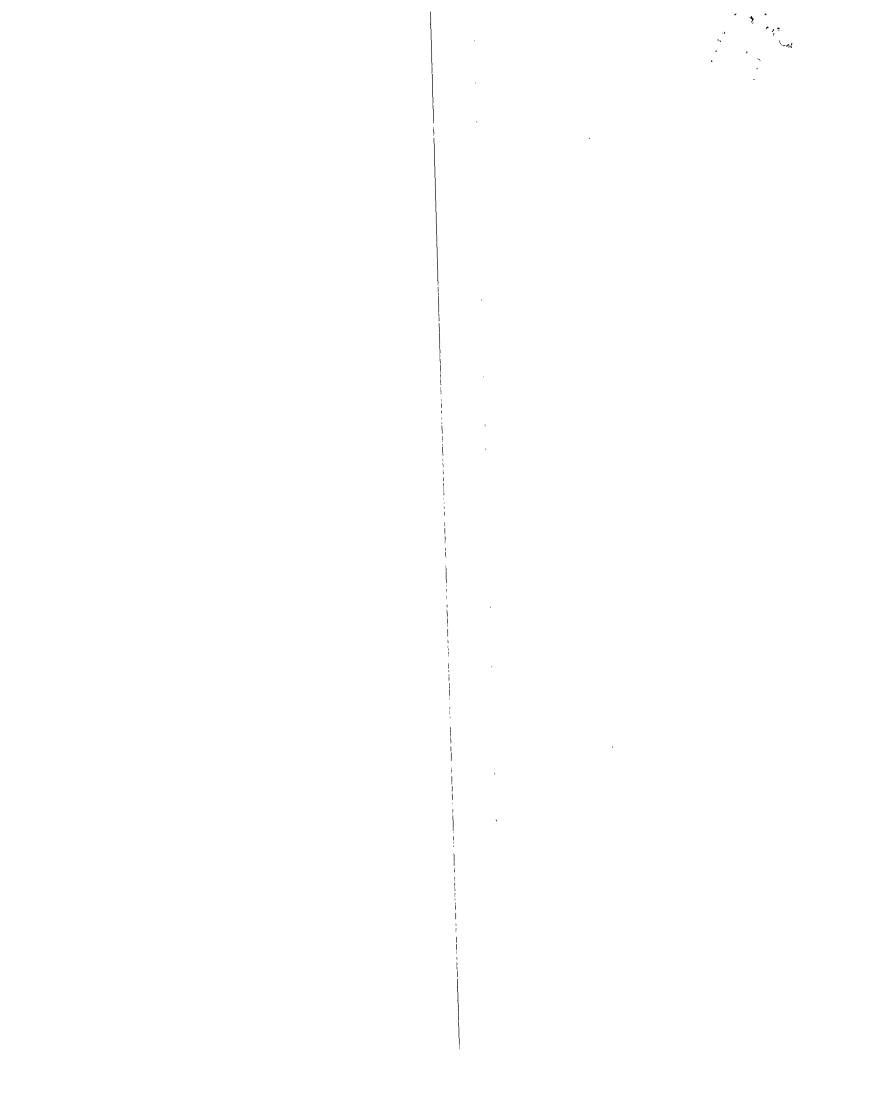
WSERT 2-9

448.03 (5) (d) Notwithstanding the requirements of s. 448.30 and the requirement to provide the name and address of the patient in s. 450.11 (1), a physician who in good faith prescribes a drug for treatment of a sexually transmitted disease to a patient for use by a person with whom the patient has sexual intercourse is immune from liability for any damage that results from any act or omission in prescribing the drug. In any administrative or court proceeding, the good faith of a physician who prescribes such a drug shall be presumed. This paragraph does not apply to the prescribing of a substance listed in the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 or substances added by the controlled substances board acting under s. 961.11 (1).

Section 3. Effective date.

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- 1 (1) This act takes effect on February 1, 1999, or on the day after publication, 2 whichever is later.
- 3 (END)



No#) 1. In this parograph,

a semisjothetic substance derived from a microorganism and able in dilute solutions to inhibit or kiel another microorganism.

2.



10/9/98 Phone message from Rep Wassern	nau:
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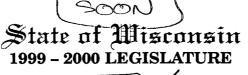


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D-NOTE V

LRB-0031/4/2-DAK&MDK:jlg&kmg

1999 BILL

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

Analysis by the Legislative Reference Bureau

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INSERT 2-11

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

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

448.03 (5) (d) 1. In this paragraph, "antibiotic" means a substance produced by or a semisynthetic substance derived from a microorganism and able in dilute solutions to inhibit or kill another microorganism.

2. Notwithstanding the requirements of s. 448.30 and the requirement to provide the name and address of the patient in s. 450.11 (1), a physician who in good faith prescribes a drug that is an antibiotic for treatment of a sexually transmitted disease to a patient for use by a person with whom the patient has sexual intercourse is immune from liability for any damage that results from any act or omission in prescribing the drug. In any administrative or court proceeding, the good faith of a physician who prescribes such a drug shall be presumed. This subdivision does not apply to the prescribing of a substance listed in the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 or substances added by the controlled substances board acting under s. 961.11 (1).

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1	SECTION 3.	Effective	date.

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

4 (END)

D-NOTE

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A Comment

INSEU 2-11

STATE OF WISCONSIN – LEGISLATIVE REFERENCE BUREAU – LEGAL SECTION (608–266–3561)

b. "Sexual intercourse" means the genital contact
by one person with the genetalia of another or
cumilingus, fellatio or anal intercourse between
persons.
persons.
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STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU - LEGAL SECTION DAKY-MDK: KShi...

To Representative Wasserman:
I adopted the definition of "sexual intercourse"
from that of s. 948.01 (6), state. It appears that the
Statutes do not refer to genital-oral or genital-rectal
contact as such, but instead use the terms
"cunnilingus", "fellatio" and "anal intercourse".
Is the definition satisfactory?
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DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

LRB-0031/2dn DAK&MDK:ksh:hmh

Thursday, October 29, 1998

To Representative Wasserman:

I adopted the definition of "sexual intercourse" from that of s. 948.01 (6), stats. It appears that the statutes do not refer to genital—oral or genital—rectal contact as such, but instead use the terms "cunnilingus", "fellatio" and "anal intercourse". Is the definition satisfactory?

Debora A. Kennedy Assistant Chief Counsel 266–0137 ,, **t**



Health Department Bureau of Administration

Seth L. Foldy, MD Commissioner of Health

Frank P. Zeidler Municipal Building, 841 North Broadway, Room 112, Milwaukee, WI 53202-3653

Phone (414) 286-3521 FAX (414) 286-5990

December 21, 1998

Dr. Sheldon Wasserman, State Representative PO Box 8953 Madison, WI-42708

Re: 1999 Bill on physicians and STD treatment liability

Dear Dr. Wasserman,

I have reviewed your proposed bill to amend 448.015 (4) and to create 448.03 (5) (d), at the request of Dr. Seth Foldy. As medical director of the state's largest sexually transmitted disease clinic, as a family physician, and as a public health administrator for the state's largest local public health department, I appreciate the opportunity to comment on it.

in general, i strongly support your proposed statutory language. In my view, the relatively small risks of prescribing antibiotics for sex partners of persons with sexually transmitted diseases (STDs) are outweighed by the large public health benefit that accrues when these partners are treated. Current statutory language places a barrier to treatment for partners; this barrier is givercome in your proposed bill.

I have one concern regarding the specific wording in sub a) of the proposed 448.03 (5) (d) 1 in which "Antibiotic" is defined as "a substance produced by or a semisynthetic substance derived from a microorganism and able in dilute solutions to inhibit or kill another microorganism." I'm concerned that such a definition is too restrictive. I'd be happier with a definition that allowed for completely synthetic antibiotics as well as antibiotics not derived from a microorganism. I also worry that including concepts such as "dilute" and "solutions" may leave room for legal hair-splitting. As an alternative, I propose the following language: "Antibiotic means a medication as proved by the US Food and Drug Administration for the purpose of killing or inhibiting disease-causing microorganisms."

Please contact me if I can be of any further assistance to you. Thank you for your support of public health!

Sincerely.

Geoffrey R. Swain, MD

Assistant Professor, Dept. of Family and Community Medicine, Medical College of Wisconsin Associate Medical Director, City of Milwaukee Health Department

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1999 BILL

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

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:

SECTION 1. 448.015 (4) of the statutes, as affected by 1997 Wisconsin Act 67, is amended to read:

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

Section 2. 448.03 (5) (d) of the statutes is created to read:

autibiotic

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

a. "Antibiotic" means a substance produced by or a semisynthetic substance derived from a microorganism and able in dilute solutions to inhibit or kill another microorganism.

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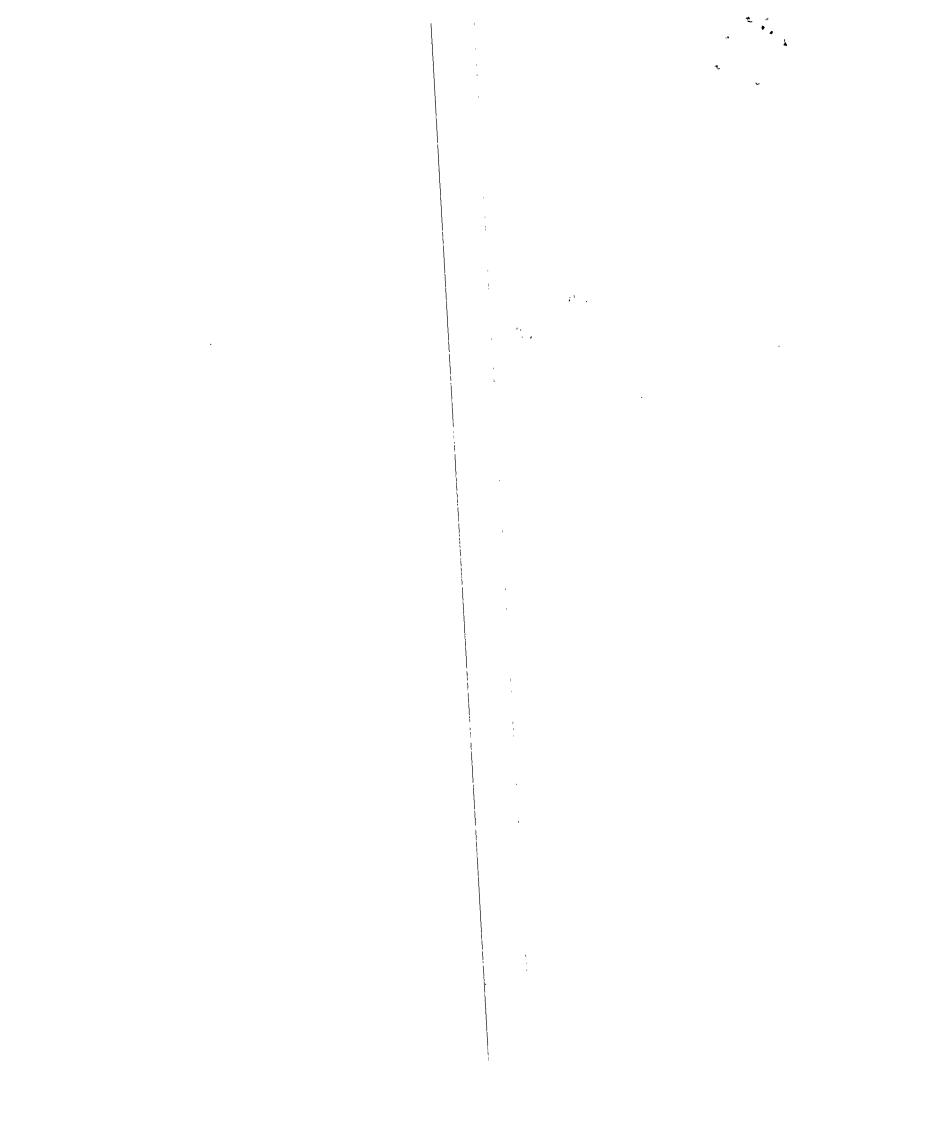
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b. "Sexual intercourse" means the genital contact by one person with the genitalia of another or cunnilingus, fellatio or anal intercourse between persons.

2. Notwithstanding the requirements of s. 448.30 and the requirement to provide the name and address of the patient in s. 450.11 (1), a physician who in good faith prescribes a drug that is an antibiotic for treatment of a sexually transmitted disease to a patient for use by a person with whom the patient has sexual intercourse is immune from liability for any damage that results from any act or omission in prescribing the drug. In any administrative or court proceeding, the good faith of a physician who prescribes such a drug shall be presumed. This subdivision does not

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apply to the prescribing of a substance listed in the schedules in ss. 961.14, 961.16
961.18, 961.20 and 961.22 or substances added by the controlled substances board
acting under s. 961.11 (1).
Section 3. Effective date.
(1) This act takes effect on February 1 1999 or on the day after nightication

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

7 (END)

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LEGISLATIVE REFERENCE BUREAU

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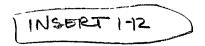
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a. "Antibiotic drug" means a drug approved by the federal food and drug administration for human use that has the capacity to inhibit or destroy microorganisms in dilute solution and that is composed wholly or partially of any kind of penicillin, streptomycin,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

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LEGISLATIVE REFERENCE BUREAU **Legal Section** Telephone: 266-3561 5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 1/7/99 To: Representative Wasserman

Relating to LRB drafting number: LRB-0031

<u>Topic</u>

Provide civil immunity for physicians who, in good faith, write prescriptions for use by patient's partners for sexually transmitted disease
Subject(s) Health - miscellaneous, Courts - immunity liablty 1. JACKET the draft for introduction (check only one). Only the requester under whose name the
1. JACKET the draft for introduction (h) Wellemsen
in the Senate or the Assembly (check only one). Only the requester under whose name the
drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please
allow one day for the preparation of the required copies.
2. REDRAFT. See the changes indicated or attached
A revised draft will be submitted for your approval with changes incorporated.
3. Obtain FISCAL ESTIMATE NOW, prior to introduction
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or
increases or decreases existing appropriations or state or general local government fiscal liability or
revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to
introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon
introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to
introduction retains your flexibility for possible redrafting of the proposal.
If you have any questions regarding the above procedures, please call 266-3561. If you have any questions

relating to the attached draft, please feel free to call me.

Debora A. Kennedy, Managing Attorney Telephone: (608) 266-0137