**LRB-1848**

# 2003 DRAFTING REQUEST

## Bill

Received: **01/30/2003**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Russ Whitesel**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**
**Occupational Reg. - misc**

Extra Copies: **PJH, DAK, PG**

Submit via email: **YES**

Requester's email: **russ.whitesel@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Prescriptions for children with attention deficit hyperactivity disorder

---

**Instructions:**

See Attached

---

**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
|---|---|---|---|---|---|---|---|
| /? | mkunkel 01/30/2003 | kfollett 01/31/2003 kfollett 02/04/2003 | | _____ _____ _____ _____ | | | State |
| /1 | | | jfrantze 02/04/2003 | _____ _____ | mbarman 02/04/2003 | amentkow 03/13/2003 | |

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
|---|---|---|---|---|---|---|---|

FE Sent For: At intro.

<END>

# 2003 DRAFTING REQUEST

## Bill

Received: **01/30/2003**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Russ Whitesel**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**
**Occupational Reg. - misc**

Extra Copies: **PJH, DAK, PG**

Submit via email: **YES**

Requester's email: **russ.whitesel@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Prescriptions for children with attention deficit hyperactivity disorder

---

**Instructions:**

See Attached

---

**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
|---|---|---|---|---|---|---|---|
| /? | mkunkel 01/30/2003 | kfollett 01/31/2003 kfollett 02/04/2003 | | _____ _____ _____ _____ | | | State |
| /1 | | | jfrantze 02/04/2003 | _____ _____ | mbarman 02/04/2003 | | |

For Assembly

Per Russ Leg Council Phone Call

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
|---|---|---|---|---|---|---|---|

FE Sent For:

**<END>**

**LRB-1848**

# 2003 DRAFTING REQUEST

## Bill

Received: **01/30/2003**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Russ Whitesel**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**
**Occupational Reg. - misc**

Extra Copies: **PJH, DAK, PG**

Submit via email: **YES**

Requester's email: **russ.whitesel@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Prescriptions for children with attention deficit hyperactivity disorder

---

**Instructions:**

See Attached

---

**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
|---|---|---|---|---|---|---|---|
| /? | mkunkel | 11 kj fc 2/4 2/4 | | 2/4 | | | |

FE Sent For:

<END>

2001 – 2002 LEGISLATURE

LRB-~~3587/1~~
MDK:~~cjs:rs~~
Kjf

By Thurs. 2/6

D-NOTE

-1848/1

# 2001 ASSEMBLY BILL 672

RM NOT ANN

December 7, 2001 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Health.

This bill is explained in the ~~PREFATORY~~ NOTES (C&S) provided by the joint legislative council in the bill.

Regen

AN ACT *to amend* 448.02 (3) (a): and *to create* 115.357 and 448.35 of the statutes; **relating to:** requiring physicians to provide certain information when issuing prescription orders to treat children with attention deficit hyperactivity disorder.

---

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

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 was prepared for the joint legislative council's special committee on use of prescription drugs for children.

***REQUIREMENT FOR A PHYSICIAN ISSUING A PRESCRIPTION ORDER FOR A CHILD FOR TREATMENT OF ATTENTION DEFICIT HYPERACTIVITY DISORDER TO PROVIDE CERTAIN INFORMATION***

***Treatment of Attention Deficit Hyperactivity Disorder With a Prescription Drug***

The bill requires any physician who diagnoses a child (any person less than 18 years old) with attention deficit hyperactivity disorder (ADHD) and issues a prescription order for treatment of the disorder to provide certain information to the parent or

guardian of the child or to an adult who is with the child at the time the prescription order is issued, if any. If the child is 14 years of age or older, the physician must also provide the information to the child.

If a physician treats a child for ADHD with a prescription drug on a long–term basis, the physician must provide the information when issuing the initial prescription order and at least once every 2 years thereafter. A physician is not required to provide the information in an emergency or if the physician reasonably believes that another physician has issued a prescription order for the child for the same prescription drug within the past year.

Under the circumstances described above, a physician must provide all of the following information:

1. An explanation of the method of diagnosis used, including the results of any tests or evaluations.

2. Information on alternative modes of treatment, as provided in s. 448.30, stats., which provides as follows:

"**448.30 Information on alternate modes of treatment.** Any physician who treats a patient shall inform the patient about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments. The physician's duty to inform the patient under this section does not require disclosure of:

(1) Information beyond what a reasonably well–qualified physician in a similar medical classification would know.

(2) Detailed technical information that in all probability a patient would not understand.

(3) Risks apparent or known to the patient.

(4) Extremely remote possibilities that might falsely or detrimentally alarm the patient.

(5) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.

(6) Information in cases where the patient is incapable of consenting.".

3. A printed copy of the informational materials pertaining to the assessment and treatment of ADHD prepared by the department of health and family services (DHFS). The requirement for DHFS to prepare those materials is described below.

***Treatment of ADHD With a Schedule II Controlled Substance***

In addition to providing the materials described above, a physician who diagnoses a child with ADHD and prescribes a Schedule II controlled substance for treatment of the disorder must provide a printed copy of any materials pertaining to the substance which have been prepared by DHFS.

A physician who is required to provide any of the information (as described above) must obtain certification in writing from the parent or guardian of the child or the adult to whom the information is provided, if any, that the physician has provided all of the required information.

***Penalty for Failure to Provide Information; Exemption***

Under current law, a physician who, after investigation and a hearing, is found guilty of unprofessional conduct is subject to disciplinary action by the medical examining board. The bill provides that an allegation that a physician has failed to provide the required information or obtain the required certification is an allegation of unprofessional conduct. However, the bill provides that it is not unprofessional conduct for a physician to fail to provide the informational materials prepared by DHFS, if the physician made a reasonably diligent effort to obtain the materials from DHFS and DHFS did not make materials available at the time the physician was required to provide them.

fix- no break before text

***PREPARATION OF INFORMATIONAL MATERIALS BY DHFS***

***Materials Pertaining to the Assessment and Treatment of ADHD***

The bill requires DHFS to prepare informational materials on the assessment and treatment of ADHD. These are the materials which must be provided by a physician who prescribes any prescription drug for the treatment of ADHD in a child. The materials must contain the following:

1. A summary of the practice parameters for the assessment and treatment of children and adolescents with ADHD published by the American Academy of Child and Adolescent Psychiatry.

2. A statement that a parent or guardian may seek treatment other than prescription drugs for a child with ADHD.

***Materials Pertaining to Schedule II Controlled Substances***

In addition to the materials above, the bill requires DHFS to prepare informational materials on certain Schedule II controlled substances. These are the additional materials that must be provided by a physician who prescribes any Schedule II controlled substance for treatment of ADHD in a child. DHFS must, in consultation with the State Medical Society of Wisconsin, determine which Schedule II controlled substances are routinely prescribed by physicians in this state to treat ADHD in children. For each of these substances, DHFS must prepare materials containing the following information:

1. A statement that the substance is a Schedule II controlled substance under s. 961.16.

2. A summary of information included in the labeling of the substance required by federal law pertaining to the safety and effectiveness of the substance when used to treat ADHD in children, including any information relating to the potential for abuse or development of dependence upon the drug.

3. A statement that use of a the Schedule II controlled substance to treat ADHD may affect a person's eligibility to serve in the U.S. armed forces, if the DHFS so finds.

4. A statement that the use of a Schedule II controlled substance to treat ADHD may affect the cost of a person's health insurance.

DHFS must prepare all of the informational materials within approximately 5 months after the effective date of the bill. Physicians are first required to provide the required information beginning approximately 9 months after the effective date of the bill.

***Dissemination of Materials by the Department of Public Instruction***

The bill requires the department of public instruction (DPI) to disseminate the informational materials prepared by DHFS to appropriate public school staff.

1 **SECTION 1.** 115.357 of the statutes is created to read:

2 **115.357 Information on attention deficit hyperactivity disorder.** The
3 department shall disseminate to appropriate public school staff the information
4 regarding the diagnosis and treatment of attention deficit hyperactivity disorder and
5 prescription drugs used to treat the disorder prepared by the department of health
6 and family services under s. 448.35 (2).

NOTE: Requires the DPI to distribute the informational materials prepared by DHFS to appropriate public school staff.

7 **SECTION 2.** 448.02 (3) (a) of the statutes is amended to read:

1 448.02 **(3)** (a) The board shall investigate allegations of unprofessional conduct
2 and negligence in treatment by persons holding a license, certificate or limited
3 permit granted by the board. An allegation that a physician has violated s. 253.10
4 (3), 448.30, 448.35 (3), or 450.13 (2) or has failed to mail or present a medical
5 certification required under s. 69.18 (2) within 21 days after the pronouncement of
6 death of the person who is the subject of the required certificate or that a physician
7 has failed at least 6 times within a 6–month period to mail or present a medical
8 certificate required under s. 69.18 (2) within 6 days after the pronouncement of death
9 of the person who is the subject of the required certificate is an allegation of
10 unprofessional conduct. Information contained in reports filed with the board under
11 s. 49.45 (2) (a) 12r., 50.36 (3) (b), 609.17 or 632.715, or under 42 CFR 1001.2005, shall
12 be investigated by the board. Information contained in a report filed with the board
13 under s. 655.045 (1), as created by 1985 Wisconsin Act 29, which is not a finding of
14 negligence or in a report filed with the board under s. 50.36 (3) (c) may, within the
15 discretion of the board, be used as the basis of an investigation of a person named in
16 the report. The board may require a person holding a license, certificate or limited
17 permit to undergo and may consider the results of one or more physical, mental or
18 professional competency examinations if the board believes that the results of any
19 such examinations may be useful to the board in conducting its investigation.

NOTE: Amends the statute which authorizes the medical examining board to investigate allegations of unprofessional conduct and impose penalties against a physician who is found guilty of unprofessional conduct. Specifically, provides that an allegation that a physician violated s. 448.35 (3), stats., requiring physicians to provide certain informational materials, as created in SECTION 3 of the bill, is an allegation of unprofessional conduct. SECTION 3 of the bill also creates an exemption which provides that a physician is not guilty of unprofessional conduct for failure to provide the informational materials prepared by DHFS if the physician made a reasonably diligent effort to obtain the materials from DHFS and DHFS did not make the materials available.

20 **SECTION 3.** 448.35 of the statutes is created to read:

1 **448.35 Attention deficit hyperactivity disorder. (1)** DEFINITIONS. In this
2 section:
3 (a) "Child" means a person under 18 years of age.
4 (b) "Department" means the department of health and family services.
5 (c) "Prescription drug" has the meaning given in s. 450.01 (20).
6 (d) "Prescription order" has the meaning given in s. 450.01 (21).
7 (e) "Schedule II controlled substance" means any substance included under s.
8 961.16.
9 **(2)** INFORMATIONAL MATERIALS. (a) The department shall prepare informational
10 materials which contain the following:
11 1. A summary of the practice parameters for the assessment and treatment of
12 children and adolescents with attention deficit hyperactivity disorder published by
13 the American Academy of Child and Adolescent Psychiatry.
14 2. A statement that a parent or guardian may seek treatment other than
15 prescription drugs for a child with attention deficit hyperactivity disorder.
16 (b) The department shall, in consultation with the State Medical Society of
17 Wisconsin, determine which Schedule II controlled substances are commonly
18 prescribed by physicians in this state to treat attention deficit hyperactivity disorder
19 and shall prepare informational materials pertaining to each of those substances
20 containing the following information:
21 1. A statement that the substance is a Schedule II controlled substance.
22 2. A summary of the information included in the labeling of the substance
23 under 21 USC 352 (f) which relates to the safety and effectiveness of the substance
24 when used to treat attention deficit hyperactivity disorder in children and the
25 potential for abuse or development of dependence upon the substance.

3. A statement that use of the substance to treat attention deficit hyperactivity disorder may affect a person's eligibility to serve in the U.S. armed forces, if the department so finds.

4. A statement that a person's use of the substance to treat attention deficit hyperactivity disorder may affect the cost of health insurance for that person.

(c) The materials prepared under pars. (a) and (b) shall be made available to physicians and to the public on the department's internet site. Upon the request of a physician, the materials under pars. (a) and (b) shall be provided to the physician in printed form.

(d) The materials under pars. (a) and (b) shall be made available to physicians and to the public no later than the first day of the 6th month beginning after the effective date of this paragraph .... [revisor inserts date].

(e) The department shall periodically review the materials under pars. (a) and (b) and shall exercise reasonable diligence in providing materials that are accurate and current.

**(3)** REQUIREMENTS FOR PHYSICIANS. (a) Except in an emergency and as provided under par. (e), a physician who diagnoses a child with attention deficit hyperactivity disorder and issues a prescription order for treatment of the disorder shall provide the following information to the persons specified in par. (c):

1. An explanation of the method of diagnosis used, including the results of any tests or evaluations.

2. Information on alternative modes of treatment, as provided in s. 448.30.

3. A printed copy of the materials prepared under sub. (2) (a).

(b) In addition to the information required under par. (a), except in an emergency and as provided under par. (e), a physician who diagnoses a child with

attention deficit hyperactivity disorder and issues a prescription order for a Schedule II controlled substance for treatment of the disorder shall provide a printed copy of any materials pertaining to the prescribed substance which have been prepared by the department under sub. (2) (b) to the persons specified in par. (c).

(c) A physician required to provide information under this section shall provide the information to the parent or guardian of the child if the parent or guardian of the child is present when the prescription order is issued. If the child is 14 years of age or older, the physician shall also provide the information to the child. If the child's parent or guardian is not present at the time the prescription order is issued, the physician shall provide the information to an adult who is with the child at the time the prescription order is issued, if any.

(d) A physician shall obtain from the parent or guardian of the child, or the adult to whom the information is provided, if any, certification in writing that the physician has provided the information required under this section.

(e) A physician who treats a child for attention deficit hyperactivity disorder on a long–term basis with the same prescription drug shall provide the information and obtain the certification required under this section when issuing the initial prescription order for that prescription drug and at least once every 2 years thereafter. A physician is not required to provide the information described under sub. (2) if the physician reasonably believes that another physician has issued a prescription order for the child for the same prescription drug within the past year.

**(4)** EXEMPTION. It is not unprofessional conduct under s. 448.02 (3) (a) for a physician to fail to provide the materials required under this section if the physician made a reasonably diligent effort to obtain the materials from the department and

1 the department did not make the materials available at the time that the physician
2 was required to provide them.

NOTE: Creates the requirements for physicians to provide certain information when issuing a prescription order to treat ADHD in a child, and for DHFS to prepare those informational materials, as described above in the prefatory note.

Also creates an exemption to an allegation of unprofessional conduct as described in the note following SECTION 2.

3 **SECTION 4. Initial applicability.**

4 (1) The treatment of sections 448.02 (3) (a) and 448.35 (3) of the statutes first
5 applies to prescription orders that are issued on the first day of the 10th month
6 beginning after the effective date of this subsection.

NOTE: Provides that the requirements pertaining to physicians do not take effect until the first day of the 10th month after the effective date of the bill.

7 **(END)**

D-Note

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

LRB–1848/1dn
MDK:...

Date

Russ Whitesel:

This bill is a redraft of 2001 Assembly Bill 672.

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

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

LRB–1848/1dn
MDK:kjf:jf

February 4, 2003

Russ Whitesel:

This bill is a redraft of 2001 Assembly Bill 672.

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