

2011 DRAFTING REQUEST

Assembly Amendment (AA-SB306)

Received: 03/13/2012

Received By: **tdodge**

Wanted: **As time permits**

Companion to LRB:

For: **Christine Sinicki (608) 266-8588**

By/Representing: **Mary Beth George**

May Contact:

Drafter: **tdodge**

Subject: **Health - abortion**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Sinicki@legis.wisconsin.gov**

Carbon copy (CC:) to: **tamara.dodge@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Require voluntary and informed consent for a vasectomy

Instructions:

Require voluntary and informed consent to vasectomy.

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>
/?	tdodge 03/13/2012	mduchek 03/13/2012		_____			
/1			phenry 03/13/2012	_____	lparisi 03/13/2012	lparisi 03/13/2012	
/2	tdodge 03/13/2012	wjackson 03/13/2012	phenry 03/13/2012	_____	lparisi 03/13/2012	lparisi 03/13/2012	

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<END>

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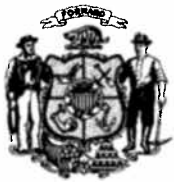
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FE Sent For:

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TJD:/.....
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RMNR

In 3/13/12

Due
TODAY

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

**ASSEMBLY AMENDMENT ,
TO 2011 SENATE BILL 306**

SA
Bh

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 4: after "abortion," insert "voluntary and informed consent for
3 vasectomy,".

4 **2.** Page 3, line 1: before that line insert:

5 "SECTION 1g. 146.39 of the statutes is created to read:

6 **146.39 Voluntary and informed consent; vasectomy. (1) DEFINITIONS.** In
7 this section:

8 (a) "Qualified person assisting the physician" means a social worker certified
9 under ch. 457, a registered nurse, or a physician assistant to whom a physician who
10 is to perform a vasectomy has delegated the responsibility, as the physician's agent,
11 for providing the information required under sub. (2) (c) 2.

1 (b) "Qualified physician" means a physician who by training or experience is
2 qualified to provide the information required under sub. (2)(c) 1.

3 (2) VOLUNTARY AND INFORMED CONSENT. (a) *Generally*. Vasectomies may not be
4 performed unless the man who is to receive the vasectomy has given voluntary and
5 informed written consent under the requirements of this section.

6 (b) *Voluntary consent*. Consent under this section to a vasectomy is voluntary
7 only if the consent is given freely and without coercion by any person. The physician
8 who is to perform the vasectomy shall determine whether the individual's consent
9 is, in fact, voluntary. Notwithstanding par. (c) 3., the physician shall make the
10 determination by speaking to the individual in person, out of the presence of anyone
11 other than a person working for or with the physician. If the physician has reason
12 to suspect that the individual is in danger of being physically harmed by anyone who
13 is coercing the individual to consent to ~~erectile dysfunction medications~~ ^{a vasectomy} against his
14 will, the physician shall inform the individual of services for victims or individuals
15 at risk of domestic abuse and provide him with private access to a telephone.

16 (c) *Informed consent*. An individual's consent to receive a vasectomy is
17 informed only if all of the following first take place:

18 1. At least 24 hours before the vasectomy is performed, the physician who
19 performs the vasectomy or any other qualified physician has, in person, orally
20 informed the individual of all of the following:

21 a. Whether or not, according to the reasonable medical judgment of the
22 physician, the individual is a candidate for a vasectomy.

23 b. The probable condition of the man's body and sexual organs at the time that
24 the information is provided. The physician or other qualified physician shall also
25 provide this information to the individual in writing at this time.

1 c. The particular medical risks, if any, associated with the man's sexual
2 condition.

3 d. The probable anatomical and physiological characteristics of the man's
4 sexual organs.

5 e. The details of the medical method that would be used to perform the
6 vasectomy.

7 f. The medical risks associated with the particular method of vasectomy that
8 would be used.

9 g. The recommended general medical instructions for the individual to follow
10 after a vasectomy to enhance his safe recovery and the name and telephone number
11 of a physician to call if complications arise after receiving a vasectomy.

12 h. That the individual has a right to refuse to consent to a vasectomy, that his
13 consent is not voluntary if anyone is coercing him to consent to having a vasectomy
14 against his will, and that it is unlawful for the physician to perform a vasectomy
15 without his voluntary consent.

16 i. That the individual may withdraw his consent to a vasectomy at any point
17 before the vasectomy is performed.

18 j. That the individual is not required to pay any amount for a vasectomy until
19 at least 24 hours have elapsed after the requirements of this paragraph are met.

20 k. That the man must return to the facility for a follow-up visit 12 to 18 days
21 after a vasectomy to confirm the efficacy of the procedure and evaluate the man's
22 medical condition.

23 2. At least 24 hours before performing a vasectomy, the physician who is to
24 perform the vasectomy, a qualified person assisting the physician, or another
25 qualified physician has, in person, done all of the following:

1 a. Orally informed the man that he has the right to receive and review the
2 printed materials described in par. (d). The physician or qualified person assisting
3 the physician shall physically give the materials to the individual and shall, in
4 person, orally inform him that the materials are free of charge and have been
5 provided by the state and shall provide him with the current updated copies of the
6 printed materials free of charge.

7 b. Orally informed the man that the printed materials described in par. (d)
8 contain information on services available for victims or individuals at risk of
9 domestic abuse. *e informed*

10 c. Orally *inform* the man that the printed materials described in par. (d) contain
11 information on the availability of public and private agencies and services to provide
12 the individual with information on vasectomies.

13 3. The information that is required under subds. 1. and 2. is provided to the
14 individual in an individual setting that protects his privacy, maintains the
15 confidentiality of his decision, and ensures that the information he receives focuses
16 on his individual circumstances. This subdivision may not be construed to prevent
17 the individual from having a family member, or any other person of his choice,
18 present during his private counseling.

19 4. Whoever provides the information that is required under subd. 1. or 2., or
20 both, provides adequate opportunity for the man to ask questions and provides the
21 information that is requested or indicates to the man where he can obtain the
22 information.

23 5. The individual certifies in writing on a form that the department shall
24 provide, prior to the vasectomy, that the information that is required under subds.
25 1. and 2. has been provided to him in the manner specified in subd. 3., that he has

1 been offered the information described in par. (d), and that all of his questions, as
2 specified under subd. 4., have been answered in a satisfactory manner. The
3 physician who is to perform the vasectomy or the qualified person assisting the
4 physician shall write on the certification form the name of the physician who is to
5 perform the vasectomy. The individual shall indicate on the certification form who
6 provided the information to him or her and when it was provided.

7 6. Prior to performing the vasectomy, the physician who is to ^{perform the} prescribe or give
8 the medications or the qualified person assisting the physician receives the written
9 certification that is required under subd. 5. The physician or qualified person
10 assisting the physician shall place the certification in the individual's medical record
11 and shall provide the individual with a copy of the certification.

12 7. If the individual considering a vasectomy is a minor, the requirements to
13 provide information to the minor under subds. 1. to 6. apply also to require provision
14 of the information to the individual whose consent is required. If the individual
15 considering a vasectomy is an individual adjudicated incompetent in this state, the
16 requirements to provide information to the individual under subds. 1. to 6. apply to
17 also require provision of the information to the person appointed as the individual's
18 guardian.

19 (d) *Printed information.* By the date that is 60 days after May 1, 2012, the
20 department shall cause to be published in English, Spanish, and other languages
21 spoken by a significant number of state residents, as determined by the department,
22 materials that are in an easily comprehensible format and are printed in type of not
23 less than 12-point size. The department shall distribute a reasonably adequate
24 number of the materials to county departments under s. 46.215, 46.22, or 46.23 and,
25 upon request, shall annually review the materials for accuracy and shall exercise

1 reasonable diligence in providing materials that are accurate and current. The
2 materials shall be all of the following:

3 1. Geographically indexed materials that are designed to inform an individual
4 about public and private agencies and services that are available to provide
5 information on ^{vasectomies} ~~erectile dysfunction~~ and provide imaging services. The materials
6 shall include a comprehensive list of the agencies available, a description of the
7 services that they offer and a description of the manner in which they may be
8 contacted, including telephone numbers and addresses, or, at the option of the
9 department, the materials shall include a toll-free, 24-hour telephone number that
10 may be called to obtain an oral listing of available agencies and services in the locality
11 of the caller and a description of the services that the agencies offer and the manner
12 in which they may be contacted. The materials shall provide information on the
13 availability of governmentally funded programs that serve individuals ^{with} ~~with~~ ^{erectile} ~~erectile~~
14 ~~dysfunction~~. Services identified for the individual shall include Medical Assistance.

15 The materials shall state that it is unlawful to perform a vasectomy for which consent
16 has been coerced and that any physician who performs a vasectomy without
17 obtaining the individual's voluntary and informed consent is liable to him for
18 damages in a civil action and is subject to a civil penalty. The materials shall state
19 that imaging services may be obtainable by individuals who wish to use them and
20 shall describe the services. The materials shall include information on services in
21 the state that are available for victims or individuals at risk of domestic abuse.

22 2. Materials, including photographs, pictures, or drawings, that are designed
23 to show vasectomies. The pictures, drawings, and videos must be realistic and
24 appropriate for the method of vasectomy depicted. The materials shall be objective,
25 nonjudgmental and designed to convey only accurate scientific information about

Seeking a
vasectomy

1 vasectomies. The materials shall also contain objective, accurate information
2 describing the methods of vasectomy commonly employed, and the medical and
3 psychological risks commonly associated with each such procedure.

4 3. A certification form for use under par. (c) 5. that lists, in a check-off format,
5 all of the information required to be provided under ^{par. (c) 5.} that subdivision.

6 (e) *Requirement to obtain materials.* A physician who intends to perform
7 vasectomies or another qualified physician, who reasonably believes that he or she
8 might have a patient for whom the information under par. (d) is required to be given,
9 shall request a reasonably adequate number of the materials that are described
10 under par. (d) from the department under par. (d) or from a county department under
11 s. 46.215, 46.22, or 46.23.

12 (f) *Presumptions.* Satisfaction of the conditions required under par. (c) creates
13 a rebuttable presumption that the individual's consent and, if the individual is a
14 minor, the consent of the individual who also gives consent, to a vasectomy is
15 informed. The presumption of informed consent may be overcome by a
16 preponderance of evidence that establishes that the consent was obtained through
17 fraud, negligence, deception, misrepresentation or omission of a material fact. There
18 is no presumption that consent to a vasectomy is voluntary.

19 (3) **PENALTY.** Any person who violates sub. (2) shall be required to forfeit not
20 less than \$1,000 nor more than \$10,000. No penalty may be assessed against the
21 man upon whom a vasectomy is performed or attempted to be performed.

22 (4) **CIVIL REMEDIES.** (a) A person who violates sub. (2) is liable to the man on
23 whom the vasectomy is performed or attempted to be performed for damages arising
24 out of the performance of the vasectomy, including damages for personal injury and
25 emotional and psychological distress.

1 (b) A person who has been awarded damages under par. (a) shall, in addition
2 to any damages awarded under par. (a), be entitled to not less than \$1,000 nor more
3 than \$10,000 in punitive damages for a violation that satisfies a standard under s.
4 895.043 (3).

5 (c) A conviction under sub. (3) is not a condition precedent to bringing an action,
6 obtaining a judgment, or collecting the judgment under this subsection.

7 (d) Notwithstanding s. 814.04 (1), a person who recovers damages under par.
8 (a) or (b) may also recover reasonable attorney fees incurred in connection with the
9 action.

10 (e) A contract is not a defense to an action under this subsection.

11 (f) Nothing in this subsection limits the common law rights of a person that are
12 not in conflict with sub. (2).

13 **(5) AFFIRMATIVE DEFENSE.** No person is liable under sub. (3) or (4) or under s.
14 441.07 (1) (f), 448.02 (3) (a), or 457.26 (2) (gm) for failure under sub. (2) (c) 2. to provide
15 the printed materials described in sub. (2) (d) to an individual or for failure under
16 sub. (2) (c) 2. to describe the contents of the printed materials if the person has made
17 a reasonably diligent effort to obtain the printed materials under sub. (2) (e) and the
18 department and the county department under s. 46.215, 46.22, or 46.23 have not
19 made the printed materials available at the time that the person is required to give
20 them to the individual.)

21 **3.** Page 3, line 1: delete “SECTION 1” and substitute “SECTION 1r”.

22 **4.** Page 9, line 23: after that line insert:

23 “SECTION 10k. 441.07 (1) (f) of the statutes is amended to read:

1 441.07 (1) (f) A violation of the requirements of s. 146.39 (2) (c) 2., 3., 4., 5., 6.,
2 or 7. or 253.10 (3) (c) 2., 3., 4., 5., 6. or 7.

3 **SECTION 10n.** 448.02 (3) (a) of the statutes is amended to read:

4 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
5 and negligence in treatment by persons holding a license, certificate or limited
6 permit granted by the board. An allegation that a physician has violated s. 146.39
7 (2), 253.10 (3), 448.30 or 450.13 (2) or has failed to mail or present a medical
8 certification required under s. 69.18 (2) within 21 days after the pronouncement of
9 death of the person who is the subject of the required certificate or that a physician
10 has failed at least 6 times within a 6-month period to mail or present a medical
11 certificate required under s. 69.18 (2) within 6 days after the pronouncement of death
12 of the person who is the subject of the required certificate is an allegation of
13 unprofessional conduct. Information contained in reports filed with the board under
14 s. 49.45 (2) (a) 12r., 50.36 (3) (b), 609.17 or 632.715, or under 42 CFR 1001.2005, shall
15 be investigated by the board. Information contained in a report filed with the board
16 under s. 655.045 (1), as created by 1985 Wisconsin Act 29, which is not a finding of
17 negligence or in a report filed with the board under s. 50.36 (3) (c) may, within the
18 discretion of the board, be used as the basis of an investigation of a person named in
19 the report. The board may require a person holding a license, certificate or limited
20 permit to undergo and may consider the results of one or more physical, mental or
21 professional competency examinations if the board believes that the results of any
22 such examinations may be useful to the board in conducting its investigation.

23 **SECTION 10p.** 457.26 (2) (gm) of the statutes is amended to read:



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa2850/1-2

TJD:med:ph

In: 3/13/12 Due TODAY 6:30pm-ish

RMR
TWJ

**ASSEMBLY AMENDMENT ,
TO 2011 SENATE BILL 306**

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3 vasectomy.”

4 **2.** Page 3, line 1: before that line insert:

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7 this section:

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9 under ch. 457, a registered nurse, or a physician assistant to whom a physician who
10 is to perform a vasectomy has delegated the responsibility, as the physician’s agent,
11 for providing the information required under sub. (2) (c) 2.

12 (b) “Qualified physician” means a physician who by training or experience is
13 qualified to provide the information required under sub. (2) (c) 1.

1 (2) VOLUNTARY AND INFORMED CONSENT. (a) *Generally*. Vasectomies may not be
2 performed unless the man who is to receive the vasectomy has given voluntary and
3 informed written consent under the requirements of this section.

4 (b) *Voluntary consent*. Consent under this section to a vasectomy is voluntary
5 only if the consent is given freely and without coercion by any person. The physician
6 who is to perform the vasectomy shall determine whether the individual's consent
7 is, in fact, voluntary. Notwithstanding par. (c) 3., the physician shall make the
8 determination by speaking to the individual in person, out of the presence of anyone
9 other than a person working for or with the physician. If the physician has reason
10 to suspect that the individual is in danger of being physically harmed by anyone who
11 is coercing the individual to consent to a vasectomy against his will, the physician
12 shall inform the individual of services for victims or individuals at risk of domestic
13 abuse and provide him with private access to a telephone.

14 (c) *Informed consent*. An individual's consent to receive a vasectomy is
15 informed only if all of the following first take place:

16 1. At least 24 hours before the vasectomy is performed, the physician who
17 performs the vasectomy or any other qualified physician has, in person, orally
18 informed the individual of all of the following:

19 a. Whether or not, according to the reasonable medical judgment of the
20 physician, the individual is a candidate for a vasectomy.

21 b. The probable condition of the man's body and sexual organs at the time that
22 the information is provided. The physician or other qualified physician shall also
23 provide this information to the individual in writing at this time.

24 c. The particular medical risks, if any, associated with the man's sexual
25 condition.

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2 sexual organs.

3 e. The details of the medical method that would be used to perform the
4 vasectomy.

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6 would be used.

7 g. The recommended general medical instructions for the individual to follow
8 after a vasectomy to enhance his safe recovery and the name and telephone number
9 of a physician to call if complications arise after receiving a vasectomy.

10 h. That the individual has a right to refuse to consent to a vasectomy, that his
11 consent is not voluntary if anyone is coercing him to consent to having a vasectomy
12 against his will, and that it is unlawful for the physician to perform a vasectomy
13 without his voluntary consent.

14 i. That the individual may withdraw his consent to a vasectomy at any point
15 before the vasectomy is performed.

16 j. That the individual is not required to pay any amount for a vasectomy until
17 at least 24 hours have elapsed after the requirements of this paragraph are met.

18 k. That the man must return to the facility for a follow-up visit 12 to 18 days
19 after a vasectomy to confirm the efficacy of the procedure and evaluate the man's
20 medical condition.

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25 printed materials described in par. (d). The physician or qualified person assisting

1 the physician shall physically give the materials to the individual and shall, in
2 person, orally inform him that the materials are free of charge and have been
3 provided by the state and shall provide him with the current updated copies of the
4 printed materials free of charge.

5 b. Orally informed the man that the printed materials described in par. (d)
6 contain information on services available for victims or individuals at risk of
7 domestic abuse.

8 c. Orally informed the man that the printed materials described in par. (d)
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11 3. The information that is required under subds. 1. and 2. is provided to the
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13 confidentiality of his decision, and ensures that the information he receives focuses
14 on his individual circumstances. This subdivision may not be construed to prevent
15 the individual from having a family member, or any other person of his choice,
16 present during his private counseling.

17 4. Whoever provides the information that is required under subd. 1. or 2., or
18 both, provides adequate opportunity for the man to ask questions and provides the
19 information that is requested or indicates to the man where he can obtain the
20 information.

21 5. The individual certifies in writing on a form that the department shall
22 provide, prior to the vasectomy, that the information that is required under subds.
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9 and shall provide the individual with a copy of the certification.

10 7. If the individual considering a vasectomy is a minor, the requirements to
11 provide information to the minor under subds. 1. to 6. apply also to require provision
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17 (d) *Printed information.* By the date that is 60 days after May 1, 2012, the
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5 that they offer, and a description of the manner in which they may be contacted,
6 including telephone numbers and addresses, or, at the option of the department, the
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8 obtain an oral listing of available agencies and services in the locality of the caller
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2 psychological risks commonly associated with each such procedure.

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4 all of the information required to be provided under par. (c) 5.

5 (e) *Requirement to obtain materials.* A physician who intends to perform
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8 shall request a reasonably adequate number of the materials that are described
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10 s. 46.215, 46.22, or 46.23.

11 (f) *Presumptions.* Satisfaction of the conditions required under par. (c) creates
12 a rebuttable presumption that the individual's consent and, if the individual is a
13 minor, the consent of the individual who also gives consent, to a vasectomy is
14 informed. The presumption of informed consent may be overcome by a
15 preponderance of evidence that establishes that the consent was obtained through
16 fraud, negligence, deception, misrepresentation or omission of a material fact. There
17 is no presumption that consent to a vasectomy is voluntary.

18 (3) **PENALTY.** Any person who violates sub. (2) shall be required to forfeit not
19 less than \$1,000 nor more than \$10,000. No penalty may be assessed against the
20 man upon whom a vasectomy is performed or attempted to be performed.

21 (4) **CIVIL REMEDIES.** (a) A person who violates sub. (2) is liable to the man on
22 whom the vasectomy is performed or attempted to be performed for damages arising
23 out of the performance of the vasectomy, including damages for personal injury and
24 emotional and psychological distress.

(b) A person who has been awarded damages under par. (a) shall, in addition to any damages awarded under par. (a), be entitled to not less than \$1,000 nor more than \$10,000 in punitive damages for a violation that satisfies a standard under s. 895.043 (3).

(c) A conviction under sub. (3) is not a condition precedent to bringing an action, obtaining a judgment, or collecting the judgment under this subsection.

(d) Notwithstanding s. 814.04 (1), a person who recovers damages under par. (a) or (b) may also recover reasonable attorney fees incurred in connection with the action.

(e) A contract is not a defense to an action under this subsection.

(f) Nothing in this subsection limits the common law rights of a person that are not in conflict with sub. (2).

(5) AFFIRMATIVE DEFENSE. No person is liable under sub. (3) or (4) or under s. 441.07 (1) (f), 448.02 (3) (a), or 457.26 (2) (gm) for failure under sub. (2) (c) 2. to provide the printed materials described in sub. (2) (d) to an individual or for failure under sub. (2) (c) 2. to describe the contents of the printed materials if the person has made a reasonably diligent effort to obtain the printed materials under sub. (2) (e) and the department and the county department under s. 46.215, 46.22, or 46.23 have not made the printed materials available at the time that the person is required to give them to the individual.”.

3. Page 3, line 1: delete “SECTION 1” and substitute “SECTION 1r”.

4. Page 9, line 23: after that line insert:

“SECTION 10k. 441.07 (1) (f) of the statutes is amended to read:

1 441.07 (1) (f) A violation of the requirements of s. 146.39 (2) (c) 2., 3., 4., 5., 6.,
2 or 7. or 253.10 (3) (c) 2., 3., 4., 5., 6. or 7.

3 **SECTION 10n.** 448.02 (3) (a) of the statutes is amended to read:

4 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
5 and negligence in treatment by persons holding a license, certificate or limited
6 permit granted by the board. An allegation that a physician has violated s. 146.39
7 (2), 253.10 (3), 448.30 or 450.13 (2) or has failed to mail or present a medical
8 certification required under s. 69.18 (2) within 21 days after the pronouncement of
9 death of the person who is the subject of the required certificate or that a physician
10 has failed at least 6 times within a 6-month period to mail or present a medical
11 certificate required under s. 69.18 (2) within 6 days after the pronouncement of death
12 of the person who is the subject of the required certificate is an allegation of
13 unprofessional conduct. Information contained in reports filed with the board under
14 s. 49.45 (2) (a) 12r., 50.36 (3) (b), 609.17 or 632.715, or under 42 CFR 1001.2005, shall
15 be investigated by the board. Information contained in a report filed with the board
16 under s. 655.045 (1), as created by 1985 Wisconsin Act 29, which is not a finding of
17 negligence or in a report filed with the board under s. 50.36 (3) (c) may, within the
18 discretion of the board, be used as the basis of an investigation of a person named in
19 the report. The board may require a person holding a license, certificate or limited
20 permit to undergo and may consider the results of one or more physical, mental or
21 professional competency examinations if the board believes that the results of any
22 such examinations may be useful to the board in conducting its investigation.

23 **SECTION 10p.** 457.26 (2) (gm) of the statutes is amended to read:

