

2003-04 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Senate Committee on
Health, Children,
Families, Aging and
Long Term Care
(SC-HCFALTC)

Sample:

Record of Comm. Proceedings ... RCP

- 03hrAC-EdR_RCP_pt01a
- 03hrAC-EdR_RCP_pt01b
- 03hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ **

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ 03hr_sb0227_pt05

➤ Miscellaneous ... Misc

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **

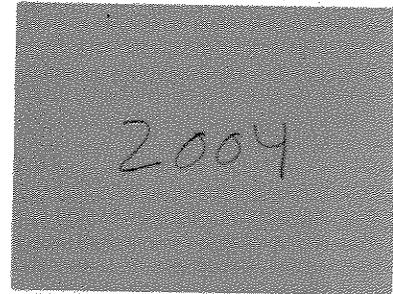
JB 227

Halbur, Jennifer

From: Klein, Christopher
Sent: Tuesday, January 27, 2004 3:30 PM
To: Halbur, Jennifer
Subject: FW: Dr. Barrette of the Dental board

Jennifer, this is the email I mentioned to you. It is difficult to fulfill our promise to the legislature of clearing out our backlog and moving cases along at a respectable rate.

Christopher P. Klein
Executive Assistant,
Legislative Liaison
Wisconsin Department of Regulation & Licensing
608-266-8609



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

From: Rowe, Sandra - DRL
Sent: Tuesday, January 27, 2004 3:28 PM
To: Klein, Christopher
Subject: FW: Dr. Barrette of the Dental board

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

From: Lytle, Jeanette
Sent: Tuesday, January 27, 2004 1:42 PM
To: Rowe, Sandra - DRL
Cc: Berndt, Michael
Subject: Dr. Barrette of the Dental board

Sandy,

I just had an interesting phone conversation with Dr. Barrette. I discussed it with Mike and he suggested that I e-mail you.

Dr. Barrette is the case advisor on 00 DEN 116 (Labella). I called him several weeks ago to ask him to explain what the Respondent did wrong, as it is not apparent from the file. He told me he needed to see the x-rays and asked me to bring them to the next board meeting. I did that, but when he saw the x-rays he said he couldn't tell from the x-rays and he would have to go back and look at the file and he would call me.

That was almost three weeks ago, and I hadn't heard from him, so I called him today and very politely and pleasantly asked him if he had had a chance to review the file. He told me that we were going to put this one on hold for a while. I asked him when I should check back with him. He thought for a moment, then said, "At the July board meeting." I was taken aback for a second, then told him, still pleasantly, that that might be a problem, because DOE has "marching orders" to clean up the pre-2001 cases in the next few months. He then told me, in a very terse tone of voice, that I should "march" right down to the front office and tell the Secretary that he was not going to be ready until July. I tried to keep things light and said in a joking way, "This sounds like something I don't want to be in the middle of." He said something to the effect of, "Probably not." Then the conversation ended.

Just wanted to let you know...

Jeanette.

Halbur, Jennifer

To: michael.heifetz@deancare.com

Subject: RE: Thanks...

Good Morning,

I left you a voicemail but thought I would e-mail as well. The first amendment you mention was adopted in Committee. We do plan to introduce two amendments on the floor: 1. Remove provisions requiring coroners or medical examiners to report deaths they determine to be therapeutic-related 2. Require that notification of disciplinary action be reported to a person's employer. The bill requires that within 30 days after a formal complaint alleging unprofessional conduct by a health care professional is filed, the department shall send written notice that a complaint has been filed to the person's employer, etc. I think it was you who specifically requested that this be changed.

I think maybe the letter should be more clearly indicate that the following amendment was adopted in Committee: Identifying health care professionals who, even if not the subject of a specific allegation of, or specific information relating to, unprofessional conduct, may warrant further evaluation and possible investigation. Also add support for above mentioned amendments. Does that make sense?

Let me know what you think.

Thanks,
Jennifer

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

From: michael.heifetz@deancare.com [mailto:michael.heifetz@deancare.com]

Sent: Monday, February 02, 2004 10:15 AM

To: Halbur, Jennifer

Subject: RE: Thanks...

Good morning. Here is a draft of a letter supporting SB227/amendments. With your approval, we will do a floor distribution...

Please advise. Thanks!

DRAFT

Dear Senator Roessler:

Thank you for your thoughtful work on Senate Bill 227. This bill seeks to protect patients by improving the process for addressing physicians performing at less than satisfactory levels. The amendments you have offered improve this legislation by maintaining necessary due process protections.

SB 227 expands the authority of the Medical Examining Board (MEB) and refines the investigation progress. This bill has many positive aspects but, unamended, also contains some provisions that may inappropriately bring the appearance of physician misconduct without sufficient cause.

We are supportive of provisions that require DRL to prioritize disciplinary cases. This is sound policy and

02/02/2004

while DRL may already be implementing such a system, a statutory requirement may help improve this process and highlight its importance.

Additionally, the related provisions authorizing the MEB to limit credential holders to specific areas of practice also are sound policy. It simply makes sense to more narrowly allow the MEB to restrict certain practices rather than simply suspend a physician's license.

We support your amendment to remove the proposed requirement of DRL to promulgate rules "for identifying health care professionals who, even if not the subject of a specific allegation of, or specific information relating to, unprofessional conduct, may warrant further evaluation and possible investigation." Obviously, this provision is worrisome. It contradicts due process procedures and the presumption of innocence. Therefore, this provision should be deleted.

We also support your amendment to remove provisions requiring coroners or medical examiners to report deaths they determine to be therapeutic-related. The language in this provision is quite vague. Additionally, the term "therapeutic misadventures" is more inflammatory than scientific and presumes negligence and wrongdoing on the part of the physician.

With these changes, we believe this legislation will improve patient care in Wisconsin. As physicians, we also have an interest in ensuring the very small number of allegedly underperforming physicians are appropriately investigated, and, if warranted, appropriately disciplined.

Thank you again for addressing these important patient safety issues and for considering our suggested modifications. We look forward to continuing to work with you on these and other health care issues.

Michael Heifetz
 Director of Governmental Affairs
 Dean Health System/SSM Health Care of Wisconsin
 Phone: (608) 250-1225
 Fax: (608) 250-1020
 Email: michael.heifetz@deancare.com

"Halbur, Jennifer" <Jennifer.Halbur@legis.state.wi.us>

To: "michael.heifetz@deancare.com" <michael.heifetz@deancare.c

01/30/2004 11:22 AM

cc:

Subject: RE: Thanks...

Sounds good. I think right now we are okay on SB 227. When it does get scheduled it would be good for you to touch base with legislators letting them know that you support the amendments and why.

Thanks!
 Jennifer

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

From: michael.heifetz@deancare.com [mailto:michael.heifetz@deancare.com]
Sent: Friday, January 30, 2004 8:55 AM
To: jennifer.halbur@legis.state.wi.us
Subject: Thanks...

...for yesterday's meeting. We are not trying to cause trouble on this bill, but it does interfere with some good things we are doing. I believe there is a way to arrive at an agreeable position. But that

will probably need to occur in the Senate.

Need anything from us on SB 227?

Michael Heifetz
Director of Governmental Affairs
Dean Health System/SSM Health Care of Wisconsin
Phone: (608) 250-1225
Fax: (608) 250-1020
Email: michael.heifetz@deancare.com

Halbur, Jennifer

From: michael.heifetz@deancare.com
Sent: Monday, February 02, 2004 5:46
To: jennifer.halbur@legis.state.wi.us
Subject: SB 227--2nd attempt

Hope this version is better. Sorry to make this more difficult than it needs to be!

DRAFT

Dear Senator Roessler:

Thank you for your thoughtful work on Senate Bill 227. This bill seeks to protect patients by modifying the process for addressing physicians performing at less than satisfactory levels.

SB 227 expands the authority of the Medical Examining Board (MEB) and refines the investigation process. This bill has many positive aspects but, unamended, also contains some provisions that may inappropriately bring the appearance of physician misconduct without sufficient cause.

We are supportive of provisions that require the Department of Regulation and Licensing (DRL) to prioritize disciplinary cases. This is sound policy and while DRL may already be implementing such a system, a statutory requirement may help improve this process and highlight its importance.

Additionally, the related provisions authorizing the MEB to limit credential holders to specific areas of practice also are sound policy. It simply makes sense to more narrowly allow the MEB to restrict certain practices rather than simply suspend a physician's license.

The Senate Health Committee already adopted an amendment to remove the proposed requirement of DRL to promulgate rules "for identifying health care professionals who, even if not the subject of a specific allegation of, or specific information relating to, unprofessional conduct, may warrant further evaluation and possible investigation." This provision contradicts due process procedures and violates the presumption of innocence. Therefore, we are pleased the amendment deleted this provision.

The two amendments you are offering on the Senate floor further improve this legislation. The first amendment removes provisions requiring coroners or medical examiners to report deaths they determine to be therapeutic-related. The language in this provision is quite vague. Additionally, the term "therapeutic misadventures" is more inflammatory than scientific and presumes negligence and wrongdoing on the part of the physician. Therefore, we strongly support this amendment to remove such language.

We also support your second floor amendment, related to employer notification. SB 227 requires that within 30 days after a formal complaint alleging unprofessional conduct by a health care professional is filed, the department shall send written notice that a complaint has been filed to the person's employer. Your amendment modifies this process to require such notification only if disciplinary action is taken by the Board. This reduces the administrative burden on the department while providing employers with the most relevant information regarding Board action.

With these changes, we believe this legislation will improve patient care in Wisconsin. As physicians, we also have an interest in ensuring the very small number of allegedly underperforming physicians are appropriately investigated, and, if warranted, appropriately disciplined.

Thank you again for addressing these important patient care issues and for considering our suggested modifications. We look forward to continuing to work with you on these and other health care issues.

Sincerely,

02/03/2004

Donald C. Logan, MD
Chief Medical Officer

Michael Heifetz
Director of Governmental Affairs
Dean Health System/SSM Health Care of Wisconsin
Phone: (608) 250-1225
Fax: (608) 250-1020
Email: michael.heifetz@deancare.com

Halbur, Jennifer

From: michael.heifetz@deancare.com
Sent: Tuesday, February 03, 2004 1:29 PM
To: Halbur, Jennifer
Subject: RE: SB 227--2nd attempt

When it is scheduled, we will distribute however you want--floor memo, email to offices, etc.

Michael Heifetz
Director of Governmental Affairs
Dean Health System/SSM Health Care of Wisconsin
Phone: (608) 250-1225
Fax: (608) 250-1020
Email: michael.heifetz@deancare.com

"Halbur, Jennifer" <Jennifer.Halbur@legis.state.wi.us>

To: "michael.heifetz@deancare.com" <michael.heifetz@deancare.com>
cc:
Subject: RE: SB 227--2nd attempt

02/03/2004 09:49 AM

Good morning,

I think it looks great. Now we just need this bill to get scheduled :)

Thanks!
Jennifer

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

From: michael.heifetz@deancare.com [mailto:michael.heifetz@deancare.com]
Sent: Monday, February 02, 2004 5:46 PM
To: jennifer.halbur@legis.state.wi.us
Subject: SB 227--2nd attempt

Hope this version is better. Sorry to make this more difficult than it needs to be!

DRAFT

Dear Senator Roessler:

Thank you for your thoughtful work on Senate Bill 227. This bill seeks to protect patients by modifying the process for addressing physicians performing at less than satisfactory levels.

SB 227 expands the authority of the Medical Examining Board (MEB) and refines the investigation process. This bill has many positive aspects but, unamended, also contains some provisions that may inappropriately bring the appearance of physician misconduct without sufficient cause.

We are supportive of provisions that require the Department of Regulation and Licensing (DRL) to prioritize disciplinary cases. This is sound policy and while DRL may already be implementing such a system, a statutory requirement may help improve this process and highlight its importance.

02/03/2004

Additionally, the related provisions authorizing the MEB to limit credential holders to specific areas of practice also are sound policy. It simply makes sense to more narrowly allow the MEB to restrict certain practices rather than simply suspend a physician's license.

The Senate Health Committee already adopted an amendment to remove the proposed requirement of DRL to promulgate rules "for identifying health care professionals who, even if not the subject of a specific allegation of, or specific information relating to, unprofessional conduct, may warrant further evaluation and possible investigation." This provision contradicts due process procedures and violates the presumption of innocence. Therefore, we are pleased the amendment deleted this provision.

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We also support your second floor amendment, related to employer notification. SB 227 requires that within 30 days after a formal complaint alleging unprofessional conduct by a health care professional is filed, the department shall send written notice that a complaint has been filed to the person's employer. Your amendment modifies this process to require such notification only if disciplinary action is taken by the Board. This reduces the administrative burden on the department while providing employers with the most relevant information regarding Board action.

With these changes, we believe this legislation will improve patient care in Wisconsin. As physicians, we also have an interest in ensuring the very small number of allegedly underperforming physicians are appropriately investigated, and, if warranted, appropriately disciplined.

Thank you again for addressing these important patient care issues and for considering our suggested modifications. We look forward to continuing to work with you on these and other health care issues.

Sincerely,

Donald C. Logan, MD
Chief Medical Officer

Michael Heifetz
Director of Governmental Affairs
Dean Health System/SSM Health Care of Wisconsin
Phone: (608) 250-1225
Fax: (608) 250-1020
Email: michael.heifetz@deancare.com



February 3, 2004

The Honorable Senator Carol Roessler
Room 8 South
P/O. Box 7882
Madison, WI 53707-7882

Dear Senator Roessler:

Thank you for your thoughtful work on Senate Bill 227. This bill seeks to protect patients by modifying the process for addressing physicians performing at less than satisfactory levels.

SB 227 expands the authority of the Medical Examining Board (MEB) and refines the investigation process. This bill has many positive aspects but, unamended, also contains some provisions that may inappropriately bring the appearance of physician misconduct without sufficient cause.

We are supportive of provisions that require the Department of Regulation and Licensing (DRL) to prioritize disciplinary cases. This is sound policy and while DRL may already be implementing such a system, a statutory requirement may help improve this process and highlight its importance.

Additionally, the related provisions authorizing the MEB to limit credential holders to specific areas of practice also are sound policy. It simply makes sense to more narrowly allow the MEB to restrict certain practices rather than simply suspend a physician's license.

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We also support your second floor amendment, related to employer notification. SB 227 requires that within 30 days after a formal complaint alleging unprofessional conduct by a health care professional is filed, the department shall send written notice that a complaint has been filed to the person's employer. Your amendment modifies this process to require such notification only if disciplinary action is taken by the Board. This reduces the administrative burden on the department while providing employers with the most relevant information regarding Board action.

With these changes, we believe this legislation will improve patient care in Wisconsin. As physicians, we also have an interest in ensuring the very small number of allegedly underperforming physicians are appropriately investigated, and, if warranted, appropriately disciplined.

Thank you again for addressing these important patient care issues and for considering our suggested modifications. We look forward to continuing to work with you on these and other health care issues.

Sincerely,

Donald C. Logan, MD
Chief Medical Officer

cc: Members, Wisconsin State Senate

Halbur, Jennifer

From: Asbjornson, Karen
Sent: Wednesday, February 04, 2004 5:31
To: Halbur, Jennifer
Subject: FW: Support SB 227
CR email

SB
227

Karen Asbjornson
Office of Senator Carol Roessler
(608) 266-5300/1-888-736-8720
Karen.Asbjornson@legis.state.wi.us

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

From: michael.heifetz@deancare.com [mailto:michael.heifetz@deancare.com]
Sent: Wednesday, February 04, 2004 7:53 AM
To: sen.breske@legis.state.wi.us; sen.brown@legis.state.wi.us; sen.carpenter@legis.state.wi.us;
sen.chvala@legis.state.wi.us; sen.coggs@legis.state.wi.us; sen.cowles@legis.state.wi.us;
sen.darling@legis.state.wi.us; sen.decker@legis.state.wi.us; sen.ellis@legis.state.wi.us;
sen.erpenbach@legis.state.wi.us; sen.fitzgerald@legis.state.wi.us; sen.hansen@legis.state.wi.us;
sen.harsdorf@legis.state.wi.us; sen.jauch@legis.state.wi.us; sen.kanavas@legis.state.wi.us;
sen.kedzie@legis.state.wi.us; sen.lasee@legis.state.wi.us; sen.lassa@legis.state.wi.us;
sen.lazich@legis.state.wi.us; sen.leibham@legis.state.wi.us; sen.meyer@legis.state.wi.us;
sen.moore@legis.state.wi.us; sen.panzer@legis.state.wi.us; sen.plale@legis.state.wi.us;
sen.reynolds@legis.state.wi.us; sen.risser@legis.state.wi.us; sen.robson@legis.state.wi.us;
sen.roessler@legis.state.wi.us; sen.schultz@legis.state.wi.us; sen.stepp@legis.state.wi.us;
sen.welch@legis.state.wi.us; sen.wirch@legis.state.wi.us; sen.zien@legis.state.wi.us;
gregory.hubbard@legis.state.wi.us
Cc: jennifer.halbur@legis.state.wi.us
Subject: Support SB 227

Good morning. Attached is a letter from Dr. Donald Logan, Chief Medical Officer for Dean Health System, expressing support for Senate Bill 227. If you have any questions, please contact me at (608) 250-1225. Thank you.

Michael Heifetz
Director of Governmental Affairs
Dean Health System/SSM Health Care of Wisconsin
Phone: (608) 250-1225
Fax: (608) 250-1020
Email: michael.heifetz@deancare.com

SENATE BILL 227
SENATE FLOOR DEBATE
February 4, 2004

5 YEARS AGO, THE JOINT LEGISLATIVE COUNCIL'S
SPECIAL COMMITTEE ON DISCIPLINE OF HEALTH CARE
PROFESSIONALS WAS DIRECTED TO STUDY
PROCEDURES FOR IMPOSITION OF DISCIPLINE FOR
ALLEGED CASES OF PATIENT NEGLIGENCE OR
UNPROFESSIONAL CONDUCT BY HEALTH CARE-
RELATED EXAMINING BOARDS AND AFFILIATED
CREDENTIALING BOARDS IDENTIFIED BY THE SPECIAL
COMMITTEE.

AS A RESULT OF THEIR FINDINGS, THE COMMITTEE
MADE RECOMMENDATIONS FOR A LEGISLATIVE
PROPOSAL. IN THE PREVIOUS TWO SESSIONS,
LEGISLATION WAS INTRODUCED AND PUBLIC

HEARINGS WERE HELD. HOWEVER, THEY WERE NEVER VOTED ON IN THE STATE SENATE.

NOW IS THE TIME TO MOVE FORWARD WITH THE COUNCIL'S RECOMMENDED CHANGES IN DISCIPLINARY PROCEDURES.

THERE HAVE BEEN NUMEROUS REPORTS THAT WISCONSIN LAGS IN THE DISCIPLINE OF HEALTH CARE PROFESSIONALS. I FEEL SENATE BILL 227 IS IMPORTANT TO PATIENTS AND TO THE INTEGRITY OF THE MEDICAL PROFESSION.

SENATE BILL 227 CONTAINS PROVISIONS THAT APPLY TO DISCIPLINARY PROCEDURES FOR HEALTH CARE PROFESSIONALS GENERALLY, AND PROVISIONS THAT ARE SPECIFIC TO PHYSICIAN DISCIPLINE.

PROVISIONS THAT APPLY TO HEALTH CARE

PROFESSIONALS IN GENERAL INCLUDE:

- **REQUIRING THE DEPARTMENT OF REGULATION AND LICENSING TO:**
 - **DEVELOP A SYSTEM TO ESTABLISH THE RELATIVE PRIORITY OF CASES INVOLVING UNPROFESSIONAL CONDUCT;**
 - **ESTABLISH GUIDELINES FOR THE TIMELY COMPLETION OF DISCIPLINE CASES;**
 - **GIVE NOTICE TO COMPLAINANTS, PATIENTS AND HEALTH CARE PROFESSIONALS AND THEIR PLACES OF PRACTICE, WHEN SPECIFIED STAGES OF THE DISCIPLINARY PROCESS ARE OPENED OR CLOSED;**

- REQUIRE THAT A PATIENT OR CLIENT WHO HAS BEEN ADVERSELY AFFECTED BY A HEALTH CARE PROFESSIONAL'S CONDUCT BE GIVEN AN OPPORTUNITY TO CONFER WITH THE DEPARTMENT'S PROSECUTING ATTORNEY.

**PROVISIONS OF THE BILL SPECIFIC TO THE
PHYSICIAN DISCIPLINARY PROCESS INCLUDE:**

- ADDING 2 PUBLIC MEMBERS TO THE MEDICAL EXAMINING BOARD, RESULTING IN A 15 MEMBER BOARD WITH 5 PUBLIC MEMBERS, 9 MEDICAL DOCTORS AND 1 DOCTOR OF OSTEOPATHY;
- AUTHORIZING THE MEDICAL EXAMINING BOARD TO SUMMARILY LIMIT, ANY CREDENTIAL ISSUED BY THE BOARD, PENDING A DISCIPLINARY HEARING;

- AUTHORIZING THE MEDICAL EXAMINING BOARD TO ASSESS A FORFEITURE OF NOT MORE THAN \$1,000 AGAINST A CREDENTIAL HOLDER FOUND GUILTY OF UNPROFESSIONAL CONDUCT; AND
- REQUIRING THAT REPORTS ON MEDICAL MALPRACTICE PAYMENTS AND ON PROFESSIONAL REVIEW ACTIONS BY HEALTH CARE ENTITIES, WHICH CURRENTLY MUST BE SUBMITTED TO THE NATIONAL PRACTITIONER DATA BANK, MUST ALSO BE SUBMITTED TO THE MEDICAL EXAMINING BOARD. THE BILL CREATES A PENALTY FOR FAILURE TO SUBMIT SUCH REPORTS.
- WHEN A CORONER OR MEDICAL EXAMINER RECEIVES A REQUIRED REPORT OF A DEATH AND SUBSEQUENTLY DETERMINES THAT THE DEATH WAS "THERAPEUTIC-RELATED," AS DEFINED IN

THE BILL, THE CORONER OR MEDICAL EXAMINER MUST INDICATE THAT DETERMINATION ON THE DEATH CERTIFICATE AND FORWARD THE INFORMATION TO THE DEPARTMENT OF REGULATION AND LICENSING.

- LASTLY, SB 227 REQUIRES THAT WITHIN 30 DAYS AFTER A FORMAL COMPLAINT ALLEGING UNPROFESSIONAL CONDUCT BY A HEALTH CARE PROFESSIONAL IS FILED, THE DEPARTMENT SHALL SEND WRITTEN NOTICE THAT A COMPLAINT HAS BEEN FILED TO EACH EMPLOYER THAT EMPLOYS THE HEALTH CARE PROFESSIONAL.

THE SENATE COMMITTEE ON HEALTH PASSED SENATE AMENDMENT 1: 9-0. THIS AMENDMENT DELETED THE LANGUAGE IN THE BILL THAT WOULD HAVE REQUIRED THE DEPARTMENT OF REGULATION AND LICENSING TO DEVELOP A SYSTEM OF "MARKERS" FOR IDENTIFYING

HEALTH CARE PROFESSIONALS WHO MAY WARRANT
FURTHER EVALUATION BEFORE AN INCIDENT OF
UNPROFESSIONAL CONDUCT OCCURS.

THIS BILL IS THE RIGHT THING TO DO. OUR
DISCIPLINARY SYSTEM FOR HEALTHCARE
PROFESSIONALS NEEDS TO BE IMPROVED AND SB 227 IS
A STRONG STEP FORWARD IN THIS DIRECTION.



Wisconsin Medical Society

Your Doctor. Your Health.

DATE: February 4, 2004
TO: Members, Wisconsin State Senate
FROM: Alice O'Connor and Mark Grapentine
RE: SB 227: Support Senator Roessler's Amendments

On behalf of more than 10,000 members statewide, we want to take this opportunity to ask for your support for two amendments Senator Carol Roessler plans to introduce to Senate Bill 227.

We applaud Senator Roessler for her perseverance on this bill – it does much to advance the safety of the public by updating the Medical Examining Board's ability to investigate and discipline poor physician-related outcomes. We support Senator Roessler's introduction of two amendments that fine tune this proposal further, and ask for the full Senate's approval.

Reporting "Therapeutic-Related" Deaths is Vague

Remove lines 5-16 on page 12

Requiring a Medical Examiner or Coroner to put in essence a "red flag" on a death due to "complications" from surgery, prescription drug use and the like is in our opinion extremely vague. For example, if a patient has an unexpected reaction to cardiac drugs, does that warrant a Department of Regulation and Licensing (DRL) notification? Or if post-surgery a patient get an infection that does not respond to normal, within-the-practice treatment? The existing language of SB 227 could be interpreted to say that any death not clearly "natural" could qualify as a complication.

Please support Senator Roessler's amendment removing the language on Page 12, lines 5-16 of the bill.

Employer Notification Should Occur Following Disciplinary Action

Amend to Notify Following a Disciplinary Decision

SB 227's current language mandates notification of a physician's employer within 30 days of an unprofessional conduct allegation being filed, regardless of the complaint's merits. (See page 7, lines 16-23 and page 8, lines 1-5.) Considering that the Medical Examining Board's screening committees often find that complaints are without merit, setting the notification trigger at the earliest possible point – the simple filing of a complaint – creates an extraordinary burden on a discipline system already groaning under the weight of its current load without providing useful information to the employer.

The Society supports an amendment requiring DRL to notify an employer after disciplinary action has been determined. If a case is found not to be of merit, then no additional administrative burden need be borne either by the state or by the physician's employer. If a complaint has validity, however, it makes good sense to have that physician's employer notified.

Our 10,000 members firmly believe what Society President Paul A. Wertsch, M.D. told the Senate Health Committee during testimony on SB 227 last September: that the main tenet of the Hippocratic Oath – “do no harm” – is the most important guiding principle physicians bring to their work. The Society welcomes continued high standards to ensure that the trust between physicians and patients continues based on the highest quality and standards of care possible.

Thank you for this opportunity to share our support for Senator Roessler's amendments, and please feel free to contact us with any of your questions or concerns.



Carol Roessler
STATE SENATOR

FOR IMMEDIATE RELEASE

February 6, 2004

Contact: State Senator Carol Roessler, 1-888-736-8720

ROESSLER DOCTOR DISCIPLINE BILL PASSES STATE SENATE

MADISON- A bill authored by Senator Carol Roessler (R-Oshkosh), which proposes revising procedures relating to the discipline of health care professionals, passed the State Senate 33 to 0. "Five years ago, the Joint Legislative Council's Special Committee on Discipline of Health Care Professionals recommended several changes that would make the current state discipline process more effective and responsive. Now is the time to move forward and address these necessary changes in disciplinary procedures," said Roessler.

Roessler continued, "There have been numerous reports that Wisconsin lags in the discipline of health care professionals. This bill is important both to patients and to the integrity of the medical profession."

The bill, Senate Bill 227, contains provisions that apply to disciplinary procedures for health care professionals generally, and provisions that are specific to physician discipline. **Provisions that apply to health care professionals in general include:**

- Requiring the Department of Regulation (DRL) to:
 - *Develop a system to establish the relative priority of cases involving unprofessional conduct;

(more)

*Establish guidelines for the timely completion of discipline cases;

*Give notice to complainants, patients and health care professionals and their places of practice, when specified stages of the disciplinary process are opened or closed;

- Require that a patient or client who has been adversely affected by a health care professional's conduct be given an opportunity to confer with the Department's prosecuting attorney.

Provisions of the bill specific to the physician disciplinary process include:

- Adding 2 public members to the Medical Examining Board (MEB), resulting in a 15-member board with 5 public members, 9 medical doctors and 1 doctor of osteopathy.
- Authorizing the Medical Examining Board to summarily limit any credential issued by the Board, pending a disciplinary hearing;
- Authorizing the MEB to assess a forfeiture of not more than \$1,000 against a credential holder found guilty of unprofessional conduct;
- Require the Department of Regulation and Licensing to notify a health care professional's place of employment after disciplinary action has been determined.

"This bill is the right thing to do. Our disciplinary system for health care professionals needs to be improved and Senate Bill 227 is a strong step forward in this direction," said Roessler.

Senate Bill 227 will now be sent to the Assembly for review and action.

###

Halbur, Jennifer

From: Asbjornson, Karen
Sent: Monday, February 09, 2004 4:38 PM
To: Halbur, Jennifer; Halbur, Jennifer
Subject: New Forward Contact Ownership and Assignment

Constituent: Dr. Darold Treffert (13324)
W4065 Maplewood Ln
Fond Du Lac, WI 54935-9562

Home: 920-921-9381
Fax: 920-926-8933
Cell Phone: 920-960-2167

Email: daroldt@dotnet.com
Email: dtreffert@pol.net

Owner: Halbur, Jennifer
Assigned: Halbur, Jennifer
Summary: TU Dr. Discipline

Issue:
Position:
Status: Pending
Contact Type: E-mail

Description: -----Original Message-----
From: Darold Treffert, MD [mailto:daroldt@dotnet.com]
Sent: Monday, February 09, 2004 4:10 PM
To: sen.roessler@legis.state.wi.us
Subject: Physician discipline bill

Carol,

Thanks for your leadership and support on the Physician Discipline Bill that you and I have discussed in the past. I also appreciate your support for the three amendments that changed problem language and concepts. I appreciate your attention to this bill and was glad to give my advice and perspectives.

Darold Treffert

SS
207
T.U. X JH
CR

Halbur, Jennifer

From: Asbjornson, Karen
Sent: Tuesday, February 10, 2004 7:44 AM
To: Halbur, Jennifer
Subject: FW: SB 227
CR email

T.O. — CR

Karen Asbjornson
Office of Senator Carol Roessler
(608) 266-5300/1-888-736-8720
Karen.Asbjornson@legis.state.wi.us

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

From: Dr. Wilhelm [mailto:kwilhelm@mwt.net]
Sent: Monday, February 09, 2004 7:35 PM
To: sen.roessler@legis.state.wi.us
Subject: SB 227

I wanted to thank you personally as a physician for the work you did to insure fairness in the treatment of these medical issues. Your leadership is greatly appreciated.

Sincerely,

Kurt Wilhelm II, MD
Boscobel, WI
member, Wisconsin Medical Society

Halbur, Jennifer

From: Seaquist, Sara
Sent: Wednesday, February 11, 2004 6:15 PM
To: Halbur, Jennifer
Subject: FW: Thank you

CR email...

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

From: william.listwan@aurora.org [mailto:william.listwan@aurora.org]
Sent: Wednesday, February 11, 2004 4:10 PM
To: sen.roessler@legis.state.wi.us
Subject: Thank you

T.O. ✓

A voice from the past. A long time ago, before redistricting in the early 90's, you were our State Senator.

Thanks for your help with the amendments to SB 227. We all appreciate your help.

Bill Listwan, MD
West Bend

*A personal
hello to
him*

SB227

Halbur, Jennifer

From: Seaquist, Sara
Sent: Thursday, February 12, 2004 4:24 PM
To: Halbur, Jennifer
Subject: FW: SB227
CR email

T.O. X CR

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

From: Dart, Richard MD [mailto:dart.richard@mcrf.mfidclin.edu]
Sent: Thursday, February 12, 2004 4:09 PM
To: sen.roessler@legis.state.wi.us
Cc: markg@wismed.org; aliceo@wismed.org; Farnsworth, Kathy; Phillips, Robert MD
Subject: SB227

Dear Senator Roessler, Though not a member of your Senate District, I am writing to you, on my own behalf and as a member of the Wisconsin Medical Society, to thank you for your proactive and effective help in responding to the Society's concerns about issues in SB 227. This is very much appreciated.

Respectfully,
Richard A. Dart, MD

02/12/2004

MERCY HEALTH SYSTEM
1000 MINERAL POINT AVE.
JANESVILLE, WI 53404
608•756•6000
A System for Life

608•756•6819
Fax: 608•756•6572
E-Mail: thaas@mhsjvi.org

Thomas Haas, DO
Pathologist

JAT ✓
OK
MN
Special number
Dud the
Resonance
Janesville
I think you

Lee JD

Dear Senator Roessler 2/13/04

Thank you for your effort
to the Wisconsin Medical Society
Re. the recent Senate Bill 227
(DRL-MEB, "Physician Discipline B.I.I.")

I appreciate your efforts on
behalf of our profession & the
WMS.

Please let me know if I may
return the favor.

Sincerely
Tom Haas, DO
Janesville

WISCONSIN STATE SENATE



Carol Roessler
STATE SENATOR

February 13, 2004

James Vanbommel
259 North Park Avenue
Fond du Lac, WI 54935

Dear James,

Given your past interest in Senate Bill 227, I would like to update you on the status of this bill. SB 227 relates to physician and other healthcare worker discipline.

SB 227 passed the Senate 33-0 on February 4, 2004. It has been referred to the Assembly Committee on Health. To date, a public hearing has not been held on this bill in the Assembly.

Thank you for your interest in SB 227. I will continue to update you regarding the status of this bill as it moves forward.

Sincerely,

A handwritten signature in cursive script that reads "Carol".

CAROL ROESSLER
State Senator
18th Senate District

CR:/jhs\DOCS\Jennifer\2-13-04 vanbommel sb 227.doc

SB227

CR wants call.
wants SB 227
on health
agenda

Halbur, Jennifer

From: Lee Gruenwald [imgruenw@mcw.edu]
Sent: Saturday, February 14, 2004 7:40 AM
To: sen.roessler@legis.state.wi.us
Subject: Senate Bill 227

Senator Roessler,

Thank you for supporting the State Medical Society and its efforts to help clarify Senate Bill 227. I appreciate your hard work on this topic.

Sincerely,

Lee Gruenwald, MD
Chief Resident
Department of Psychiatry and Behavioral Medicine
Medical College of Wisconsin
8701 Watertown Plank Road
Milwaukee, WI 53226
phone 414-456-8983
fax 414-456-6299

T.U. J

Home:
3142 N. 89th Street
Milwaukee, WI 53222

02/20/2004

Contact Detail

Treffert, Darold
W4065 Maplewood Ln
Fond Du Lac, WI 54935-9562

Fax: (920) 926-8933
Cell Phone: (920) 960-2167

SB 227

Email: daroldt@dotnet.com
Email: dtreffert@pol.net

Contact Date: 02/09/2004

Contact Type: E-mail

Summary: TU Dr. Discipline

Issue:

Position:

T.U. ✓ ✓

Description: -----Original Message-----

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Darold Treffert

Status: Pending

Closed Date:

Assigned: Halbur, Jennifer

Owner: Halbur, Jennifer

Note **Note Date:**

Summary:

Contact Type:

Description:

yes?
Did this die
States of this bill

ASK Ellen why?

Call from Chris Klem, DRL 2/25/04

Sec. Strong Hill will be testifying on SB 227, DOL Discipline.

* She will mention a concern ~~about~~ about notifying a healthcare worker within 40 days that a complaint has been filed against them.

* This was not a concern when the Senate had the bill. A

circumstance occurred that has prompted DRL concern.

- DRL notified a physician that a complaint had been made against him shortly after it was filed.

- Drug enforcement called DRL and told them that by notifying the physician, they had blown their whole case/investigation.

- The accused now had plenty of time to destroy evidence.



Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Assembly Committee on Health

FROM: Mark Grapentine

DATE: February 26, 2004

RE: Senate Bill 227: **Information Only**

On behalf of more than 10,000 members statewide, thank you for this opportunity to testify on Senate Bill 227, which would alter the powers and makeup of the Department of Regulation and Licensing (DRL) and the Medical Examining Board (MEB). As our members have the greatest potential to be affected by this bill, we appreciate the chance to share some thoughts.

The bill has been improved greatly since its original introduction:

- Last October the Senate Health Committee removed the ambitious – but ultimately unworkable – proposal to establish a “system of markers” through which a health care professional would be subject to investigation without a complaint being filed.
- The full Senate further altered the bill earlier this month by removing an ambiguous section related to mandated reporting of “therapeutic-related deaths.”
- The Senate also changed the timeline where health care professional employers would be notified of a complaint related to unprofessional conduct; rather than have that notification occur immediately upon a simple filing of a complaint, the full Senate correctly decided that such notification should occur only after a final decision and order for disciplinary action has been made.

While the bill does not make an appropriation to DRL, it is worth noting the Department’s fiscal note estimates increased costs – although some are no longer applicable due to the Senate’s amendments to SB 227. It is likely, however, that DRL will recommend an increase in license fees in their 2005-07 Biennial Budget. As such, we wish to reiterate to this committee the Society’s hope that the legislature require DRL to earmark dollars gleaned through physician licensing for MEB-related activities.

Thank you again for this opportunity to testify. If you have any further questions, please feel free to contact Alice O’Connor (aliceo@wismed.org) or Mark Grapentine (markg@wismed.org) at 608.442.3800.

Assembly Health

2/26/04

SB227

See Strong Hill

- prior concerns have been addressed.

Dr. Richard Strand - opposed

DGB member

- wants Reg board to maintain auth.
- * DRC does have to take into consideration views/
input of the Bd.
- Dental Exam Bd. wants to control prioritization
of cases relating to dentists - not DRC

Dr. Denis Engel - gen. dentist in Maquon
Aos. WDA

- opposed
- Priority of cases should be determined by
Bd - not DRC staff
-

John Buhlman

- Supports
- member of pharm. exam Bd. but is speaking
on his own behalf.
- Bill doesn't require DRC to use input
from cred. boards.
- He sugg. inserting a statement - system dev.
must include input from cred. boards.

Mark Gopertino - info. only

- Med. Sec.

- doesn't agree that we ranks @ bottom of journal in the discipline.

- 1 study done - not credible

- public member aspect - when log study was done - only intent to replace ^{prof} private members with public to remedy a problem they thought existed. After hearing testimony, log. council study comm. decided to add 2 public members rather than replace prof. members w/ public.

Jim Doyle
Governor

**WISCONSIN DEPARTMENT OF
REGULATION & LICENSING**

1400 E Washington Ave
PO Box 8935
Madison WI 53708-8935
Email: web@drf.state.wi.us
Voice: 608-266-2112
FAX: 608-267-0644
TTY: 608-267-2416

Donsia Strong Hill
Secretary



Statement on SB 227

Before The

ASSEMBLY COMMITTEE ON HEALTH
Representative Greg Underheim, Chair

February 26, 2004
417 North, State Capitol

Statement of Secretary Donsia Strong Hill
Representing the Department of Regulation and Licensing

For Information Only

Good morning Chairman Underheim and members of the Committee. My name is Donsia Strong Hill and I am the Secretary for the Department of Regulation and Licensing. I am appearing today to comment on SB 227.

This is the Department's second opportunity to publicly comment on SB 227. Many of our prior concerns have been addressed. I am grateful for Senator Roessler's responsiveness and willingness to address most of the Department's concerns.

This bill contains provisions that the Department supports. In fact, this Administration has already implemented several of the bill's provisions. However, the bill also contains provisions that would be problematic if adopted.

Establishment of priority disciplinary cases.

This provision requires the Department to establish a priority system that gives the highest priority to those cases that have the greatest potential to adversely affect public health, safety and welfare. The provision also requires that the Department give special consideration to those cases that involve death, serious injury, substantial damages or sexual abuse of a patient or client.

I agree that cases should be prioritized. Some cases are more immediately important to public safety than others. Staff resources must be allocated to prosecutions that will provide the greatest degree of protection to Wisconsin citizens.

I have already directed that the highest priority be given to those cases that affect health, safety and welfare and that this mandate is being implemented. The Deputy Secretary and I are being briefed on every case currently open that exceeds the Department's existing case process

timelines to ensure that case priorities are being followed and that staff resources are being allocated appropriately. We will continue this practice until all such cases have been resolved.

Current law already imposes time limits for initiating disciplinary actions against physicians. (Wis. Stat. s. 448.02(3)). The law requires that a disciplinary action where a death has occurred be initiated within one year after initiating an investigation, and that a disciplinary action in all other medical cases be initiated within three years. As a result, these cases must receive priority treatment. In addition, I believe these mandates will create a significant need for increased resources in the near future.

Notice to health care professionals, complainants, patients and clients and the health care professional's place of practice.

Under the Department's current procedure, complainants are informed when a complaint is received and when an investigation or case is closed. With respect to health related cases, approximately 1,600 notices of complaints received are sent to complainants annually. If the complainant were also the victim, he/she would be notified during the course of the investigation.

Department staff notifies a health care professional when a case or an investigation is closed. The Department does not routinely notify the individual against whom the complaint is filed when the case is opened. However, we strongly oppose this provision in its current form. In certain types of cases, such as ongoing fraud, sexual misconduct, diversion or other cases where evidence may be concealed, altered or destroyed or where there is an ongoing criminal investigation in which we are cooperating. It is absolutely critical that the Department's boards and prosecutors retain the discretion to determine the appropriateness of when notification is appropriate. A routine part of each case investigation is, however, an interview of, or other contact with, the person being investigated.

The Department issues approximately 2,500 closeout letters annually.

Information regarding the health care professional's place of practice may not be readily available. The provider may change health care facilities and fail to notify the Department. The Department currently posts Denial Decisions on its website. We suggest that be the preferred method of notice.

Opportunity for Patients and Clients to Confer Concerning Discipline

I have issued a directive to Department staff stating that, generally, it is Department policy to provide victims of alleged unprofessional conduct with the opportunity to provide information and to observe proceedings in the prosecution of cases. Specifically, staff have been directed to contact and interview victims, and to consider the victim's viewpoint in determining the resolution of cases. As I stated, it is important that the Department retain flexibility in determining the appropriateness of the circumstances of victim contact.

Establishment of Disciplinary Procedure Time Guidelines

The Department has a timelines policy adopted by the previous administration that is fairly stringent. Depending upon the complexity of the case, screening is required to be conducted within 45- 60 days of receipt of the complaint; the investigation is to be conducted within 90-180 days after the completion of screening; any legal action must be taken within 90-180 days after the completion of the investigation; and the hearing stage must be conducted within 90 to 180 days after a formal complaint is filed by the Division of Enforcement.

These timelines are not always met. This is due to a number of factors, including the failure of hospitals or other facilities to timely respond to requests for health care records, uncooperative or hard to find witnesses, case loads and practice related time constraints of volunteer board members and most importantly, limited staff resources. While the Department has subpoena power as a practical matter it is rarely used because the remedy for non-compliance is not usually timely or certain. We have developed legislative language which would provide the Department with more effective sanctions.

In addition, the Division of Enforcement has been actively addressing the backlog of cases inherited by this Administration. Specific deadlines have been set for the completion of older cases. The first and second deadlines were met. Others are on target which means we plan on resolving all pre-2001 cases by this spring.

Panels of Experts: Alternative Health Care Practitioners

The current screening panels consists of Board members and a Division of Enforcement attorney.

The Committee may wish to consider requiring that one member of every board be a professional who practices an alternative form of health care in a specific area.

Expansion of board membership to include more public members.

In my view, additional public members may not fully address the perceived problems with the Medical Examining Board. Public members often defer to professionals on every board. Increasing the number of public members may not alone affect that dynamic. (The committee may want to consider including other professionals representing other disciplines or perspectives such as a nurse, or an alternative health care practitioner as required members.)

Imposition of forfeitures and expanding summary suspension provisions to limit licenses

These are enforcement tools that might be useful.

Closing

The ideals contained in this legislation are ones that we can and, for the most part, do support. At this point, the effectiveness of the goals of this legislation and the processes currently in place at the Department will continue to be constrained unless the fees collected are adjusted. This Department is funded solely by the fees paid by the self-regulated professions. These fees have simply not kept pace. Last spring the Department engaged Grant Thornton to conduct a fee study. The fee study indicated that most fees should be slightly raised to accomplish our mandate. Unfortunately, the Joint Committee on Finance declined to implement the fee changes. I think the worthy goals of this legislation, much of which is in place in some form in the Department, suggest that the fee change proposal deserves a second look. We'd appreciate any support the committee can provide in this effort.

Last, we'd like to ask that the effective date of the act be one year after the date of passage.

The Doyle Administration is committed to maintaining high standards in the health and safety of Wisconsin citizens and we look forward to working with the legislature on these important issues.

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
INVESTIGATION 01 MED 92

**PETITION AND REQUEST
FOR EXTENSION OF TIME**

The Department of Regulation and Licensing, Division of Enforcement, requests the Wisconsin Medical Examining Board as follows:

This request is made pursuant to §448.02(3)(cm), Wis. Stats.

1. This investigation was initiated on March 26, 2001, upon the report of a reputable Milwaukee physician who wished to remain anonymous, of injudicious prescribing of controlled substances to three named patients who had come to him for care following treatment by respondent.
2. The last date upon which the Medical Examining Board can initiate disciplinary action based upon this informal complaint is March 26, 2004. I, the prosecuting attorney assigned to this case, request the Medical Examining Board to petition the Secretary of the Department of Regulation and Licensing to grant an extension until April 21, 2004, to initiate disciplinary action in the above-captioned proceedings.
3. A petition for extension is justified for the following reasons: a) the case involves serious issues of competency of a physician; b) because of a concurrent investigation by the United States Drug Enforcement Administration, we have not yet obtained respondent's medical records for the three named patients (although other records from other physicians and pharmacists have been gathered, and interviews conducted); c) DEA, through Assistant United States Attorney Chris Larsen, has on March 13, 2004, requested in writing that we delay any contact with respondent until DEA has obtained and executed a search warrant of respondent's office:

"(...) after much discussion, we (the state and federal prosecutors) feel we are not in a position to obtain a search warrant by Monday or Tuesday next week. Therefore, we would respectfully request that you do what you can to delay your case for about two weeks if possible so that [respondent] is not tipped off about the existence of our investigation (we think we can put a warrant together by then). As you are aware, as compared to a more routine drug case, it is a greater undertaking to establish probable cause against a practicing physician where, as here, the illegality is not immediately obvious. In addition, we were planning to execute a simultaneous administrative warrant at the [name omitted] pharmacy, which is a fairly elaborate document that must receive the approval of DEA's counsel's office.

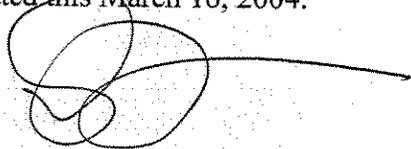
I can tell you, however, that we are moving with all due speed to get these warrants together -- so if you are able to hold off for a few weeks it would be greatly appreciated."

- d) AUSA Larsen has separately represented to me that DEA will complete its investigation, including the execution of any search warrant, within three weeks of the date of this Petition and

Request; (e) the next meeting of the Medical Examining Board which would be available for the issuance of a formal Complaint or the approval of a stipulation is April 21, 2004.

4. The case advisor, Bhupinder Saini, MD, and the Supervisor for the Health Team Attorneys in the Division of Enforcement, Michael J. Berndt, support this request for an extension of time for the Medical Examining Board to initiate disciplinary action in these proceedings.

Dated this March 16, 2004.



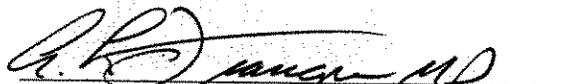
Arthur Thexton, Attorney
Division of Enforcement
1400 East Washington Avenue
PO Box 8935
Madison WI 53708-8935
608-266-9814
arthur.thexton@drl.state.wi.us

PETITION

The Wisconsin Medical Examining Board, pursuant to the authority of §448.02(3)(cm), Wis. Stats., petitions the Secretary of the Department of Regulation and Licensing to grant an extension of time to April 21, 2004, for the Medical Examining Board to initiate disciplinary action in case file 01 MED 92.

Dated this March 17, 2004.

Wisconsin Medical Examining Board, by:



a member of the Board

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
INVESTIGATION 01 MED 92

:
:
:
:
:
**ORDER FOR
EXTENSION OF TIME**

I, the Secretary of the Department of Regulation and Licensing, have reviewed the Petition of the Medical Examining Board for an extension of time in the above-captioned investigation and consider it satisfactory to establish that the extension requested is necessary for the Board to determine whether initiation of disciplinary proceedings against the respondent physician is warranted.

ORDER

Accordingly, I hereby grant the petition and order that:

Pursuant to the authority of §448.02(3)(cm), Wis. Stats., the Medical Examining Board is GRANTED an EXTENSION of time until April 21, 2004, in Division of Enforcement Case File 01 MED 92, to initiate disciplinary proceedings.

Dated this ____ day of March, 2004 at Madison, Wisconsin.

Donsia Strong Hill
Secretary
Department of Regulation and Licensing
1400 East Washington Avenue
PO Box 8935
Madison WI 53708-8935

The Capital Times April 16, 2004

Officials defend doctors despite lack of discipline

By Anita Weier

The Capital Times

Wisconsin continues to rank near the bottom in disciplining doctors, according to an annual report from the Public Citizen group. But Wisconsin medical officials defend the quality of the state's physicians and say the report isn't calculated properly.

The report from Public Citizen ranked the 50 state medical boards and the District of Columbia based on the rate of serious disciplinary actions taken against doctors in 2003.

Wisconsin was second lowest in actions taken, with a rate of 1.66 per 1,000 physicians. Only Rhode Island had fewer, with 1.46 actions per 1,000.

Wisconsin also was one of five states that has consistently been in the bottom 15 states for nine consecutive three-year average periods. The other four were Minnesota, Tennessee, Delaware and Hawaii.

"The data raise serious questions about whether patients in low-ranking states are being adequately protected because they are exposed to doctors who might be put on probation or have their licenses revoked in states that take doctor discipline more seriously," said Dr. Sidney Wolfe, director of Public Citizen's Health Research Group.

'Wisconsin has led the way in medical quality reports by Medicare. This is the only report I have heard that makes Wisconsin look bad.'

Wisconsin Medical Society
PR director Steve Busalacchi

It should be noted, however, that some of the states with the highest disciplinary actions per thousand — such as North Dakota with 10.25 and Wyoming at 11.42 — have relatively few physicians and a low population, which could affect results.

Public Citizen, a consumer advocacy group founded in 1971 by Ralph Nader, ranks states according to data from the Federation of State Medical Boards.

But Steve Busalacchi, director of public relations for the Wisconsin Medical Society, said reporting of disciplinary actions is not done uniformly.

"So any report card isn't reliable," he said.

Busalacchi added that Public Citizen doesn't credit disciplinary actions such as requiring classes or using other methods to correct flaws in a doctor's performance.

"We don't just take the license away," he said. "We want to keep good physicians practicing and protect the public. The top priority is to protect the public while promoting rehabilitation."

He added that the lack of discipline also could be attributed to the fact that Wisconsin has really good doctors.

"Wisconsin has led the way in medical quality reports by Medicare," Busalacchi said. "This is the only report I have heard that makes Wisconsin look bad."

Sidney Johnson — a member of Wisconsin's Medical Examining Board — commented last year, when Wisconsin ranked third lowest, that Public Citizen does not count some types of disciplines imposed by the board. "If we reprimand a doctor or send a doctor off for additional training, or put a limit on their license, they don't count that. So we don't believe their statistics," he said.

Johnson also said state officials are very careful about whom they admit to the practice of medicine, thus protecting patients and lowering the need for discipline.

E-mail: aweier@madison.com

To: *Suzanne Carol Rosenberg*
FAX 608 266-0423

JH

DAROLD A. TREFFERT, M.D.

W 4065 Maplewood Lane
Fond du Lac, WI 54935
Phone: (920) 921-9381
E-mail: dtreffert@pol.net
web site: www.savantsyndrome.com
web site: <http://members.authorsguild.net/treffert/>

July 23, 2004

Carol,

I don't know if you intend to re-introduce the MEB/DRL revisions which were not acted on this past session. I assume you will be doing so. If you do, there is an additional provision you might consider adding: civil immunity for patients who file a complaint against their physician (or any other licensee). The Milwaukee Journal Sentinel carried the story this morning of the doctor who 'has his lawsuits dropped'. As you know, this doctor had filed some 270 cross-claim suits against many persons, including his ex-patients who had filed complaints and were cooperating with a MEB investigation of the matter. Those complaints were filed against MEB members also, incidentally, where each of was sued as an individual, separate from our official capacities. All of the state officials, DRL employees, and MEB members, though were acting in their official capacities and, as such, are afforded protection under the statutes, apparently, and characteristically are defended by the Attorney General's office (as happened in this case).

The patient's however, had to retain attorneys at their own cost, and of course, with attendant inconvenience, stress and uncertainty. The article attached is self-explanatory in that regard. My concern is that having to retain private counsel if sued for filing a complaint, may have a chilling effect on patient's coming forward in the future for obvious reasons. I wonder if there should be some sort of civil immunity over-against a patient who, in good faith, files a complaint against a licensee (this would apply to the entire DRL roster). That would be the same civil immunity that applies to officials in DRL proceedings and would make it not necessary to retain individual legal counsel at their own expense.

Perhaps that could be added as a part of the MEB/DRL bill. Just a thought. Such civil immunity is extended, incidentally and by way of example, as I understand it, to those persons and professionals who in good faith file a petition for emergency detention or cooperate in any such legal actions in Chapter 51 proceedings.

Darold Treffert

Man has OWN lawsuits dropped

Pain specialist in Tosa had sued former patients

By DAVID DOEGE

ddoega@journal-sentinel.com

A Wauwatosa pain specialist who became the subject of a criminal investigation after filing 31 lawsuits against former patients while awaiting the outcome of regulatory proceedings has had nine of the cases dismissed at his own request.

Stuart M. Suster has asked for the dismissal of other cases he filed, saying he has "determined that time must be devoted to other legal issues and concerns."

The dismissal requests by Suster came after a Milwaukee County Circuit Court judge ruled that one of the cases he filed was frivolous and dismissed it with orders that he pay the defendants' costs and attorney's fees.



Stuart M. Suster faces the potential loss of his license.

Gary Lippow, the attorney representing those defendants, said Thursday that he reached an agreement with Suster on behalf of defendants in two other cases in which those lawsuits will be dismissed with prejudice, meaning they can't be refiled, in exchange for the defendants not asking for costs and attorney's fees.

Jeffrey Zarzynski, who represents defendants in another case filed by Suster, said having it dismissed with prejudice is of primary importance to his clients.

Legal filings investigated

Suster, who faces the potential loss of his license over professional misconduct allegations, is being investigated by Wauwatosa police and the Milwaukee County district attorney's office. Investigators are trying to determine whether he broke the law with his barrage of legal filings over the last three months.

Earlier this month, an administrative law judge presiding over the misconduct case against Suster recommended that the state Medical Examining Board revoke Suster's license. The board is expected to act on the recommendation in the next several weeks.

A state investigation resulted in an 11-count complaint in

Please see **SUSTER, 2B**

SUSTER, From 1B

October 2002 involving more than 30 patients and alleged unprofessional conduct — including sexual misconduct and boundary violations, abuse of license and insurance fraud.

Suster, a psychiatrist who treats acute and chronic pain and musculoskeletal disorders and sees patients at Great Lakes Pain Center, 10125 W. North Ave., Wauwatosa, was granted his license in 1991. The charges against him stem from 1995 to 2002.

While the disciplinary matter was pending, Suster filed more than 270 cross claim

complaints. The complaints were directed at witnesses and others, including public officials, as part of the regulatory proceeding against him.

The lawsuits that Suster began filing in March have been regarded as harassment and intimidation by lawyers representing those sued. The lawsuits accuse former patients of "maliciously" alleging "false and misleading" acts on his part to insurance companies, the media and regulatory authorities.

But paperwork in some cases could also amount to a crime that makes it illegal to file documents "simulating legal process," court records

said. It is against the Wisconsin law to send paperwork purporting to be of an official court act of a prosecutor in the Milwaukee County district attorney's office has confirmed that reviewing that issue.

Cases dropped

On July 9, a judge dismissed one of the lawsuits filed against one of his Waukesha County patients. Waukesha County Circuit Judge Mark Gampeler found Suster's allegations against Thomas Casper.

On July 15, Milwaukee County Circuit Judge K

Brennan granted Lippow's motion that Suster's case against Glenn and Maria Bishop of Milwaukee be dismissed with prejudice. In the dismissal, Brennan concluded that since it was filed without a reasonable basis, it was frivolous and Suster owed the defendants' costs and attorney's fees, which she will determine at a hearing Aug. 24.

Over the next few days, Suster filed motions for dismissal of four cases he filed in Milwaukee, requests that were subsequently granted.

In the requests, Suster said he "does not wish to prosecute this action at this time."

On Tuesday, two cases were

dismissed in Waukesha by judges after Suster filed the same request in those suits.

A total of seven other cases were dismissed this week in Racine, Dodge, Washington and Ozaukee counties, some at Suster's request and some at the defendants'.

Suster told a reporter Thursday that the case "has been and still is an uphill battle." He also accused the prosecutor in the misconduct case of "misusing his power to destroy innovation in health care in Wisconsin."

Suster added that his patients "are my number one priority" and that "I have only begun to fight."