

2003 SENATE BILL 227

August 13, 2003 – Introduced by Senators ROESSLER, SCHULTZ and RISSER, cosponsored by Representatives UNDERHEIM, ALBERS, HUNDERTMARK, GUNDERSON, J. LEHMAN and TOWNSEND. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT** *to amend* 15.405 (7) (b) 3., 448.02 (3) (c) and 448.02 (4) and (9) (intro.);
2 and *to create* 146.365, 440.037, 448.02 (3) (d) and 979.01 (1p) of the statutes;
3 **relating to:** priorities, completion guidelines, and notices required for health
4 care professional disciplinary cases; identification of health care professionals
5 in possible need of investigation; additional public members for the Medical
6 Examining Board; Authority of the Medical Examining Board to limit
7 credentials and impose forfeitures; reporting requirements for reports
8 submitted to the National Practitioner Data Bank; inclusion of health care
9 professionals who practice alternative forms of health care on panels of health
10 care experts established by the Department of Regulation and Licensing;
11 reports by coroners and medical examiners regarding therapeutic-related

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- 1 deaths; providing an exemption from rule-making procedures; requiring the
2 exercise of rule-making authority; and providing a penalty.
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Analysis by the Legislative Reference Bureau

This bill makes changes to current law regarding all of the following: 1) disciplinary actions involving certain health care professionals; 2) the authority of the Medical Examining Board; 3) malpractice reports that are required under federal law; and 4) death reports by coroners and medical examiners. These changes are described below.

Discipline of health care professionals

The bill imposes various duties on the Department of Regulation and Licensing (DRL) related to disciplining the following health care professionals that are regulated by DRL or a board in DRL: acupuncturists; audiologists; chiropractors; dental hygienists; dentists; dietitians; hearing instrument specialists; advanced practice prescriber nurses; licensed practical nurses; registered nurses; nurse-midwives; occupational therapists; occupational therapy assistants; optometrists; pharmacists; physical therapists; physicians; physician assistants; podiatrists; private practice school psychologists; psychologists; respiratory care practitioners; and speech-language pathologists.

The bill requires DRL to do all of the following:

1. Develop a system to establish the relative priority of disciplinary cases involving possible unprofessional conduct by health care professionals.
2. Promulgate rules establishing a system for identifying health care professionals who, even if not the subject of a specific allegation of, or specific information relating to, unprofessional conduct, may nonetheless warrant further evaluation and possible investigation.
3. Notify a health care professional's hospital, place of practice or employment, or defined network plan, such as a health maintenance organization or preferred provider plan, when a formal complaint alleging unprofessional conduct by the health care professional is filed.
4. Give notice to a complainant and health care professional when any of the following occurs regarding a disciplinary case of possible unprofessional conduct: a) the case is closed following screening for a possible investigation; b) the case is opened for investigation; or c) the case is closed after investigation. In addition, DRL must provide a copy of the notices under b) or c) to an affected patient or the patient's family members.
5. Give a patient or client of a health care professional who has been adversely affected by conduct of the health care professional that is the subject of a disciplinary proceeding an opportunity to confer with DRL's prosecuting attorney.
6. Establish guidelines for the timely completion of each stage of the health care professional disciplinary process. The guidelines are exempt from rule-making procedures that are otherwise applicable.

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Also, the bill requires that, if DRL establishes panels of health care experts to review complaints against health care professionals, DRL must attempt to include on the panels health care professionals who practice alternative forms of health care to assist in evaluating cases involving alternative health care.

The bill also requires DRL to submit to the legislature by May 1, 2005, a report on disciplinary process time lines that were implemented by DRL as guidelines in February 1999.

Medical Examining Board

Current law allows the Medical Examining Board, under specified circumstances, to suspend summarily a professional credential issued by the board, pending a disciplinary hearing, for a limited period of time. This bill also allows the Medical Examining Board to limit summarily a credential under the same circumstances and for the same period of time. As a result, under the bill, the Medical Examining Board may limit a credential holder to specified practice areas, rather than completely suspending the credential holder's right to practice, pending a disciplinary hearing.

Also under current law, the Medical Examining Board has no authority to impose a forfeiture against a credential holder found guilty of unprofessional conduct. This bill authorizes the Medical Examining Board to assess a forfeiture of not more than \$1,000 for each violation against a credential holder found guilty of unprofessional conduct. However, this authority does not extend to a violation that constitutes negligence in treatment.

In addition, the bill adds two public members to the Medical Examining Board. As a result, under the bill, the Medical Examining Board has the following 15 members: five public members, nine physician members, and one member who is a doctor of osteopathy.

Malpractice and disciplinary reports

Under current federal law, certain entities are required to report information on physicians to a national practitioner data bank maintained by the U.S. Department of Health and Human Services. Insurance companies and other entities must report to the data bank information about payments made under an insurance policy or in settlement of a malpractice claim. Also, state boards, such as the Medical Examining Board, must make reports regarding disciplinary actions taken against physicians. In addition, hospitals, health maintenance organizations, group medical practices, professional societies, and other health care entities must report the following: 1) professional review actions that adversely affect the clinical privileges of a physician for longer than 30 days; 2) the surrender of a physician's clinical privileges while the physician is under investigation or in return for not investigating the physician; and 3) a professional review action that restricts membership in a professional society.

Current federal law requires the reports to be made within specified deadlines and imposes penalties for not complying with the requirements.

This bill creates a requirement under state law to comply with the reporting requirements described above. A person who violates this requirement is subject to a forfeiture under state law of not more than \$10,000 for each violation.

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Current law requires a coroner or medical examiner to be notified if a homicide, suicide, or accidental death occurs, or if a death occurs under specified circumstances, including unexplained, unusual, or suspicious circumstances. A coroner or medical examiner who receives such a notification must immediately notify a district attorney about the death.

This bill also requires a coroner or medical examiner who receives such a notification to also report the death to DRL, if the coroner or medical examiner determines that the death was a therapeutic-related death. The bill defines a “therapeutic-related death” as one resulting from complications of surgery, drug use, or other medical procedures for disease or traumatic conditions, or resulting from a therapeutic misadventure in which medical procedures were done incorrectly or drugs were given in error.

For further information see the ***state and local*** 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:

1 **SECTION 1.** 15.405 (7) (b) 3. of the statutes is amended to read:

2 15.405 (7) (b) 3. ~~Three~~ Five public members.

3 **SECTION 2.** 146.365 of the statutes is created to read:

4 **146.365 Submission of reports to the medical examining board.** Reports
5 that are required to be submitted to the national practitioner data bank under 42
6 USC 11131 and 11133 shall be submitted to the medical examining board in
7 accordance with the time limits set forth in 45 CFR 60.5 (a) and (c). Any person who
8 violates this section may be required to forfeit not more than \$10,000 for each
9 violation.

10 **SECTION 3.** 440.037 of the statutes is created to read:

11 **440.037 Duties of department regarding health care professional**
12 **disciplinary process. (1) DEFINITIONS.** In this section:

13 (a) “Health care credentialing authority” means any of the following:

14 1. Board of nursing.

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- 1 2. Chiropractic examining board.
- 2 3. Dentistry examining board.
- 3 4. Dietitians affiliated credentialing board.
- 4 5. Hearing and speech examining board.
- 5 6. Marriage and family therapy, professional counseling, and social work
- 6 examining board.
- 7 7. Medical examining board.
- 8 8. Optometry examining board.
- 9 9. Pharmacy examining board.
- 10 10. Physical therapists affiliated credentialing board.
- 11 12. Psychology examining board.
- 12 13. Podiatrists affiliated credentialing board.

13 (b) “Health care professional” means:

- 14 1. An individual who is licensed or certified by a health care credentialing
- 15 authority.
- 16 2. An acupuncturist certified by the department under s. 451.04.

17 **(2) ESTABLISHMENT OF PRIORITY DISCIPLINARY CASES.** The department shall
18 develop a system to establish the relative priority of disciplinary cases involving
19 possible unprofessional conduct on the part of a health care professional. The
20 prioritization system shall give highest priority to cases of unprofessional conduct
21 that have the greatest potential to adversely affect the public health, safety, and
22 welfare. In establishing the priorities, the department shall give particular
23 consideration to cases of unprofessional conduct that may involve the death of a
24 patient or client, serious injury to a patient or client, substantial damages incurred
25 by a patient or client, or sexual abuse of a patient or client. The priority system shall

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1 be used to determine which cases receive priority of consideration and resources in
2 order for the department and health care credentialing authorities to most
3 effectively protect the public health, safety, and welfare.

4 **(3) IDENTIFICATION OF HEALTH CARE PROFESSIONALS WHO MAY WARRANT EVALUATION.**

5 (a) The department shall promulgate rules that establish a system for identifying
6 health care professionals who, even if not the subject of a specific allegation of, or
7 specific information relating to, unprofessional conduct, may warrant further
8 evaluation and possible investigation. Rules promulgated under this paragraph
9 may phase in the applicability of the system to different health care professionals as
10 determined by the department.

11 (b) Before promulgating any rules under par. (a), the department shall consult
12 with each of the following:

- 13 1. Professional and trade associations that, as determined by the department,
14 represent the interests of health care professionals.
- 15 2. Each health care credentialing authority.

16 **(4) NOTICE TO HEALTH CARE PROFESSIONALS, COMPLAINANTS, PATIENTS, AND CLIENTS**
17 **CONCERNING DISCIPLINARY CASE.** (a) In this subsection, “complainant” means a person
18 who has requested the department or a health care credentialing authority to
19 investigate a health care professional for possible unprofessional conduct.

20 (b) The department shall notify a health care professional in writing within 30
21 days after any of the following:

- 22 1. A case of possible unprofessional conduct by the health care professional is
23 closed following screening for a possible investigation.
- 24 2. A case of possible unprofessional conduct by the health care professional has
25 been opened for investigation.

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1 3. A case of possible unprofessional conduct by the health care professional is
2 closed after an investigation.

3 (c) The department shall make a reasonable attempt to provide the
4 complainant with a copy of each notice made under par. (b) that relates to a
5 disciplinary proceeding requested by the complainant.

6 (d) If a case of possible unprofessional conduct by a health care professional
7 involves conduct adversely affecting a patient or client of the health care professional
8 and the patient or client is not a complainant, the department shall make a
9 reasonable attempt to do one of the following:

10 1. Provide the patient or client with a copy of each notice made under par. (b)
11 2. and 3. related to that case.

12 2. Provide the spouse, child, sibling, parent, or legal guardian of the patient or
13 client with a copy of each notice made under par. (b) 2. and 3. related to that case.

14 (e) Failure to provide a notice under this subsection is not grounds for appeal
15 or dismissal.

16 **(5) NOTICE OF PENDING COMPLAINT TO HEALTH CARE PROFESSIONALS' PLACE OF**
17 **PRACTICE.** (a) Within 30 days after a formal complaint alleging unprofessional
18 conduct by a health care professional is filed, the department shall send written
19 notice that a complaint has been filed to all of the following:

20 1. Each hospital where the health care professional has hospital staff
21 privileges.

22 2. Each defined network plan, as defined in s. 609.01 (1b), for which the health
23 care professional is a participating provider.

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1 3. Each employer, not included under subd. 1. or 2., that employs the health
2 care professional to practice the health care profession for which the health care
3 professional is credentialed.

4 (b) If requested by the department, a health care professional shall provide
5 information necessary for the department to comply with this subsection.

6 **(6) OPPORTUNITY FOR PATIENTS AND CLIENTS TO CONFER CONCERNING DISCIPLINE.**

7 (a) In this subsection, “patient” means any of the following:

8 1. A patient or client of a health care professional who has been adversely
9 affected by conduct of the health care professional that is a subject of a disciplinary
10 proceeding.

11 2. A parent, guardian, or legal custodian of a patient or client specified in subd.
12 1., if the patient or client is a child.

13 3. A person designated by a patient or client specified in subd. 1. or the spouse
14 or a child, sibling, parent, or legal guardian of a patient or client specified in subd.
15 1., if the patient or client is physically or emotionally unable to confer as authorized
16 in this subsection.

17 4. If a patient or client specified in subd. 1. is deceased, any of the following:

18 a. The spouse or a child, sibling, parent, or legal guardian of the deceased
19 patient or client.

20 b. A person who resided with the deceased patient or client.

21 5. A guardian, appointed under ch. 880, of a patient or client specified in subd.
22 1., if the patient or client has been determined to be incompetent under ch. 880.

23 (b) Following an investigation of possible unprofessional conduct by a health
24 care professional and before disciplinary action may be negotiated or imposed
25 against the health care professional, a patient shall be provided an opportunity to

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1 confer with the department's prosecuting attorney concerning the disposition of the
2 case and the economic, physical, and psychological effect on the patient of the
3 unprofessional conduct. A prosecuting attorney may confer with a patient under this
4 paragraph in person or by telephone or, if the patient agrees to the method, by any
5 other method. The duty to confer under this paragraph does not limit the authority
6 or obligation of the prosecuting attorney to exercise his or her discretion concerning
7 the handling of a case of unprofessional conduct against the health care provider.
8 Failure to provide an opportunity to confer under this paragraph is not grounds for
9 appeal or dismissal of a disciplinary case against a health care professional.

10 **(7) ESTABLISHMENT OF DISCIPLINARY PROCEDURE TIME GUIDELINES.** The
11 department shall establish guidelines for the timely completion of each stage of the
12 health care professional disciplinary process. Notwithstanding s. 227.10 (1), the
13 guidelines need not be promulgated as rules under ch. 227. The guidelines may
14 account for the type and complexity of the case. The guidelines shall promote the fair
15 and efficient processing of cases of unprofessional conduct. The guidelines shall be
16 for administrative purposes and shall permit the department to monitor the progress
17 of cases and the performance of personnel handling the cases. Failure to comply with
18 the guidelines is not grounds for appeal or dismissal.

19 **(8) PANELS OF EXPERTS; ALTERNATIVE HEALTH CARE PRACTITIONERS.** If the
20 department establishes a panel of health care experts to be used on a consulting basis
21 by a health care credentialing authority, the department shall attempt to include a
22 health care professional who practices alternative forms of health care on the panel.
23 A health care professional who practices alternative health care and who
24 participates on a panel shall be of the same profession as the professionals regulated
25 by the health care credentialing authority utilizing the panel. The health care

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1 professional who practices alternative health care shall be available to assist in
2 evaluating complaints filed with the department or health care credentialing
3 authority against a health care professional who is alleged to have practiced health
4 care in an unprofessional or negligent manner through the use of alternative forms
5 of health care, the referral to an alternative health care provider, or the prescribing
6 of alternative medical treatment.

7 **(9) ADVICE OF CREDENTIALING AUTHORITIES.** In carrying out its duties under this
8 section, the department shall seek the advice of health care credentialing
9 authorities.

10 **SECTION 4.** 448.02 (3) (c) of the statutes is amended to read:

11 448.02 **(3)** (c) Subject to par. (cm), after a disciplinary hearing, the board may,
12 when it determines that a panel established under s. 655.02, 1983 stats., has
13 unanimously found or a court has found that a person has been negligent in treating
14 a patient or when it finds a person guilty of unprofessional conduct or negligence in
15 treatment, do one or more of the following: warn or reprimand that person, assess
16 a forfeiture against that person under par. (d). or limit, suspend or revoke any license,
17 certificate or limited permit granted by the board to that person. The board may
18 condition the removal of limitations on a license, certificate or limited permit or the
19 restoration of a suspended or revoked license, certificate or limited permit upon
20 obtaining minimum results specified by the board on one or more physical, mental
21 or professional competency examinations if the board believes that obtaining the
22 minimum results is related to correcting one or more of the bases upon which the
23 limitation, suspension or revocation was imposed.

24 **SECTION 5.** 448.02 (3) (d) of the statutes is created to read:

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1 448.02 (3) (d) The board may, except in cases where the person is found guilty
2 of negligence in treatment, assess a forfeiture of not more than \$1,000 for each
3 violation against a person who is found guilty of unprofessional conduct.

4 **SECTION 6.** 448.02 (4) and (9) (intro.) of the statutes are amended to read:

5 448.02 (4) **SUSPENSION PENDING HEARING.** The board may summarily suspend
6 or limit any license, certificate or limited permit granted by the board for a period not
7 to exceed 30 days pending hearing, when the board has in its possession evidence
8 establishing probable cause to believe that the holder of the license, certificate or
9 limited permit has violated the provisions of this subchapter and that it is necessary
10 to suspend or limit the license, certificate or limited permit immediately to protect
11 the public health, safety or welfare. The holder of the license, certificate or limited
12 permit shall be granted an opportunity to be heard during the determination of
13 probable cause. The board may designate any of its officers to exercise the authority
14 granted by this subsection to suspend or limit summarily a license, certificate or
15 limited permit, but such suspension or limitation shall be for a period of time not to
16 exceed 72 hours. If a license, certificate or limited permit has been summarily
17 suspended or limited by the board or any of its officers, the board may, while the
18 hearing is in progress, extend the initial 30-day period of suspension or limitation
19 for an additional 30 days. If the holder of the license, certificate or limited permit
20 has caused a delay in the hearing process, the board may subsequently suspend or
21 limit the license, certificate or limited permit from the time the hearing is
22 commenced until a final decision is issued or may delegate such authority to the
23 hearing examiner.

24 **(9) JUDICIAL REVIEW.** (intro.) No injunction, temporary injunction, stay,
25 restraining order or other order may be issued by a court in any proceeding for review

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1 that suspends or stays an order of the board to discipline a physician under sub. (3)
2 (c) or to suspend or limit a physician's license under sub. (4), except upon application
3 to the court and a determination by the court that all of the following conditions are
4 met:

5 **SECTION 7.** 979.01 (1p) of the statutes is created to read:

6 979.01 **(1p)** (a) In this subsection, "therapeutic-related death" means a death
7 that resulted from any of the following:

8 1. Complications of surgery, prescription drug use, or other medical procedures,
9 performed or given for disease conditions.

10 2. Complications of surgery, prescription drug use, or other medical procedures,
11 performed or given for accidental or intentional traumatic conditions.

12 3. Therapeutic misadventures, when a medical procedure may have been done
13 incorrectly or resulted from an error in dosage or type of drug administered.

14 (b) If the coroner or medical examiner determines that a death reported under
15 sub. (1) was a therapeutic-related death, the coroner or medical examiner shall
16 report this information to the department of regulation and licensing.

17 **SECTION 8. Nonstatutory provisions; report to legislature.**

18 (1) REPORT ON TIME GUIDELINES. No later than May 1, 2005, the department of
19 regulation and licensing shall submit to the appropriate standing committees of the
20 legislature, as determined by the speaker of the assembly or the president of the
21 senate, in the manner provided under section 13.172 (3) of the statutes, a report on
22 the disciplinary process time lines that were implemented by the department as
23 guidelines in February 1999. The report shall address compliance with and
24 enforcement of the guidelines and the effect of the guidelines on the fairness and
25 efficiency of the disciplinary process.

SENATE BILL 227**SECTION 9. Nonstatutory provisions; medical examining board.**

(1) INITIAL APPOINTMENT OF ADDITIONAL PUBLIC MEMBERS. Notwithstanding the length of term specified in section 15.405 (7) (b) (intro.) of the statutes, the 2 additional public members of the medical examining board shall be initially appointed for the following terms by the first day of the 4th month beginning after the effective date of this subsection:

(a) One public member, for a term expiring on July 1, 2005.

(b) One public member, for a term expiring on July 1, 2006.

SECTION 10. Initial applicability.

(1) The treatment of section 440.037 (4) of the statutes first applies to cases of possible unprofessional conduct that are screened on the effective date of this subsection.

(2) The treatment of section 440.037 (5) of the statutes first applies to formal complaints that are filed on the effective date of this subsection.

(3) The treatment of sections 440.037 (6) and 448.02 (3) (c) and (d) of the statutes first applies to cases of unprofessional conduct for which a formal complaint is filed on the effective date of this subsection.

SECTION 11. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 979.01 (1p) of the statutes takes effect on the first day of the 7th month beginning after publication.

(END)