

**2005 DRAFTING REQUEST**

**Bill**

Received: **11/22/2005**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Curtis Gielow (608) 266-0486**

By/Representing: **John**

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

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - evidence**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gielow@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Inadmissibility of apology statements from health care provider

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 11/28/2005	kfollett 11/28/2005		_____			
/1			jfrantze 11/29/2005	_____	mbarman 11/29/2005	mbarman 12/07/2005	

FE Sent For:

<END>

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/?	rnelson2	1/16/05 11/28	2/6 11/29	 11/29			

FE Sent For:

<END>

## Nelson, Robert P.

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**From:** Kennedy, Debora  
**Sent:** Tuesday, November 22, 2005 11:46 AM  
**To:** Nelson, Robert P.  
**Subject:** FW: DRAFTING REQUEST (FW: "Apology Law" Draft from Dick Sweet)

**Attachments:** Scan001.PDF



Scan001.PDF (84 KB)

Bob, I think this is yours.

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

**From:** Northrop, Lori  
**Sent:** Tuesday, November 22, 2005 11:37 AM  
**To:** Kennedy, Debora  
**Subject:** FW: DRAFTING REQUEST (FW: "Apology Law" Draft from Dick Sweet)

Debora, Can you please take care of this? I skimmed it and it seemed to be a health care issue. If not, please forward it to whom it should go to.  
Thanks much

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

**From:** Reinemann, John  
**Sent:** Tuesday, November 22, 2005 11:32 AM  
**To:** LRB.Legal  
**Subject:** DRAFTING REQUEST (FW: "Apology Law" Draft from Dick Sweet)

Attached please find a WLCS draft prepared for our office by Dick Sweet of Legislative Council.

We would like this drafted as a bill for Rep. Curt Gielow.

Please feel free to contact Dick at Leg Council or me with any questions. Thank you!

John Reinemann  
Aide to Rep. Curt Gielow  
608-266-0486

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

**From:** Sawyer, Julie  
**Sent:** Friday, November 11, 2005 2:06 PM  
**To:** 'gielow@execpc.com'; Reinemann, John  
**Subject:** Apology Law Draft from Dick Sweet



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## WISCONSIN LEGISLATIVE COUNCIL

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

TO: REPRESENTATIVE CURT GIELOW  
FROM: <sup>RNS</sup> Richard Sweet, Senior Staff Attorney  
RE: WLC: 0271/1 (Health Care Provider Statements)  
DATE: November 11, 2005

Attached is a draft prepared at your request—WLC: 0271/1, relating to inadmissibility into evidence of certain statements or actions by health care providers.

The draft is based on recently enacted statutes in Arizona (section 12-2605), Colorado (section 13-25-135), and Oregon (section 677.082).

In preparing the draft, I used the fairly broad definition of “health care provider” in s. 153.01 (4t), Stats. That definition includes all of the individual and institutional health care providers listed in s. 146.81 (1), Stats. (copy attached), as well as ambulatory surgery centers. If you would prefer a different definition of “health care provider,” this can be changed in any subsequent draft.

Feel free to contact me if I can be of further assistance.

RNS:wu  
Attachments

RNS:wu;wu

11/11/2005

1 **AN ACT to create 893.55 (8) of the statutes; relating to:** inadmissibility into evidence  
2 of certain statements or actions by health care providers.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 **SECTION 1.** 893.55 (8) of the statutes is created to read:

4 893.55 (8) (a) In this subsection, "health care provider" has the meaning given in s.  
5 153.01 (4t).

6 (b) In a civil action or an administrative proceeding against a health care provider,  
7 including arbitration or mediation relating to the civil action or administrative proceeding, any  
8 statement, affirmation, gesture, or conduct expressing apology, fault, responsibility, liability,  
9 sympathy, commiseration, condolence, compassion, or a general sense of benevolence that  
10 was made by the health care provider or an employee of the health care provider to a patient,  
11 a relative of a patient, or a patient's guardian or health care agent is inadmissible as evidence  
12 of an admission of liability or as evidence of an admission against interest.

13 (c) A health care provider or an employee of a health care provider who makes a  
14 statement, affirmation, or gesture under par. (b) or engages in conduct under par. (b) may not  
15 be examined by deposition or otherwise about the statement, affirmation, gesture, or conduct  
16 in a civil action or an administrative proceeding against the health care provider, including  
17 arbitration or mediation relating to the civil action or administrative proceeding.

18 (END)

# 2005 BILL

Regen

1 AN ACT to create 904.14 of the statutes; relating to: inadmissibility of  
2 statement of apology or condolence by a health care provider.

### *Analysis by the Legislative Reference Bureau*

Under current law, certain types of evidence are not allowed to be admitted in a court action for various policy reasons. For example, evidence of measure taken after damage occurred that would have made the damage less likely is not admissible to prove negligence or culpable conduct in connection with the damage. As another example, no written or oral communication relating to a dispute in mediation is admissible or subject to discovery in any judicial proceeding or administrative action.

This bill provides that a statement or conduct of a health care provider that expresses apology, condolence, or sympathy to a patient or patient's relative or representative is not admissible into evidence in any civil action or administrative hearing related to an act or omission of the health care provider that resulted in the injury or death of the patient.

*regarding or subject to discovery*  
*as evidence of liability or as an admission against interest*

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3 SECTION 1. 904.14 of the statutes is created to read:

4 **904.14 Inadmissibility of statement by health care provider of apology**  
5 **or condolence. (1) In this section:**

**BILL**

153.01 (42)  
4+

1 (a) "Health care provider" has the meaning given in s. ~~146.81(1)~~.

2 (b) "Relative" has the meaning given in s. 146.34 (1) (j).

3 (2) A statement, gesture, or conduct of a health care provider or a health care  
4 provider's employee or agent, that expresses apology, benevolence, compassion,

5 condolence, *fault, liability, responsibility* or sympathy to a patient or to his or her relative or representative is not

6 admissible into evidence *or subject to discovery* in any civil action or administrative hearing *related to an*

7 act or omission *regarding* of the health care provider *that resulted in the injury or death of the*

8 patient *as evidence of liability or as an admission against interest*

**SECTION 2. Initial applicability.**

10 (1) This act first applies to ~~acts or omissions~~ that occur on the effective date of  
11 this subsection.

*statements, gestures, or conduct*

12 (END)



**Barman, Mike**

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**From:** Reinemann, John  
**Sent:** Wednesday, December 07, 2005 1:01 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-4134/1 Topic: Inadmissibility of apology statements from health care provider

It has been requested by <Reinemann, John> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-4134/1 Topic: Inadmissibility of apology statements from health care provider