

2001 ASSEMBLY BILL 191

March 8, 2001 – Introduced by Representative POWERS, by request of Governor’s Task Force on Personal Privacy. Referred to Committee on Personal Privacy.

1 **AN ACT** *to amend* 905.04 (1) (b), 905.04 (1) (c), 905.04 (2), 905.04 (3), 905.04 (4)
2 (a), 905.04 (4) (e) 2. and 905.04 (4) (e) 3.; and *to create* 905.04 (1) (bg) of the
3 statutes; **relating to:** extending the physician–patient privilege to refuse to
4 disclose information to include information provided to health care services
5 review organizations.

Analysis by the Legislative Reference Bureau

Under current law, a patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient’s physical, mental, or emotional condition. The privilege currently applies to communications between the patient and the patient’s physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, professional counselor, or persons, including members of the patient’s family, who are participating in the diagnosis or treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, or professional counselor. This bill expands the privilege to include communications and information regarding the patient that are reviewed by a health care services review organization, which is an organization that reviews patients records to determine if the appropriate, complete, and necessary health care services were provided to a patient while he or she was hospitalized.

Current law creates exceptions to this privilege in proceedings involving abused children, protective services, or homicide. These exceptions apply to

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communications and information obtained by a health care services review organization.

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

1 **SECTION 1.** 905.04 (1) (b) of the statutes is amended to read:

2 905.04 (1) (b) A communication or information is “confidential” if not intended
3 to be disclosed to 3rd persons other than those present to further the interest of the
4 patient in the consultation, examination, or interview, or persons reasonably
5 necessary for the transmission of the communication or information or persons who
6 are participating in the diagnosis and treatment under the direction of the physician,
7 registered nurse, chiropractor, psychologist, social worker, marriage and family
8 therapist, health care services review organization, or professional counselor,
9 including the members of the patient’s family.

10 **SECTION 2.** 905.04 (1) (bg) of the statutes is created to read:

11 905.04 (1) (bg) “Health care services review organization” means an
12 organization that reviews the health care provided to a patient in a hospital to
13 determine if the health care services provided to that patient were appropriate,
14 complete, and necessary.

15 **SECTION 3.** 905.04 (1) (c) of the statutes is amended to read:

16 905.04 (1) (c) “Patient” means an individual, couple, family, or group of
17 individuals who consults with or is examined or interviewed by a physician,
18 registered nurse, chiropractor, psychologist, social worker, marriage and family
19 therapist, or professional counselor, or whose health care records are reviewed by a
20 health care services review organization.

21 **SECTION 4.** 905.04 (2) of the statutes is amended to read:

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1 905.04 (2) GENERAL RULE OF PRIVILEGE. A patient has a privilege to refuse to
2 disclose and to prevent any other person from disclosing confidential
3 communications made or information obtained or disseminated for purposes of
4 diagnosis or treatment of the patient's physical, mental or emotional condition,
5 among the patient, the patient's physician, the patient's registered nurse, the
6 patient's chiropractor, the patient's psychologist, the patient's social worker, the
7 patient's marriage and family therapist, the health care services review organization
8 reviewing the patient's records, the patient's professional counselor, or persons,
9 including members of the patient's family, who are participating in the diagnosis or
10 treatment under the direction of the physician, registered nurse, chiropractor,
11 psychologist, social worker, marriage and family therapist, or professional counselor.

12 **SECTION 5.** 905.04 (3) of the statutes is amended to read:

13 905.04 (3) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the
14 patient, by the patient's guardian or conservator, or by the personal representative
15 of a deceased patient. The person who was the physician, registered nurse,
16 chiropractor, psychologist, social worker, marriage and family therapist, member of
17 the health care services review organization, or professional counselor may claim the
18 privilege but only on behalf of the patient. The authority so to do is presumed in the
19 absence of evidence to the contrary.

20 **SECTION 6.** 905.04 (4) (a) of the statutes is amended to read:

21 905.04 (4) (a) *Proceedings for hospitalization, guardianship, protective services*
22 *or protective placement.* There is no privilege under this rule as to communications
23 and information relevant to an issue in proceedings to hospitalize the patient for
24 mental illness, to appoint a guardian under s. 880.33, for court-ordered protective
25 services or protective placement or for review of guardianship, protective services,

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1 or protective placement orders, if the physician, registered nurse, chiropractor,
2 psychologist, social worker, marriage and family therapist, health care services
3 review organization, or professional counselor in the course of diagnosis or treatment
4 has determined that the patient is in need of hospitalization, guardianship,
5 protective services, or protective placement.

6 **SECTION 7.** 905.04 (4) (e) 2. of the statutes is amended to read:

7 905.04 (4) (e) 2. There is no privilege in situations where the examination of
8 an abused or neglected child creates a reasonable ground for an opinion of the
9 physician, registered nurse, chiropractor, psychologist, social worker, marriage and
10 family therapist, health care services review organization, or professional counselor
11 that the abuse or neglect was other than accidentally caused or inflicted by another.

12 **SECTION 8.** 905.04 (4) (e) 3. of the statutes is amended to read:

13 905.04 (4) (e) 3. There is no privilege in situations where the examination of
14 the expectant mother of an abused unborn child creates a reasonable ground for an
15 opinion of the physician, registered nurse, chiropractor, psychologist, social worker,
16 marriage and family therapist, health care services review organization, or
17 professional counselor that the physical injury inflicted on the unborn child was
18 caused by the habitual lack of self-control of the expectant mother of the unborn
19 child in the use of alcohol beverages, controlled substances or controlled substance
20 analogs, exhibited to a severe degree.

21 (END)