

2001 DRAFTING REQUEST

Bill

Received: **03/07/2001**

Received By: **nelsorp1**

Wanted: **Soon**

Identical to LRB:

For: **Michael Powers (608) 266-1192**

By/Representing: **Vince W**

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

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Courts - miscellaneous
Health - decisionmaking**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Physician/patient privilege extended to hospital quality control programs

Instructions:

See Attached replaces 01-1490

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>
/?	nelsorp1 03/07/2001	jdye 03/07/2001		_____			
/1			kfollet 03/07/2001	_____	lrb_docadmin 03/08/2001	lrb_docadmin 03/08/2001	

FE Sent For:

<END>

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/?	nelsorp1	1 3/4 jld	kjg s/h	kjg 3/1 pg			

please jacket this 11

FE Sent For:

<END>

2001 DRAFTING REQUEST

Bill

Received: 12/13/2000

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

For: **Michael Powers (608) 266-1192**

By/Representing: **Vince Williams**

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

Drafter: **nelsorp1**

May Contact:

Alt. Drafters: **kenneda**

Subject: **Courts - miscellaneous
Health - decisionmaking**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Physician/patient privilege - hospital quality control programs

Instructions:

See Attached. Note: check on Wisconsin ID cards.

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/1	nelsorp1 01/10/2001	jdye 01/16/2001	martykr 01/30/2001	_____	lrb_docadmin 01/30/2001	lrb_docadmin 01/31/2001	

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1?	nelsorp1	1/16 jld	km/30	js km/30			

FE Sent For:

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Matters Worthy of Further Review:

Time constraints prevented the Task Force from making recommendations on certain matters that came to its attention during the course of the Hearings and in the discussions that followed in the working sessions. However, the Task Force urges future study, evaluation and appropriate action by the Governor and the Legislature on these matters:

- ✓ ① Creating a Privacy Watch Commission composed of not more than fourteen unpaid members attached to the Department of Agriculture, Trade and Consumer Protection whose purpose is to meet regularly and review privacy issues arising from both the public and private sector; *Council*
- ✓ ② Establishing venue for prosecution of privacy related crimes in the County where the victim resides;
- ✓ ③ Allowing law enforcement officers access to drivers license photographs to assist investigations of privacy related crimes;
- 4. Sponsoring an amendment to the Hearsay Rule of Evidence, which now bars admission of law enforcement officers' reports at preliminary hearings, so that such reports are admissible evidence;
- 5. Investigating the impact of the Internet on privacy concerns; and
- ⑥ Extending the physician-patient privilege to the peer review process in hospital quality control/improvement programs.

657 Peer review

632.835 Ind. rev.

249.45 (3/1/17)

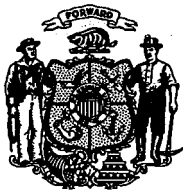
146.37 (12)

146.38

146.82(2)(a)1. - health care case 16

15.195 (9) Ind. rev. bd *252.15(9)(a)8.

ambulatory service center - 153.01



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen information provided to
1 AN ACT ...; relating to: extending the physician-patient privilege to refuse to
2 disclose ~~communications~~ ^{information} to include health care services 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 reviewed by a health care services review organization, 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.

which is

that are

* Current law creates exceptions to this privilege, including requiring disclosure in proceedings ~~related to~~ ^{involving} abuse of children, ~~and~~ ^{involving} protective services ~~are~~

~~murder~~, or ~~murdering~~ homicide. These exceptions apply to 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) (bg) [✓] of the statutes is created to read:

2 905.04 (1) (bg) "Health care services review organization" [✓] means an
3 organization that reviews the health care provided to a patient in a hospital to
4 determine if the health care services provided to that patient were appropriate,
5 complete, and necessary.

6 SECTION 2. 905.04 (1) (b) [✓] of the statutes is amended to read:

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

History: Sup. Ct. Order, 59 Wis. 2d R121; 1975 c. 393; 1977 c. 61, 418; 1979 c. 32 s. 92 (1); 1979 c. 221, 352; 1983 a. 400, 535; 1987 a. 233, 264; Sup. Ct. Order, 151 Wis. 2d xxi (1989); 1991 a. 32, 39, 160; 1993 a. 98; 1995 a. 77, 275, 436; 1997 a. 292; 1999 a. 22.

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

1 therapist, or professional counselor, or whose health care records are reviewed by a
2 health care services review organization. ✓

History: Sup. Ct. Order, 59 Wis. 2d R121; 1975 c. 393; 1977 c. 61, 418; 1979 c. 32 s. 92 (1); 1979 c. 221, 352; 1983 a. 400, 535; 1987 a. 233, 264; Sup. Ct. Order, 151 Wis. 2d xxi (1989); 1991 a. 32, 39, 160; 1993 a. 98; 1995 a. 77, 275, 436; 1997 a. 292; 1999 a. 22.

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

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

History: Sup. Ct. Order, 59 Wis. 2d R121; 1975 c. 393; 1977 c. 61, 418; 1979 c. 32 s. 92 (1); 1979 c. 221, 352; 1983 a. 400, 535; 1987 a. 233, 264; Sup. Ct. Order, 151 Wis. 2d xxi (1989); 1991 a. 32, 39, 160; 1993 a. 98; 1995 a. 77, 275, 436; 1997 a. 292; 1999 a. 22.

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

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

History: Sup. Ct. Order, 59 Wis. 2d R121; 1975 c. 393; 1977 c. 61, 418; 1979 c. 32 s. 92 (1); 1979 c. 221, 352; 1983 a. 400, 535; 1987 a. 233, 264; Sup. Ct. Order, 151 Wis. 2d xxi (1989); 1991 a. 32, 39, 160; 1993 a. 98; 1995 a. 77, 275, 436; 1997 a. 292; 1999 a. 22.

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

1 905.04 (4) (a) *Proceedings for hospitalization, guardianship, protective services*
2 *or protective placement.* There is no privilege under this rule as to communications
3 and information relevant to an issue in proceedings to hospitalize the patient for
4 mental illness, to appoint a guardian under s. 880.33, for court-ordered protective
5 services or protective placement or for review of guardianship, protective services,
6 or protective placement orders, if the physician, registered nurse, chiropractor,
7 psychologist, social worker, marriage and family therapist, health care services
8 review organization ✓ or professional counselor in the course of diagnosis or treatment
9 has determined that the patient is in need of hospitalization, guardianship,
10 protective services, ✓ or protective placement.

History: Sup. Ct. Order, 59 Wis. 2d R121; 1975 c. 393; 1977 c. 61, 418; 1979 c. 32 s. 92 (1); 1979 c. 221, 352; 1983 a. 400, 535; 1987 a. 233, 264; Sup. Ct. Order, 151 Wis. 2d xxi (1989); 1991 a. 32, 39, 160; 1993 a. 98; 1995 a. 77, 275, 436; 1997 a. 292; 1999 a. 22.

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

12 905.04 (4) (e) 2. There is no privilege in situations where the examination of
13 an abused or neglected child creates a reasonable ground for an opinion of the
14 physician, registered nurse, chiropractor, psychologist, social worker, marriage and
15 family therapist, health care services review organization ✓ or professional counselor
16 that the abuse or neglect was other than accidentally caused or inflicted by another.

History: Sup. Ct. Order, 59 Wis. 2d R121; 1975 c. 393; 1977 c. 61, 418; 1979 c. 32 s. 92 (1); 1979 c. 221, 352; 1983 a. 400, 535; 1987 a. 233, 264; Sup. Ct. Order, 151 Wis. 2d xxi (1989); 1991 a. 32, 39, 160; 1993 a. 98; 1995 a. 77, 275, 436; 1997 a. 292; 1999 a. 22.

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

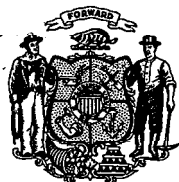
18 905.04 (4) (e) 3. There is no privilege in situations where the examination of
19 the expectant mother of an abused unborn child creates a reasonable ground for an
20 opinion of the physician, registered nurse, chiropractor, psychologist, social worker,
21 marriage and family therapist, health care services review organization ✓ or
22 professional counselor that the physical injury inflicted on the unborn child was
23 caused by the habitual lack of self-control of the expectant mother of the unborn

- 1 child in the use of alcohol beverages, controlled substances or controlled substance
- 2 analogs, exhibited to a severe degree.

History: Sup. Ct. Order, 59 Wis. 2d R121; 1975 c. 393; 1977 c. 61, 418; 1979 c. 32 s. 92 (1); 1979 c. 221, 352; 1983 a. 400, 535; 1987 a. 233, 264; Sup. Ct. Order, 151 Wis. 2d xxi (1989); 1991 a. 32, 39, 160; 1993 a. 98; 1995 a. 77, 275, 436; 1997 a. 292; 1999 a. 22.

3

(END)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

January 30, 2001

MEMORANDUM

To: Representative Powers

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-1490 Physician/patient privilege - hospital quality control programs

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-7511 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.



2001 BILL

p-Note

Regen

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

BILL

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
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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,
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9 including the members of the patient's family.

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

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BILL

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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,
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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,

BILL

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,
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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)

D-Note

*This draft replaces LRB-1490/1. It
is identical to that draft.*

RPN

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2758/1dn
RFN:jld:kjf

March 7, 2001

This draft replaces LRB-1490/1. It is identical to that draft.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us