WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2013 Assembly Bill 120	**Assembly Amendment 1**
Memo published: **June 19, 2013**	*Contact*: **Mary Matthias, Senior Staff Attorney (266-0932)**

This memorandum describes Assembly Amendment 1 to 2013 Assembly Bill 120, relating to inadmissibility of a statement of apology or condolence by a health care provider.

Assembly Bill 120 provides that a statement, gesture, or the conduct of a health care provider[1] or a health care provider's employee or agent, that expresses apology, benevolence, compassion, condolence, fault, liability, remorse, responsibility, or sympathy to a patient or the patient's relative or representative is not admissible into evidence or subject to discovery in any civil action or administrative hearing regarding the health care provider as evidence of liability or as an admission against interest.

Assembly Amendment 1 modifies the bill as follows.

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[1] Under the bill, the term "health care provider" includes all of the following licensed or certified personnel: a nurse; a chiropractor; a dentist; a physician, physician assistant, perfusionist, or respiratory care practitioner; a physical therapist; a podiatrist; a dietitian; an athletic trainer; an occupational therapist or occupational therapy assistant; an optometrist; a pharmacist; an acupuncturist; a psychologist; a social worker, marriage and family therapist, or professional counselor; a speech-language pathologist or audiologist; a massage therapist or bodywork therapist; an emergency medical technician; and a first responder.

The term "health care provider "includes a partnership of any of the providers listed above, a corporation or limited liability company of any providers listed above that provides health care services, or a cooperative health care association that directly provides services through salaried employees in its own facility.

The term "health care provider" also includes all of the following entities: hospitals; hospices; nursing homes; county homes; county mental hospitals; the Milwaukee County Mental Health Complex; adult family homes; a community-based residential facility; rural medical centers; and ambulance service providers.

Discovery

The bill provides that a statement, gesture, or the conduct of a health care provider or their employee or agent described above is not admissible into evidence *or subject to discovery* in any civil action or administrative hearing regarding the health care provider as evidence of liability or as an admission against interest.

The amendment deletes the language pertaining to discovery. Thus, under the amendment, any statement, gesture or conduct described above may be subject to discovery. However, as under the bill, the statement, gesture or conduct is not admissible into evidence as evidence of liability or an admission against interest.

Types of Proceedings Covered

The bill provides that a health care provider's statement, gesture, or conduct described above is not admissible into evidence or subject to discovery in any *civil action* or *administrative hearing* regarding the health care provider as evidence of liability or as an admission against interest.

The amendment expands the types of proceedings that are covered by the bill to include *disciplinary proceedings, mediation, and arbitration* regarding the health care provider.

Statements, Gestures, or Conduct Occurring After Commencement of Legal Proceedings

The amendment specifies that the bill's provisions apply only to statements or gestures that are made, or conduct that occurs, *before* the commencement of a civil action, administrative hearing, disciplinary proceeding, mediation, or arbitration regarding the health care provider.

Bill History

Assembly Amendment 1 was introduced by Representative Severson on May 31, 2013. On June 5, 2013, the Assembly Committee on Health voted to recommend adoption of Assembly Amendment 1 and passage of the bill, as amended, on successive votes of Ayes, 7; Noes, 4.

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