

**2003 DRAFTING REQUEST**

**Bill**

Received: 01/13/2003

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Roessler (608) 266-5300**

By/Representing: **Sara Jermstad**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Occupational Reg. - misc**

Extra Copies: **PJH**

Submit via email: **YES**

Requester's email: **Sen.Roessler@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Public information regarding disciplinary action against physicians

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**Instructions:**

See Attached

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**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>
/?	mkunkel 03/17/2003	kgilfoy 03/17/2003		_____			State
/1			jfrantze 03/18/2003	_____	mbarman 03/18/2003	amentkow 06/04/2003	

FE Sent For: *at inter 8/14/03*

<END>

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1/?	mkunkel	1-3/17 Kmg	2-3/18	J/RS 3/18			

FE Sent For:

<END>

D-NOTE

2001 SENATE BILL 140

April 11, 2001 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Health, Utilities, Veterans and Military Affairs

By WED 3/19 NOON

KMG 1474/1

RM NOT RUN

Sen. Cat.

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  
3 on the education, practice, and disciplinary history of physicians, requiring  
4 rules of the department of health and family services to include procedures  
5 affording health care providers opportunity to correct health care information,  
6 and granting rule-making authority.

INSERT IA

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

**SENATE BILL 140**

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), inclusion of more comprehensive information will better 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 <sup>the</sup> release of health care

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**SENATE BILL 140**

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

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

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

153.75 (1) (b) Establishing procedures under which health care providers are permitted to review, verify, and comment on, and have <sup>an</sup> opportunity to correct 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.

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

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

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

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

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



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

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 specialty board certification, and certification by  
10 any 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 <sup>of</sup> 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 preceding 10 years.

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

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

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

**SENATE BILL 140**

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 limited service health organization, preferred provider plan, or managed care plan  
9 within the preceding 10 years that is required to be reported to the board under s.  
10 609.17. ✓

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

SENATE BILL 140

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.

CFS

STATE MEDICAL SOCIETY

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 <sup>that</sup> 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.

physician directory located on the Web site of the State Medical Society.

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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  
16 described and made available to the public under sub. (1r) (o) or (p) is the result of  
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.

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

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

23

~~AND~~ → AN

**SENATE BILL 140**

1 (b) The board shall provide a physician with a copy of his or her information  
2 prior to its initial release and prior to the inclusion of any change in the information.  
3 A physician shall be provided a reasonable time to correct factual inaccuracies that  
4 appear in the information before the information is released to the public. This  
5 paragraph does not apply to information on a physician made available by means of  
6 a link to another Web site under sub. (3).

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

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

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

16 (8) APPLICATION TO PHYSICIAN HOLDING TEMPORARY LICENSE. The board by rule  
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.

**SECTION 5. Effective date.**

19 (1) This act takes effect on the first day of the 12th month beginning after  
20 publication.  
21

22 (END)

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1474/lins  
MDK:.....

LPS: This  
is in 11 pt.; make  
it 12 pt.

INSERT 1A:

This bill requires the Medical Examining Board (board) in the Department of Regulation and Licensing (DRL) to make available to the public certain information about physicians. The bill also requires the Department of Health and Family Services (DHFS) to promulgate rules establishing procedures for correcting certain health care information about health care providers that is collected by DHFS. *A*

subsub

→ **Physician information** The bill 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. The information must be reported in nontechnical language that is capable of being understood by the general public. Information about medical malpractice history must be accompanied by explanatory information that gives context to the information. Physicians must provide any information requested by the board that the board determines is necessary to comply with the bill. In addition, physicians must be provided a reasonable time to correct factual inaccuracies that appear in the information before the information is released to the public. The bill requires the board to determine by rule whether, and to what extent, the bill's requirements apply to physicians issued temporary licenses by the board.

The bill also provides for a surcharge to physician license renewal fees that must be paid every two years. The purpose of the surcharge is to fund the costs of making information available to the public under the bill. DRL must determine the amount of the surcharge and include the surcharge in its biennial budget recommendation for changes to licensing fees.

In addition, the bill provides that information made available to the public under the bill does not qualify as an exception to the hearsay rule that otherwise applies to public records and reports. (Under the hearsay rule, an out-of-court statement is generally not admissible as evidence, unless an exception applies to the statement.) Also, the bill provides that the information made available to the public under the bill is not self-authenticated for purposes of its admissibility as evidence. In other words, the information must be authenticated before it is admissible as evidence. *A*

subsub

→ **DHFS corrections** Under current law, DHFS must promulgate rules that establish procedures under which health care providers are permitted to review, verify, and comment on certain health care information that DHFS collects. This bill requires such rules to also establish procedures for health care providers to correct the information, in addition to reviewing, verifying, and commenting on the information.

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

LRB-1474/1dn

MDK:1.2...

*kmg*

Senator Roessler:

This bill is a redraft of 2001 Senate Bill 140, as amended by 2001 LRBa1300/1.

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

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

LRB-1474/1dn  
MDK:kmg:jf

March 18, 2003

Senator Roessler:

This bill is a redraft of 2001 Senate Bill 140, as amended by 2001 LRBa1300/1.

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



**Emery, Lynn**

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**From:** Jermstad, Sara  
**Sent:** Wednesday, June 04, 2003 4:02 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-1474/1 Topic: Public information regarding disciplinary action against physicians

It has been requested by <Jermstad, Sara> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-1474/1 Topic: Public information regarding disciplinary action against physicians