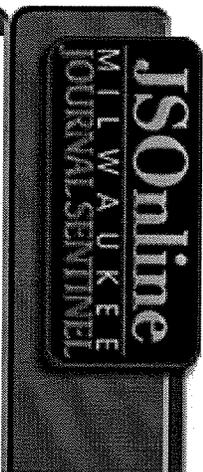


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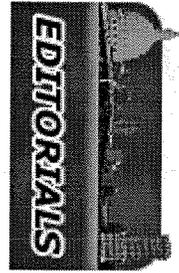
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# A look ahead, with concern about reproductive rights

By BARBARA MINER

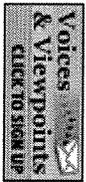
Last Updated: June 21, 2003

Twice in my life I have been involved in decisions whether to indefinitely prolong the life of a loved one near death - or to follow that person's wishes to say their last goodbyes, gather their family and friends around them and die as comfortably and humanely as possible.

As someone named in my mother's "living will," which stipulates her desires for death with dignity, I know I may face such a scenario again.

Unless the anti-abortion movement takes away my mother's rights.

Having politically pushed the abortion issue as far as possible under current U.S. Supreme Court rulings, Wisconsin's anti-choice movement is now taking aim at "living wills," which legally protect a terminally ill person's right to die with dignity.



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But that's only part of it. The anti-choice movement is also targeting birth control. And fertility procedures. And stem cell medical research. And sterilization. And a whole host of complicated issues where it wants to impose its narrow, rigid and simplistic ideology of what constitutes life and death.

"The pro-life movement has become the Islamic jihad of Wisconsin," warns state Rep. Sheldon Wasserman (D-Milwaukee), an ob-gyn specialist who is the Legislature's only medical doctor. "They are moving beyond abortion into end of life, to living wills, to hospice issues, to contraception, to infertility, to sterilization."

Equally frightening, their efforts are meeting with political success.

The anti-choice movement's campaign centers on two legislative efforts. One, Assembly Bill 63, allows pharmacists to refuse to fill birth control prescriptions or prescriptions "causing the death of any person." The other, Assembly Bill 67, allows health care workers to refuse to provide care or be involved in a variety of medical and research issues from living wills to stem cell research to fertility procedures.

AB 63 and its companion bill in the Senate have both passed out of committee. Most disturbing, the broader bill, AB 67, was passed by the Republican-controlled Assembly in early June and is expected to win passage in the Republican-controlled Senate.

The anti-choice movement is packaging its efforts as merely protecting health care workers who have moral or religious objections to abortion, assisted suicide and euthanasia. AB 67, for example, is often referred to as the "conscience clause" or "right to refuse" bill.

There are several problems with the anti-choice movement's spin. First, protections already exist for health care workers who have moral objections to abortion and sterilization. Second, assisted suicide and euthanasia are illegal, so health care workers have no need for further protections in those areas.



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"This is not about abortion, that's just rhetoric," state Rep. Christine Simicki (D-Milwaukee) says of the bills. "This is a very right-wing attempt to get at birth control, stem cell research and end-of-life issues."

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Health care groups are particularly upset by AB 67. Gina Dennik-Champion, executive director of the Wisconsin Nurses Association, said she did not know of a single health care or labor group that complained of problems with workers being forced to perform duties that violate their religious or moral beliefs. And not a single medical or labor group supported the bill.

The bill is so extreme that it violates medical ethics codes that doctors and nurses do not abandon their patients.

Procedures exist for resolving moral or ethical conflicts, Dennik-Champion notes. "But you can't just walk away from a patient, saying you have a moral or ethical problem, and I won't take care of you," she said. "Yet that's what this bill allows."

Given medical technology's ability to keep a person breathing almost forever, there is widespread popular support for an individual's right to die with dignity. Thus, the anti-choice movement has downplayed its attacks on living wills, in particular patient requests concerning intravenous hydration and nutrition. Unfortunately, the media has been slow to pick up on the anti-choice movement's expanded agenda.

Wasserman says he has no problem with doctors objecting to living wills. "Put a sign up in your office, let your patient know," he advises. "But be upfront about it."

Yet when Wasserman proposed an amendment that doctors or pharmacists opposed to the outlined activities post a sign letting patients know of their opposition, the amendment was rejected.

At the other end of life, so to speak, the anti-abortion movement is targeting birth control, even though birth control prevents abortions.

The bills don't come out and say "birth control" because that is too politically explosive. Instead, they cover objections based on "abortion."

But here's the catch. If you read the legislative fine print, abortion can be defined to cover a medicine or drug that has any intent "other than to increase the probability of a live birth." And it covers not only pregnant women but also those who might be pregnant.

Pro-Life Wisconsin - which, along with Wisconsin Right-to-Life, is the main power behind the bills - is particularly adamant that any contraception that affects a fertilized egg is an "abortion-causing agent" because it can end the "life" of that fertilized egg.

Don't believe me? Go to Pro-Life Wisconsin's Web site, where it clearly states: "Using any form of so-called birth control that kills or has the potential to kill the unborn child after fertilization is sinful. This includes the I.U.D., Depo-Provera, Norplant and other chemical combinations being used. To the best of our knowledge, this also includes all forms of the birth control pill currently being sold."

The anti-abortion movement also elevates an embryo above the health and life of the mother.

Pregnant women with epilepsy, depression or other chronic problems often make difficult decisions about what medicines to take. If the anti-choice movement gets its way, however, a physician could refuse to prescribe and a pharmacist could refuse to fill prescriptions for anti-depressant or anti-seizure medications, based on a belief that the medicines could potentially harm an embryo or fetus. Likewise, chemotherapy could be denied to a pregnant woman with cancer or even to a woman who *might* be pregnant.

The anti-choice movement's agenda is so outrageous one wonders how it is making any political headway. The answer, apparently, is that the Republicans are afraid to say no to Wisconsin Right to Life and Pro-Life Wisconsin.

Wasserman said that after the Assembly vote approving AB 67, several Republicans came up to him and admitted, "Sheldon, I am with you. This has moved beyond abortion. But what can I do?"

"These legislators know that if you cross Wisconsin Right to Life and Pro-Life Wisconsin, even if it's only one time, they don't forget you," Wasserman continued. "These groups are fundamentalists on a mission from God, and they are right and you are wrong. And if you are one of their legislators, you do what they say."

*Barbara Miner is a Milwaukee-based writer. (STYL)blurb* Having politically pushed the abortion issue as far as possible under current U.S. Supreme Court rulings, Wisconsin's anti-choice movement is now taking aim at "living wills," which legally protect a terminally ill person's right to die with dignity.

From the June 22, 2003 editions of the Milwaukee Journal Sentinel

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**LOCAL NEWS**

Posted Apr. 29, 2003

## Hundertmark bill defends health care workers' beliefs

Job decisions based on religion can't be punished

By Ben Jones  
*P-C Madison bureau chief*

MADISON — State Rep. Jean Hundertmark, R-Clintonville, says doctors and nurses who refuse to perform certain medical procedures on moral or religious grounds shouldn't face repercussions from their employers.

"This is a big question for health care workers," she said. "They need to be protected."

Hundertmark authored a bill that recently advanced out of an Assembly committee that would allow medical workers to opt out of participating in abortions, medical procedures that use tissues from aborted fetuses and withholding life support from terminally ill patients.

"It basically gives health care workers protection from being punished or reprimanded because they decided to not participate in a life-or-death situation, such as an abortion,"

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Hundertmark said.

Lisa Boyce, vice president of public affairs for Planned Parenthood Advocates of Wisconsin, said the law already has protection for doctors who don't want to perform abortions.

She said the bill includes "extreme and shocking" measures that could make it harder for women to receive pre-natal care and fertility treatment.

"It defies common sense why anyone would vote in support of a measure that would deny pregnant women access to health care and medication and to then further deny her the right to receive an explanation or referral to alternative medical providers," Boyce said. "To then eliminate legal protections for women harmed by substandard medical care is simply unfathomable."

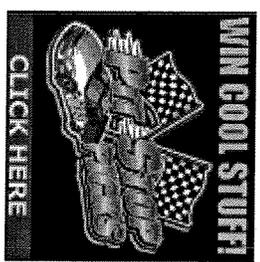
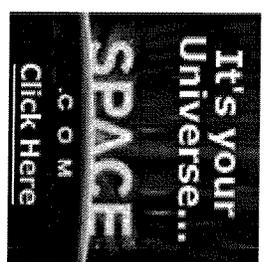
Wisconsin Right to Life supports the bill.

Susan Armacost, the group's legislative director, said health care workers are free to perform the procedures, but they will be protected if they choose not to.

"It is the most significant step forward in health care conscience rights in over 30 years," Armacost said.

*Ben Jones can be reached at 608-255-9256 or by e-mail at [bjones@postcrescent.com](mailto:bjones@postcrescent.com)*

[Back to Top](#)



Original URL: <http://www.jsonline.com/news/editorials/jun03/151430.asp>

## Bill would protect ethical beliefs of health care professionals

By SUSAN ARMACOST

*Last Updated: June 28, 2003*

Abortion, assisted suicide, euthanasia and unethical medical experiments involving the deliberate destruction of human life are activities that many health care professionals and facilities want no part of. They recognize that each of these activities entails the intentional destruction of human life and participating in them would violate their most deeply held moral beliefs.

Yet there are those who want to force health care professionals and facilities to participate in these activities against their will.

Assembly Bill 67 - reasonable, common-sense legislation - would protect the conscience rights of health care professionals and facilities in the specific areas of abortion, assisted suicide, euthanasia and unethical medical experimentation. The bill overwhelmingly passed the State Assembly and awaits action by the State Senate. The legislation is authored by Rep. Jean Hundertmark (R-Clintonville) and Sen. Carol Roessler (R-Oshkosh).

Some opponents of AB 67 are so fearful this legislation will pass they have resorted to making up ridiculous fabrications. Some have falsely claimed that under AB 67, a pharmacist could refuse to give medication to an AIDS patient based on objections to homosexuality. Others say the bill is targeting, among other things, birth control and living wills. Some legislators resorted to extremist name calling with one calling the bill "un-American" and another referring to the pro-life movement as "the Islamic Jihad of Wisconsin."

Given the wackiness coming from some of the bill's opponents, it's time for a reality check about what AB 67 would and would not do.

The majority of opposition to AB 67 comes from the pro-abortion lobby, most notably Planned Parenthood, the state's largest abortion provider. Its opposition to AB 67 is no surprise, since the pro-abortion movement has been involved in a national effort to force health care providers to participate in abortion.

In Alaska, the State Supreme Court ruled that some community hospitals must perform abortions against their will. In Connecticut, a certificate of need was denied to a proposed outpatient clinic that refused to perform abortions. Similar pro-abortion successes have occurred in other states.

In Congress, attempts have been made by the pro-abortion lobby to force medical programs to train students to perform abortions or lose accreditation.

Assembly Bill 67 would provide protection for health care professionals and facilities should pro-abortion activists in Wisconsin attempt similar tactics. The bill would protect health care professionals from job discrimination and lawsuits should they refuse to participate in the activities outlined in the bill.

Assisted suicide and euthanasia are not legal in Wisconsin, but actions sometimes occur that are tantamount to euthanasia. Some health care professionals object to the practice of causing the death of a patient by starvation and dehydration when the patient is not dying.

For them, deliberately causing the death of an individual by denying them food and fluids is no different than injecting them with a deadly drug - except that it takes seven to 10 days for the patient to die instead of a few moments.

Assembly Bill 67 would protect those who refuse to participate in actions that intentionally take the life of a patient.

Although every effort is being made to prevent assisted suicide or euthanasia from ever becoming legal in Wisconsin, a court could overturn our current law prohibiting these acts, as surely as *Roe vs. Wade* made our laws against abortion invalid. Should that occur, health care professionals and facilities who object to taking the lives of patients would be protected under AB 67.

Beyond doctors and nurses, AB 67 also would protect medical students who do not want to participate in abortion, assisted suicide, euthanasia or unethical research.

Pharmacists would be protected in the areas of abortion drugs, such as RU-486, that are specifically manufactured to cause an abortion, and drugs that would be used in an assisted suicide. Those working in research facilities who object to the deliberate destruction of human embryos for research purposes also would be protected.

In spite of false claims of opponents of AB 67, the bill does not cover drugs or devices that are intended to prevent a pregnancy. In fact, there is specific language in AB 67 that distinguishes between drugs that are intended to cause an abortion and drugs that are intended to prevent a pregnancy.

Nor does AB 67 tamper with living wills or any other advance directive for health care as some falsely claim. In fact, under AB 67, if a physician has a conscience concern regarding a patient's advance directive, that physician must immediately inform the patient orally and in writing regarding the physician's conscience concern in the categories of abortion, assisted suicide, euthanasia or unethical research.

After consultation, if a patient is uncomfortable with a physician in this regard, he or she can do what patients typically do when dissatisfied with a physician -they can find another physician.

Finally, opponents of AB 67 would like to amend the bill to force a physician who objects to abortion to transfer a pregnant woman to an abortionist. Or force a physician who does not want to starve and dehydrate a patient to death to transfer the patient to a doctor who is willing to kill the patient in that manner. An amendment to mandate such transfers was solidly rejected by the Assembly.

So, in view of the hyperbole from the opponents of AB 67, let's set the record straight. This bill protects health care professionals and facilities in only the specific areas of abortion, euthanasia, assisted suicide and unethical research. All of these involve the deliberate destruction of human life.

Assembly Bill 67 does not "take aim at living wills." Assembly Bill 67 does not protect conscience rights for medical treatments, pain medication, prenatal care, birth control, fertility treatments, anti-depressant drugs or anti-seizure medications, as some opponents falsely claim.

AB 67 recognizes that many health care professionals and facilities believe their mission is to treat and heal patients, not to engage in actions that deliberately destroy human life. This reasonable and common-sense legislation deserves to be enacted into law.

*Susan Armacost is legislative director of Wisconsin Right to Life.*

From the June 29, 2003 editions of the Milwaukee Journal Sentinel

Original URL: <http://www.jsonline.com/news/editorials/jul03/154529.asp>

## Right-to-life lobbying would hurt women's health care

By LISA BOYCE

*Last Updated: July 12, 2003*

Many people have a strong opinion about abortion, but did you know that anti-choice extremists are trying to deny Wisconsin residents access to basic health care? The fact is that the right-to-life lobby is advocating the demise of some vital and routine health care under the guise of the abortion debate.

Each year, more than 625,000 Wisconsin women rely on birth control. Contraception is credited with preventing more than 24,200 unintended pregnancies and 12,100 abortions each year in the state of Wisconsin. Yet, unbelievably, the right-to-life lobby is on a crusade to limit women's ability to access basic birth control, to receive prenatal care and to undergo cervical cancer screenings.

The following are examples of the terrifying legislation introduced by anti-choice groups. The right-to-lifers advocate allowing physicians to lie to women about the results of abnormal prenatal tests (Senate Bill 27). They support granting pharmacists the right to deny women access to birth control (Assembly Bill 63 and Senate Bill 21). They favor withholding public funds from health care providers who provide women with all-options counseling (Assembly Bill 231 and Senate Bill 84) and favor repealing federal assistance to improve low-income women's ability to access birth control (Assembly Bill 383 and Senate Bill 186).

And then there's Assembly Bill 67. Contrary to what the right-to-life lobby would like the public to believe, Assembly Bill 67 has absolutely nothing to do with abortion and assisted suicide. State law already allows health care professionals to refuse to participate in abortion and sterilization and classifies assisted suicide and euthanasia as crimes.

So what other health care services could doctors possibly find morally objectionable? According to the right-to-life lobby, administering birth control, conducting fertility treatments and prenatal tests, dispensing medication to pregnant women and adhering to the advance directives legally documented by the elderly and terminally ill are all areas the right-to-life groups find reprehensible and seek to impair.

Assembly Bill 67 greatly extends the list of medical procedures that health care providers can refuse to provide for their patients, including prenatal care, fertility treatment, stem cell research and palliative care for the elderly and terminally ill. Worse yet, there are no requirements that the health care professionals provide a referral to the patient, transfer the patient or render care if the patient's health or life is threatened. Finally, patients who are harmed by a health provider's failure to perform potentially life-saving treatments would be prohibited from suing the hospital or the health care professional even if permanent injuries are sustained.

All of this defies common sense. How could anyone in good conscience vote in support of a measure that would violate the trust of unsuspecting patients, jeopardize health and even threaten lives? Nevertheless, despite compelling opposition from experts in the health care community, 59 of our 99 elected representatives voted to pass Assembly Bill 67 and rejected amendments to preserve patients' rights and access to vital health care.

To make matters even worse, our taxpayer-funded, elected officials failed to support an amendment that would at least require physicians to provide medical and prenatal care necessary to preserve the health and life of a woman.

And there's more: In reference to concerns that patients may unknowingly see a doctor who would refuse to provide lifesaving care, a majority of our elected representatives rejected an amendment that would require the physician to inform the patient of the physician's moral objections and refer the patient for alternative medical care.

That's why professionals from the Wisconsin Medical Society, Wisconsin Nurses Association, Wisconsin

Association of School Nurses, American College of Nurse-Midwives, the American Association of Retired Persons, the Hospice Organization of Wisconsin, the League of Women Voters and the American Civil Liberties Union actively oppose Assembly Bill 67 and describe it as an attack on a patient's rights and the medical code of ethics.

The Wisconsin Medical Society concludes that Assembly Bill 67 harms the most vulnerable people and violates ethical standards that all physicians must follow, including providing informed consent, lifesaving care and respecting the patient's wishes for medical care.

The Wisconsin Nurses Association has echoed similar concerns by saying, "Assembly Bill 67 violates the nurses' code of ethics and a medical provider's commitment to the patient by granting them the right to walk away from a patient in their most vulnerable state."

Doug Laube of the University of Wisconsin Medical School and past vice chairman of the American College of Obstetricians and Gynecologists called Assembly Bill 67 "an unconscionable attack on maternal health that would restrict valuable prenatal diagnosis and care that is integral to the health of women and their babies."

Joining the voices of Wisconsin's medical community are newspapers from across the state, including the Wisconsin State Journal and Capital Times, the Waukesha Freeman, Eau Claire Leader-Telegram, Stevens Point Journal, Wausau Daily Herald, Marshfield News-Herald and northern Wisconsin's Daily Press. All of these publications have concluded Assembly Bill 67 is bad medicine and have used words such as "fanatic," "fundamentalist," "unconscionable," "a violation of patient rights" and a "threat to women's well-being" in articulating their opposition to Assembly Bill 67.

The right-to-life lobby is purposefully misleading the public about the real impact of Assembly Bill 67 because lobby representatives know the bills they advance are really about allowing moral beliefs to override the health care needs of patients.

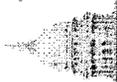
Compromising women's health and well-being by denying them health care and treating them as second-class citizens is not a matter of conscience, it is simply unconscionable.

*Lisa Boyce is vice president of public affairs for Planned Parenthood of Wisconsin.*

From the July 13, 2003 editions of the Milwaukee Journal Sentinel

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## OPINION

### Fanatic 'conscience' bill violates patients' rights

7:07 PM 6/10/03

Should a nurse be able to withhold pain medication from a dying patient - medication prescribed by the patient's doctor - because the medication might hasten the patient's death, and the nurse finds that morally objectionable?

Most reasonable people would say "No. That's not her call to make."

Should a pharmacist be able to refuse AIDS medication to a gay man - medication prescribed by the man's own doctor - because the pharmacist has moral objections to homosexuality?

Most reasonable people would say "No. That's not the pharmacist's call."

Alas: Most of the people in the state Assembly are not reasonable people in this case. They are zealots bent on inserting their own personal beliefs between patients and their doctors - and posing for holier-than-thou card pictures with the religious right.

This bill, AB 67, known as the "conscience" bill, is promoted as a way to allow health care workers to follow their consciences by protecting them from liability and employment discrimination if they refuse to participate in listed procedures involving embryos, assisted suicide and euthanasia. But make no mistake: The bill is not about abortion. It is not about assisted suicide. It is not about euthanasia. State law already protects doctors, nurses and other health care providers who object to abortion. Assisted suicide and euthanasia are already illegal.

So whom would this bill protect? Even its backers have yet to produce evidence that any health-care workers are being forced to perform tasks they find morally objectionable or are being fired for refusing to do so.

Meanwhile, the list of groups that oppose the bill is growing. It includes AARP, the State Medical Society, the Wisconsin Nurses Association, the Hospice Organization, Planned Parenthood - even the Lutheran Church. A doctor from the UW Medical School called the bill "an unconscionable attack on maternal health." The head of the Nurses Association said it

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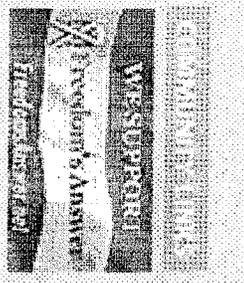
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violated the Nurses Code of Ethics. The executive director of the Hospice Organization called it "an abomination" that would allow health care workers "to disregard a dying patient's wishes specified in their living wills."

The bill passed the Assembly 59 to 38 on an almost strict party-line vote, minus three Republican legislators brave enough to buck their party: state Reps. DuWayne Johnsrud, R-Eastman, Mike Powers, R-Albany, and John Ainsworth, R-Shawano. We wish them luck reminding their fellow Republicans that the GOP once stood for Individual rights - not the right of legislators to insert their personal beliefs into the relationship between a doctor and a patient.

All South Central Wisconsin Democrats in the Assembly opposed the bill - except for state Rep. Wayne Wood, D-Janesville.

The bill now goes to the Senate, where it is expected to pass. Gov. Jim Doyle has promised to veto it, but whether there are enough votes to sustain the veto is a matter of concern.

Once more with feeling: This bill is not about abortion; it's not about assisted suicide; it's not about euthanasia. It is a wholly unnecessary attack on patients' rights. Those who support it should be ashamed.

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The Capital Times January 29, 2004

# Two bills opposing abortion advance

By Matt Pommer

*The Capital Times*

Legislative committees today advanced two bills sought by abortion opponents.

On a 4-2 vote a Senate committee recommended a so-called "conscience clause" bill for passage. Under its provisions, health care providers could not be forced to do any activities related to abortion, euthanasia, assisted suicide, medical experiments in which human embryos are destroyed such as stem cell research, or using the fetal tissue from abortions.

On a 6-2 vote an Assembly committee endorsed legislation to require a minor to get parental permission to have an abortion. The consent would have to include a legal notarization.

Current Wisconsin law provides that approval for a minor's abortion may be obtained from a parent, legal guardian,

**Current Wisconsin law provides that approval for a minor's abortion may be obtained from a parent, legal guardian, legal custodian, adult family member at least 25 years old or judge.**

legal custodian, adult family member at least 25 years old or judge.

State law now provides exceptions to the consent law if the minor is emancipated (living on her own), if there is a medical emergency or if there is the likelihood of a suicide.

The bill would eliminate provisions conferring consent authority on clergy, adult family members and foster parents.

E-mail: [mpommer@madison.com](mailto:mpommer@madison.com)

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## Senate approves bill allowing care refusal

### Citing beliefs, staffers could demur on abortions, other procedures

By AMY RINARD  
[arinard@journalsentinel.com](mailto:arinard@journalsentinel.com)

Posted: Feb. 4, 2004

**Madison** - Doctors, nurses, pharmacists and other health care workers could refuse to provide certain types of care and medication - including those related to abortion - based on their personal moral and religious beliefs under legislation advanced by the state Senate Wednesday.

On a 20-13 vote, the Senate approved a bill (AB 67) that would allow health care workers to refuse to participate in abortions, sterilizations, experiments on human embryos, procedures using some fetal tissues or organs, and withdrawal of food and water for patients who are in a vegetative state but not in a terminal condition.

The Assembly approved the legislation, known as the "conscience bill," last June on a 56-35 vote.

The Senate added amendments to the bill to clarify the definition of experiments on embryos and to provide that a doctor must inform a patient in writing if he or she is unwilling based on moral grounds to comply with provisions for care spelled out in the patient's living will or durable power of attorney for health care.

Those amendments now must be approved by the Assembly before the bill is sent to Gov. Jim Doyle.

Proponents of the legislation, most notably Wisconsin Right to Life Inc., argued that the measure was needed to protect the conscience rights of health care professionals so they are not forced to perform procedures that are contrary to their own moral or religious beliefs.

Under the bill, health care providers and pharmacists who invoke their right to refuse care and service based on moral or religious grounds cannot be discriminated against by their employers or be subject to any disciplinary action by state licensing boards.

Those health care professionals - and the clinics, hospitals and pharmacies they work for - also would be immune from legal liability for any harm to patients that results from the refusals to perform certain procedures or fill certain prescriptions.

Opponents of the bill, including the Wisconsin Medical Society, said the legislation would hinder patient care and could endanger the lives of pregnant women.

"This will allow physicians to abandon patients when patients are in greatest need," said Sen. Judy Robson (D-Beloit), who has worked as a registered nurse.

"Patients will be harmed under this bill."

The Republican majority in the Senate defeated attempts by Democrats to amend the bill to require that doctors who invoke their right to refuse care under this conscience provision be required to refer patients to another doctor.

#### At A Glance

■ Under the bill, health care providers and pharmacists who invoke their right to refuse care and service based on moral or religious grounds cannot be discriminated against by their employers or be subject to any disciplinary action by state licensing boards.

■ Those health care professionals - and the clinics, hospitals and pharmacies they work for - would be immune from legal liability for any harm to patients that results from the refusals to perform certain procedures or fill certain prescriptions.

"This bill is a denial of health care bill," said Sen. Gwendolynne Moore (D-Milwaukee).

"It gives medical professionals a free ride - no consequences - for not even referring a patient to another doctor."

But Sen. Carol Roessler (R-Oshkosh), the primary Senate sponsor of the bill, said doctors are not required now to make referrals to other doctors for patients for whom they cannot provide care.

Roessler also denied that patient lives would be endangered under the bill because procedures health care workers could refuse to participate in are very narrowly defined.

"This is very specialized," she said. "It isn't generalized care."

But Sen. Jon Erpenbach (D-Middleton), and other Democratic opponents of the bill argued that the measure had been drafted at the request of abortion opponents - not medical professionals - and was "extreme and polarizing" and strictly political.

Doyle has not said whether he will sign or veto the measure. But Democrats speculated that Doyle, who supports a woman's right to have an abortion, would veto the conscience bill.

From the Feb. 5, 2004 editions of the Milwaukee Journal Sentinel

**Halbur, Jennifer**

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**From:** Seaquist, Sara  
**Sent:** Friday, February 06, 2004 2:15 PM  
**To:** Halbur, Jennifer  
**Subject:** FW: Thank YOU!!!  
 CR email...not a constituent

T.O. — CR  
 X SH

-----Original Message-----

**From:** Nelson, Spencer [mailto:Spencer\_Nelson@trekbikes.com]  
**Sent:** Friday, February 06, 2004 12:28 PM  
**To:** sen.roessler@legis.state.wi.us  
**Subject:** Thank YOU!!!

Thank you so much for your hard work with the AB 67!  
 Awesome victory and great work for the protection of life and what we believe in!!  
 Sincerely,  
 Spencer Nelson  
 Lake Mills, WI.

~~~~~  
**Wisconsin Right to Life NEWS RELEASE**  
 10625 W. North Avenue, Milwaukee, WI 53226  
 414-778-5780 or toll free: 877-855-5007

**For immediate release:** Thursday, February 5, 2003

**Contact:** Susan Armacost, Legislative Director

**STATE SENATE PASSES THE MOST COMPREHENSIVE  
 CONSCIENCE CLAUSE BILL IN THE NATION!**

***Will Soon Reach the Governor's Desk***

In spite of a campaign of misinformation and inflammatory rhetoric by the pro-abortion lobby, the State Senate passed Assembly Bill 67, legislation to protect the conscience rights of health care professionals and facilities. The measure is authored by Rep. Jean Hundertmark (R-Clintonville) and Sen. Carol Roessler (R-Oshkosh), AB 67.

**"Abortion, assisted suicide, euthanasia and unethical medical experiments involving the deliberate destruction of in vitro human embryos or the use of tissue from aborted babies are activities that many health care professionals and facilities want no part of,"** said Susan Armacost, Legislative Director for Wisconsin Right to Life, the lead organization promoting the legislation. **"They recognize that each of these activities entails the intentional destruction of human life and participating in them would violate their most deeply held beliefs."**

The pro-abortion lobby, most notably Planned Parenthood and NARAL Pro-Choice Wisconsin, have been relentless in literally making up ridiculous and inflammatory arguments against AB 67. For example, they tried unsuccessfully to convince legislators that AB 67 is "an inhumane assault on pregnant women's health and lives, and allows doctors to refuse medical care and information in the most tragic situations."

**"Assembly Bill 67 does not ban any of the covered activities listed in the bill which are limited to abortion, assisted suicide, euthanasia, medical experiments that deliberately destroy human embryos and the use of tissue from aborted babies,"** said Armacost. **"The legislation merely protects the right of those health care professionals and facilities who have a moral objection to those activities from being forced to participate in them. The patient is free to find another health care professional who will carry**

out their request. We welcome honest debate on the issues for which we advocate. We believe that political discourse should be based on fact, not on fabrications. Apparently, the opponents of AB 67 don't agree with us on that point either."

Assembly Bill 67 will go back to the Assembly for their concurrence on one change made by the State Senate. Assembly concurrence may take place today. The bill will then go to the Governor.

"We so deeply appreciate the work of Sen. Roessler in the State Senate on this issue and for the State Senate leadership's fairness in dealing with this issue in a timely manner," said Armacost. "In addition, there were many other senators who made great contributions to the passage of this ground-breaking legislation. We thank them so much."

**Spencer Nelson**

Manufacturing Engineer

Waterloo Framebuild

920-478-2191,x 2297

**Halbur, Jennifer**

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**From:** Seaquist, Sara  
**Sent:** Thursday, February 19, 2004 3:28 PM  
**To:** Halbur, Jennifer  
**Subject:** FW: Conscience Clause Bill (AB 67) - News Release  
 CR email...

-----Original Message-----

**From:** Legislative [mailto:legis@wrtl.org]  
**Sent:** Thursday, February 19, 2004 1:08 PM  
**To:** Legislative  
**Subject:** Conscience Clause Bill (AB 67) - News Release

**Wisconsin Right to Life NEWS RELEASE**  
 10625 W. North Avenue, Milwaukee, WI 53226  
 414-778-5780 or toll free: 877-855-5007

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**FOR IMMEDIATE RELEASE:** Thursday, February 19, 2004  
**CONTACT:** Susan Armacost, Legislative Director

**ASSEMBLY VOTE LIKELY NEXT WEEK ON CONCURRENCE WITH SENATE  
 ACTION ON CONSCIENCE CLAUSE BILL (AB 67)**

***Pro-Abortion Lobby Resorts to Ridiculous Arguments  
 Regarding the Nation's Most Comprehensive  
 Bill Dealing With Conscience Rights***

The Assembly is likely to vote next week on concurrence with State Senate action on the nation's most comprehensive conscience clause legislation, Assembly Bill 67. The legislation is authored by Rep. Jean Hundertmark (R-Clintonville) and Sen. Carol Roessler (R-Oshkosh). After the Assembly completes its work on AB 67, the measure will go to the governor.

Assembly Bill 67 would protect the conscience rights of health care professionals and facilities so they would not be forced to participate in a number of activities that deliberately destroy human life. The activities in the legislation for which conscience rights could be evoked are abortion, assisted suicide, euthanasia, unethical research involving the deliberate destruction of human embryos, and the use of fetal tissue from aborted babies.

**"Everyone recognizes that these particular activities involve the deliberate destruction of human life,"** said Susan Armacost, Legislative Director of Wisconsin Right to Life. **"Within the medical profession, there are some individuals and facilities who want no part of those activities. But there are also some organizations and legislators who would like to force physicians, nurses, medical students, research assistants and others to participate in those activities against their will. Assembly Bill 67 would protect the conscience rights of medical professionals and facilities only in the specific areas defined in the legislation."**

*Assembly Bill 67 does not ban any of the activities outlined in the bill.* It merely protects the right of health care professionals and facilities, who believe their mission is to treat and heal, to not be forced to participate in acts involving the deliberate destruction of human life.

**"To listen to the ridiculous arguments coming from the opponents of AB 67, you'd think that medical care, as we know it, would be doomed if AB 67 becomes law"** said Armacost. **"If you**

02/20/2004

**look at the majority of those who are making various absurd claims about AB 67, you soon realize it is coming mainly from the radical pro-abortion lobby who has gone to court in several states to force facilities to perform abortions against their will. The really scary thing is that they have been successful in several situations."**

Examples of pro-abortion court successes include Alaska, where the State Supreme Court ruled that some community hospitals must perform abortions against their will. In Connecticut, a certificate of need was denied to a proposed outpatient clinic that refused to perform abortions. Pro-abortion forces have been successful in other states. In the U. S. Congress, attempts have been made by the pro-abortion lobby to force medical programs to train medical students to perform abortions or lose accreditation. Assembly Bill 67 would provide protection for health care professionals, medical students and facilities if pro-abortion activists in Wisconsin attempt similar tactics. And it is this fact that so concerns the pro-abortion lobby.

In order to garner opposition to AB 67, pro-abortion forces and some others claim AB 67 would "restrict access to health care" and would "deny medical treatment due to the practitioner's personal or moral beliefs." They also say that legislators "have no business giving doctors the power to pick and choose what health care options they provide their patients."

**"The fact that opponents of the bill consider abortion, assisted suicide and euthanasia to be 'health care' is, in and of itself, outrageous," said Armacost. "They don't seem to understand that most people think it's wrong to fire a member of the medical community or to slap them with a civil suit because they don't want to participate in the deliberate killing of vulnerable people. If one physician refuses to participate in the taking of human life, nothing in AB 67 would prevent a patient from going to another physician who is willing to comply. In spite of the scare tactics being employed by the opponents of AB 67, the legislation is a very simple, commonsense concept that protects conscience rights and bans nothing."**

Some opponents of AB 67 claim that including assisted suicide and euthanasia in the bill is unnecessary because those activities are currently illegal in Wisconsin. One of the reasons AB 67 is considered to be the strongest conscience clause measure in the nation is because it is both comprehensive and forward looking. Even though assisted suicide and euthanasia are not now legal in our state, a court could overturn our laws prohibiting these acts just as surely as *Roe v. Wade* made our laws against abortion invalid. Should that occur, and it is a very real possibility given some recent court rulings, AB 67 would protect facilities and health care professionals who object to this deliberate taking of human life. In addition, there are some actions that currently occur in Wisconsin's hospitals and nursing homes that are tantamount to euthanasia. The removal of food and fluids from patients who are not terminally ill and who are not dying is considered by some health care professionals to be tantamount to euthanasia because it would result in a patient being starved and dehydrated to death. Thus, AB 67 is needed to protect conscience rights in all of these areas.

**"We look forward to the Assembly completing its action on AB 67," said Armacost. "We are particularly appreciative to the leadership in the Assembly and State Senate for dealing with this issue in such a fair and timely manner."**

**Stegall, Jennifer**

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**From:** Malszycki, Marcie  
**Sent:** Thursday, September 23, 2004 1:27 PM  
**To:** Stegall, Jennifer  
**Subject:** FW: WI Right to Life Decries Court's Decision in Terri's Law

CR email

-----Original Message-----

**From:** WILegislators-owner@wrtl.org [mailto:WILegislators-owner@wrtl.org] **On Behalf Of** Legislative  
**Sent:** Thursday, September 23, 2004 1:16 PM  
**To:** Legislative  
**Subject:** WI Right to Life Decries Court's Decision in Terri's Law

 <http://www.wrtl.org>

**Wisconsin Right to Life**

10625 W. North Avenue, Milwaukee, WI 53226  
414-778-5780 or toll free: 877-855-5007

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**For immediate release:** Thursday, September 23, 2004

**Contact:** Barbara Lyons, Executive Director  
Susan Armacost, Legislative Director

**Wisconsin Right to Life Decries Florida Supreme Court Ruling  
That Strikes Down "Terri's Law"**

***Legislation is Imperative to Protect Vulnerable Patients***

Today, the Florida Supreme Court unanimously struck down "Terri's Law" on the basis that it violates the separation of powers. The law was passed in an emergency session of the Florida Legislature in October 2003 and signed into law by Governor Jeb Bush.

**"This tragic decision highlights the fact that the life of Terri Schindler-Schiavo and the lives of countless disabled Americans are in grave danger,"** said Barbara Lyons, Executive Director of Wisconsin Right to Life. **"It is time to act in Florida and in other states to protect the lives of helpless patients through protective legislation."**

Wisconsin Right to Life will be urging its members and supporters to contact members of the Florida Legislature to urge them to act on S.B. 692, the *Florida Starvation and Dehydration of Persons With Disabilities Act*. This legislation would protect patients, who are unable to speak for themselves and who have not clearly indicated otherwise, from being starved or dehydrated to death.

**"We grieve for Terri Schindler-Schiavo, her family and for the many disabled individuals who are in similar situations,"** said Lyons.



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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE STEPHEN NASS

FROM: Robert J. Conlin, Senior Staff Attorney

RE: Description of 2003 Assembly Bill 63 and Assembly Bill 67, Relating to Employment Discrimination Based on Creed and Exemption From Liability and Discipline for Certain Health Providers for Refusing to Participate in Certain Activities

DATE: February 27, 2003

This memorandum, prepared at your request, describes the provisions of two bills scheduled for public hearing before the Assembly Labor Committee on March 5, 2003. Those bills are: (1) Assembly Bill 63, relating to employment discrimination based on creed and exemption from liability and discipline for pharmacists who refuse to dispense for abortions, assisted suicides, and euthanasia; and (2) Assembly Bill 67, relating to employment discrimination based on creed, exemption from liability and discipline for health care providers and hospital employees who refuse to participate in sterilization, abortion, assisted suicide, and other procedures on moral or religious grounds, and power of attorney for health care instruments and patient declarations regarding the withholding or withdrawal of life sustaining procedures or feeding tubes.

Assembly Bill 63 was introduced by Representative Owens and others and was cosponsored by Senator Reynolds and others. Assembly Bill 67 was introduced by Representative Hundertmark and others and was cosponsored by Senator Roessler and others. Both bills have been referred to the Assembly Labor Committee which, as noted above, has scheduled a public hearing on them for Wednesday, March 5, 2003.

The remainder of this memorandum briefly describes the provisions of current law affected by the bills and summarizes the substantive provisions of the bills.

### **CURRENT LAW**

#### **WFEA**

Wisconsin's Fair Employment Act (WFEA) generally prohibits discrimination employment and licensure based on, among other things, a person's creed. For purposes of the WFEA, "creed" is defined

as a system of religious beliefs, including moral or ethical beliefs about right and wrong, that are sincerely held with the strength of traditional religious views. [s. 111.32 (3m), Stats.] Under the WFEA, employment discrimination because of creed specifically includes refusing to reasonably accommodate an employee's or prospective employee's religious observance or practice unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise, or business.

### **Regulation of Pharmacists**

Under current law, pharmacists and the practice of pharmacy are regulated by state statutes and rules of the Pharmacy Examining Board. Both the statutes and rules provide for the discipline of licensed pharmacists who engage in "unprofessional conduct."

### **Refusal to Perform Certain Procedures**

Under current law, no hospital may be required to admit a patient or to allow the use of its facilities for the purpose of performing a sterilization procedure or removing a human embryo or fetus. A physician or any other person who is a member of or associated with the staff of a hospital, or an employee of the hospital in which such a procedure has been authorized, may not be required to participate in such procedure if his or her objection is stated in writing and is based on moral or religious grounds. Such a refusal to participate in a procedure may not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against the person. [s. 253.09 (1), Stats.]

In addition, no hospital or employee of any hospital may be held liable for any civil damage, resulting from a refusal to perform sterilization procedures or to remove a human embryo or fetus from a person, if such refusal is based on religious or moral precepts. [s. 253.09 (2), Stats.] The law also prohibits any hospital, school, or employer from discriminating against any person with regard to admission, hiring or firing, tenure, term, condition or privilege of employment, or student or staff status on the ground the person refuses to recommend, aid, or perform procedures for sterilization or the removal of a human embryo or fetus, if the refusal is based on religious or moral precepts. [s. 253.09 (3), Stats.]

Finally, the law provides that the receipt of a grant, contract, loan or loan guarantee under any state or federal law does not authorize any court or any public official or other public authority to require either:

1. Such individual to perform or assist in the performance of any sterilization procedure or removal of a human embryo or fetus if the individual's performance or assistance in the performance of such a procedure would be contrary to the individual's religious beliefs or moral convictions.
2. Such entity to:
  - a. Make its facilities available for the performance of any sterilization procedure or removal of a human embryo or fetus if the performance of such a procedure in those facilities is prohibited by the entity on the basis of religious beliefs or moral convictions; or

- b. Provide any personnel for the performance or assistance in the performance of any sterilization procedure or removal of a human embryo or fetus by such personnel if such participation would be contrary to the religious beliefs or moral convictions of such personnel. [s. 253.09 (4), Stats.]

Generally, physicians and other health care professionals licensed by the Medical Examining Board and registered nurses licensed by the Board of Nursing are immune from civil damages for refusing to perform or participate in a sterilization procedure or the removal of a human embryo or fetus.

## **THE BILLS**

### **Assembly Bill 63**

Assembly Bill 63 amends the WFEA to provide that employment discrimination based on creed also specifically includes discriminating against any licensed pharmacist in a manner prohibited by the WFEA on the basis of the pharmacist's refusal to dispense a prescribed drug or device because the pharmacist believes that the drug or device would be used for any of the following:

1. Causing an abortion, as defined in current law.<sup>1</sup>
2. Causing the death of any person, if the pharmacist consults with the practitioner who prescribed the drug or device before the pharmacist makes the refusal.

In addition, the bill amends the law governing the practice of pharmacy by providing that no pharmacist may be required to dispense or prescribe a drug or device if the pharmacist has reason to believe that the drug or device would be used for the two purposes identified above. The bill also provides that such a refusal by a pharmacist may not be the basis for either a claim for damages against the pharmacist or his or her pharmacy, or disciplinary action by the Pharmacy Examining Board or Department of Regulation and Licensing (DRL) against the pharmacist.

[Comments: You asked for comments on aspects of the bill that may present legal or technical problems. The following comments respond to this request.

1. It should be noted that the amendment to the WFEA in the bill does not contain an "undue hardship" provision as is contained in current law. Such a provision generally provides that it would not be discrimination to fail to accommodate a person's religious beliefs if doing so would create an "undue hardship" on the business. Accordingly, if enacted, the bill would establish two different levels of protection for creed-related discrimination.

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<sup>1</sup> For purposes of Assembly Bill 63, an "abortion" means "the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant or for whom there is reason to believe that she may be pregnant and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus." [See s. 253.10 (2) (a), Stats.]

2. As noted, the WFEA changes in the bill protect a pharmacist who "*believes*" that the requested drug or device will be used in a certain way. The changes in the pharmacy regulations apply when a pharmacist "*has reason to believe*" drugs or devices will be used in a certain way. This inconsistency appears to provide for a subjective standard in one case (WFEA) and a more objective standard in the other. It is not clear that the distinction was intended.
3. For purposes of the liability exemption in the bill, the bill provides protection for a pharmacist who refuses to dispense certain drugs or devices and for the "pharmacy of the pharmacist." It is not clear whether the "pharmacy of the pharmacist" refers only to a pharmacy owned by the refusing pharmacist or a pharmacy that employs the refusing pharmacist, or both. You may wish to clarify the meaning of the phrase.
4. The bill is generally intended to provide protection to licensed pharmacists. However, it does not appear to extend to pharmacy interns and pharmacy technicians, both of whom may be involved in the process of "dispensing" drugs or devices at issue in the bill. You may wish to consider extending the bill's protections to all persons who may dispense the types of drugs or devices at issue in the bill.
5. As noted, the bill allows a pharmacist to not dispense a drug or device that he or she "has reason to believe" would be used for causing the death of any person. The bill requires that in order for this right to be invoked, the pharmacist must first consult with the practitioner who prescribed the drug or device. However, the bill does not specify what the consultation must be about. For example, there is no requirement that the consultation concern the planned uses of the prescribed drug or device. Although the requirement for the pharmacist to "have reason to believe" that a drug or device will be used a certain way may imply that the consultation should concern the intended use of the drug or device, such conclusion is by no means guaranteed. Accordingly, you may wish to clarify the purpose of the consultation.]

### Assembly Bill 67

The bill amends the WFEA to provide that employment discrimination based on creed also specifically includes discriminating against any employee or prospective employee in a manner prohibited by the WFEA on the basis of that person's refusal, or statement of an intention to refuse, based on his or her creed, to participate in any of the following:

1. A sterilization procedure.

2. An abortion.<sup>2</sup>
3. An experiment or medical procedure involving any of the following:
  - a. The destruction of a human embryo.
  - b. The human embryo or unborn child, at any stage of development, in which the experiment or procedure is not related to the beneficial treatment of the human embryo or unborn child.
4. A procedure, including a transplant procedure, that uses fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or miscarriage.
5. The withholding or withdrawal of nutrition or hydration, if the withholding or withdrawal would result in the patient's death from malnutrition or dehydration, or complications of malnutrition or dehydration, rather than from the underlying terminal illness or injury, unless the administration of nutrition or hydration is medically contraindicated.
6. An act that intentionally causes or assists in causing the death of an individual, such as by assisted suicide, euthanasia, or mercy killing.

For purposes of the bill, a "human embryo" is defined as a human organism that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells. The term includes a zygote but does not include a human organism at or beyond the state of development at which the major body structures are present. In addition, the bill defines the phrase "participate in" to mean to perform, assist in, recommend, counsel in favor of, make referrals for, prescribe, dispense or administer drugs for, or otherwise promote, encourage, or aid.

Additionally, the bill expands the provisions of current law relating to the refusal of hospitals, health care professionals, and hospital employees to participate in various procedures to apply to a refusal to participate, based on moral or religious grounds, in any of the six activities described above. In addition, the bill allows a person who is adversely affected by conduct that violates these provisions to bring a civil action for injunctive relief, damages, and attorney's fees.

The bill also provides that licensed pharmacists are exempt from liability for damages that result from a refusal to participate in any of the six activities if the refusal is based on religious or moral precepts. In addition, the bill changes the exemptions from liability under current law for physicians and other health care professionals licensed or certified by the Medical Examining Board and registered nurses licensed by the Board of Nursing so that they are consistent with the exemption under the bill for pharmacists.

Further, the bill specifies that the Medical Examining Board, Board of Nursing, Pharmacy Examining Board, and the DRL may not take any disciplinary action against any of the following who, in writing, refuse or state an intention to refuse to participate in any of the six activities if the refusal is

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<sup>2</sup> Assembly Bill 67 adopts the same definition of "abortion" as provided in Assembly Bill 63.

based on moral or religious grounds: (1) a physician or other health care professional licensed or certified by the Medical Examining Board; (2) a registered nurse licensed by the Board of Nursing; or (3) a pharmacist licensed by the Pharmacy Examining Board. In addition, the bill allows a physician, registered nurse, or pharmacist who is adversely affected by conduct that violates this prohibition to bring a civil action for injunctive relief, damages, and attorneys fees.

Under the bill, the Medical Examining Board may not take disciplinary action against a physician who makes such a refusal even if the physician refuses to transfer a patient who has executed a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has executed a power of attorney for health care instrument consenting to the withholding or withdrawal of feeding tubes, to another physician who will comply with the declaration or instrument. However, under the bill, the Medical Examining Board may take disciplinary action against a physician who makes such a refusal if the physician refuses to transfer an incapacitated, terminally ill patient who has executed such a declaration.

Finally, under the bill, a physician who receives a power of attorney for health care instrument or who is notified that a patient has executed a declaration must immediately review the instrument or declaration and, if the physician intends to refuse to participate in any of the six activities, must as soon as possible inform the patient orally and in writing about the refusal and any concerns that the physician has about the instrument or declaration. Similar requirements apply if a physician received a statement of incapacity regarding a patient who has executed a power of attorney for health care instrument. In such cases, the physician must immediately review the statement and, if the physician intends to refuse to participate in any of the six activities, must, as soon as possible, inform the patient's principal, orally and in writing, about the refusal and about any concerns regarding the statement.

[Comments: You asked for comments on aspects of the bill that may present legal or technical problems. The following comments respond to this request.

1. Like Assembly Bill 63, the amendments to the WFEA made by Assembly Bill 67 do not include an "undue hardship" exception.
2. The provisions of the bill specifically affecting pharmacists do not appear to extend to pharmacy interns and technicians who may also dispense drugs or devices that may be used in any of the six practices covered by the bill.]

If you have any questions or need additional information, please contact me directly at the Legislative Council staff offices.

RJC:rv;jal;ksm

WRTO Lyle



see professionals

**WISCONSIN LEGISLATIVE COUNCIL**

*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE JEAN HUNDERTMARK  
FROM: Robert J. Conlin, Senior Staff Attorney  
RE: Brief Description of Differences Between 2003 Assembly Bill 67 and Assembly Substitute Amendment \_\_ (LRBs0028/1), Relating to a "Conscience Clause" for Health Care Providers  
DATE: April 2, 2003

This memorandum, prepared at your request, provides a brief description of the substantive differences between 2003 Assembly Bill 67 and Assembly Substitute Amendment \_\_ (LRBs0028/1) (hereinafter, ASA \_\_), a proposed substitute amendment to the bill. This memorandum was prepared for discussion purposes and does not describe the entire bill or ASA \_\_. A more complete description of ASA \_\_ will be provided in the future.

As you know, the bill provides certain employment-related and other protections for health care providers and other individuals who refuse to participate in certain procedures. The bill had a public hearing before the Assembly Labor Committee on March 5, 2003.

The substantive provisions of Assembly Bill 67 were described in the bill's Legislative Reference Bureau analysis and in a memorandum from me to Representative Nass dated February 27, 2003 and made public on March 3, 2003.

In general, the bill and ASA \_\_ are nearly identical. The following substantive changes are noted:

**Private Cause of Action**

As you know, Assembly Bill 67 not only created a clear cause of action under the Wisconsin Fair Employment Act for employees and licensees discriminated against for their refusal to participate in certain activities, it also created a separate cause of action for certain health care providers and others. Under the bill's separate cause of action, a person who is adversely affected by, or who reasonably may be expected to be adversely affected by, conduct that violates certain provisions of the bill (e.g., adverse employment action based on a refusal to participate in certain activities) may bring a civil action for

*— these who are not an employee  
e.g. student, 1st-contract employee*

injunctive relief, including reinstatement, or damages, including damages for emotional or psychological distress, or both.

ASA \_\_ provides that this separate cause of action does not apply to claims that are subject to the Wisconsin Fair Employment Act. In addition, ASA \_\_ deletes the ability of a person "who reasonably may be expected to be adversely affected" by conduct that violates certain provisions to file a separate cause of action. Finally, ASA \_\_ deletes the phrase "including damages for emotional or psychological distress" from the language specifying the damages that may be sought in a separate cause of action under the bill. - makes more parallel to fair employment act

[Comment: If the intent of removing the phrase "including damages for emotional or psychological distress" is to eliminate the ability to recover such damages, ASA \_\_ may not be sufficient to do so. The term "damages" will likely be construed broadly by a court and any "damages" proven may be subject to recovery. If the desire is to prevent recovery of damages for emotional or psychological distress, an explicit prohibition should be included.]

### "Participate In"

Under the bill, the term "participate in" is defined to mean "to perform, assist in, recommend, counsel in favor of, make referrals for, prescribe, dispense, or administer drugs for, or otherwise promote, encourage, or aid."

ASA \_\_ modifies the definition of "participate in" to mean "to perform; practice; engage in; assist in; recommend; counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for or otherwise promote, encourage, or aid." For purposes of ASA \_\_, "contraceptive article" means any drug, medicine, mixture, preparation, instrument, article, or device of any nature used or intended or represented to be used to prevent a pregnancy. this would include "morning after pill"

In addition, ASA \_\_ uses the phrase "participate in" consistently throughout the draft.

### Licensed Practical Nurses

The bill provides certain protections for a person licensed as a registered nurse based upon his or her refusal to participate in various activities.

ASA \_\_ expands the protections to apply to a person licensed as a practical nurse.

### Revision of Objectionable Activities

The bill provides protections for health care professionals objecting to participating in six specified activities. One of those activities included an experiment or medical procedure involving: (1) the destruction of a human embryo; or (2) a human embryo or unborn child, at any stage of development, in which the experiment or procedure is not related to the beneficial treatment of the human embryo or unborn child.

Concerned raised b/c contraceptives prevent implantation of an embryo

ASA \_\_ deletes the above procedure and instead substitutes the following three procedures:

1. An experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissue derived from the destruction of an in vitro human embryo. *Stem cells*
2. An experiment or medical procedure on an in vitro human embryo that is not related to the beneficial treatment of the in vitro human embryo. *research*  
*this def will be new to state statute*
3. An experiment or medical procedure on a developing child in a natural or artificial womb, at any stage of development, that is not related to the beneficial treatment of the developing child. *cloning or experiments on child known to die via abortion*

Additionally, ASA \_\_ defines "in vitro human embryo" as a "human embryo, whether cryopreserved or not, living outside of a woman's body."<sup>1</sup>

### Technical Changes

ASA \_\_ also makes certain technical changes so that the amendments made to ch. 448, Stats., are consistent with the changes made in chs. 441 and 450, Stats.

I hope this information is useful. If you have additional questions, please feel free to contact me at the Legislative Council staff offices.

RJC:jal:wu:jal

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<sup>1</sup> Both the bill and ASA \_\_ define the term "human embryo" to mean "a human organism that is derived from fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells." Under both the bill and ASA \_\_, a human embryo includes a zygote but does not include a human organism at or beyond the stage of development at which the major body structures are present.



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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE STEPHEN NASS

FROM: Robert J. Conlin, Senior Staff Attorney

RE: 2003 Assembly Bill 67 and Assembly Substitute Amendment 1, Relating to a "Conscience Clause" for Health Care Providers

DATE: April 21, 2003 (Revised April 22, 2003)

The first part of this memorandum provides a brief description of the substantive differences between 2003 Assembly Bill 67 and Assembly Substitute Amendment 1 (hereinafter, ASA 1), a proposed substitute amendment to the bill. The second part of this memorandum briefly describes current law and offers a more extensive description of ASA 1.

As you know, the bill provides certain employment-related and other protections for health care providers and other individuals who refuse to participate in certain procedures. The bill had a public hearing before the Assembly Labor Committee on March 5, 2003.

The substantive provisions of Assembly Bill 67 were described in the bill's Legislative Reference Bureau analysis and in a memorandum from me to Representative Nass dated February 27, 2003 and made public on March 3, 2003.

### **DIFFERENCES BETWEEN ASSEMBLY BILL 67 AND ASA 1**

In general, the bill and ASA 1 are nearly identical. However, ASA 1 makes several changes to the bill which are discussed below.

#### **Separate Cause of Action**

As you know, Assembly Bill 67 not only created a clear cause of action under the Wisconsin Fair Employment Act for employees and prospective employees discriminated against for their refusal to participate in certain activities, it also created a separate cause of action. Under the bill's separate cause of action, a person who is adversely affected by, or who reasonably may be expected to be adversely affected by, conduct that violates certain provisions of the bill (e.g., adverse employment action based on a refusal to participate in certain activities) may bring a civil action for injunctive relief, including

reinstatement, or damages, including damages for emotional or psychological distress, or both. Generally, such actions must be commenced within six years after the cause of action accrues.

ASA 1 provides that this separate cause of action does not apply to claims that are subject to the Wisconsin Fair Employment Act. In addition, ASA 1 deletes the ability of a person "who reasonably may be expected to be adversely affected" by conduct that violates certain provisions to file a separate cause of action. ASA 1 also modifies the remedy available to a person filing a separate cause of action. Under ASA 1, a successful claimant may obtain equitable relief, including reinstatement, or damages, or both. For purposes of ASA 1, damages *does not* include "noneconomic damages" as described in current law.<sup>1</sup> Finally, ASA 1 requires that the separate cause of action be commenced within one year after the cause of action accrues.

### **"Participate In"**

Under the bill, the term "participate in" is defined to mean "to perform, assist in, recommend, counsel in favor of, make referrals for, prescribe, dispense, or administer drugs for, or otherwise promote, encourage, or aid."

ASA 1 modifies the definition of "participate in" to mean "to perform; practice; engage in; assist in; recommend; counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for or otherwise promote, encourage, or aid." For purposes of ASA 1, "contraceptive article" means any drug, medicine, mixture, preparation, instrument, article, or device of any nature used or intended or represented to be used to prevent a pregnancy. [See s. 450.155 (1) (a), Stats.]

In addition, ASA 1 uses the phrase "participate in" consistently throughout the draft.

### **Licensed Practical Nurses**

The bill provides certain protections for a person licensed as a registered nurse based upon his or her refusal to participate in various activities.

ASA 1 expands the protections to apply to a person licensed as a practical nurse.

### **Revision of Objectionable Activities**

Generally, the bill provides protections for health care professionals who refuse to participate in six specified activities. One of those activities included participating in an experiment or medical procedure involving: (1) the destruction of a human embryo; or (2) a human embryo or unborn child, at any stage of development, in which the experiment or procedure is not related to the beneficial treatment of the human embryo or unborn child.

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<sup>1</sup> Current law defines "noneconomic damages" to mean "moneys intended to compensate for pain and suffering; humiliation; embarrassment; worry; mental distress; noneconomic effects of disability including loss of enjoyment of the normal activities, benefits and pleasures of life and loss of mental or physical health, well-being or bodily functions; loss of consortium, society and companionship; or loss of love and affection." [s. 893.55 (4) (a), Stats.]

ASA 1 deletes the above-described procedure and instead substitutes the following three procedures:

1. An experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissue derived from the destruction of an in vitro human embryo.
2. An experiment or medical procedure on an in vitro human embryo that is not related to the beneficial treatment of the in vitro human embryo.
3. An experiment or medical procedure on a developing child in a natural or artificial womb, at any stage of development, that is not related to the beneficial treatment of the developing child.

ASA 1 defines an "in vitro human embryo" as a "human embryo, whether cryopreserved or not, living outside of a woman's body."<sup>2</sup>

### **Technical Changes**

ASA 1 also makes certain technical changes so that the amendments made to ch. 448, Stats., are consistent with the changes made in chs. 441 and 450, Stats.

### **CURRENT LAW AND ASA 1 TO ASSEMBLY BILL 67**

The remainder of this memorandum will briefly describe current law and the provisions of ASA 1 to Assembly Bill 67.

### **Current Law**

#### ***WFEA***

Wisconsin's Fair Employment Act (WFEA) generally prohibits discrimination in employment and licensure based on, among other things, a person's creed. For purposes of the WFEA, "creed" is defined as a system of religious beliefs, including moral or ethical beliefs about right and wrong, that are sincerely held with the strength of traditional religious views. [s. 111.32 (3m), Stats.] Under the WFEA, employment discrimination because of creed specifically includes refusing to reasonably accommodate an employee's or prospective employee's religious observance or practice unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise, or business.

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<sup>2</sup> Both the bill and ASA 1 define the term "human embryo" to mean "a human organism that is derived from fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells." Under both the bill and ASA 1, a human embryo includes a zygote but does not include a human organism at or beyond the stage of development at which the major body structures are present.

### ***Refusal to Perform Certain Procedures***

Under current law, no hospital may be required to admit a patient or to allow the use of its facilities for the purpose of performing a sterilization procedure or removing a human embryo or fetus. A physician or any other person who is a member of or associated with the staff of a hospital, or an employee of the hospital in which such a procedure has been authorized, may not be required to participate in such procedure if his or her objection is stated in writing and is based on moral or religious grounds. Such a refusal to participate in a procedure may not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against the person. [s. 253.09 (1), Stats.]

In addition, no hospital or employee of any hospital may be held liable for any civil damage resulting from a refusal to perform sterilization procedures or to remove a human embryo or fetus from a person, if such refusal is based on religious or moral precepts. [s. 253.09 (2), Stats.] The law also prohibits any hospital, school, or employer from discriminating against any person with regard to admission, hiring or firing, tenure, term, condition or privilege of employment, or student or staff status on the ground the person refuses to recommend, aid, or perform procedures for sterilization or the removal of a human embryo or fetus, if the refusal is based on religious or moral precepts. [s. 253.09 (3), Stats.]

Finally, the law provides that the receipt of a grant, contract, loan or loan guarantee under any state or federal law does not authorize any court or any public official or other public authority to require either:

1. Such individual to perform or assist in the performance of any sterilization procedure or removal of a human embryo or fetus if the individual's performance or assistance in the performance of such a procedure would be contrary to the individual's religious beliefs or moral convictions.
2. Such entity to:
  - a. Make its facilities available for the performance of any sterilization procedure or removal of a human embryo or fetus if the performance of such a procedure in those facilities is prohibited by the entity on the basis of religious beliefs or moral convictions; or
  - b. Provide any personnel for the performance or assistance in the performance of any sterilization procedure or removal of a human embryo or fetus by such personnel if such participation would be contrary to the religious beliefs or moral convictions of such personnel. [s. 253.09 (4), Stats.]

Generally, physicians and other health care professionals licensed by the Medical Examining Board and registered nurses licensed by the Board of Nursing are immune from civil damages for refusing to perform or participate in a sterilization procedure or the removal of a human embryo or fetus.

### **ASA 1 to Assembly Bill 67**

ASA 1 amends the WFEA to provide that employment discrimination based on creed also specifically includes discriminating against any employee or prospective employee in a manner

prohibited by the WFEA on the basis of that person's refusal, or statement of an intention to refuse, based on his or her creed, to participate in any of the following:

1. A sterilization procedure.
2. An abortion.<sup>3</sup>
3. An experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissue derived from the destruction of an in vitro human embryo.
4. An experiment or medical procedure on an in vitro human embryo that is not related to the beneficial treatment of the in vitro human embryo.
5. An experiment or medical procedure on a developing child in a natural or artificial womb, at any stage of development, that is not related to the beneficial treatment of the developing child.
6. A procedure, including a transplant procedure, that uses fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or miscarriage.
7. The withholding or withdrawal of nutrition or hydration, if the withholding or withdrawal would result in the patient's death from malnutrition or dehydration, or complications of malnutrition or dehydration, rather than from the underlying terminal illness or injury, unless the administration of nutrition or hydration is medically contraindicated.
8. An act that intentionally causes or assists in causing the death of an individual, such as by assisted suicide, euthanasia, or mercy killing.

For purposes of the ASA 1, an "in vitro human embryo" means a human embryo, whether cryopreserved or not, living outside of a woman's body. In addition, a "human embryo" is defined as a human organism that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells. The term includes a zygote but does not include a human organism at or beyond the stage of development at which the major body structures are present.

Under ASA 1, to "participate in" means to perform; to practice; to engage in; to assist in; to recommend; to counsel in favor of; to make referrals for; to prescribe, dispense, or administer drugs or devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), Stats.,<sup>4</sup> for; or to otherwise promote, encourage, or aid.

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<sup>3</sup> For purposes of Assembly Bill 67 and ASA 1, an "abortion" means "the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant or for whom there is reason to believe that she may be pregnant and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus." [See s. 253.10 (2) (a), Stats.]

<sup>4</sup> Section 450.155 (1) (a), Stats., defines contraceptive articles as "any drug, medicine, mixture, preparation, instrument, article or device of any nature used or intended or represented to be used to prevent a pregnancy."

Additionally, ASA 1 expands the provisions of current law relating to the refusal of hospitals, health care professionals, and hospital employees to participate in various procedures to apply to a refusal, based on moral or religious grounds, to participate in any of the eight activities described above. In addition, ASA 1 allows a person who may not file a claim under the WFEA and who is adversely affected by conduct that violates these provisions to bring a civil action for equitable relief, including reinstatement, or for damages, or both, and attorney's fees. For purposes of this provision of ASA 1, damages do not include "noneconomic damages" as defined under current law.<sup>5</sup> Such an action must be commenced within one year after the cause of action accrues.

ASA 1 also provides that licensed pharmacists are exempt from liability for damages that result from a refusal to participate in any of the eight activities if the refusal is based on religious or moral precepts. In addition, ASA 1 changes the exemptions from liability under current law for physicians and other health care professionals licensed or certified by the Medical Examining Board and registered and licensed practical nurses licensed by the Board of Nursing so that they are consistent with the exemption under ASA 1 for pharmacists.

Further, ASA 1 specifies that the Medical Examining Board, Board of Nursing, Pharmacy Examining Board, and the DRL may not take any disciplinary action against any of the following who, in writing, refuse or state an intention to refuse to participate in any of the eight activities if the refusal is based on moral or religious grounds: (1) a physician or other health care professional licensed or certified by the Medical Examining Board; (2) a registered or practical nurse licensed by the Board of Nursing; or (3) a pharmacist licensed by the Pharmacy Examining Board.

Under ASA 1, the Medical Examining Board may not take disciplinary action against a physician who makes such a refusal even if the physician refuses to transfer a patient who has executed a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has executed a power of attorney for health care instrument consenting to the withholding or withdrawal of feeding tubes, to another physician who will comply with the declaration or instrument. However, under ASA 1, the Medical Examining Board may take disciplinary action against a physician who makes such a refusal if the physician refuses to transfer an incapacitated, terminally ill patient who has executed such a declaration.

Finally, under ASA 1, a physician who receives a power of attorney for health care instrument or who is notified that a patient has executed a declaration must immediately review the instrument or declaration and, if the physician intends to refuse to participate in any of the eight activities, must as soon as possible inform the patient orally and in writing about the refusal and any concerns that the physician has about the instrument or declaration. Similar requirements apply if a physician received a statement of incapacity regarding a patient who has executed a power of attorney for health care instrument. In such cases, the physician must immediately review the statement and, if the physician intends to refuse to participate in any of the eight activities, must, as soon as possible, inform the

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<sup>5</sup> Current law defines "noneconomic damages" as "moneys intended to compensate for pain and suffering; humiliation; embarrassment; worry; mental distress; noneconomic effects of disability including loss of enjoyment of the normal activities, benefits and pleasures of life and loss of mental or physical health, well-being or bodily functions; loss of consortium, society and companionship; or loss of love and affection."

patient's principal, orally and in writing, about the refusal and about any concerns regarding the statement.

If you have any questions or need additional information, please contact me directly at the Legislative Council staff offices.

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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director*  
*Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE GLENN GROTHMAN

FROM: Robert J. Conlin, Senior Staff Attorney

RE: Wisconsin Fair Employment Act (WFEA) Claims Under Assembly Substitute Amendment 1 to Assembly Bill 67

DATE: April 22, 2003

You have asked whether Assembly Substitute Amendment 1 (ASA 1) to Assembly Bill 67 diminishes the protections that pharmacists might have under current law to refuse to dispense contraceptives based upon their creed. This memorandum responds to your inquiry.

The WFEA generally prohibits discrimination in employment and licensure based on, among other things, a person's creed. For purposes of the WFEA, "creed" is defined as a system of religious beliefs, including moral or ethical beliefs about right and wrong, that are sincerely held with the strength of traditional religious views. [s. 111.32 (3m), Stats.] Under the WFEA, employment discrimination because of creed specifically includes, *but is not limited to*, refusing to reasonably accommodate an employee's or prospective employee's religious observance or practice, unless the employer could demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise, or business. Although the issue does not appear to have been squarely addressed by the courts, it seems plausible that, based upon the broad definition of creed in the WFEA, a court might construe current law to protect an employee pharmacist who refuses to dispense contraceptives based on that pharmacist's religious beliefs. There do not appear to be any cases in Wisconsin that construe the WFEA in such a way as to foreclose the possibility of the WFEA covering the above situation.

Assembly Bill 67 provides certain employment-related and other protections for health care providers and other individuals who refuse to participate in certain procedures. ASA 1 to Assembly Bill 67 makes various changes to the bill. Those changes were described in a revised memorandum from me to Representative Nass, dated April 22, 2003. That memorandum noted that, among other things, ASA 1 changes the definition of "participate in" to specifically exclude dispensing contraceptive devices. Thus, ASA 1 offers no protection to an employee pharmacist who is discriminated against for refusing to dispense contraceptive devices based upon his or her creed. The question, then, is whether such a pharmacist would have recourse under the general provisions of the WFEA's creed protections.

ASA 1 to Assembly Bill 67 specifies that employment discrimination because of creed includes, but is not limited to, discriminating against an employee or prospective employee on the basis of the employee or prospective employee's refusal to participate in any of eight certain procedures. As noted above under ASA 1, the dispensing of contraceptive devices is not a protected activity. Because the provisions of ASA 1 constitute a specific component of discrimination based on creed, it appears possible that a court could reasonably conclude that a pharmacist who harbors religious objections to dispensing contraceptives may not avail himself or herself of the general protections of the WFEA because the dispensing of contraceptives has been specifically excluded by ASA 1 from coverage under the WFEA. If your intent is to make sure such pharmacists may still avail themselves of the protections under the WFEA, you may wish to clarify this intent in ASA 1.

I hope the information in this memorandum is responsive to your request. If you have additional questions, please feel free to contact me at the Legislative Council staff offices.

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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: SENATOR CAROL ROESSLER  
FROM: Laura Rose, Deputy Director  
RE: Questions Raised Concerning 2003 Assembly Bill 67  
DATE: October 3, 2003 (Revised October 7, 2003)

*CR  
Roedel*

This memorandum responds to questions raised at a meeting in your office on September 30, 2003, on Assembly Bill 67.

**ISSUE 1: DOES ASSEMBLY BILL 67 PROVIDE A NEW LEGAL CLAIM?**

Yes. Assembly Bill 67, as amended, creates a separate cause of action. However, it provides that this separate cause of action does *not* apply to claims that are subject to the Wisconsin Fair Employment Act (WFEA). Under the bill's separate cause of action, a person who is adversely affected by conduct that violates certain provisions of the bill (e.g., adverse employment action based on a refusal to participate in certain activities) may bring a civil action for injunctive relief, including reinstatement, or damages (but not including noneconomic damages as defined under current law), or both. The actions must be commenced within one year after the cause of action accrues.

**ISSUE 2: DOES ASSEMBLY BILL 67 CONFLICT WITH THE FEDERAL LAW (EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT (EMTALA)) THAT REQUIRES HOSPITALS TO ADMINISTER CERTAIN EMERGENCY TREATMENT TO PATIENTS?**

If Assembly Bill 67 is enacted into law, the two laws can likely coexist without conflict in most situations. When they do conflict, it appears that the federal law will take precedence. Current state law already provides that a hospital may not be required to admit a patient or allow its facilities to be used for a sterilization procedure or to remove a human embryo or fetus. Thus, under current law, the potential for conflict with EMTALA already exists and hospitals seem to have been able to negotiate any conflicts that may have arisen.

Assembly Bill 67 may not provide protection to health care providers when EMTALA is invoked. For example, a hospital seeking to invoke the protections of Assembly Bill 67 while under EMTALA's duty to provide services may be faced with a dilemma: treat the patient and violate the

hospital's code of ethics or do not treat the patient and face sanctions and liability under EMTALA. This predicament faced a Virginia hospital in the early 1990s. In that case, the U.S. Court of Appeals for the 4th Circuit held that a Virginia law which authorized physicians to refuse to provide medical treatment that the physician considered medically or ethically inappropriate was preempted when EMTALA imposed a specific duty upon a physician to provide care. [*In the Matter of Baby "K,"* 16 F. 3rd 590 (4th Cir. 1994).] Accordingly, a Wisconsin hospital seeking to invoke its rights under Assembly Bill 67 in a situation in which EMTALA imposes a duty incompatible with the hospital's moral or ethical beliefs will likely find no protection from its duties under EMTALA in the provisions of Assembly Bill 67. However, where the protections of Assembly Bill 67 and the duties of EMTALA conflict will depend upon the facts of each situation.

**ISSUE 3: DOES THE CONSCIENCE CLAUSE PROVISION APPLY TO DOCTORS, NURSES, AND PHARMACISTS WHO MAY REFUSE TO PROVIDE THE "MORNING-AFTER" PILL?**

Most likely not. Assembly Bill 67, as amended, no longer includes contraceptive articles, as defined in s. 450.155 (1) (a), in its provisions. Section 450.155 (1) (a) defines "contraceptive article" as any drug, medicine, mixture, preparation, instrument, article, or device of any nature used or intended or represented to be used to prevent a pregnancy.

Emergency contraception, also known as the "morning after pill," would not be among the medications covered under Assembly Bill 67's provisions. This is based on the Federal Food and Drug Administration's opinion on the mechanism of the morning after pill. The morning after pill works by preventing pregnancy when other contraceptive methods fail or when no contraception is used. The regimen does not work if a woman is already pregnant. Emergency contraceptive pills are thought to work primarily by delaying or inhibiting ovulation. [See [http://www.fda.gov/fdac/departs/1998/698\\_upd.html](http://www.fda.gov/fdac/departs/1998/698_upd.html).]

**ISSUE 4: IS THERE A DIFFERENCE BETWEEN THE CURRENT CONSCIENCE CLAUSE, WHICH PROVIDES IMMUNITY FROM "CIVIL DAMAGES" AND ASSEMBLY BILL 67, WHICH PROVIDES IMMUNITY FROM "LIABILITY FOR ANY DAMAGE"?**

There was intended to be no difference from the current conscience clause's immunity from civil damages in s. 253.09 and the amended version of s. 253.09 in the bill. According to the drafter of the bill, if the bill intended to provide immunity from criminal acts, it would have explicitly stated this by providing immunity from liability from damages or penalties.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

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|-----------------------------------------|-----------------------------------------------------------------------------|
| <b>2003 Assembly Bill 67</b>            | <b>Senate Amendments 1 and 2 to<br/>Assembly Substitute<br/>Amendment 1</b> |
| <i>Memo published:</i> February 3, 2004 | <i>Contact:</i> Laura Rose, Deputy Director (266-9791)                      |

**ASSEMBLY BILL 67**

Assembly Bill 67, as amended by Assembly Substitute Amendment 1, provides certain employment-related and other protections for health care providers and other individuals who refuse to participate in certain medical procedures. Hereafter, references to the “bill” mean the bill as amended by Assembly Substitute Amendment 1 and passed by the Assembly.

**Separate Cause of Action**

Assembly Bill 67 creates a clear cause of action under the Wisconsin Fair Employment Act (WFEA) for employees and prospective employees discriminated against for their refusal to participate in certain activities. It also creates a separate cause of action. Under the bill’s separate cause of action, a person who is adversely affected by, or who reasonably may be expected to be adversely affected by, conduct that violates certain provisions of the bill (e.g., adverse employment action based on a refusal to participate in certain activities) may bring a civil action for injunctive relief, including reinstatement, or damages, including damages for emotional or psychological distress, or both. Generally, such actions must be commenced within six years after the cause of action accrues.

This separate cause of action does not apply to claims that are subject to the WFEA. Under the bill, a successful claimant may obtain equitable relief, including reinstatement, or damages, or both. Under the bill, damages **does not** include “noneconomic damages” as described in current law.<sup>1</sup> Finally, the bill requires that the separate cause of action be commenced within one year after the cause of action accrues.

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<sup>1</sup> Current law defines “noneconomic damages” to mean “moneys intended to compensate for pain and suffering; humiliation; embarrassment; worry; mental distress; noneconomic effects of disability including loss of enjoyment of the normal activities, benefits and pleasures of life and loss of mental or physical health, well-being or bodily functions; loss of consortium, society and companionship; or loss of love and affection.” [s. 893.55 (4) (a), Stats.]

**Employment Discrimination Based on Creed**

The bill amends the WFEA to provide that employment discrimination based on creed also specifically includes discriminating against any employee or prospective employee in a manner prohibited by the WFEA on the basis of that person's refusal, or statement of an intention to refuse, based on his or her creed, to participate in any of the following:

1. A sterilization procedure.
2. An abortion.<sup>2</sup>
3. An experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissue derived from the destruction of an in vitro human embryo.
4. An experiment or medical procedure on an in vitro human embryo that is not related to the beneficial treatment of the in vitro human embryo.
5. An experiment or medical procedure on a developing child in a natural or artificial womb, at any stage of development, that is not related to the beneficial treatment of the developing child.
6. A procedure, including a transplant procedure, that uses fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or miscarriage.
7. The withholding or withdrawal of nutrition or hydration, if the withholding or withdrawal would result in the patient's death from malnutrition or dehydration, or complications of malnutrition or dehydration, rather than from the underlying terminal illness or injury, unless the administration of nutrition or hydration is medically contraindicated.
8. An act that intentionally causes or assists in causing the death of an individual, such as by assisted suicide, euthanasia, or mercy killing.

Under the bill, to "participate in" means to perform; to practice; to engage in; to assist in; to recommend; to counsel in favor of; to make referrals for; to prescribe, dispense, or administer drugs or devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), Stats.,<sup>3</sup> for; or to otherwise promote, encourage, or aid.

The bill expands the provisions of current law relating to the refusal of hospitals, health care professionals, and hospital employees to participate in various procedures to apply to a refusal, based on moral or religious grounds, to participate in any of the eight activities described above. In addition, the bill allows a person who may not file a claim under the WFEA and who is adversely affected by conduct that violates these provisions to bring a civil action for equitable relief, including reinstatement, or for damages, or both, and attorney's fees. For purposes of this provision of the bill, damages do not include

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<sup>2</sup> For purposes of Assembly Bill 67 and ASA 1, an "abortion" means "the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant or for whom there is reason to believe that she may be pregnant and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus." [See s. 253.10 (2) (a), Stats.]

<sup>3</sup> Section 450.155 (1) (a), Stats., defines contraceptive articles as "any drug, medicine, mixture, preparation, instrument, article or device of any nature used or intended or represented to be used to prevent a pregnancy."

“noneconomic damages” as defined under current law.<sup>4</sup> Such an action must be commenced within one year after the cause of action accrues.

The bill also provides that licensed pharmacists are exempt from liability for damages that result from a refusal to participate in any of the eight activities if the refusal is based on religious or moral precepts. In addition, the bill changes the exemptions from liability under current law for physicians and other health care professionals licensed or certified by the Medical Examining Board and registered and licensed practical nurses licensed by the Board of Nursing so that they are consistent with the exemption under the bill for pharmacists.

Further, the bill specifies that the Medical Examining Board, Board of Nursing, Pharmacy Examining Board, and the Department of Regulation and Licensing may not take any disciplinary action against any of the following who, in writing, refuse or state an intention to refuse to participate in any of the eight activities if the refusal is based on moral or religious grounds: (1) a physician or other health care professional licensed or certified by the Medical Examining Board; (2) a registered or practical nurse licensed by the Board of Nursing; or (3) a pharmacist licensed by the Pharmacy Examining Board.

Under the bill, the Medical Examining Board may not take disciplinary action against a physician who makes such a refusal even if the physician refuses to transfer a patient who has executed a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has executed a power of attorney for health care instrument consenting to the withholding or withdrawal of feeding tubes, to another physician who will comply with the declaration or instrument. However, under the bill, the Medical Examining Board may take disciplinary action against a physician who makes such a refusal if the physician refuses to transfer an incapacitated, terminally ill patient who has executed such a declaration.

Finally, under the bill, a physician who receives a power of attorney for health care instrument or who is notified that a patient has executed a declaration must immediately review the instrument or declaration and, if the physician intends to refuse to participate in any of the eight activities, must as soon as possible inform the patient orally and in writing about the refusal and any concerns that the physician has about the instrument or declaration. Similar requirements apply if a physician received a statement of incapacity regarding a patient who has executed a power of attorney for health care instrument. In such cases, the physician must immediately review the statement and, if the physician intends to refuse to participate in any of the eight activities, must, as soon as possible, inform the patient’s principal, orally and in writing, about the refusal and about any concerns regarding the statement.

### **SENATE AMENDMENT 1**

Senate Amendment 1 does the following:

1. The bill, as passed by the Assembly, amends a provision in current chs. 154 and 155 to add language that an attending physician who is notified about a declaration (under ch. 154) or a power of attorney for health care instrument or statement of an agent (under ch. 155) must

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<sup>4</sup> Current law defines “noneconomic damages” as “moneys intended to compensate for pain and suffering; humiliation; embarrassment; worry; mental distress; noneconomic effects of disability including loss of enjoyment of the normal activities, benefits and pleasures of life and loss of mental or physical health, well-being or bodily functions; loss of consortium, society and companionship; or loss of love and affection.”

immediately review the declaration, instrument, or statement. If the physician intends to invoke his or her rights under the bill relating to conscience protections, the physician must, as soon as possible, inform the declarant (under ch. 154) or principal (under ch. 155) both orally and in writing of that intent and of the physician's concerns, if any, about the declaration.

Under the amendment, instead of amending current law, a new provision in chs. 154 and 155 is created. That new provision contains essentially the same requirements as the provision under the bill-- that there must be an oral and written notification that the physician will be invoking his or her conscience rights with respect to the declaration on instrument. However, the amendment makes technical changes to the provision to more accurately reflect the terminology in chs. 154 and 155.

2. Under current law, in both chs. 154 and 155, no health care facility or health care provider may be held civilly or criminally liable or charged with unprofessional conduct for failing to comply with a declaration or a power of attorney for health care instrument or the decision of a health care agent, except that failure of a physician to comply constitutes unprofessional conduct if the physician refuses or fails to make a good faith attempt to transfer the principal to another physician who will comply. The bill provides that a physician may not be disciplined by the Medical Examining Board (MEB) or the Department of Regulation and Licensing (DRL) for refusing, or stating an intention to refuse to participate in one of the eight activities specified in the bill, including refusing or stating an intention to refuse to transfer a patient to another physician who will comply with a living will or an instrument of power of attorney for health care. The only situation in the bill in which a physician would be required to make a good faith attempt to transfer a patient to another physician who will comply with the declaration or the power of attorney for health care would be if the patient had incapacity **and** a terminal condition.

Under the amendment, as under the bill, a physician who refuses, or states an intention to refuse, on moral or religious grounds to participate in one of the eight activities specified in the bill may not be required to participate in the activity and may not be disciplined by the MEB or the DRL for refusing or stating an intention to refuse to participate in the activity.

However, if the declaration, instrument for power of attorney for health care, or directive from a health care agent directs the physician to participate in activity number 7 (withholding or withdrawal of nutrition or hydration from a non-terminal patient), and the physician intends to invoke his or her right to not participate in the activity, the physician must still comply with current law and make a good faith attempt to transfer the patient to another physician who will comply with the declaration, power of attorney for health care, or health care agent's directive. Under the amendment, however, a physician is not required to locate another physician who is willing to participate in activities 1 to 6 or 8, if an advance directive directs that any of those other activities be performed on the patient. Further, if there is no advance directive on behalf of a patient, a physician is not required to locate another physician who is willing to participate in activities 1 to 8. Therefore, for example, if a patient not in a terminal condition, or someone on that patient's behalf, requests a physician to withhold or withdraw nutrition or hydration from that patient, and the withholding or withdrawal would result in the patient's death from malnutrition or dehydration, the physician would not be required, in that situation, to locate another physician who would be willing to participate in the withholding or withdrawal of nutrition and hydration.

**SENATE AMENDMENT 2**

Senate Amendment 2 does the following:

1. The amendment modifies activity number 5 in the bill (an experiment or medical procedure on a developing child in **a natural or artificial womb**, at any stage of development that is not related to the beneficial treatment of the developing child) to encompass only an experiment or medical procedure on a developing child in **an artificial womb**.
2. The amendment modifies activity number 7 (the withholding or withdrawal of nutrition or hydration if the withholding or withdrawal would result in the patient's death from malnutrition or dehydration, or complications of malnutrition or dehydration, rather from the **underlying terminal** illness or injury, unless the administration of nutrition or hydration is medically contraindicated) so that the protections under the bill are only extended for the withholding of nutrition and hydration from a patient **who is not in a terminal condition**, if the withholding or withdrawal of nutrition or hydration would result in the patient's death from malnutrition or dehydration, or complications of malnutrition or dehydration, rather than from the underlying illness or injury, unless the administration of nutrition or hydration is medically contraindicated.
3. The amendment modifies activity number 8 (an act that intentionally causes or assists in causing the death of an individual, **such as by** assisted suicide, euthanasia, or mercy killing) to encompass **only** to assisted suicide, euthanasia, or mercy killing.

**Legislative History**

On May 29, 2003, the Assembly adopted ASA 1 on a vote of Ayes, 63, Noes, 30, and Paired, 2. On June 4, 2003, the Assembly passed Assembly Bill 67, as amended, on a vote of Ayes, 56, Noes, 35, and Paired, 6. On January 30, 2004, the Senate Committee on Health, Children, Families, Aging and Long-Term Care recommended introduction and adoption of Senate Amendments 1 and 2 by a vote of Ayes, 8; Noes, 1; and recommended concurrence in the bill, as amended by Senate Amendments 1 and 2, by a vote of Ayes, 5; Noes, 4.

LR:RJC:all;jal;jal;rv;ksm