

**Committee Name:**

**Senate Committee – Privacy, Electronic Commerce and Financial Institutions  
(SC-PECFI)**

**Appointments**

01hr\_SC-PECFI\_Appoint\_pt00

**Clearinghouse Rules**

01hr\_SC-PECFI\_CRule\_01-

**Committee Hearings**

01hr\_SC-PECFI\_CH\_pt00

**Committee Reports**

01hr\_SC-PECFI\_CR\_pt00

**Executive Sessions**

01hr\_SC-PECFI\_ES\_pt00

**Hearing Records**

01hr\_ab0000

01hr\_sb0000

**Misc.**

01hr\_SC-PECFI\_\_Misc\_\_pt07

**Record of Committee Proceedings**

01hr\_SC-PECFI\_RCP\_pt00

Roll

Public Hearing   X   date:   9-20-01  

Executive Session \_\_\_\_\_ date: \_\_\_\_\_

	Present	Absent
Senator Erpenbach	<u>  X  </u>	_____
Senator Jauch	<u>  X  </u>	_____
Senator Plache	<u>  X  </u>	_____
Senator Fitzgerald	_____	<u>  X  </u>
Senator Kanavas	<u>  X  </u>	_____

Roll left open for drop in

Roll

Public Hearing \_\_\_\_\_ date: \_\_\_\_\_

Executive Session X date: 9-20-01

	Present	Absent
Senator Erpenbach	<u>X</u>	_____
Senator Jauch	<u>X</u>	_____
Senator Plache	<u>X</u>	_____
Senator Fitzgerald	_____	<u>X</u>
Senator Kanavas	<u>X</u>	_____

~~XXXXXX~~

Cannot leave roll open beyond mtg

## Laundrie, Julie

---

**From:** Laundrie, Julie  
**Sent:** Wednesday, September 12, 2001 11:26 AM  
**To:** \*Legislative All Senate; \*Legislative All Assembly; Sweet, Richard; Schmidt, Dan; Cohen, Sally  
**Subject:** Rescheduled - Senate Privacy, EC, & FI Committee to 9-20-01 at 1pm



H20010920001.doc

\*\*\*\*\*Time and date change attached for the Senate Privacy, Electronic Commerce and Financial Institutions Committee. Call 6-6670 with questions.

Julie Laundrie  
Office of Senator Jon Erpenbach

sg<sup>i</sup>

Heidi Wendorf

104 1/2 S. 3<sup>rd</sup> St.

River Falls, WI 54022

(715) 426-1972

UW-River Falls Social Work students

heidi.m.wendorf@uwrf.edu

Thank-you.

- send report  
and everything else

sg<sup>i</sup>

Purpose of the Hearing

register with Page Staff

SB135

SB181

SB237

SB212

sgi

SB 237 - exec

~~SB 212~~ — exec w/ Amendment ↗

SB 135 — will Amend and paper ballot  
# amend don't notify

SB 181 — no exec ●

sgi

by Kenneth R. Baker, RPh, JD

## Release of Pharmacy Records in Wisconsin

*Pharmacists need to be mindful of Wisconsin patient confidentiality laws*



*The pharmacist did not provide the patient with a statement of rights because the pharmacist did not know he was supposed to give such a statement. Ignorance of the law does not mean it was not "knowing and willful," the Court said.*

*Ken Baker is a Vice President and General Counsel for Pharmacists Mutual Insurance Co. He was one of the featured speakers at the 1999 PSW Educational Conference in April.*

In February 1999 the Wisconsin Court of Appeals overturned a trial court decision and ruled a patient may sue a pharmacy for failing to maintain a copy of a release the patient's employer sent to the pharmacy to obtain records regarding the patient. In addition, the pharmacy failed to provide the patient with a statement paraphrasing his rights in regard to his medical records. The Court of Appeals ruled that under Wisconsin Statute §146.83 and §146.84 a patient could sue a pharmacy for these failures regardless of whether the pharmacist was aware of these requirements. In fact, most pharmacists are unaware of these requirements. According to the statute, pharmacists may be sued whether or not the patient is harmed by the failure to keep a copy of a release for records or failure to hand all patients a statement of rights in regard to medical records.

Wisconsin Statutes §146.81, et. seq. legislates confidentiality of patient health care records, including "all records related to the health of a patient prepared by or under the supervision of a health care provider," with some exceptions. Pharmacists are included within the definition of "health care provider." W.S. §146.81 (1) (fm). The Statute in W.S. §146.82 (1) provides, in part:

(1) *Confidentiality. All patient health care records shall remain confidential. Patient health care records may be released only to persons designated in this section or to other persons with the informed consent of the patient or a person authorized by the patient.<sup>1</sup>*

Under the law an informed consent may not be just a simple statement, but must contain several items. The law defines "informed consent" as:

"... written consent to the disclosure of information from patient health care records to an individual, agency or organization that includes all of the following:

- (a) *The name of the patient whose record is being disclosed.*
- (b) *The type of information to be disclosed.*
- (c) *The types of health care providers making the disclosure.*
- (d) *The purpose of the disclosure such as whether the disclosure is to further medical care, for an application for insurance, to obtain payment of an insurance claim, for a disability determination, for a vocational rehabilitation evaluation, for a legal investigation or for other specified purposes.*
- (e) *The individual, agency or organization to which disclosure may be made.*
- (f) *The signature of the patient or the person authorized by the patient and, if signed by a person authorized by the patient, the relationship of that person to the patient or the authority of the person.*
- (g) *The date on which the consent is signed.*
- (h) *The time period during which the consent is effective.*

There are, of course, several exceptions to the statute. Records may be released without informed consent in some circumstances, including to another health care provider or other person "acting under the supervision of a health care provider" if the person is assisting or being consulted regarding the patient or the information is necessary to aid the patient whose life or health appears to be in danger. In addition, court ordered releases and some restricted government agencies may obtain the information. There are other exceptions which are set forth in several pages of the statute with which the pharmacist should become familiar. Even when an informed consent is not required a record of the release must be made. The law states:

(d) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date



and time of the release and the identification of the records released. W.S. § 146.82 (2)(d)

The pharmacist in the February 1999 Court of Appeals decision was judged to have run afoul of two sections of the Statute. First, he did not keep a record or a copy of the release. Second, he did not provide the patient with a statement paraphrasing the provisions of the law regarding confidentiality and the patient's rights. As to these points, the law in §146.83 (2) and (3) states:

*Access to patient health care records*

- (2) *The health care provider shall provide each patient with a statement paraphrasing the provisions of this section either upon admission to an inpatient health care facility . . . or upon the first provision of services by the health care provider.*
- (3) *The health care provider shall note the time and date of each request by a patient or person authorized by the patient to inspect the patient's health care records, the name of the inspecting person, the time and date of inspection and identify the records released for inspection.*

In the February case the pharmacist is not accused of wrongfully releasing information, but he is accused of not following the statute. The pharmacist said, "I did not know of the statute." The pharmacist could not show a copy of the release signed by the patient to the patient, because the copy no longer existed and no record was made. The pharmacist did not provide the patient with a statement of rights under the statute when the patient first filled a prescription at the pharmacy, because the pharmacist did not know he was supposed to give such a statement.

No matter, the Court said. The law provides damages of \$1000 for each "knowing and willful" violation. Ignorance of the law does not mean it was not "knowing and willful," the Court said. The Statute also says, "A custodian of records incurs no liability . . . while acting in good faith." W.S. §146.84 (1).

The Court did not address what circumstances "good faith" may come into the equation, but for the Wisconsin pharmacist the lesson is clear. In Wisconsin there is a special statute, which the pharmacist needs to know and follow.

- (1) Keep all release forms given.
- (2) Release information only upon receipt of a special Wisconsin release form, except when the law says a release form is not necessary. Even then, record the release.

Give each new patient a statement paraphrasing the Wisconsin Statute regarding the patient's right to confidentiality.

The statute continues: "This subsection does not prohibit reports made in compliance with s. 146.995 or 979.01 or testimony authorized under s. 905.04 (4)(h)." The statute contains several exceptions as provided by other Wisconsin statutes. An examination of these is beyond the scope of this article. ■

## PHARMACISTS PHARMACY TECHNICIANS

**St. Luke's Medical Center**, a nationally recognized 700-bed acute care hospital, **Sinai Samaritan Medical Center**, a 300-bed teaching hospital located in downtown Milwaukee, AND **West Allis Memorial Hospital**, a 175 bed community hospital, have several exceptional career opportunities for **Pharmacists** and **Pharmacy Technicians** who are committed to practice excellence.

Decentral pharmacist opportunities are available in cardiovascular surgery medicine and solid organ transplant. Pharmacist positions in central pharmacy and ambulatory settings are also available. Pharmacy Technician opportunities exist both in inpatient and outpatient pharmacies. In addition, we have recently begun construction on an operating room pharmacy satellite and we are seeking pharmacists and pharmacy technicians who can help make this new service successful.

In addition to our exceptional compensation and benefit package, we offer pharmacists and pharmacy technicians a career ladder for ongoing development. Qualified pharmacist candidates will have earned a B.S. or Pharm.D. degree. Pharmacy Technicians will have completed a Pharmacy Tech training program or have previous experience. Excellent communication skills and a commitment to professional development are essential.

Milwaukee is located on the shores of Lake Michigan and offers year round outdoor activities including sailing, golfing, biking, running, and hiking. The lakefront also boasts a series of ethnic festivals throughout the summer months. Milwaukee is rich in cultural offerings with a professional symphony orchestra, ballet, and theater companies.

Please e-mail [maryjo\\_vangompel@aurora.org](mailto:maryjo_vangompel@aurora.org), fax (414) 649-7180 or mail your letter of interest and resume to:



**Aurora  
HealthCare**

**M. Van Gompel, Employment Office**  
**Aurora Health Care**  
**P.O. Box 343910**  
**Milwaukee, WI 53234-3910**

**Equal Opportunity Employer M/F/D/V**

*We support a safe, healthy, and drug free work environment through pre-employment drug testing and criminal background checking*

Julie - 11:50

Please call  
Fred Risse's Office  
about 15 minutes before  
you need him to come  
over for the hearing.  
Julie called

Nancy