

**2009 DRAFTING REQUEST**

**Bill**

Received: 03/26/2010

Received By: phurley

Wanted: As time permits

Companion to LRB:

For: Sandy Pasch (608) 266-7671

By/Representing:

May Contact:

Drafter: phurley

Subject: Criminal Law - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Pasch@legis.wisconsin.gov

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Medical negligence

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**Instructions:**

companion to 09-4437

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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>
/?	phurley 03/26/2010	kfollett 03/31/2010		_____			
/1			mduchek 03/31/2010	_____	cduerst 03/31/2010	lparisi 03/31/2010	

FE Sent For:

*None*

<END>

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/?	phurley	1/kf 3/31	AD 3/31	_____ _____			

FE Sent For:

<END>

## Hurley, Peggy

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**From:** Ludwig, Frederic  
**Sent:** Friday, March 26, 2010 2:25 PM  
**To:** Hurley, Peggy  
**Subject:** FW: LRB-4437/1 Decriminalization of unintentional medical errors

**Attachments:** 09-44371.pdf

Hi Peggy,

Rep. Pasch would like to request an Assembly companion to LRB 4437/1. Please let me know if you need any further info.

Thanks,  
Fred

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**From:** Gratz, Nadine  
**Sent:** Friday, March 26, 2010 11:02 AM  
**To:** Ludwig, Frederic  
**Subject:** RE: LRB-4437/1 Decriminalization of unintentional medical errors



09-44371.pdf (21  
KB)

Sorry about that. Here it is.

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**From:** Ludwig, Frederic  
**Sent:** Friday, March 26, 2010 10:46 AM  
**To:** Gratz, Nadine  
**Subject:** RE: LRB-4437/1 Decriminalization of unintentional medical errors

Who is the drafter on this? No bill was attached, so unable to find out for myself...

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**From:** Gratz, Nadine  
**Sent:** Wednesday, March 24, 2010 12:51 PM  
**To:** \*Legislative Senate Democrats; \*Legislative Senate Republicans; \*Legislative Assembly Democrats; \*Legislative Assembly Republicans; \*Legislative Assembly - Independents  
**Subject:** LRB-4437/1 Decriminalization of unintentional medical errors

**Deadline extended to Thursday, March 25 at 4:30 pm.**

**If you would like to co-sponsor this bill, please contact Nadine Gratz in Sen. Robson's office (266-2263)**

**TO:** Legislative Colleagues  
**FROM:** Senator Judy Robson  
**DATE:** March 19, 2010  
**RE:** Co-sponsorship of LRB-4437/1 Relating to abuse and neglect of patients and residents.

In 2006, the Wisconsin Department of Justice (DOJ) filed criminal charges against a registered nurse who was

involved in an unintentional medical error that resulted in the death of her patient. The hospital blamed the error on the nurse and terminated her employment. The Board of Nursing issued disciplinary sanctions that included a 9-month suspension of her license. In addition to this action, DOJ filed criminal charges against the nurse under Section 940.295 of the Statutes which defines the conditions of conduct related to reckless and negligent treatment of a patient.

The DOJ action resulted in a tsunami of disbelief, shock, fear and concern throughout the nursing and medical community in Wisconsin and nationally. Their concern stemmed from the fact that unintentional medical errors are rarely the result of an action by a single health care provider. Unintentional medical errors come as the result of many contributing factors and system deficits that, when occurring simultaneously, can result in harm to a patient. This is the scenario that played out for this nurse in 2006.

A recent article in *The Joint Commission Journal on Quality and Patient Safety* summarized the contributing factors in this case. The *Journal* also provided commentary by two national quality and patient safety experts that chastise the hospital administration for blaming the nurse and firing her. The study shows how inappropriate, unjustified and ineffective it is to criminalize unintentional medical errors.

LRB-4437/1 will decriminalize unintentional medical errors by clarifying what level of conduct regarding caregiver error **does not** meet the standard for abuse and neglect of a patient. It states that conduct may not be considered criminal "abuse" or neglect" if the act is mere inefficiency, unsatisfactory conduct or failure in good performance as the result of inability, incapacity, inadvertency or ordinary negligence in an isolated instance or a good faith error of judgment or discretion by a provider acting in his or her scope of practice.

**If you would like to co-sponsor this bill, please contact Nadine Gratz in Sen. Robson's office (266-2263) by Wednesday, March 24, 2010.**

*Please see attached bill for analysis by the Legislative Reference Bureau*



State of Wisconsin  
2009 - 2010 LEGISLATURE

4597/1  
LRB-4437/1  
PJH:jld:jf  
Stays

TODAY

2009 BILL

3-26-10

Regen

1 AN ACT *to create* 940.295 (4) of the statutes; **relating to:** abuse and neglect of  
2 patients and residents.

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***Analysis by the Legislative Reference Bureau***

Under current law, no person may abuse or neglect a person who is a patient or resident at a care facility, adult day care, foster home, group home, hospice, or other inpatient health care facility, or who is at risk for abuse or neglect due to a mental or physical impairment. The penalty for abuse or neglect depends on the severity of the damage done to the patient, resident, or at-risk person and whether the actor acted intentionally, recklessly, or negligently.

For example, a person who commits an intentional or reckless act that causes the death of a patient, resident, or at-risk person is guilty of a Class C felony and may be fined up to \$100,000, imprisoned for up to 40 years, or both. A person who commits a negligent act that results in the death of a patient, resident, or at-risk person is guilty of a Class D felony and subject to the same fine but a maximum of 25 years in prison. A person who acts intentionally, recklessly, or negligently but does not cause harm or create a risk of harm to a patient, resident, or at-risk person is guilty of a Class B misdemeanor and may be fined up to \$1,000, imprisoned for up to 90 days, or both.

Under current law, conduct is "reckless" if it creates an unreasonable risk of death or harm to, and demonstrates a conscious disregard for, the safety of a patient, resident, or at-risk person. An act, omission, or course of conduct is "negligent" if the actor should realize that it creates a substantial and unreasonable risk of death or harm.



**Parisi, Lori**

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**From:** Ludwig, Frederic  
**Sent:** Wednesday, March 31, 2010 10:56 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-4597/1 Topic: Medical negligence  
**Importance:** High

Rush please!

Thanks,  
Fred

Please Jacket LRB 09-4597/1 for the ASSEMBLY.

03/31/2010