

**1999 DRAFTING REQUEST**

**Bill**

Received: 10/08/1999

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Don Dyke**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Occupational Reg. - misc**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Public information regarding disciplinary action against physicians

**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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	kunkemd 11/18/1999	kgeller 11/18/1999		_____			
/1			mclark 11/18/1999	_____	lrb_docadmin 11/18/1999	lrb_docadminState 01/05/2000	
				_____	lrb_docadmin 01/04/2000		
				_____	lrb_docadmin 01/04/2000		

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FE Sent For: **01/05/2000.**



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11/18 jlg  
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/?	kunkemd	1/PI 11/17 jg	LC	_____	_____	_____	_____
			CONVER	_____	_____	_____	_____
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FE Sent For:

1       **AN ACT** to amend 153.45 (5) and 153.75 (1) (b); and to create 440.03 (9) (c) and  
 2       448.15 of the statutes; relating to: making available to the public information on the  
 3       education, practice and disciplinary history of physicians and requiring rules of the  
 4       department of health and family services to include procedures affording health care  
 5       providers opportunity to correct health care information and granting rule-making  
 6       authority.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft is recommended by the joint legislative council's special committee on discipline of health care professionals. The draft: (1) directs the medical examining board (MEB) to make available for dissemination to the public, in a format established by the board, specified information concerning a physician's education, practice, malpractice history, criminal history and disciplinary history; and (2) requires administrative rules of the department of health and family services (DHFS) to include procedures affording health care providers opportunity to correct health care information collected under ch. 153, stats.

The provisions of this draft relating to information on individual physicians are based on a Massachusetts law that directs the Massachusetts board of registration in medicine (Massachusetts's counterpart to the MEB) to collect certain information to create individual profiles on physicians in a format created by the board for dissemination to the public. [Annotated Laws of Massachusetts, General Laws, ch. 112, SEC. 5 (1998 Cumulative Supplement).] That directive resulted in an initiative known as "Massachusetts physician profiles", which the special committee reviewed in developing this draft. Under that initiative, information on over 27,000 individual physicians licensed to practice medicine in Massachusetts is available to the public from the Massachusetts board of registration in medicine home page.

Much of the information on physicians required by this draft can presently be obtained from public and private sources. The special committee concluded that it is desirable to have the information available at one source for the convenience and utility it affords the

public. Furthermore, because the department of regulation and licensing (DRL) intends to provide information on its website on state disciplinary actions against physicians (and other credential holders), it is fair to include more comprehensive information in order to balance the information provided by the state. The information required under this draft should enhance the public's ability to choose physicians and the public's confidence in physicians.

In general terms, this draft:

1. As noted above, requires the MEB to make available for dissemination to the public, in a format established by the board, specified information regarding the education, practice, medical malpractice history, disciplinary history and criminal history of physicians licensed in this state.
2. Requires that the information made available to the public be reported in nontechnical language that is capable of being understood by the general public.
3. Requires information relating to medical malpractice claims to be accompanied by explanatory information that gives the reported information context.
4. Requires physicians to provide any information requested by the board that the board determines is necessary to comply with the requirements of the draft. Physicians are to be provided a reasonable time to correct factual inaccuracies that appear in the information before the information is released to the public.
5. Provides that information made available for dissemination to the public is not an exception to the hearsay rule under s. 908.03 (8), stats., and is not self-authenticating under s. 909.02, stats.
6. Requires the MEB by rule to determine whether and the extent to which the provisions of the draft apply to a physician who holds a temporary license to practice medicine and surgery.

The costs incurred by the DRL under the draft are to be funded by a surcharge on the license renewal fee paid biennially by physicians licensed in this state.

1           **SECTION 1. 153.45 (5) of the statutes is amended to read:**

2           **153.45 (5) The department may not release any health care information that is subject**  
3 **to rules promulgated under s. 153.75 (1) (b) until the verification, comment and, review and**  
4 **correction opportunity procedures required under those rules have been complied with.**



1 Nothing in this subsection prohibits release of health care provider-specific information to the  
2 health care provider to whom the information relates.

NOTE: Reflects the amendment of s. 153.75 (1) (b), stats., by SECTION 2  
of this draft.

3 SECTION 2. 153.75 (1) (b) of the statutes is amended to read:

4 153.75 (1) (b) Establishing procedures under which health care providers are permitted  
5 to review, verify and comment on and have opportunity to correct information and include the  
6 comments with the information.

NOTE: Currently, the DHFS is directed to promulgate administrative rules, with the approval of the board on health care information to, among other things, establish procedures under which health care providers are permitted to review, verify and comment on health care information collected under ch. 153, stats. [s. 153.75 (1) (b), stats.] Under s. 153.45 (5), stats., DHFS may not release any health care information that is subject to those rules until there is compliance with the verification, comment and review procedures.

The amendment of s. 153.75 (1) (b), stats., by this SECTION expressly requires the rules to include procedures affording health care providers opportunity to correct health care information.

7 SECTION 3. 440.03 (9) (c) of the statutes is created to read:

8 440.03 (9) (c) A determination of the surcharge to the renewal fee under s. 440.08 (2)  
9 (a) 58. necessary to fund the costs incurred by the department under s. 448.15. The surcharge  
10 shall be included in the recommendation under par. (b) for the change to the renewal fee  
11 specified under s. 440.08 (2) (a) 58.

NOTE: Directs the DRL to determine the surcharge on the physicians biennial license renewal fee that is necessary to fund the costs incurred by the department in providing information to the public about individual physicians, as required under s. 448.15, stats., created by this draft. The DRL's surcharge determination is included in the department's biennial recommendation for changes in license renewal fees to cover costs funded by the fees.

12 SECTION 4. 448.15 of the statutes is created to read:

1           **448.15 Information on physician education, practice and disciplinary history. (1)**  
2   **INFORMATION AVAILABLE TO PUBLIC.** The board shall make available for dissemination to the  
3   public, in a format established by the board, all of the following information concerning a  
4   physician who is licensed to practice medicine and surgery in this state:

- 5           (a) Names of medical schools attended and dates of graduation.
- 6           (b) Graduate medical education.
- 7           (c) Board eligibility or board certification and when eligible to become board certified.
- 8           (d) Number of years in practice or year first admitted to practice.
- 9           (e) Location of primary practice setting.
- 10          (f) Identification of any translating services that may be available at the primary practice  
11   location.
- 12          (g) Names of hospitals where the physician has privileges.
- 13          (h) Indication whether the physician participates in the medical assistance program and  
14   in the medicare program.
- 15          (i) Education appointments and indication whether the licensee has had a responsibility  
16   for graduate medical education within the 10 years preceding the most recent license  
17   application.
- 18          (j) A description of any felony conviction within the preceding 10 years.
- 19          (k) A description of any final board disciplinary action taken within the preceding 10  
20   years.
- 21          (L) A description of any final disciplinary action taken by a licensing board of another  
22   jurisdiction reported to the board within the preceding 10 years.
- 23          (m) A description of medical assistance decertification or suspension within the  
24   preceding 10 years that is required to be reported to the board under s. 49.45 (2) (a) 12r.

1           (n) A description of any loss or reduction of hospital staff privileges or resignation from  
2 hospital staff within the preceding 10 years that is required to be reported to the board under  
3 s. 50.36 (3) (b) and (c).

4           (o) Subject to sub. (4) (e), a description of any disciplinary action taken by a health  
5 maintenance organization, limited service health organization or preferred provider plan  
6 within the preceding 10 years that is required to be reported to the board under s. 609.17.

7           (p) Subject to sub. (4) (e), a description of any action taken by an insurer against a  
8 physician within the preceding 10 years that is required to be reported to the board under s.  
9 632.715.

10           (q) A description of any exclusion from participation in medicare and federally  
11 approved or funded state health care programs within the preceding 10 years that is required  
12 to be reported to the board under 42 CFR 1001.2005.

13           (r) A description of any medical malpractice claims paid by the patients compensation  
14 fund or other insurer within the preceding 10 years that is required to be reported to the board  
15 under s. 655.26.

16           (s) A description of any amount of settlement or award to a claimant in a medical  
17 malpractice action within the preceding 10 years that is required to be reported to the board  
18 under s. 655.45.

19           (t) Any other information required by the board by rule.

20           (2) AGENCY COOPERATION AND COORDINATION. The department and the department of  
21 health and family services shall cooperate with the board in implementing this section. The  
22 board, department and department of health and family services shall avoid to the extent  
23 practicable duplication in the collection and dissemination of the information required under

1 this section and shall coordinate the sharing of information and resources in a manner that  
2 permits the board to carry out its duties under this section efficiently and effectively.

3 (3) INFORMATION AVAILABLE FROM OTHER SOURCES; LINKS TO WEBSITES. The board shall  
4 determine whether any of the information that is required under this section to be made  
5 available to the public is accessible at no cost to the public through a website developed by  
6 another source. If the board makes that determination, it shall include on any website it  
7 develops to disseminate information under this section, in place of providing the information  
8 through the board's own web page, a link to the other website if all of the following apply:

9 (a) The information on an individual physician licensed in this state is accessible on the  
10 other website through reasonable effort and, if links to more than one website are utilized to  
11 provide access to different information at each website, the cumulative effort to obtain  
12 information on a physician licensed in this state is reasonable.

13 (b) The information available through the other website otherwise complies with this  
14 section and in the judgment of the board meets reasonable standards of accuracy.

15 (c) Utilization of the link to the other website, or the cumulative effect of utilizing more  
16 than one link to other websites, in place of providing the information through the board's own  
17 web page, will result in cost savings to the department.

18 (4) REQUIREMENTS RELATED TO REPORTED INFORMATION. (a) The information reported  
19 under this section shall be reported in nontechnical language that is capable of being  
20 understood by the general public.

21 (b) Dispositions of paid medical malpractice claims shall be reported in a minimum of  
22 3 graduated categories, indicating the level of significance of the amount of the award or  
23 settlement.

1 (c) Information concerning paid medical malpractice claims shall be given context by  
2 comparing the physician's medical malpractice judgment awards and settlements to the  
3 experience of other physicians in the same specialty.

4 (d) Information concerning medical malpractice settlements shall include the following  
5 statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily  
6 reflect negatively on the professional competence or conduct of the physician. A payment in  
7 settlement of a medical malpractice action or claim should not be construed as creating a  
8 presumption that medical malpractice has occurred."

9 (e) If the board determines that an action that otherwise is required to be described and  
10 made available to the public under sub. (1) (o) or (p) is the result of a business or economic  
11 decision by the person taking the action and does not involve conduct by the physician that  
12 appears to relate to possible unprofessional conduct or negligence in treatment, the board may  
13 omit that action from the information made available to the public.

14 (f) The board may include any other explanations of the information made available to  
15 the public that the board considers desirable.

16 (5) DUTY TO PROVIDE AND OPPORTUNITY TO CORRECT AND DELETE INFORMATION. (a) A  
17 physician shall provide any information requested by the board that the board determines is  
18 necessary to comply with this section.

19 (b) The board shall provide a physician with a copy of his or her information prior to  
20 its initial release and prior to the inclusion of any change in the information. A physician shall  
21 be provided a reasonable time to correct factual inaccuracies that appear in the information  
22 before the information is released to the public. This paragraph does not apply to information  
23 on a physician made available by means of a link to another website under sub. (2m).

1 (c) A physician may decline to provide the information specified in sub. (1) (i). When  
2 the board collects information included in sub. (1), the board shall notify the physician of the  
3 option not to provide that information.

4 (6) INFORMATION NOT EXCEPTION TO HEARSAY RULE NOR SELF-AUTHENTICATING.  
5 Information that is made available by the board under this section is not an exception under  
6 s. 908.03 (8) to the hearsay rule and is not self-authenticating under s. 909.02.

7 (7) PROGRAM FUNDED BY SURCHARGE ON LICENSE RENEWAL FEE. Costs incurred by the  
8 department under this section shall be funded by a surcharge on the fee specified in s. 440.08  
9 (2) (a) 58., as determined under s. 440.03 (9) (c).

10 (8) APPLICATION TO PHYSICIAN HOLDING TEMPORARY LICENSE. The board by rule shall  
11 determine whether and the extent to which this section applies to a physician who holds a  
12 temporary license to practice medicine and surgery.

13 (END)



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-3729/P1  
MDK:mrc

O-NOTE

JLg

by Fri  
11/19

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gen cat

- 1 AN ACT ...; relating to: making available to the public information on the
- 2 education, practice and disciplinary history of physicians ~~and~~ requiring rules
- 3 of the department of health and family services to include procedures affording
- 4 health care providers opportunity to correct health care information and
- 5 granting rule-making authority.

**Analysis by the Legislative Reference Bureau**

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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:**

PREFATORY NOTE: This bill is recommended by the joint legislative council's special committee on discipline of health care professionals. The bill: (1) directs the medical examining board (board) to make available for dissemination to the public, in a format established by the board, specified information concerning a physician's education, practice, malpractice history, criminal history and disciplinary history; and (2) requires administrative rules of the department of health and family services (DHFS) to include procedures affording health care providers opportunity to correct health care information collected under ch. 153, stats.

The provisions of this bill relating to information on individual physicians are based on a Massachusetts law that directs the Massachusetts board of registration in medicine (Massachusetts's counterpart to the board) to collect certain information to create individual profiles on physicians in a format created by the board for dissemination to the public. [Annotated Laws of Massachusetts, General Laws, ch. 112, SEC. 5 (1998 Cumulative Supplement).] That directive resulted in an initiative known as "Massachusetts physician profiles", which the special committee reviewed in developing this bill. Under that initiative, information on over 27,000 individual physicians licensed to practice medicine in Massachusetts is available to the public from the Massachusetts board of registration in medicine home page.

Much of the information on physicians required by this bill can presently be obtained from public and private sources. The special committee concluded that it is desirable to have the information available at one source for the convenience and utility it affords the public. Furthermore, because the department of regulation and licensing (DORL) intends to provide information on its website on state disciplinary actions against physicians (and other credential holders), it is fair to include more comprehensive information in order to balance the information provided by the state. The information required under this bill should enhance the public's ability to choose physicians and the public's confidence in physicians.

In general terms, this bill:

1. As noted above, requires the board to make available for dissemination to the public, in a format established by the board, specified information regarding the education, practice, medical malpractice history, disciplinary history and criminal history of physicians licensed in this state.
2. Requires that the information made available to the public be reported in nontechnical language that is capable of being understood by the general public.
3. Requires information relating to medical malpractice claims to be accompanied by explanatory information that gives the reported information context.
4. Requires physicians to provide any information requested by the board that the board determines is necessary to comply with the requirements of the bill. Physicians are to be provided a reasonable time to correct factual inaccuracies that appear in the information before the information is released to the public.
5. Provides that information made available for dissemination to the public is not an exception to the hearsay rule under s. 908.03 (8), stats., and is not self-authenticating under s. 909.02, stats.

plain - 6. Requires the board by rule to determine whether and the extent to which the provisions of the bill apply to a physician who holds a temporary license to practice medicine and surgery.

The costs incurred by DORL under the bill are to be funded by a surcharge on the license renewal fee paid biennially by physicians licensed in this state.

SECTION 1. 153.45 (5) of the statutes is amended to read:

153.45 (5) The department may not release any health care information that is subject to rules promulgated under s. 153.75 (1) (b) until the verification, comment and, review and correction opportunity procedures required under those rules have

PROOF W/STATS.



1 been complied with. Nothing in this subsection prohibits release of health care  
2 provider-specific information to the health care provider to whom the information  
3 relates.

NOTE: Reflects the amendment of s. 153.75 (1) (b), stats., by SECTION 2 of this bill.

4 **SECTION 2.** 153.75 (1) (b) of the statutes is amended to read:

5 153.75 (1) (b) Establishing procedures under which health care providers are  
6 permitted to review, verify and comment on and have opportunity to correct  
7 information and include the comments with the information.

NOTE: Currently, the DHFS is directed to promulgate administrative rules, with the approval of the board on health care information to, among other things, establish procedures under which health care providers are permitted to review, verify and comment on health care information collected under ch. 153, stats. [s. 153.75 (1) (b), stats.] Under s. 153.45 (5), stats., DHFS may not release any health care information that is subject to those rules until there is compliance with the verification, comment and review procedures.

The amendment of s. 153.75 (1) (b), stats., by this SECTION expressly requires the rules to include procedures affording health care providers opportunity to correct health care information.

8 **SECTION 3.** 440.03 (9) (c) of the statutes is created to read:

9 440.03 (9) (c) A determination of the surcharge to the renewal fee under s.  
10 440.08 (2) (a) 58. necessary to fund the costs incurred by the department under s.  
11 448.15. The surcharge shall be included in the recommendation under par. (b) for  
12 the change to the renewal fee specified under s. 440.08 (2) (a) 58.

NOTE: Directs DORL to determine the surcharge on the physicians biennial license renewal fee that is necessary to fund the costs incurred by the department in providing information to the public about individual physicians, as required under s. 448.15, stats., created by this bill. DORL's surcharge determination is included in the department's biennial recommendation for changes in license renewal fees to cover costs funded by the fees.

13 **SECTION 4.** 448.15 of the statutes is created to read:

14 **448.15 Information on physician education, practice and disciplinary**  
15 **history. (1g) DEFINITIONS.** In this section:

PROOF w/STATS.

1 (a) "Medical assistance program" means the medical assistance program under  
2 subch. IV of ch. 49.✓

3 (b) "Medicare program" means the federal medicare program under 42 USC  
4 1395 to 1395ccc.

5 (1r) INFORMATION AVAILABLE TO PUBLIC.✓ The board shall make available for  
6 dissemination to the public, in a format established by the board, all of the following  
7 information concerning a physician who is licensed to practice medicine and surgery  
8 in this state:

9 (a) Names of medical schools attended and dates of graduation.

10 (b) Graduate medical education.

11 (c) Eligibility status for any professional or specialty board certification, and  
12 certification by any professional or specialty board.

13 (d) Number of years in practice or year first admitted to practice.

14 (e) Location of primary practice setting.

15 (f) Identification of any translating services that may be available at the  
16 primary practice location.

17 (g) Names of hospitals where the physician has staff privileges.

18 (h) Indication whether the physician participates in the medical assistance  
19 program and in the medicare program.

20 (i) Education appointments and indication whether the licensee has had a  
21 responsibility for graduate medical education within the 10 years preceding the most  
22 recent license application.

23 (j) A description of any felony conviction within the preceding 10 years.

24 (k) A description of any final board disciplinary action taken within the  
25 preceding 10 years.

1 (L) A description of any final disciplinary action taken by a licensing board of  
2 another jurisdiction reported to the board within the preceding 10 years.

3 (m) A description of any medical assistance program decertification or  
4 suspension within the preceding 10 years that is required to be reported to the board  
5 under s. 49.45 (2) (a) 12r.

6 (n) A description of any loss or reduction of hospital staff privileges or  
7 resignation from hospital staff within the preceding 10 years that is required to be  
8 reported to the board under s. 50.36 (3) (b) and (c).

9 (o) Subject to sub. (4) (e), a description of any disciplinary action taken by a  
10 health maintenance organization, limited service health organization, preferred  
11 provider plan or managed care plan within the preceding 10 years that is required  
12 to be reported to the board under s. 609.17 or any predecessor statute.

13 (p) Subject to sub. (4) (e), a description of any action taken by an insurer against  
14 a physician within the preceding 10 years that is required to be reported to the board  
15 under s. 632.715.

16 (q) A description of any exclusion from participation in the medicare program  
17 and federally approved or funded state health care programs within the preceding  
18 10 years that is required to be reported to the board under 42 CFR 1001.2005.

19 (r) A description of any medical malpractice claims paid by the patients  
20 compensation fund or other insurer within the preceding 10 years that is required  
21 to be reported to the board under s. 655.26.

22 (s) A description of any amount of settlement or award to a claimant in a  
23 medical malpractice action within the preceding 10 years that is required to be  
24 reported to the board under s. 655.45.

25 (t) Any other information required by the board by rule.

1           (2) AGENCY COOPERATION AND COORDINATION. The department of regulation and  
2           licensing and the department of health and family services shall cooperate with the  
3           board in implementing this section. The board, department of regulation and  
4           licensing and department of health and family services shall avoid to the extent  
5           practicable duplication in the collection and dissemination of the information  
6           required under this section and shall coordinate the sharing of information and  
7           resources in a manner that permits the board to carry out its duties under this section  
8           efficiently and effectively.

9           (3) INFORMATION AVAILABLE FROM OTHER SOURCES; LINKS TO WEBSITES. The board  
10          shall determine whether any of the information that is required under this section  
11          to be made available to the public is accessible at no cost to the public through a  
12          website developed by another source. If the board makes that determination, it shall  
13          include on any website it develops to disseminate information under this section, in  
14          place of providing the information through the board's own web page, a link to the  
15          other website if all of the following apply:

16          (a) The information on an individual physician licensed in this state is  
17          accessible on the other website through reasonable effort and, if links to more than  
18          one website are utilized to provide access to different information at each website,  
19          the cumulative effort to obtain information on a physician licensed in this state is  
20          reasonable.

21          (b) The information available through the other website otherwise complies  
22          with this section and in the judgment of the board meets reasonable standards of  
23          accuracy.

1 (c) Utilization of the link to the other website, or the cumulative effect of  
2 utilizing more than one link to other websites, in place of providing the information  
3 through the board's own web page, will result in cost savings to the department.

4 (4) REQUIREMENTS RELATED TO REPORTED INFORMATION. (a) The information  
5 reported under this section shall be reported in nontechnical language that is  
6 capable of being understood by the general public.

7 (b) Dispositions of paid medical malpractice claims shall be reported in a  
8 minimum of 3<sup>✓</sup> graduated categories, indicating the level of significance of the amount  
9 of the award or settlement.

10 (c) Information concerning paid medical malpractice claims shall be given  
11 context by comparing the physician's medical malpractice judgment awards and  
12 settlements to the experience of other physicians in the same specialty.

13 (d) Information concerning medical malpractice settlements shall include the  
14 following statement: "Settlement of a claim may occur for a variety of reasons <sup>that</sup> ~~which~~  
15 do not necessarily reflect negatively on the professional competence or conduct of the  
16 physician. A payment in settlement of a medical malpractice action or claim should  
17 not be construed as creating a presumption that medical malpractice has occurred."

18 (e) If the board determines that an action that otherwise is required to be  
19 described and made available to the public under sub. (1r) (o) or (p) is the result of  
20 a business or economic decision by the person taking the action and does not involve  
21 conduct by the physician that appears to relate to possible unprofessional conduct  
22 or negligence in treatment, the board may omit that action from the information  
23 made available to the public.

24 (f) The board may include any other explanations of the information made  
25 available to the public that the board considers desirable.

1 (5) DUTY TO PROVIDE AND OPPORTUNITY TO CORRECT AND DELETE INFORMATION. (a)

2 A physician shall provide any information requested by the board that the board  
3 determines is necessary to comply with this section.

4 (b) The board shall provide a physician with a copy of his or her information  
5 prior to its initial release and prior to the inclusion of any change in the information.

6 A physician shall be provided a reasonable time to correct factual inaccuracies that  
7 appear in the information before the information is released to the public. This  
8 paragraph does not apply to information on a physician made available by means of  
9 a link to another website under sub. (3a).

10 (c) A physician may decline to provide the information specified in sub. (1r) (i).

11 When the board collects information included in sub. (1r), the board shall notify the  
12 physician of the option not to provide that information.

13 (6) INFORMATION NOT EXCEPTION TO HEARSAY RULE NOR SELF-AUTHENTICATING.

14 Information that is made available by the board under this section is not an exception  
15 under s. 908.03 (8) to the hearsay rule and is not self-authenticating under s. 909.02.

16 (7) PROGRAM FUNDED BY SURCHARGE ON LICENSE RENEWAL FEE. Costs incurred by  
17 the department under this section shall be funded by a surcharge on the fee specified  
18 in s. 440.08 (2) (a) 58., as determined under s. 440.03 (9) (c).

19 (8) APPLICATION TO PHYSICIAN HOLDING TEMPORARY LICENSE. The board by rule  
20 shall determine whether and the extent to which this section applies to a physician  
21 who holds a temporary license to practice medicine and surgery.

22 (END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3729/P1dn  
MDK::mrc

↑  
JLg

Don Dyke:

Please note the following about this draft:

1. Proposed s. 448.15 (1r) (o) is slightly different than the language in the instructions in order to reflect the amendment of s. 609.17 by 1997 Wisconsin Act 237.
2. Proposed s. 448.15 (1r) (c) is different than the language in the instructions. Is it okay?
3. Proposed s. 448.15 (1r) (g) refers to staff privileges, rather than just privileges. Is this okay?
4. The draft adds definitions of the medical assistance program and the medicare program.
5. In proposed s. 448.15 (1r) (i), I'm not sure what is intended by the reference to the most recent license application. Perhaps this language should be clarified.
6. Should the draft clarify what DORL's duties are with respect to making the information available to the public? Although the draft requires the medical examining board to make the information available, the draft refers to the costs incurred by DORL, rather than by the medical examining board.

I will prepare a version of this draft that may be introduced after you have an opportunity to review the above comments. If you have any questions, please give me a call.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: Mark.Kunkel@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3729/P1dn  
MDK:jlg:km

November 17, 1999

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Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: Mark.Kunkel@legis.state.wi.us



By Friday  
11/19  
noon

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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AN ACT *to amend* 153.45 (5) and 153.75 (1) (b); and *to create* 440.03 (9) (c) and 448.15 of the statutes; **relating to:** making available to the public information on the education, practice and disciplinary history of physicians, requiring rules of the department of health and family services to include procedures affording health care providers opportunity to correct health care information and granting rule-making authority.

***Analysis by the Legislative Reference Bureau***

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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:***

PREFATORY NOTE: This bill is recommended by the joint legislative council's special committee on discipline of health care professionals. The bill: (1) directs the medical examining board (board) to make available for dissemination to the public, in a format established by the board, specified information concerning a physician's education, practice, malpractice history, criminal history and disciplinary history; and (2) requires

administrative rules of the department of health and family services (DHFS) to include procedures affording health care providers opportunity to correct health care information collected under ch. 153, stats.

The provisions of this bill relating to information on individual physicians are based on a Massachusetts law that directs the Massachusetts board of registration in medicine (Massachusetts's counterpart to the board) to collect certain information to create individual profiles on physicians in a format created by the board for dissemination to the public. [Annotated Laws of Massachusetts, General Laws, ch. 112, SEC. 5 (1998 Cumulative Supplement).] That directive resulted in an initiative known as "Massachusetts physician profiles", which the special committee reviewed in developing this bill. Under that initiative, information on over 27,000 individual physicians licensed to practice medicine in Massachusetts is available to the public from the Massachusetts board of registration in medicine home page.

Much of the information on physicians required by this bill can presently be obtained from public and private sources. The special committee concluded that it is desirable to have the information available at one source for the convenience and utility it affords the public. Furthermore, because the department of regulation and licensing (DORL) intends to provide information on its website on state disciplinary actions against physicians (and other credential holders), it is ~~not~~ <sup>to include</sup> more comprehensive information ~~in order to~~ balance the information provided by the state. The information required under this bill should enhance the public's ability to choose physicians and the public's confidence in physicians.

In general terms, this bill:

1. As noted above, requires the board to make available for dissemination to the public, in a format established by the board, specified information regarding the education, practice, medical malpractice history, disciplinary history and criminal history of physicians licensed in this state.
2. Requires that the information made available to the public be reported in nontechnical language that is capable of being understood by the general public.
3. Requires information relating to medical malpractice claims to be accompanied by explanatory information that gives the reported information context.
4. Requires physicians to provide any information requested by the board that the board determines is necessary to comply with the requirements of the bill. Physicians are to be provided a reasonable time to correct factual inaccuracies that appear in the information before the information is released to the public.
5. Provides that information made available for dissemination to the public is not an exception to the hearsay rule under s. 908.03 (8), stats., and is not self-authenticating under s. 909.02, stats.
6. Requires the board by rule to determine whether and the extent to which the provisions of the bill apply to a physician who holds a temporary license to practice medicine and surgery.

The costs incurred by DORL under the bill are to be funded by a surcharge on the license renewal fee paid biennially by physicians licensed in this state.

**SECTION 1.** 153.45 (5) of the statutes is amended to read:

153.45 (5) The department may not release any health care information that is subject to rules promulgated under s. 153.75 (1) (b) until the verification, comment and, review and correction opportunity procedures required under those rules have been complied with. Nothing in this subsection prohibits release of health care

will better ✓

inclusion of ✓

1 provider-specific information to the health care provider to whom the information  
2 relates.

NOTE: Reflects the amendment of s. 153.75 (1) (b), stats., by SECTION 2 of this bill.

3 **SECTION 2.** 153.75 (1) (b) of the statutes is amended to read:

4 153.75 (1) (b) Establishing procedures under which health care providers are  
5 permitted to review, verify and comment on and have opportunity to correct  
6 information and include the comments with the information.

NOTE: Currently, the DHFS is directed to promulgate administrative rules with  
the approval of the board on health care information to, among other things, establish  
procedures under which health care providers are permitted to review, verify and  
comment on health care information collected under ch. 153, stats. [s. 153.75 (1) (b),  
stats.] Under s. 153.45 (5), stats., DHFS may not release any health care information that  
is subject to those rules until there is compliance with the verification, comment and  
review procedures.

The amendment of s. 153.75 (1) (b), stats., by this SECTION expressly requires the  
rules to include procedures affording health care providers opportunity to correct health  
care information.

7 **SECTION 3.** 440.03 (9) (c) of the statutes is created to read:

8 440.03 (9) (c) A determination of the surcharge to the renewal fee under s.  
9 440.08 (2) (a) 58. necessary to fund the costs incurred by the department under s.  
10 448.15. The surcharge shall be included in the recommendation under par. (b) for  
11 the change to the renewal fee specified under s. 440.08 (2) (a) 58.

NOTE: Directs DORL to determine the surcharge on the physicians biennial license  
renewal fee that is necessary to fund the costs incurred by the department in providing  
information to the public about individual physicians, as required under s. 448.15, stats.,  
created by this bill. DORL's surcharge determination is included in the department's  
biennial recommendation for changes in license renewal fees to cover costs funded by the  
fees.

12 **SECTION 4.** 448.15 of the statutes is created to read:

13 **448.15 Information on physician education, practice and disciplinary**  
14 **history. (1g) DEFINITIONS.** In this section:

15 (a) "Medical assistance program" means the medical assistance program under  
16 subch. IV of ch. 49.

1 (b) "Medicare program" means the federal medicare program under 42 USC  
2 1395 to 1395ccc.

3 (1r) INFORMATION AVAILABLE TO PUBLIC. The board shall make available for  
4 dissemination to the public, in a format established by the board, all of the following  
5 information concerning a physician who is licensed to practice medicine and surgery  
6 in this state:

7 (a) Names of medical schools attended and dates of graduation.

8 (b) Graduate medical education.

9 (c) Eligibility status for any professional or specialty board certification, and  
10 certification by any professional or specialty board.

11 (d) Number of years in practice or year first admitted to practice.

12 (e) Location of primary practice setting.

13 (f) Identification of any translating services that may be available at the  
14 primary practice location.

15 (g) Names of hospitals where the physician has staff privileges.

16 (h) Indication whether the physician participates in the medical assistance  
17 program and in the medicare program.

18 (i) Education appointments and indication whether the licensee has had a  
19 responsibility for graduate medical education within the 10 years preceding the most  
20 recent license application.

21 (j) A description of any felony conviction within the preceding 10 years.

22 (k) A description of any final board disciplinary action taken within the  
23 preceding 10 years.

24 (L) A description of any final disciplinary action taken by a licensing board of  
25 another jurisdiction reported to the board within the preceding 10 years.

1 (m) A description of any medical assistance program decertification or  
2 suspension within the preceding 10 years that is required to be reported to the board  
3 under s. 49.45 (2) (a) 12r.

4 (n) A description of any loss or reduction of hospital staff privileges or  
5 resignation from hospital staff within the preceding 10 years that is required to be  
6 reported to the board under s. 50.36 (3) (b) and (c).

7 (o) Subject to sub. (4) (e), a description of any disciplinary action taken by a  
8 ~~health maintenance organization~~ <sup>✓</sup> limited service health organization, preferred  
9 provider plan or managed care plan within the preceding 10 years that is required  
10 to be reported to the board under s. 609.17 <sup>^</sup> or any predecessor statute

11 (p) Subject to sub. (4) (e), a description of any action taken by an insurer against  
12 a physician within the preceding 10 years that is required to be reported to the board  
13 under s. 632.715.

14 (q) A description of any exclusion from participation in the medicare program  
15 and federally approved or funded state health care programs within the preceding  
16 10 years that is required to be reported to the board under 42 CFR 1001.2005.

17 (r) A description of any medical malpractice claims paid by the patients  
18 compensation fund or other insurer within the preceding 10 years that is required  
19 to be reported to the board under s. 655.26.

20 (s) A description of any amount of settlement or award to a claimant in a  
21 medical malpractice action within the preceding 10 years that is required to be  
22 reported to the board under s. 655.45.

23 (t) Any other information required by the board by rule.

24 (2) AGENCY COOPERATION AND COORDINATION. The department of regulation and  
25 licensing and the department of health and family services shall cooperate with the

1 board in implementing this section. The board, department of regulation and  
2 licensing and department of health and family services shall avoid to the extent  
3 practicable duplication in the collection and dissemination of the information  
4 required under this section and shall coordinate the sharing of information and  
5 resources in a manner that permits the board to carry out its duties under this section  
6 efficiently and effectively.

7 (3) INFORMATION AVAILABLE FROM OTHER SOURCES; LINKS TO WEB SITES. The board  
8 shall determine whether any of the information that is required under this section  
9 to be made available to the public is accessible at no cost to the public through a Web  
10 site developed by another source. If the board makes that determination, it shall  
11 include on any Web site it develops to disseminate information under this section,  
12 in place of providing the information through the board's own Web page, a link to the  
13 other Web site if all of the following apply:

14 (a) The information on an individual physician licensed in this state is  
15 accessible on the other Web site through reasonable effort and, if links to more than  
16 one Web site are utilized to provide access to different information at each Web site,  
17 the cumulative effort to obtain information on a physician licensed in this state is  
18 reasonable.

19 (b) The information available through the other Web site otherwise complies  
20 with this section and in the judgment of the board meets reasonable standards of  
21 accuracy.

22 (c) Utilization of the link to the other Web site, or the cumulative effect of  
23 utilizing more than one link to other Web sites, in place of providing the information  
24 through the board's own Web page, will result in cost savings to the department.

1           (4) REQUIREMENTS RELATED TO REPORTED INFORMATION. (a) The information  
2 reported under this section shall be reported in nontechnical language that is  
3 capable of being understood by the general public.

4           (b) Dispositions of paid medical malpractice claims shall be reported in a  
5 minimum of 3 graduated categories, indicating the level of significance of the amount  
6 of the award or settlement.

7           (c) Information concerning paid medical malpractice claims shall be given  
8 context by comparing the physician's medical malpractice judgment awards and  
9 settlements to the experience of other physicians in the same specialty.

10           (d) Information concerning medical malpractice settlements shall include the  
11 following statement: "Settlement of a claim may occur for a variety of reasons that  
12 do not necessarily reflect negatively on the professional competence or conduct of the  
13 physician. A payment in settlement of a medical malpractice action or claim should  
14 not be construed as creating a presumption that medical malpractice has occurred."

15           (e) If the board determines that an action that otherwise is required to be  
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17 a business or economic decision by the person taking the action and does not involve  
18 conduct by the physician that appears to relate to possible unprofessional conduct  
19 or negligence in treatment, the board may omit that action from the information  
20 made available to the public.

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22 available to the public that the board considers desirable.

23           (5) DUTY TO PROVIDE AND OPPORTUNITY TO CORRECT AND DELETE INFORMATION. (a)  
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25 determines is necessary to comply with this section.

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8 When the board collects information included in sub. (1r), the board shall notify the  
9 physician of the option not to provide that information.

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15 in s. 440.08 (2) (a) 58., as determined under s. 440.03 (9) (c).

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17 shall determine whether and the extent to which this section applies to a physician  
18 who holds a temporary license to practice medicine and surgery.

19 (END)

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**SECTION 1. Effective date.**

3

(1) This act takes effect on the first day of the 12<sup>th</sup> month beginning after

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publication.

