

**1983 Assembly Bill 217**

Date of enactment: **April 20, 1984**  
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**1983 Wisconsin Act 253**

AN ACT *to repeal* 655.03 (2) (c), 655.03 (3) (b), 655.06 (2), 655.06 (5), 655.13 (2) and 655.16 (title); *to renumber* 655.065 (1), (2) and (3) and 655.16 (1) and (2); *to amend* 441.01 (6), 448.02 (3) (intro.), 655.007, 655.009 (1), 655.02, 655.03 (1) (a) and (c) to (f) and (2) (a) (intro.), 1 and 2 and (b), 655.03 (3) (c), 655.04 (2) and (3), 655.04 (6), 655.06

(1), 655.06 (3), 655.13 (1), 655.17 (6), 655.19 (intro.) and (2) and 807.01 (5); *to repeal and recreate* 655.04 (1) (a) and 655.04 (4); and *to create* 655.03 (2) (d), 655.03 (4), 655.065 (1) (title) and (3) (title), 655.067 and 655.19 (3) of the statutes, *relating to* patients compensation panels.

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

SECTION 1. 441.01 (6) of the statutes is amended to read:

441.01 (6) The board shall investigate any nurse anesthetist who is found to have acted negligently by a panel established under s. 655.02 or by a court. If the board finds that any nurse anesthetist refuses to serve on a patients compensation panel under s. 655.03 without being excused by the director of state courts, it may warn or reprimand the nurse anesthetist or may limit, suspend or revoke the nurse anesthetist's license or registration.

SECTION 2. 448.02 (3) (intro.) of the statutes is amended to read:

(3) INVESTIGATION; HEARING; ACTION. The board shall investigate allegations of unprofessional conduct by persons holding a license or certificate granted by the board. A finding by a panel established under s. 655.02 or by a court that a physician has acted negligently is an allegation of unprofessional conduct. An allegation that a physician has violated s. 448.30 is an allegation of unprofessional conduct. After the investigation, if the board finds that there is probable cause to believe that the person is guilty of unprofessional conduct, the board shall hold a hearing on such conduct. The board shall render a decision within 90 days following completion of the hearing. The board may, when it finds a person guilty of unprofessional conduct, do one or more of the following: warn or reprimand that person, or limit, suspend or revoke any license or certificate granted by the board to that person. If the board finds that any physician or podiatrist refuses to serve on a patients compensation panel under s. 655.03 without being excused by the director of state courts, it may warn or reprimand the physician or podiatrist or may limit, suspend or revoke the license issued by the board. The board shall comply with rules of procedure for the investigation, hearing and action promulgated under ss. 440.03 (1) and 448.40. Any person who in good faith provides to the board information concerning possible unprofessional conduct by a person holding a license or certificate granted by the board is immune from civil liability for his or her acts or omissions in providing such information.

SECTION 3. 655.007 of the statutes is amended to read:

**655.007 Patients' claims.** On and after July 24, 1975, any patient or the patient's representative, having a claim or any spouse, parent or child of the patient having a derivative claim for injury or death on account of malpractice is subject to this chapter.

SECTION 4. 655.009 (1) of the statutes is amended to read:

655.009 (1) COMPLAINT. The complaint in such action shall not specify the amount of money to which the plaintiff supposes to be entitled except to state whether such amount is ~~\$10,000~~ \$25,000 or less or is over ~~\$10,000~~ \$25,000. The complaint shall, if applicable, state that the damages the plaintiff is entitled to are more than the minimum amount necessary to invoke the jurisdiction of the court.

SECTION 5. 655.02 of the statutes is amended to read:

**655.02 Establishment of panels.** The director shall establish patients compensation panels situated throughout this state to hear controversies presented under this chapter. The director shall establish 4 as many formal panels under s. 655.03 (1) and ~~such~~ informal panels under s. 655.03 (2) as the director deems necessary.

SECTION 6. 655.03 (1) (a) and (c) to (f) and (2) (a) (intro.), 1 and 2 and (b) of the statutes are amended to read:

655.03 (1) (a) One physician licensed to practice medicine in this state, appointed at random by the director for a 6-month term commencing on the date specified in the letter of appointment or for the duration of any assigned case pending at the expiration of such term, from a list submitted by an appropriate statewide organization of physicians as designated by the director.

(c) One attorney with trial experience who is licensed to practice law in this state, appointed by the director to serve as the chairperson of the panel.

(d) Two public members appointed by the director from a list submitted by the governor for 2-year ~~staggered~~ terms who are not attorneys and who, at the time of their appointment, are not engaged in or licensed to practice any of the professions or occupations to which this chapter applies. The governor shall director may appoint at least 2 alternates for each panel, to serve in the event that any public member is unable to serve on a panel for a particular claim or is unable to complete the term for which the person was appointed. No public member or alternate may attend more than 4 formal panel meetings per year.

(e) No person appointed to a panel by the director under par. (a) or (b) may decline to serve on a panel except that the director may for good cause excuse such person. Any physician, podiatrist or nurse anesthetist who declines to serve on a panel without being excused by the director is subject to the penalties provided in s. 441.01 (6) or 448.02 (3). No person may serve on a panel if the person has a professional or personal interest in a claim under consideration. Persons who resign or who are excused or prohibited from serving on a panel shall be replaced as provided in par. (f). No person appointed under par. (a) ~~or (b)~~ may serve on more than one panel in a 5-year period as a member appointed under par. (a), unless all other physicians in the area served by the panel have served or have been excused from serving on a panel. No person appointed under par. (d) may serve again on a panel unless at least 5 years elapse since the date on which the person last served on a panel.

(f) If a person is excused or is prohibited from serving on a panel, as provided in par. (e), for a particular claim under consideration, a replacement shall be selected, to serve during the consideration of that claim, in the same manner as the original member was selected, except that if the person was appointed under par. (d), that person's replacement shall be appointed by the director from the list of alternates appointed under par. (d). If any public member or his or her alternate reaches the limit of service of 4 formal panel meetings per year, as specified in par. (d), the director shall appoint a replacement. If a person resigns or is otherwise unable to complete the term for which appointed, that person's replacement shall be selected, to serve for the remainder of the term, in the same manner as the original member was selected, except that if the person was appointed under par. (d), the person's replacement shall be appointed by the director from the list of alternates appointed under par. (d).

(2) (a) (intro.) The director shall select ~~3 names~~ one name from each of the following lists:

1. A list of attorneys with trial experience. ~~The list shall be prepared and periodically revised by the state bar of Wisconsin who are licensed to practice law in this state. The attorney selected shall serve as the chairperson of the panel.~~

2. A list of health care providers, arranged according to the field of health care of the health care providers. The list shall be prepared and periodically revised by appropriate statewide organizations of health care providers. The list shall designate the specialty, if any, of each health care provider listed. Such organizations shall assist the director in determining the appropriate specialty or field of practice to be represented on each panel. ~~The director shall select 3 names from the list to represent adequately the field of health care of the respondent or respondents.~~

(b) If any person selected from a list desires not to participate on the informal panel, the director may, for good cause, excuse such person from service. Any physician, podiatrist or nurse anesthetist who declines to serve on a panel without being excused by the director is subject to the penalties provided in s. 441.01 (6) or 448.02 (3). No person may serve on an informal panel if the person has a professional or personal interest in a claim under consideration. A replacement shall be selected in the same manner as the excused person was selected. The selections shall consist of the categories of attorney, of health care provider and of juror.

SECTION 7. 655.03 (2) (c) of the statutes is repealed.

SECTION 8. 655.03 (2) (d) of the statutes is created to read:

655.03 (2) (d) No person selected from the list of petit jurors under par. (a) 3 may attend more than one informal panel meeting per year.

SECTION 9. 655.03 (3) (b) of the statutes is repealed.

SECTION 10. 655.03 (3) (c) of the statutes is amended to read:

655.03 (3) (c) *Compensation of panel members.* Each person appointed to a panel under this section shall be paid ~~\$75~~ \$150 for each day's actual attendance at a panel meeting plus actual and necessary travel expenses.

SECTION 11. 655.03 (4) of the statutes is created to read:

655.03 (4) **REMOVAL OF PANEL MEMBERS.** The director shall establish procedures through which claimants and respondents may request the removal of any person from a panel for cause. The attorney chairperson shall rule on each request, except that if the removal of the attorney chairperson is requested the director shall rule on the request. The claimant and the respondent each are entitled to one peremptory challenge of a panel member. The director shall establish procedures for exercising peremptory challenges. If more than one respondent is a party to the controversy, the respondents shall resolve among themselves the question of which panel member to remove through peremptory challenge. Replacements for members of formal panels shall be selected as provided in sub. (1) (f). Replacements for members of informal panels shall be selected in the same manner as the person replaced was selected.

SECTION 12. 655.04 (1) (a) of the statutes is repealed and recreated to read:

655.04 (1) (a) On and after July 24, 1975, any person listed in s. 655.007 having a claim or a derivative claim under this chapter for bodily injury or death because of a tort or breach of contract based on professional services rendered or that should have been rendered by a health care provider may, after paying the fee under s. 655.14, file a submission of controversy with the director in accordance with this chapter. The submission of controversy shall be in substantially the following form:

The undersigned, .... (name of claimant), of .... (city) in .... (county), being a party to the following matter in difference that might be the subject of a legal action and desiring to avoid the expense of litigation, certifies that:

1) .... (Name of patient) was a patient of .... (name of health care provider) on .... (date).

2) .... (Name of health care provider), in treating .... (name of patient) for .... (nature of condition or disease), was negligent in rendering or failing to render health care services and injured the patient, in that .... (short statement of injury).

3) The injury to the patient entitles the claimant to recovery in the amount of (\$25,000 or less) (over \$25,000).

The undersigned claimant requests that a panel be convened under section 655.02 of the Wisconsin Statutes to investigate this matter.

.... (Name of claimant)

SECTION 13. 655.04 (2) and (3) of the statutes are amended to read:

655.04 (2) CHOICE OF PANEL. (a) (title) *Claims of \$25,000 or less*. If the ~~petitioner~~ claimant states in the submission of controversy that the ~~petitioner~~ claimant is entitled to recovery in the amount of ~~\$10,000~~ \$25,000 or less, the controversy shall be heard by an informal panel under s. 655.03 (2), unless all parties stipulate in writing that the controversy shall be heard by a formal panel under s. 655.03 (1).

(b) (title) *Claims of over \$25,000*. If the ~~petitioner~~ claimant states in his the submission of controversy that ~~he~~ the claimant is entitled to recovery in an amount over ~~\$10,000~~ \$25,000, the controversy shall be heard by ~~an informal~~ a formal panel under s. 655.03 (2) (1), unless ~~one party requests~~ all parties stipulate in writing that the controversy shall be heard by ~~a formal~~ an informal panel under s. 655.03 (+) (2).

(3) NOTICE. Notice of the filing of the submission of controversy shall be served on all named health care providers by the director by ~~1st class~~ registered mail to the address of the health care provider as designated in the submission of controversy.

SECTION 14. 655.04 (4) of the statutes is repealed and recreated to read:

655.04 (4) PROCEDURE. (a) The director shall schedule a prehearing conference for each submission of controversy, which shall be held within 60 days of the date the submission of controversy is filed under s. 655.04 (1). At the prehearing conference the attorney who chairs the panel shall establish a scheduling order in compliance with the director's procedural guidelines established under par. (d).

(b) If any party fails to comply with the scheduling order under par. (a) without good cause, the attorney who chairs the panel shall set a date to hear arguments why the controversy should not be resolved in favor of the opposing party.

(c) Unless both parties stipulate to a delay, the panel hearing on the controversy shall be held within 210 days after the date of the initial prehearing conference.

(d) The director shall establish procedural guidelines for processing controversies under this chapter. Each panel shall establish its own internal procedures, consistent with the director's guidelines.

SECTION 15. 655.04 (6) of the statutes is amended to read:

655.04 (6) STATUTE OF LIMITATIONS. The filing of the submission of controversy shall toll any applicable statute of limitations, and such statute of limitations shall remain tolled until ~~30~~ 60 days after the hearing panel issues its written decision and order, or the jurisdiction of the panel is otherwise terminated.

SECTION 16. 655.06 (1) of the statutes is amended to read:

655.06 (1) FOR WHOM APPOINTED. In every controversy involving a ~~victim of alleged malpractice~~ claimant who is a minor or incompetent, the attorney who chairs the panel shall appoint a guardian ad litem to represent ~~such minor or incompetent~~ this claimant as soon as practicable after the controversy is assigned to the panel for a hearing. A guardian ad litem shall not be appointed or appear in the same controversy for different persons whose interests may be conflicting.

SECTION 17. 655.06 (2) of the statutes is repealed.

SECTION 18. 655.06 (3) of the statutes is amended to read:

655.06 (3) DURATION OF APPOINTMENT. The guardian ad litem shall continue to act until the panel issues its findings, order and award, unless earlier discharged by the attorney who chairs the panel.

SECTION 19. 655.06 (5) of the statutes is repealed.

SECTION 20. 655.065 (1), (2) and (3) of the statutes are renumbered 655.065 (2), (4) and (5).

SECTION 21. 655.065 (1) (title) and (3) (title) of the statutes are created to read:

655.065 (1) (title) DISPOSITION WITHOUT A HEARING.

(3) (title) PANEL ORDERS.

SECTION 22. 655.067 of the statutes is created to read:

**655.067 Duty of the panel chairperson.** The attorney who chairs a panel shall hear and rule upon matters of law before the panel.

SECTION 23. 655.13 (1) of the statutes is amended to read:

655.13 (1) All original pleadings, motions or other papers shall be filed ~~on a form prescribed by~~ with the director and shall be filed in triplicate. Sufficient additional copies of the submission of controversy shall be filed to permit service of a copy on each respondent.

SECTION 24. 655.13 (2) of the statutes is repealed.

SECTION 25. 655.16 (title) of the statutes is repealed.

SECTION 26. 655.16 (1) and (2) of the statutes are renumbered 655.065 (1) and (3).

SECTION 27. 655.17 (6) of the statutes is amended to read:

655.17 (6) Original ~~X-rays taken~~ X-ray photographs and records or duplicates thereof made in the course of a regularly conducted activity by a health care provider or the provider's agent shall be admissible without the necessity of other identification or authentication unless a question is raised as to their authenticity or accuracy.

SECTION 28. 655.19 (intro.) and (2) of the statutes are amended to read:

**655.19 Court trial.** (intro.) Unless the parties have stipulated in writing under s. 655.07 to be bound by the panel determination, any party to a panel hearing may, within ~~120~~ 60 days after the date of an order made by a panel, commence an action for a trial in the circuit court for the county designated ~~in the submission of controversy under s. 655.04 as the location of the panel hearing~~. The provisions of ch. 805 which are not in conflict with this chapter shall apply to the trial. No panel member may participate in the trial either as counsel or witness. The Subject to the limitations on recovery under sub. (3), the judgment or order of the circuit court shall supersede any order or award made by a panel in a hearing under this chapter.

(2) INFORMAL PANELS. The findings and order of any informal panel shall not be admissible in any court action. No statement or expression of opinion made in the course of an informal panel hearing is admissible in evidence either as an admission or otherwise in any court action. If the court action is based on a submission of controversy in which the petitioner alleged entitlement to recover \$25,000 or less, this limitation on entitlement to recovery is admissible.

SECTION 29. 655.19 (3) of the statutes is created to read:

655.19 (3) LIMITS ON RECOVERY. The amount recoverable in any action under this section based on a submission of controversy under s. 655.04 (1) in which the petitioner alleged entitlement to recover \$25,000 or less may not exceed \$25,000, unless the court determines by a preponderance of evidence that the petitioner could not have known or determined with reasonable diligence the extent of the injury at the time of filing the submission of controversy.

SECTION 29m. 807.01 (5) of the statutes is amended to read:

807.01 (5) Subsections (1) to (4) apply to offers which may be made by any party to any other party who demands a judgment or setoff against the offering party. Subsections (1) to (4) also apply to offers made by any party to a submission of controversy under s. 655.04 with the exception that, rather than serving written offers at least 20 days before trial, written offers shall be served at least 60 days after the prehearing conference and at least 20 days before the panel hearing.

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**SECTION 31. Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

| <b>A</b>         | <b>B</b>             | <b>C</b>             |
|------------------|----------------------|----------------------|
| Statute Sections | Old Cross-References | New Cross-References |
| 655.10           | 655.065 (2)(a) 2     | 655.065 (4)(a) 2     |

**SECTION 32. Initial applicability.** (1) The treatment of section 655.04 (6) of the statutes by this act, changing the period during which the statute of limitations is tolled from 30 to 60 days, applies to parties who have received a panel determination on or after the effective date of this act. The treatment of section 655.19 (intro.) of the statutes by this act, changing the period from 120 to 60 days during which a party to a patients compensation panel hearing may commence an action for trial in circuit court, applies to parties who have received a panel determination on or after the effective date of this act.

(2) The treatment of section 655.03 (1) (a) and (c) to (e), (2) (a) (intro.), 1 and 2 and (c) and (4) of the statutes by this act, modifying the method by which members of patients compensation panels are appointed, revising the qualifications of attorneys who are appointed to informal panels and creating a method for removing panel members, applies to members of patients compensation panels appointed on or after the effective date of this act.

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