

**2005 DRAFTING REQUEST**

**Bill**

Received: 10/10/2005

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **John Gard (608) 266-3387**

By/Representing: **Ellen Nowak**

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

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Insurance - other insurance  
Insurance - miscellaneous  
Health - miscellaneous**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to: **Rep.Huebsch@legis.state.wi.us  
Rep.Gielow@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Covering medical residents under the injured patients and families compensation fund

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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>
/?	csundber 10/13/2005	lkunkel 10/14/2005		_____			State
/1			rschluet 10/14/2005	_____	mbarman 10/14/2005	Inorthro 10/17/2005	

FE Sent For:

*AF Intro.*

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Covering medical residents under the injured patients and families compensation fund

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Table with columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Required. Row 1: /?, csundber, 1/mk 10/14, [Signature], [Signature], [Signature], [Signature], State

FE Sent For:

<END>

## Miller, Steve

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**From:** Nowak, Ellen  
**Sent:** Saturday, October 08, 2005 11:03 AM  
**To:** Miller, Steve  
**Cc:** Jensen, Jodi  
**Subject:** Medical residents & collateral source

**Attachments:** MedResidents-Collateral Source drafting.doc

Steve:

Attached are drafting instructions for 2 more bills that the Medical Malpractice Task Force recommended. We would like them as individual bills so that in the end we have a total of 3 bills: (1) med mal caps; (2) coverage of medical residents under the statutory cap on noneconomic damages; and (3) address the Supreme Court's concern raised in *Lagerstrom v. Myrtle Werth Hospital*, 2005 WI 124 about evidence of collateral source payments .

Drafting instructions for #2 and #3 are attached. Instructions for #1 will be sent in a separate document. Please call Jodi Jensen from Rep. Huebsch's office or me if you have any questions.



MedResidents-Collateral Source...

### **Coverage of medical residents under the cap on noneconomic damages**

In June 2005, the Wisconsin Supreme Court decided *Phelps v. Physicians Insurance Company of Wisconsin, Inc.*, 2005 WI 85 (2005). In that case, the court held that the statutory cap on noneconomic damages did not apply to a person during his or her medical residency who was not yet a licensed physician and, in the circumstances of the particular case, was not an employee of a hospital. However, the Supreme Court sent the case back to a lower court for a determination of whether or not the medical resident can be considered to be a "borrowed employee" of a hospital.

In response to the *Phelps* decision, the Legislature desires to enact a statute that requires all unlicensed medical residents to have a temporary educational permit starting in their first year, so that they may be considered health care providers.

### **Collateral Sources (see Wis. Stat. Sec. 893.55(7))**

In July 2005, the Wisconsin Supreme Court decided *Lagerstrom v. Myrtle Werth Hospital-Mayo Health System*, 2005 WI 124 (2005). IN that case, the court noted that current statutes provide that a jury may receive information about other sources of payments for the injured patient's injuries, in addition to payments from the defendant, but the statutes are silent on how the jury is to use that information. The court held that the jury may not use the information about collateral sources to reduce the award to the injured patient, but may use the information to determine the value of medical services rendered.

In response to the *Lagerstrom* decision, the Legislature desires to enact a statute that requires the jury to reduce the injured patient's award by any collateral source payments received. This reduction would be offset by any amount of obligations that the injured patient must reimburse the collateral sources.

**Nelson, Robert P.**

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**From:** Nowak, Ellen  
**Sent:** Monday, October 10, 2005 10:42 AM  
**To:** Nelson, Robert P.  
**Subject:** Addendum to coverage of medical residents

Bob:  
I understand that Steve Miller forwarded the drafting request to you regarding coverage of medical residents under the cap. In addition to the information that I sent, the legislature would also like to allow sponsors of a graduate medical education program the option of participating in the Injured Patients Compensation Fund. (the language that I sent earlier would cover 1st year residents under the med mal cap.).  
Thanks,  
Ellen

Any legislation that you might introduce should apply only to acts of malpractice that occur after the effective date of the legislation. The Wisconsin Supreme Court has previously declared invalid an attempt to apply caps on damages retroactively.

In addition, it is recommended that you consider whether any new cap on noneconomic damages be indexed for changes in the Consumer Price Index, as was the cap that was in effect prior to *Ferdon*.

### Medical Residents

In June of this year, the Wisconsin Supreme Court rendered a decision in *Phelps v. Physicians Insurance Company of Wisconsin, Inc.*, 2005 WI 85 (2005). In that case, the court held that the statutory cap on noneconomic damages did not apply to a person during his or her medical residency who was not yet a licensed physician and, in the circumstances of the particular case, was not an employee of a hospital. However, the Supreme Court sent the case back to a lower court for a determination of whether or not the medical resident can be considered to be a "borrowed employee" of a hospital.

The recommendations of the Task Force are as follows:

- Require all unlicensed medical residents to have a temporary educational permit starting in their first year, so that they may be considered health care providers. ? for what purpose, not
- Allow sponsors of a graduate medical education program the option of participating in the Fund. ch 655

### Collateral Sources

The third Wisconsin Supreme Court case that the Task Force discussed is *Lagerstrom v. Myrtle Werth Hospital-Mayo Health System*, 2005 WI 124 (2005). In that case, the court noted that current statutes provide that a jury may receive information about other sources of payments for the injured patient's injuries, in addition to payments from the defendant, but the statutes are silent on how the jury is to use that information. The court held that the jury may not use the information about collateral sources to reduce the award to the injured patient, but may use the information to determine the value of medical services rendered.

The recommendation of the Task Force is as follows:

- Require the jury to reduce the injured patient's award by any collateral source payments received. [Distinctions could be made in this statute depending on the type of collateral source involved; e.g., Medicare or private insurance.] This reduction would be offset by any amount of obligations that the injured patient must reimburse the collateral sources.



**Kahler, Pam**

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**From:** Sawyer, Julie  
**Sent:** Tuesday, October 11, 2005 3:09 PM  
**To:** Kahler, Pam  
**Subject:** FW: Medical Malpractice

Pam -- Here is Ms. Eastham's information and her response to an inquiry for clarification from me. Thanks. Julie

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**From:** Catherine Eastham [mailto:ceastham@fmlh.edu]  
**Sent:** Tuesday, October 11, 2005 2:54 PM  
**To:** Maureen McNally; Sawyer, Julie  
**Subject:** RE: Medical Malpractice

Julie: I thought it would be easier for me to write it out - then you can file this away and not have to rely on notes.

By including a person (such as the residents before they have an MD license) as a health care provider means that person is required to get health insurance and pay premiums into the fund. UW-Madison's hospital would be opposed to that (they have told me that) because, right now, their residents who are not licensed, are considered the employee of a health care provider who cannot practice independently. So, they are included as part of the hospitals overall premium for its employees. Making these residents a separate health care provider would require those residents to have their own insurance policy and pay a premium into the fund.

I know that you and Barbara Connelly were discussing this issue earlier today. She was not aware I had taked to UW Hospital about this approach and learned about their objection. I have also talked with Pam Kahler today about it and I think she also understands the issue.

Let me know if this doesn't fully clarify the issues.  
Catherine

**Catherine Mode Eastham, Esq.**  
Vice President & General Counsel  
Froedtert & Community Health  
ceastham@fmlh.edu  
Phone: 414-805-2994  
Fax: 414-805-5283

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LRB

(414) 805 2994

per Catherine  
F?

Surname? Eastman

by phone 10-11:

do not add "medical resident" to s. 655.001 (71)

+ s. 655.005(2)(a) will not apply to  
med residents because they  
do not practice "not in collaboration"  
or ~~is~~ not "under the direction and  
supervision"



**Proposed Changes to Statutes and Administrative Code Governing the  
Status of Unlicensed Physicians as Healthcare Providers and Healthcare Practitioners  
September 26, 2005**

Chapter 180	Chapter 448	Chapter 655	Chapter 893	WI Administrative Code Chapter Med 5
<p><b>180.1901 Definitions.</b> In ss. 180.1901 to 180.1921:</p> <p>(1) "Employee" means an individual who is hired by a service corporation and who is usually and ordinarily considered by custom, practice or law to be rendering professional or other personal services for which a license, certificate, registration, permit, or other legal authorization is required. "Employee" does not include any of the following:</p> <p>(a) An individual who is hired by a service corporation and who provides services as an administrator, technician, clerk or bookkeeper.</p> <p>(b) An individual who performs all of his or her employment for a service corporation under the direct supervision and control</p> <p>(1m) "Health care professional" means an individual who is licensed, registered, or certified, or issued a permit by any of the following:</p> <p>(ag) The department of regulation and licensing under ch. 460.</p> <p>(am) Chiropractic examining board under ch. 446</p> <p>(ar) Board of nursing under ch. 441.</p> <p>(at) Dentistry examining board under ch. 447.</p> <p>(b) Medical examining board under subch. II of ch. 448.</p> <p>(bg) Physical therapists affiliated credentialing board under subch. III of ch. 448.</p> <p>(bk) Podiatrists affiliated credentialing board under subch. IV of ch. 448.</p> <p>(br) Dietitians affiliated credentialing board under subch. V of ch. 448.</p> <p>(bs) Athletic trainers affiliated credentialing board under subch. VI of ch. 448.</p> <p>(bu) Occupational therapists affiliated credentialing board under subch. VII of ch. 448.</p> <p>(c) Optometry examining board under ch. 449.</p> <p>(d) Pharmacy examining board under ch. 450.</p> <p>(e) Psychology examining board under ch. 455.</p>	<p><b>448.01 Definitions.</b> In this chapter:</p> <p>(2) "Disease" means any pain, injury, deformity or physical or mental illness or departure from complete health or the proper condition of the human body or any of its parts.</p> <p>(5) "Physician" means an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by the medical examining board, and holding a license granted by the medical examining board.</p> <p>(6) "Physician assistant" means an individual licensed by the medical examining board to provide medical care with physician supervision and direction.</p> <p>(9) "Practice of medicine and surgery" means:</p> <p>(a) To examine into the fact, condition or cause of human health or disease, or to treat, operate, prescribe or advise for the same, by any means or instrumentality.</p> <p>(b) To apply principles or techniques of medical sciences in the diagnosis or prevention of any of the conditions described in par. (a) and in sub. (2).</p> <p>(c) To penetrate, pierce or sever the tissues of a human being.</p> <p>(d) To offer, undertake, attempt or do or hold oneself out in any manner as able to do any of the acts described in this subsection.</p> <p>(9s) "Scene of an emergency" means an area not within the confines of a hospital or other institution which has hospital facilities or the office of a person licensed, certified or holding a limited permit under this chapter.</p> <p>(10) "Treat the sick" means to examine into the fact, condition or cause of human health or disease, or to treat, operate, prescribe or advise for the same, or to undertake, offer, advertise,</p>	<p><b>655.001 Definitions.</b> In this chapter:</p> <p>(1) "Board of governors" means the board created under s. 619.04 (3).</p> <p>(2) "Claimant" means the person filing a request for mediation under s. 655.44 or 655.445.</p> <p>(4) "Department" means the department of health and family services.</p> <p>(6) "Fiscal year" means the period beginning on July 1 and ending on the following June 30.</p> <p>(7) "Fund" means the injured patients and families compensation fund under s. 655.27.</p> <p>(7t) "Health care practitioner" means a health care professional, as defined in s. 180.1901 (1m), who is an employee of a health care provider described in s. 655.002 (1) (d), (e), or (f) and 655.002.</p> <p>(2) (and who has the authority to provide health care services that are not in collaboration with a physician under s. 441.15 (2) (b) or that may or may not be under the direction and supervision of a physician or nurse anesthetist.</p> <p>(7u) "Graduate Medical Education Program" means a program approved by the Board that provides postgraduate medical education and training for persons who possess a diploma from a medical or osteopathic college, or who has the equivalent education and experience from a foreign medical school recognized by the Education Committee for Foreign Medical Graduates (ECFMG).</p> <p>(8) "Health care provider" means a person to whom this chapter applies</p>	<p><b>893.55 Medical malpractice; limitation of damages; itemization of damages. (1) In this section healthcare provider is defined as Except as provided by subs. (2) and (3), an action to recover damages for injury arising from any treatment or operation performed by, or from any omission by, a person who is a health care provider, regardless of the theory on which the action is based, shall be commenced within the later of:</b></p> <p>(a) Three years from the date of the injury, or</p> <p>(b) One year from the date the injury was discovered or, in the exercise of reasonable diligence should have been discovered, except that an action may not be commenced under this paragraph more than 5 years from the date of the act or omission.</p> <p>(2) If a health care provider conceals from a patient a prior act or omission of the provider which has resulted in injury to the patient, an action shall be commenced within one year from the date the patient discovers the concealment or, in the exercise of reasonable diligence, should have discovered the concealment or within the time limitation provided by sub. (1), whichever is later.</p> <p>(3) When a foreign object which has no therapeutic or diagnostic purpose or effect has been left in a patient's body, an action shall be commenced within one year after the</p>	<p><b>Med 5.01 Authority and purpose.</b> The rules in this chapter are adopted by the medical examining board pursuant to the authority delegated by ss. 15.08 (5), 227.11 and 448.40, Stats., and govern application for temporary educational permit to practice medicine and surgery under s. 448.04 (1) (c), Stats., (hereinafter "temporary educational permit"), and also govern practice thereunder. History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1989, No. 481.</p> <p><b>Med 5.02 Applications, credentials, and eligibility.</b> An applicant who has been appointed to a postgraduate training program in a facility in this state approved by the board under the provisions of s. Med 1.02 (3) may apply to the board for a temporary educational permit to practice medicine and surgery and shall submit to the board the following:</p> <p>(1) A completed and verified application form supplied by the board for this purpose. These application forms are furnished by the board to the directors of training programs in approved facilities in this state and are available to the applicant from such directors.</p> <p>(2) The documentary evidence and credentials required under s. Med 1.02 (2), (4) and (5). History: Cr. Register, October, 1976, No. 250, eff. 11-1-76.</p> <p><b>Med 5.03 Fees.</b> The required fees must accompany the application, and all remittances must be made payable to</p>

**Proposed Changes to Statutes and Administrative Code Governing the  
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Chapter 180	Chapter 448	Chapter 655	Chapter 893	WI Administrative Code Chapter Med 5
<p>(f) Marriage and family therapy, professional counseling, and social work examining board under ch. 457.</p> <p>(g) Hearing and speech examining board under subch. II of ch. 459.</p>	<p>announce or hold out in any manner to do any of the aforementioned acts, for compensation, direct or indirect, or in the expectation thereof.</p> <p>(12) "Warn" means to privately appraise the holder of a license or certificate of the unprofessional nature of the holder's conduct and admonish the holder that continued or repeated conduct of such nature may give the medical examining board or an attached affiliated credentialing board cause to reprimand the holder or to limit, suspend or revoke such license or certificate.</p> <p><b>448.03 License or certificate required to practice; use of titles; civil immunity; practice of Christian Science.</b></p> <p>(1) LICENSE REQUIRED TO PRACTICE. (a) No person may practice medicine and surgery, or attempt to do so or make a representation as authorized to do so, without a license to practice medicine and surgery granted by the board.</p> <p>(b) No person may practice as a physician assistant unless he or she is licensed by the board as a physician assistant.</p> <p>(c) No person may practice perfusion, attempt to do so, or make a representation as authorized to do so, without a license to practice perfusion granted by the board.</p> <p>(1m) CERTIFICATE REQUIRED TO PRACTICE. No person may practice respiratory care, or attempt to do so or make a representation as authorized to do so, without a certificate as a respiratory care practitioner granted by the board.</p> <p>(2) EXCEPTIONS. Nothing in this subchapter shall be construed either to prohibit, or to require, a license or certificate under this subchapter for any of the following:</p>	<p>under s. 655.002 (1) or a person who elects to be subject to this chapter under s. 655.002 (2).</p> <p>(9) "Nurse anesthetist" means a nurse licensed under ch. 441 or in a party state, as defined in s. 441.50 (2) (f), who is certified as a nurse anesthetist by the American association of nurse anesthetists.</p> <p>(10) "Patient" means an individual who received or should have received health care services from a health care provider or from an employee of a health care provider acting within the scope of his or her employment.</p> <p>(10m) "Physician" means a medical or osteopathic physician licensed under ch. 448.</p> <p>(11) "Principal place of practice" means any of the following:</p> <p>(a) The state in which a health care provider furnishes health care services to more than 50% of his or her patients in a fiscal year.</p> <p>(b) The state in which a health care provider derives more than 50% of his or her income in a fiscal year from the practice of his or her profession.</p> <p>(12) "Representative" means the personal representative, spouse, parent, guardian, attorney or other legal agent of a patient.</p> <p>(13) "Respondent" means the person alleged to have been negligent in a request for mediation filed under s. 655.44 or 655.445.</p>	<p>patient is aware or, in the exercise of reasonable care, should have been aware of the presence of the object or within the time limitation provided by sub. (1), whichever is later.</p> <p>(4) (g) In this subsection, "noneconomic damages" means 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.</p> <p>(b) The total noneconomic damages recoverable for bodily injury or death, including any action or proceeding based on contribution or indemnification, may not exceed the limit under par. (d) for each occurrence on or after May 25, 1995, from all health care providers and all employees of health care providers acting within the scope of their employment and providing health care services who are found negligent and from the injured patients and families compensation fund.</p> <p>(c) A court in an action tried without a jury shall make a finding as to noneconomic damages without regard to the limit under par. (d). If noneconomic damages in excess of the limit are found, the court shall make</p>	<p>the Wisconsin department of regulation and licensing.</p> <p>History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; Register, February, 1997, No. 494, eff. 3-1-97.</p> <p><b>Med 5.035 Examination.</b> Applicants shall complete an open book examination on statutes and rules governing the practice of medicine and surgery in Wisconsin.</p> <p>History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.</p> <p><b>Med 5.04 Practice limitations.</b> The holder of a temporary educational permit to practice medicine and surgery may, under the direction of a person licensed to practice medicine and surgery in this state, perform services requisite to the training program in which that holder is serving. Acting under such direction, the holder of such temporary educational permit shall also have the right to prescribe drugs other than narcotics and to sign any certificates, reports or other papers for the use of public authorities which are required of or permitted to persons licensed to practice medicine and surgery. The holder of such temporary educational permit shall confine his or her training and entire practice to the facility in which the permit holder is taking the training and to the duties of such training.</p> <p>History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; correction made under s. 13.95 (2m) (b) 5., Stats., Register, May, 1989, No. 401.</p> <p><b>Med 5.05 Revocation.</b> Violation by the holder of a temporary educational</p>

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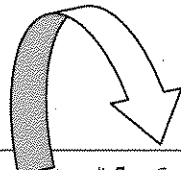
Chapter 180	Chapter 448	Chapter 655	Chapter 893	WI Administrative Code Chapter Med 5
<p>(a) Any person lawfully practicing within the scope of a license, permit, registration, certificate or certification granted to practice professional or practical nursing or nurse-midwifery under ch. 441, to practice chiropractic under ch. 446, to practice dentistry or dental hygiene under ch. 447, to practice optometry under ch. 449, to practice acupuncture under ch. 451 or under any other statutory provision, or as otherwise provided by statute.</p> <p>(b) The performance of official duties by a physician or perfusionist of any of the armed services or federal health services of the United States.</p> <p>(c) The activities of a medical student, respiratory care student, perfusion student, or physician assistant student required for such student's education and training, or the activities of a medical school graduate required for training.</p> <p>(d) Actual consultation or demonstration by licensed physicians or perfusionists or certified respiratory care practitioners of other states or countries with licensed physicians or perfusionists or certified respiratory care practitioners of this state.</p> <p>(e) Any person other than a physician assistant who is providing patient services as directed, supervised and inspected by a physician who has the power to direct, decide and oversee the implementation of the patient services rendered.</p> <p>(g) Ritual circumcision by a rabbi.</p> <p>(h) The gratuitous domestic administration of family remedies.</p> <p>(i) Any person furnishing medical assistance or first aid at the scene of an emergency.</p> <p>(j) Any person assisting a respiratory care</p>	<p><b>655.002 Applicability.</b> (1) MANDATORY PARTICIPATION. Except as provided in s. 655.003, this chapter applies to all of the following:</p> <p>(a) A physician or a nurse anesthetist for whom this state is a principal place of practice and who practices his or her profession in this state more than 240 hours in a fiscal year.</p> <p>(b) A physician or a nurse anesthetist for whom Michigan is a principal place of practice, if all of the following apply:</p> <ol style="list-style-type: none"> <li>The physician or nurse anesthetist is a resident of this state.</li> <li>The physician or nurse anesthetist practices his or her profession in this state or in Michigan or a combination of both more than 240 hours in a fiscal year.</li> <li>The physician or nurse anesthetist performs more procedures in a Michigan hospital than in any other hospital. In this subdivision, "Michigan hospital" means a hospital located in Michigan that is an affiliate of a corporation organized under the laws of this state that maintains its principal office and a hospital in this state.</li> <li>A physician or nurse anesthetist who is exempt under s. 655.003 (1) or (3), but who practices his or her profession outside the scope of the exemption and who fulfills the requirements under par. (a) in relation to that practice outside the scope of the exemption. For a physician or a nurse anesthetist who is subject to this chapter</li> </ol>	<p>any reduction required under s. 895.045 and shall award as non-economic damages the lesser of the reduced amount or the limit. If an action is before a jury, the jury shall make a finding as to non-economic damages without regard to the limit under par. (d). If the jury finds that non-economic damages exceed the limit, the jury shall make any reduction required under s. 895.045 and the court shall award as non-economic damages the lesser of the reduced amount or the limit.</p> <p>(d) The limit on total non-economic damages for each occurrence under par. (b) on or after May 25, 1993, shall be \$350,000 and shall be adjusted by the director of state courts to reflect changes in the consumer price index for all urban consumers, U.S. city averages, as determined by the U.S. department of labor, at least annually thereafter, with the adjusted limit to apply to awards subsequent to such adjustments.</p> <p>(e) Economic damages recovered under ch. 655 for bodily injury or death, including any action or proceeding based on contribution or indemnification, shall be determined for the period during which the damages are expected to accrue, taking into account the estimated life expectancy of the person, then reduced to present value, taking into account the effects of inflation.</p> <p>(f) Notwithstanding the limits on</p>	<p>permit to practice medicine and surgery of any of the provisions of this chapter or of any of the provisions of the Wisconsin Administrative Code or of ch. 448, Stats., which apply to persons licensed to practice medicine and surgery shall be cause for the revocation of such temporary educational permit.</p> <p>History: Cr. Register, October, 1976, No. 250, eff. 11-1-76.</p> <p><b>Med 5.06 Expiration and renewal.</b> Temporary educational permits granted under this chapter shall expire one year from date of issuance and for cause shown to the satisfaction of the board may be renewed annually for not more than 4 such renewals, and the renewal fee shall be paid for each such renewal.</p> <p>History: Cr. Register, October, 1976, No. 250, eff. 11-1-76.</p>	

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Chapter 180	Chapter 448	Chapter 655	Chapter 893	WI Administrative Code Chapter Med 5
<p>practitioner in practice under the direct, immediate, on-premises supervision of the respiratory care practitioner.</p> <p>(k) Any persons, other than physician assistants or perfusionists, who assist physicians.</p> <p>(l) A person performing autotransfusion or blood conservation techniques under the direction and supervision of a licensed physician.</p> <p>(m) A person practicing perfusion for not more than 30 days in a year, if the person is certified or eligible to be certified as a clinical perfusionist by the American Board of Cardiovascular Perfusion.</p> <p>(n) A person employed as a perfusionist by a federal agency, as defined in s. 59.57 (2) (c) 1., if the person provides perfusion services solely under the direction or control of the federal agency by which he or she is employed.</p> <p>(3) USE OF TITLES. (a) No person may use or assume the title "doctor of medicine" or append to the person's name the letters "M.D." unless one of the following applies:</p> <ol style="list-style-type: none"> <li>The person possesses the degree of doctor of medicine.</li> <li>The person is licensed as a physician under this subchapter because the person satisfied the degree requirement of s. 448.05 (2) by possessing a medical degree that was conferred by a medical school recognized and listed as such by the World Health Organization of the United Nations.</li> </ol> <p>(b) No person not possessing the degree of doctor of osteopathy may use or assume the title "doctor of osteopathy" or append to the person's name the letters "D.O."</p> <p>(c) No person may designate himself or herself as a "physician assistant" or use or assume the title "physician assistant" or append</p>	<p>under this paragraph, this chapter applies only to claims arising out of practice that is outside the scope of the exemption under s. 655.003 (1) or (3).</p> <p>(d) A partnership comprised of physicians or nurse anesthetists and organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists.</p> <p>(e) A corporation organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists.</p> <p>(f) A cooperative sickness care association organized under ss. 185.981 to 185.985 that operates a nonprofit sickness care plan in this state and that directly provides services through salaried employees in its own facility.</p> <p>(g) An ambulatory surgery center that operates in this state.</p> <p>(h) A hospital, as defined in s. 50.33 (2) (a) and (c), that operates in this state.</p> <p>(i) An entity operated in this state that is an affiliate of a hospital and that provides diagnosis or treatment of, or care for, patients of the hospital.</p> <p>(j) A nursing home, as defined in s. 50.01 (3), whose operations are combined as a single entity with a hospital described in par.(b), whether or not the nursing home operations are physically separate from the hospital operations.</p> <p>(2) OPTIONAL PARTICIPATION. All of the following may elect, in the manner</p>	<p>non-economic damages under this subsection, damages recoverable against health care providers and an employee of a health care provider, acting within the scope of his or her employment and providing health care services, for wrongful death are subject to the limit under s. 895.04(4). If damages in excess of the limit under s. 895.04 (4) are found, the court shall make any reduction required under s. 895.045 and shall award the lesser of the reduced amount or the limit under s. 895.04 (4).</p> <p>(5) Every award of damages under ch. 655 shall specify the sum of money, if any, awarded for each of the following for each claimant for the period from the date of injury to the date of award and for the period after the date of award, without regard to the limit under sub. (4) (d):</p> <ol style="list-style-type: none"> <li>Pain, suffering and noneconomic effects of disability.</li> <li>Loss of consortium, society and companionship or loss of love and affection.</li> <li>Loss of earnings or earning capacity.</li> <li>Each element of medical expenses.</li> <li>Other economic injuries and damages.</li> </ol> <p>(6) Damages recoverable under this section against health care providers and an employee of a health care provider, acting within the scope of his or her employment and</p>	<p>non-economic damages under this subsection, damages recoverable against health care providers and an employee of a health care provider, acting within the scope of his or her employment and providing health care services, for wrongful death are subject to the limit under s. 895.04(4). If damages in excess of the limit under s. 895.04 (4) are found, the court shall make any reduction required under s. 895.045 and shall award the lesser of the reduced amount or the limit under s. 895.04 (4).</p> <p>(5) Every award of damages under ch. 655 shall specify the sum of money, if any, awarded for each of the following for each claimant for the period from the date of injury to the date of award and for the period after the date of award, without regard to the limit under sub. (4) (d):</p> <ol style="list-style-type: none"> <li>Pain, suffering and noneconomic effects of disability.</li> <li>Loss of consortium, society and companionship or loss of love and affection.</li> <li>Loss of earnings or earning capacity.</li> <li>Each element of medical expenses.</li> <li>Other economic injuries and damages.</li> </ol> <p>(6) Damages recoverable under this section against health care providers and an employee of a health care provider, acting within the scope of his or her employment and</p>	<p>non-economic damages under this subsection, damages recoverable against health care providers and an employee of a health care provider, acting within the scope of his or her employment and providing health care services, for wrongful death are subject to the limit under s. 895.04(4). If damages in excess of the limit under s. 895.04 (4) are found, the court shall make any reduction required under s. 895.045 and shall award the lesser of the reduced amount or the limit under s. 895.04 (4).</p> <p>(5) Every award of damages under ch. 655 shall specify the sum of money, if any, awarded for each of the following for each claimant for the period from the date of injury to the date of award and for the period after the date of award, without regard to the limit under sub. (4) (d):</p> <ol style="list-style-type: none"> <li>Pain, suffering and noneconomic effects of disability.</li> <li>Loss of consortium, society and companionship or loss of love and affection.</li> <li>Loss of earnings or earning capacity.</li> <li>Each element of medical expenses.</li> <li>Other economic injuries and damages.</li> </ol> <p>(6) Damages recoverable under this section against health care providers and an employee of a health care provider, acting within the scope of his or her employment and</p>

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<p>to the person's name the words or letters "physician assistant" or "P.A." or any other titles, letters or designation which represents or may tend to represent the person as a physician assistant unless he or she is licensed as a physician assistant by the board.</p> <p>(f) A person who is not licensed to practice perfusion by the board may not designate himself or herself as a perfusionist, use or assume the title "licensed perfusionist" or the abbreviation "L.P.," or use any other title, letters, or designation that represents or may tend to represent the person as a perfusionist. This paragraph does not apply to any of the following:</p> <ol style="list-style-type: none"> <li>1. Any person employed as a perfusionist by a federal agency, as defined in s. 39.57 (2) (c) 1., if the person provides perfusion services solely under the direction or control of the federal agency by which he or she is employed.</li> <li>2. Any person pursuing a supervised course of study leading to a degree or certificate in perfusion under an accredited or approved educational program, if the person is designated by a title that clearly indicates his or her status as a student or trainee.</li> <li>3. Any person practicing perfusion under a temporary license issued under s. 448.04 (1) (c), if the person is designated by a title that clearly indicates that he or she is practicing under a temporary license.</li> </ol> <p><b>448.04 Classes of license; certificate of licensure.</b></p> <p>(1) CLASSES OF LICENSE. (a) <i>License to practice medicine and surgery.</i> A person holding a license to practice medicine and surgery may practice as defined in s. 448.01 (9).</p> <p>(b) <i>Temporary license to practice medicine</i></p>	<p>designated by the commissioner by rule under s. 655.004, to be subject to this chapter:</p> <p>(a) A physician or nurse anesthetist for whom this state is a principal place of practice but who practices his or her profession fewer than 241 hours in a fiscal year, for a fiscal year, or a portion of a fiscal year, during which he or she practices his or her profession.</p> <p>(b) Except as provided in sub. (1) (b), a physician or nurse anesthetist for whom this state is not a principal place of practice, for a fiscal year, or a portion of a fiscal year, during which he or she practices his or her profession in this state. <del>For a health-care provider who elects to be subject to this chapter under this paragraph, this chapter applies only to claims arising out of practice that is in this state and that is outside the scope of an exemption under s. 655.003 (1) or (3).</del></p> <p>(c) A graduate medical education program as defined in 655.001 (7u) that operates in this state. For a health care provider who elects to be subject to this chapter under this paragraph, this chapter applies only to claims arising out of practice that is in this state and that is outside the scope of an exemption under s. 655.003 (1) or (3).</p> <p>History: 1987 a. 27; 1991 a. 214.</p> <p><b>655.003 Exemptions for public employees and facilities and volunteers.</b> Except as provided in s. 655.002 (1) (c), this chapter does not apply to a health care provider that is any</p>	<p>providing health care services, are subject to the provisions of s. 895.045.</p> <p>(7) Evidence of any compensation for bodily injury received from sources other than the defendant to compensate the claimant for the injury is admissible in an action to recover damages for medical malpractice. This section does not limit the substantive or procedural rights of persons who have claims based upon subrogation.</p>	<p>providing health care services, are subject to the provisions of s. 895.045.</p> <p>(7) Evidence of any compensation for bodily injury received from sources other than the defendant to compensate the claimant for the injury is admissible in an action to recover damages for medical malpractice. This section does not limit the substantive or procedural rights of persons who have claims based upon subrogation.</p>	



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<p><i>and surgery.</i> 1. An applicant for license to practice medicine and surgery who has passed an examination satisfactory to the board, or who is a graduate of a medical school in this state, and who more than 30 days prior to the date set by the board for the holding of its next examination has complied with all the requirements of s. 448.05 (2) and (7) may, at the discretion of the board, be granted a temporary license to practice medicine and surgery. Such temporary license shall expire 60 days after the next examination for license is given or on the date following the examination on which the board grants or denies such applicant a license, whichever occurs first, but the temporary license shall automatically expire on the first day the board begins its examination of applicants after granting such license, unless its holder submits to examination on such date. The board may require an applicant for temporary licensure under this subdivision to appear before a member of the board for an interview and oral examination. A temporary license shall be granted under this subsection only once to the same person. Cross Reference: See also ch. Med 2, Wis. adm. code.</p> <p>2. An applicant who is a graduate of a foreign medical school and who, because of noteworthy professional attainment, is invited to serve on the academic staff of a medical school in this state as a visiting professor, may be granted a temporary license to practice medicine and surgery if the applicant does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335. Such license shall remain in force only while the holder is serving full-time on the academic staff of a medical school, and the holder's entire practice is limited to the duties of the academic position. Such license shall expire 2 years after its date of</p>	<p>of the following: (1) A physician or a nurse anesthetist who is a state, county or municipal employee, or federal employee or contractor covered under the federal tort claims act, as amended, and who is acting within the scope of his or her employment or contractual duties. (2) A facility that is exempt under s. 50.39 (3) or operated by any governmental agency. (3) A physician or a nurse anesthetist who provides professional services under the conditions described in s. 146.89, with respect to those professional services provided by the physician or nurse anesthetist for which he or she is covered by s. 165.25 and considered an agent of the department, as provided in s. 165.25 (6) (b).</p> <p><b>655.005 Health care provider employees.</b> (1) Any person listed in s. 655.007 having a claim or a derivative claim against a health care provider or an employee of the health care provider, for damages for bodily injury or death due to acts or omissions of the employee of the health care provider acting within the scope of his or her employment and providing health care services, is subject to this chapter. (2) The fund shall provide coverage, under s. 655.27, for claims against the health care provider or the employee of the health care provider due to the acts or omissions of the employee acting within the scope of his or her employment and</p>	<p><b>Chapter 655</b></p>	<p><b>Chapter 893</b></p>	<p><b>WI Administrative Code Chapter Med 5</b></p>



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<p>granting and may be renewed at the discretion of the board. The board may require an applicant for licensure under this subdivision to appear before a member of the board for an interview. <b>Cross Reference:</b> See also ch. Med 3, Wis. adm. code.</p> <p>3. The board may grant a temporary license to practice medicine and surgery for a period not to exceed 90 days to a nonresident physician who is serving on a full-time or temporary basis in a camp or other recreational facility, or to a physician temporarily maintaining the practice of another physician. In either case, the applicant for such temporary license must satisfy the board that the applicant is needed in the area in which the applicant wishes to serve and that the applicant holds a license granted upon written examination in another licensing jurisdiction of the United States or Canada. The board may renew such temporary license for additional periods of 90 days each but may not renew such license more than 3 consecutive times. The board may require an applicant for such temporary license to appear before a member of the board for interview. <b>Cross Reference:</b> See also ch. Med 4, Wis. adm. code.</p> <p>(c) <i>Temporary educational permit to practice medicine and surgery.</i> Application for a temporary educational permit to practice medicine and surgery may be made to the board by a person who meets the requirements of s. 448.05 (2) is enrolled in graduate medical education program at a facility approved by the Board. Such permit may be issued for a period not to exceed one two years and may be renewed annually for not more than 4 years. Such permit shall entitle the holder to take postgraduate educational training in a facility approved by the board. The holder of such permit may, under the direction of a person</p>	<p>providing health care services. This subsection does not apply to any of the following:</p> <p>(a) An employee of a health care provider if the employee is a physician or a nurse anesthetist or is a health care practitioner who is providing health care services that are not in collaboration with a physician under s. 441.15 (2) (b) or under the direction and supervision of a physician or nurse anesthetist.</p> <p>(b) A service corporation organized under s. 180.1903 by health care professionals, as defined under s. 180.1901 (1m), if the board of governors determines that it is not the primary purpose of the service corporation to provide the medical services of physicians or nurse anesthetists. The board of governors may not determine under this paragraph that it is not the primary purpose of a service corporation to provide the medical services of physicians or nurse anesthetists unless more than 50% of the shareholders of the service corporation are neither physicians nor nurse anesthetists.</p> <p>(2) Subsection (2) does not affect the liability of a health care provider described in s. 655.002 (1) (d), (e) or (f) for the acts of its employees.</p> <p><b>History:</b> 1985 a. 340; 1987 a. 27; Stats. 1987 s. 655.005; 1989 a. 187; 1991 a. 214; 1993 a. 473; 1995 a. 167; 2001 a. 52</p> <p><b>655.006 Remedy:</b> (1) (a) On and after July 24, 1975, every patient, every patient's representative and every health care provider shall be conclusively presumed to have accepted to be bound</p>	<p>providing health care services. This subsection does not apply to any of the following:</p> <p>(a) An employee of a health care provider if the employee is a physician or a nurse anesthetist or is a health care practitioner who is providing health care services that are not in collaboration with a physician under s. 441.15 (2) (b) or under the direction and supervision of a physician or nurse anesthetist.</p> <p>(b) A service corporation organized under s. 180.1903 by health care professionals, as defined under s. 180.1901 (1m), if the board of governors determines that it is not the primary purpose of the service corporation to provide the medical services of physicians or nurse anesthetists. The board of governors may not determine under this paragraph that it is not the primary purpose of a service corporation to provide the medical services of physicians or nurse anesthetists unless more than 50% of the shareholders of the service corporation are neither physicians nor nurse anesthetists.</p> <p>(2) Subsection (2) does not affect the liability of a health care provider described in s. 655.002 (1) (d), (e) or (f) for the acts of its employees.</p> <p><b>History:</b> 1985 a. 340; 1987 a. 27; Stats. 1987 s. 655.005; 1989 a. 187; 1991 a. 214; 1993 a. 473; 1995 a. 167; 2001 a. 52</p> <p><b>655.006 Remedy:</b> (1) (a) On and after July 24, 1975, every patient, every patient's representative and every health care provider shall be conclusively presumed to have accepted to be bound</p>	<p>providing health care services. This subsection does not apply to any of the following:</p> <p>(a) An employee of a health care provider if the employee is a physician or a nurse anesthetist or is a health care practitioner who is providing health care services that are not in collaboration with a physician under s. 441.15 (2) (b) or under the direction and supervision of a physician or nurse anesthetist.</p> <p>(b) A service corporation organized under s. 180.1903 by health care professionals, as defined under s. 180.1901 (1m), if the board of governors determines that it is not the primary purpose of the service corporation to provide the medical services of physicians or nurse anesthetists. The board of governors may not determine under this paragraph that it is not the primary purpose of a service corporation to provide the medical services of physicians or nurse anesthetists unless more than 50% of the shareholders of the service corporation are neither physicians nor nurse anesthetists.</p> <p>(2) Subsection (2) does not affect the liability of a health care provider described in s. 655.002 (1) (d), (e) or (f) for the acts of its employees.</p> <p><b>History:</b> 1985 a. 340; 1987 a. 27; Stats. 1987 s. 655.005; 1989 a. 187; 1991 a. 214; 1993 a. 473; 1995 a. 167; 2001 a. 52</p> <p><b>655.006 Remedy:</b> (1) (a) On and after July 24, 1975, every patient, every patient's representative and every health care provider shall be conclusively presumed to have accepted to be bound</p>	<p>providing health care services. This subsection does not apply to any of the following:</p> <p>(a) An employee of a health care provider if the employee is a physician or a nurse anesthetist or is a health care practitioner who is providing health care services that are not in collaboration with a physician under s. 441.15 (2) (b) or under the direction and supervision of a physician or nurse anesthetist.</p> <p>(b) A service corporation organized under s. 180.1903 by health care professionals, as defined under s. 180.1901 (1m), if the board of governors determines that it is not the primary purpose of the service corporation to provide the medical services of physicians or nurse anesthetists. The board of governors may not determine under this paragraph that it is not the primary purpose of a service corporation to provide the medical services of physicians or nurse anesthetists unless more than 50% of the shareholders of the service corporation are neither physicians nor nurse anesthetists.</p> <p>(2) Subsection (2) does not affect the liability of a health care provider described in s. 655.002 (1) (d), (e) or (f) for the acts of its employees.</p> <p><b>History:</b> 1985 a. 340; 1987 a. 27; Stats. 1987 s. 655.005; 1989 a. 187; 1991 a. 214; 1993 a. 473; 1995 a. 167; 2001 a. 52</p> <p><b>655.006 Remedy:</b> (1) (a) On and after July 24, 1975, every patient, every patient's representative and every health care provider shall be conclusively presumed to have accepted to be bound</p>

448.05(1)  
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September 26, 2005**

<p align="center"><b>Chapter 180</b></p>	<p align="center"><b>Chapter 448</b></p>	<p align="center"><b>Chapter 655</b></p>	<p align="center"><b>Chapter 893</b></p>	<p align="center"><b>WI Administrative Code Chapter Med 5</b></p>
<p>licensed to practice medicine and surgery in this state, perform services requisite to the training authorized by this section. Acting under such direction, the holder of such permit shall also have the right to prescribe drugs other than narcotics and to sign any certificates, reports or other papers for the use of public authorities which are required of or permitted to persons licensed to practice medicine and surgery. The holder of such permit shall confine training and practice to the facility in which the holder is taking the training. The purpose of this paragraph is solely to provide opportunities in this state for the postgraduate education of certain persons having training in medicine and surgery satisfactory to the board, without compliance with the licensure requirements of this subchapter. Nothing in this paragraph changes in any respect the requirements for licensure to practice medicine and surgery in this state. The violation of this paragraph by the holder of such permit shall constitute cause for the revocation of the permit. All holders of such permits shall be subject to such provisions of this subchapter as the board, by rule, determines are appropriate and to any penalties applicable to those with a temporary or regular license to practice medicine and surgery. The board may require an applicant for licensure under this paragraph to appear before a member of the board for an interview and oral examination. Cross Reference: See also ch. Med 5, Wis. adm. code.</p> <p><b>448.05 Qualification for licensure or certification;</b> <b>examinations; application.</b> (1) GENERAL REQUIREMENTS. To be qualified for the grant of any license or certificate by the board, an applicant must:</p>	<p>by this chapter. (b) Except as otherwise specifically provided in this chapter, this subsection also applies to minors. (2) This chapter does not apply to injuries or death occurring, or services rendered, prior to July 24, 1975.</p>			

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	<p>(a) Subject to ss. 111.321, 111.322 and 111.335, not have an arrest or conviction record.</p> <p>(b) Meet the specific requirements as set out in this section for that class of license or certificate for which applying.</p> <p>(c) Achieve a passing grade in the examinations required in this section.</p> <p>(d) Be found qualified by three-fourths of the members of the board, except that an applicant for a temporary license under s. 448.04 (1) (b) 1. and 3. and (e) must be found qualified by 2 members of the board.</p> <p>(2) LICENSE TO PRACTICE MEDICINE AND SURGERY. An applicant for any class of license to practice medicine and surgery must supply evidence satisfactory to the board that the applicant is a graduate of and possesses a diploma from a medical or osteopathic college approved by the board and has completed postgraduate training of 12 months in a facility approved by the board. If an applicant is a graduate of a foreign medical school which has not been approved by the board, and if such applicant has had postgraduate training in this country in a 12-month program approved by the board or has had other professional experience which the board deems has given the applicant the education and training substantially equivalent, and if such applicant has passed the examinations given by the educational council for foreign medical graduates or its successors, the board may make such additional inquiry including a personal interview as satisfies it that the applicant has had such education and training. If a majority of the board is so satisfied, the applicant may then be admitted to examination for a license to practice medicine.</p>			

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<p align="center"><b>Chapter 180</b></p>	<p align="center"><b>Chapter 448</b></p>	<p align="center"><b>Chapter 655</b></p>	<p align="center"><b>Chapter 893</b></p>	<p align="center"><b>WI Administrative Code Chapter Med 5</b></p>
<p>and surgery, if an applicant is a graduate of a foreign medical school not approved by the board, and such foreign medical school requires either social service or internship or both of its graduates, and if such applicant has not completed such requirements but has completed a 12-month supervised clinical training program under the direction of a medical school approved by the board and has complied with all other requirements of this subsection for graduates of foreign medical schools not approved by the board, the applicant may then be admitted to examination for a license to practice medicine and surgery.</p>	<p>and surgery, if an applicant is a graduate of a foreign medical school not approved by the board, and such foreign medical school requires either social service or internship or both of its graduates, and if such applicant has not completed such requirements but has completed a 12-month supervised clinical training program under the direction of a medical school approved by the board and has complied with all other requirements of this subsection for graduates of foreign medical schools not approved by the board, the applicant may then be admitted to examination for a license to practice medicine and surgery.</p>			

**Date:** 10/12/2005

**To:** Representative Curt Gielow

**Cc:** Julie Sawyer

Catherine Eastham, General Counsel, Froedtert Memorial Luther Hospital

Mahendr Kochar, MD, Executive Director MCWAH

Tom Hackl, Program Administrator

**From:** Barbara Connelly, RN, MJ

Risk Manager, Graduate Medical Education

**RE: Legislative Changes for Unlicensed Residents**

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I am writing on behalf of the Medical College of Wisconsin Affiliated Hospitals, Inc. (MCWAH) which has great interest in having unlicensed residents recognized as being health care providers. I would appreciate it if you would pass this and the attachments along to the legislative drafter(s).

There are two files attached; each has a different approach to changes in Chapter 655 relative to defining unlicensed residents as health care providers. MCWAH's preference for changes to Chapter 655 is with the second version below (Version 2 b) as it will not require future "interpretation", but understand that other graduate medical education programs have potential concerns with this solution.

The recommendations for Chapters 180, 448 are the same in both versions; the proposed changes in these chapters are important to strengthen the unlicensed resident's standing as a health care provider/practitioner and would require 1<sup>st</sup> year residents to have a temporary educational permit (TEP). A TEP would legitimize the work of a resident in their first year of training. Please note the corresponding change that would need to be made to Administrative Code, Chapter Med 5.

**Version 2 a.**

Changes in Chapter 655:

- (7t) Expands the intent so that a resident meets the definition of a health care practitioner in Chapter 655 and the definition of a health care provider in Chapter 180. Additionally, the changes expand the intent so that a healthcare practitioner may be an employee of a healthcare provider under the proposed change to the optional section 655.02.
- (7 u) New addition. Defines a "graduate medical education program."
- New addition to 655.02. Adds a graduate medical education programs as an optional participants in the WI Injured Patients and Families Compensation Fund (Fund).

This version allows graduate medical programs to be covered entities so that residency programs that are not hospital based have the same protection under Chapter 655. Currently MCWAH is considered to be an affiliate of a hospital; this status was granted through an administrative decision. There is some discussion of whether MCWAH's status as a hospital affiliate could survive a legal scrutiny. GME programs that are hospital based could continue to have the option of Fund coverage because their residents are their employees; in other words they would be covered under two provisions of the statute.

**Version 2 b.**

Changes in Chapter 655

- (7t) Expands the intent so that a resident meets the definition of a healthcare practitioner in Chapter 655 and the definition of a healthcare provider in Chapter 180.
- (10 m) Expands the definition of physician to include persons enrolled in graduate medical education programs.

This version clearly defines that unlicensed residents are health care providers if they are enrolled in a GME program in this state. The possible impact includes increased cost for Fund coverage. The premiums for unlicensed physicians' primary policies would generally not be impacted as they are based on FTE's & classifications & exposure history. Payments to the Fund may be increased as individual payment per physician would be required rather than group coverage.



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-3822/A  
PJK&CTS:.....  
lmk

In: 10/13/05  
Due: Monday TODAY

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Dr. vote

gen cost

V+

1 AN ACT relating to: coverage under the injured patients and families  
2 compensation fund of medical school graduates engaged in postgraduate  
3 training.

**Analysis by the Legislative Reference Bureau**

Under current law, certain health care providers are required to carry health care liability insurance with liability limits of at least \$1,000,000 for each occurrence and at least \$3,000,000 for all occurrences in a policy year and to pay assessments to fund the injured patients and families compensation fund (fund). If a medical malpractice claim is made against a health care provider who is subject to the health care liability insurance requirements, or against an employee of a health care provider who is subject to the health care liability insurance requirements, the portion of the claim that exceeds the limits of the provider's health care liability insurance is paid on behalf of the provider or provider's employee by the fund. In addition, the limit (cap) under current law that applies to the amount of noneconomic damages that a claimant may recover in a medical malpractice action applies if the claim is against a health care provider who is subject to the health care liability insurance requirements, or against an employee of such a health care provider.

Health care providers who are currently subject to the health care liability requirements are licensed physicians and licensed nurse anesthetists who practice in this state for more than 240 hours in a fiscal year, partnerships composed of physicians or nurse anesthetists, corporations or other organizations or enterprises that are organized in this state and that operate for the primary purpose of providing the medical services of physicians or nurse anesthetists, cooperative sickness care

associations, hospitals and their affiliates, ambulatory surgery centers, and nursing homes whose operations are combined as a single entity with a hospital. Licensed physicians and licensed nurse anesthetists who practice in this state for fewer than 241 hours in a fiscal year, or for whom this state is not a principal place of practice, may elect to be subject to the health care liability insurance requirements for practice in this state.

In *Phelps v. Physicians Ins. Co.*, 2005 WI 85, the Wisconsin Supreme Court determined that a medical resident was not a health care provider, as that term is defined for purposes of the statutory health care liability insurance requirements, because the medical resident, although a physician, was not licensed. Therefore, in the medical malpractice action against the medical resident, the cap on the amount of noneconomic damages that the plaintiff could recover did not apply, and the fund was not responsible for paying any damages amount that exceeded the limits of health care liability insurance covering the medical resident. In *Phelps*, although this issue was not addressed in the majority opinion and did not appear to be a factor on which the court's decision was based, the medical resident was considered to be an employee of the Medical College of Wisconsin, rather than of the hospital in which he was practicing when the claim arose.

This bill creates a definition for a graduate medical education program, such as the one involved in *Phelps*, and provides that a graduate medical education program may elect to be subject to the statutory health care liability insurance requirements. Thus, if a medical malpractice claim is made against a medical resident who is determined to be an employee of a graduate medical education program that has elected to be subject to the health care liability insurance requirements, the cap on noneconomic damages that may be recovered by the claimant would apply and the fund would be responsible for paying any amount exceeding the limits of health care liability insurance covering the medical resident.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

INS  
CS-A

1

SECTION 1. 655.001 (7m) of the statutes is created to read:

2

655.001 (7m) "Graduate medical education program" means a program

3

approved by the medical examining board that provides postgraduate medical

4

education and training for a person who possesses a diploma from a medical or

5

osteopathic college or who has the equivalent education and experience from a

INS CS2-1

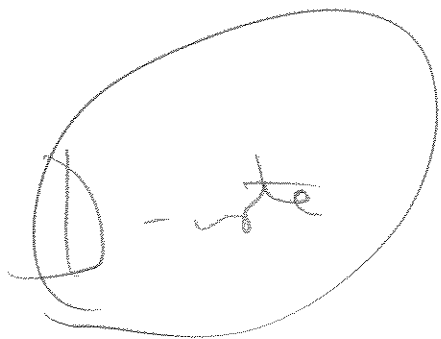


1 foreign medical school recognized by the Education Commission for Foreign Medical  
2 Graduates.

3 ~~SECTION 2.~~ 655.002 (2) (c) of the statutes is created to read:

4 655.002 (2) (c) A graduate medical education program that operates in this  
5 state. For a graduate medical education program that elects to be subject to this  
6 chapter under this paragraph, this chapter applies only to claims arising out of  
7 practice that is in this state and that is outside the scope of an exemption under s.  
8 655.003 (1) or (3).

9 (END)



1 **Insert CS-A:**

Currently, with certain exceptions, a person may not practice medicine and surgery without a license granted by the medical examining board (board). Among other exceptions, current law does not require a license for the activities of a medical school graduate obtaining the 12 months of postgraduate training (first year medical residency) currently required for admission by the board to <sup>take an</sup> examination for a license to practice medicine and surgery.

Current law authorizes the board to grant a temporary educational permit (permit) to practice medicine and surgery to a medical school graduate who successfully completes the first year of medical residency. A person who holds a permit is authorized to take postgraduate training in a facility approved by the board, may perform services under the direction of a person licensed to practice medicine and surgery, and is authorized to prescribe drugs other than narcotics. A permit is issued for a period of one year, and may be renewed annually for not more than <sup>four</sup> 4 years.

This bill deletes the exception to the licensure requirement for first year medical residency. Under the bill, the board may grant a permit to any person who is enrolled in a graduate medical education program at a facility approved by the board, including a first year medical resident. The bill provides that a permit is valid for two years and may be renewed once for an additional two years.

2 **Insert CS2-1:**

3 **SECTION 1.** 448.03 (2) (c) of the statutes is amended to read:

4 448.03 (2) (c) The activities of a medical student, respiratory care student,  
5 perfusion student, or physician assistant student required for such student's  
6 education and training, ~~or the activities of a medical school graduate required for~~  
7 ~~training as required in s. 448.05 (2).~~

History: 1975 c. 383, 421; 1977 c. 164; 1979 c. 317; 1985 a. 29; 1987 a. 40, 399; 1989 a. 31, 229; 1991 a. 23; 1993 a. 105, 107, 490; 1995 a. 27, 201; 1997 a. 67, 175, 311; 1999 a. 32, 180; 2001 a. 89.

8 **SECTION 2.** 448.04 (1) (c) of the statutes is amended to read:

9 448.04 (1) (c) *Temporary educational permit to practice medicine and surgery.*

10 Application for a temporary educational permit to practice medicine and surgery  
11 may be made to the board by a person who meets the requirements of s. 448.05 (2)  
12 is enrolled in a graduate medical education program at a facility approved by the

1 board. Such permit may be issued for a period not to exceed ~~one year~~ two years and  
2 may be renewed ~~annually for not more than 4~~ once for an additional two years. Such  
3 permit shall entitle the holder to take postgraduate educational training in a facility  
4 approved by the board. The holder of such permit may, under the direction of a  
5 person licensed to practice medicine and surgery in this state, perform services  
6 requisite to the training authorized by this section. Acting under such direction, the  
7 holder of such permit shall also have the right to prescribe drugs other than narcotics  
8 and to sign any certificates, reports or other papers for the use of public authorities  
9 which are required of or permitted to persons licensed to practice medicine and  
10 surgery. The holder of such permit shall confine training and practice to the facility  
11 in which the holder is taking the training. The purpose of this paragraph is solely  
12 to provide opportunities in this state for the postgraduate education of certain  
13 persons having training in medicine and surgery satisfactory to the board, without  
14 compliance with the licensure requirements of this subchapter. Nothing in this  
15 paragraph changes in any respect the requirements for licensure to practice  
16 medicine and surgery in this state. The violation of this paragraph by the holder of  
17 such permit shall constitute cause for the revocation of the permit. All holders of  
18 such permits shall be subject to such provisions of this subchapter as the board, by  
19 rule, determines are appropriate and to any penalties applicable to those with a  
20 temporary or regular license to practice medicine and surgery. The board may  
21 require an applicant for licensure under this paragraph to appear before a member  
22 of the board for an interview and oral examination.

23 **Cross Reference:** Cross Reference: Cross Reference: See also ch. Med 5, Wis. adm. code. **Cross Reference:**  
**History:** 1975 c. 383, 421; 1979 c. 162 s. 38 (10); 1979 c. 337; 1981 c. 380; 1981 c. 391 s. 211; 1985 a. 290; 1987 a. 399; 1989 a. 31, 229; 1991 a. 39, 180; 1993 a. 105, 107;  
1997 a. 67, 175; 1999 a. 180; 2001 a. 89.

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

LRB-3822/dn  
PJK&CTS:.....

Ink

(date)

Note that this draft does not make a medical resident a "health care provider" under ch. 655. This draft takes the approach of allowing a medical resident's graduate medical education program to elect to be subject to the insurance and fund requirements. Thus, the program may become a "health care provider" under the ch. 655 definition. This way, a medical resident who is determined to be an employee of an electing program would be covered under the fund. A medical resident could also be determined to be an employee of the hospital in which he or she is practicing. Hospitals are already "health care providers" under ch. 655. A medical resident would not be covered under this approach is if he or she were determined to be an employee of a graduate medical education program that did not elect to be subject to ch. 655 or if he or she were determined not to be an employee of either the hospital or the program.

In the proposed definition of "graduate medical program," the identity of the board approving the program was not specified. Since the definition was placed in ch. 655, the "board" could be the board of governors of the fund. However, I used "medical examining board" in the definition. Let me know if this is not what was intended.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.state.wi.us

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

LRB-3822/1dn  
PJK&CTS:lmk:rs

October 14, 2005

Note that this draft does not make a medical resident a "health care provider" under ch. 655. This draft takes the approach of allowing a medical resident's graduate medical education program to elect to be subject to the insurance and fund requirements. Thus, the program may become a "health care provider" under the ch. 655 definition. This way, a medical resident who is determined to be an employee of an electing program would be covered under the fund. A medical resident could also be determined to be an employee of the hospital in which he or she is practicing. Hospitals are already "health care providers" under ch. 655. A medical resident would not be covered under this approach is if he or she were determined to be an employee of a graduate medical education program that did not elect to be subject to ch. 655 or if he or she were determined not to be an employee of either the hospital or the program.

In the proposed definition of "graduate medical program," the identity of the board approving the program was not specified. Since the definition was placed in ch. 655, the "board" could be the board of governors of the fund. However, I used "medical examining board" in the definition. Let me know if this is not what was intended.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.state.wi.us](mailto:pam.kahler@legis.state.wi.us)

**Northrop, Lori**

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**From:** Nowak, Ellen  
**Sent:** Monday, October 17, 2005 10:24 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-3822/1 Topic: Covering medical residents under the injured patients and families compensation fund

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

Draft review: LRB 05-3822/1 Topic: Covering medical residents under the injured patients and families compensation fund

**Kahler, Pam**

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**From:** Sawyer, Julie  
**Sent:** Monday, October 17, 2005 10:19 AM  
**To:** Kahler, Pam  
**Subject:** FW: Medical Residents  
**Importance:** High

Correction to the Analysis by the Legislative Reference Bureau – See page 2., para 2

In *Phelps v. Physicians Ins. Co.*, 2005 WI 85, the Wisconsin Supreme Court determined that a medical resident was not a health care provider, as that term is defined for purposes of the statutory health care liability insurance requirements, because the medical resident, although a physician, was not licensed. Therefore, in the medical malpractice action against the medical resident, the cap on the amount of noneconomic damages that the plaintiff could recover did not apply, and the fund was not responsible for paying any damages amount that exceeded the limits of health care liability insurance covering the medical resident. In *Phelps*, although this issue was not addressed in the majority opinion and did not appear to be a factor on which the court's decision was based, the medical resident was considered to be an employee of the ~~Medical College of Wisconsin~~ Medical College of Wisconsin Affiliated Hospitals, Inc. (MCWAH), a consortium of the Medical College of Wisconsin and several hospitals located in the metropolitan Milwaukee created to sponsor medical education programs, rather than of the hospital in which he was practicing when the claim arose.

**Barbara A. Connelly, RN, MJ**  
**Risk Manager, MCWAH**  
**Graduate Medical Education**  
**8701 Watertown Plank Road**  
**Milwaukee, Wisconsin 53226**  
**414-456-4847**  
**414-456-6528 (FAX)**  
**bconnelly@mcw.edu**

**Kahler, Pam**

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**From:** Sawyer, Julie  
**Sent:** Monday, October 17, 2005 2:00 PM  
**To:** Kahler, Pam  
**Subject:** FW:  
**Attachments:** CLAR\_SFK\_20050705\_712751\_Judge.tif

Hi Pam,

I've received this follow-up from Barbara Connelly regarding the name of the Medical College of Wisconsin language contained in the LRB analysis. I told Ms. Connelly that I would forward it to you for your review.

Thank you,

Julie Sawyer

---

**From:** Connelly, Barbara [mailto:bconnell@mail.mcw.edu]  
**Sent:** Monday, October 17, 2005 1:56 PM  
**To:** Sawyer, Julie  
**Subject:**

Julie attached is the letter from the Supreme Court correcting the error in the Phelps decision.

*Analysis not changed because bill's  
already introduced and the  
change does not affect the  
case holding on the bill  
(per Ellen Nowak in Rep.  
Guard's office)*





Shirley S. Abrahamson  
Chief Justice

# Supreme Court of Wisconsin

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A. John Voelker  
Director of State Courts

Cornelia G. Clark  
Clerk of Supreme Court

July 5, 2005

Sarah E. Kaas  
Cannon & Dunphy, S.C.  
P.O. Box 1750  
Brookfield, WI 53008-1750

Christopher G.W. Hanewicz  
Heller, Ehrman, White & McAuliffe  
#201  
1 East Main St.  
Madison, WI 53703

Re: Phelps v. Physicians Ins. Co. of Wisconsin, Inc., Case No. 2003AP580

Dear Attorneys Kaas and Hanewicz:

The Court has directed me to respond to the letters you submitted regarding a statement in the court's decision issued on June 22, 2005 in the above matter. The Court has changed the language of ¶7 to include the following underlined language and footnote 1 below: ¶7 – In the early morning of November 24, 1998, Marlene was awakened with constant suprapubic pain. The on-call resident, Dr. Matthew Lindemann, was contacted. Dr. Lindemann was an unlicensed first-year resident and, according to the circuit court's findings of facts, was an employee of the Medical College of Wisconsin Affiliated Hospital.<sup>1</sup> His primary duty was to assess and report findings and differential diagnosis to an upper level senior resident or to the attending obstetrician. He had no authority, however, to provide primary obstetrical care or perform a c-section on Marlene.

These changes have been communicated to the official publishers and will appear in the bound volumes.

<sup>1</sup> The question whether Dr. Lindemann was a "borrowed employee" of St. Joseph's Hospital is to be determined on remand. See ¶4, n. 4, and ¶65.

Phelps v. Physicians Ins. Co.  
Page 2  
July 5, 2005

Yours very truly,

*Cornelia G. Clark*  
Cornelia G. Clark  
Clerk of Supreme Court

/cgc

cc: Other attorneys/organizations or record  
Hon Michael P. Sullivan  
John Barrett, Clerk of Circuit Court