



PATRICK SNYDER

STATE REPRESENTATIVE • 85th ASSEMBLY DISTRICT

Testimony in Support of Assembly Bill 287

Chairman Sanfelippo and Members of the Committee on Health,

Thank you for convening to hear testimony on Assembly Bill 287. This legislation promotes prompt, appropriate patient care; supports smooth transitions between health care facilities, reducing costs for patients; and encourages establishing efficiencies for health care providers.

Wisconsin has a workforce shortage, which is impacting communities and employers throughout the state; health care is no exception. In many small and rural communities, access to health care is a significant challenge. This legislation will ease that burden by allowing advanced practice clinicians to make certain determinations, with a physician, for the purpose of invoking a health care power of attorney or advanced directive.

Assembly bill 287 makes three main changes to statute:

1. Under current law, two physicians, or one physician and one psychologist, must make a determination of incapacity for a health care power of attorney (POA) to be activated. This legislation allows physician assistants (PAs) and advanced practice registered nurses (APRNs) to be one of two providers to make determinations of incapacity. One of the two required providers must still be a physician.
2. Similarly, under current law, two physicians must declare a patient to have a terminal illness or to be in a persistent vegetative state to invoke an advanced directive, commonly called a living will. This bill would allow a PA or APRN to be one of the two providers to make these determinations. One of the two providers would still need to be a physician.
3. Allows PAs and APRNs to issue Do-Not-Resuscitate bracelets to alert emergency responders of a patient's wishes.

PAs and APRNs perform a critical role in our health care system; patients across the state rely on their services for prompt, comprehensive care. Several communities in Wisconsin depend solely on these types of providers for their care, because the closest physicians are many miles away. For these communities, and others that rely heavily on advanced practice providers, this legislation will allow for a continuity of care that currently is prohibited under state law.

While it is certainly appropriate for these providers to be allowed to make these determinations, patient safety is foremost, so there are safeguards built into the legislation. Consistent with all other medical treatments, procedures, evaluations, etc., the bill requires that a PA or APRN has sufficient training, education and experience to make determinations of incapacity, terminal illness or persistent vegetative state. Explicitly stated in the legislation, it allows the licensing



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board to take action against a providers' license if they make these determinations inappropriately. Lastly, to preserve patients' rights over their own care, the legislation continues the current law practice of allowing a POA or advanced directive to be written uniquely to express the wishes of the patient—meaning the patient could still require two physicians to make the activations addressed in this bill.

There is also one proposed amendment to the legislation. Under current law, there is a process by which an incapacitated person without a healthcare POA can be admitted to hospice. The amendment to this bill would apply the same concept of allowing advanced practice providers to make certain determinations of incapacity to this section of statute.

In conclusion, this legislation uses the regulatory framework that already exists in health care, ensuring that these critical determinations are only made by qualified providers, to support more expeditious, accurate and continuous patient care. I respectfully request that you join me in supporting this legislation.



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FAQs:

Q: What is an Advanced Practice Registered Nurse?

A: Under the legislation, an “advanced practice registered nurse” means a nurse licensed under chapter 441 who is currently certified by a national certifying body approved by the board of nursing as a nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist, or clinical nurse specialist.”

Q: How will this impact existing advanced directives and healthcare power of attorney documents?

A: This legislation would not change previous directives. If the legislation is enacted, a patient would need to change his or her directive to reflect current law if desired.

Q: Does this legislation apply to all Do Not Resuscitate orders?

A: No, this only applies to DNRs in the community. It does not apply to issuing DNRs once a patient has been admitted to a hospital.

Q: How does this impact the physician and physician assistant supervisory relationship?

A: This legislation was drafted using the current regulatory structure for physicians and physician assistants. The goal of this legislation is to allow advanced practice providers to make determinations to improve patient care under the current regulatory structure, therefore, it does not make changes to physician/physician assistant relationships. Consistent with current law, physicians would have the ability to determine whether the physician assistants that they oversee have the competency to make these determinations.

Q: Would *any* physician assistant or advanced practice registered nurse be able to make these determinations under the legislation?

A: No, only advanced practice providers with the experience, training and education to make these determinations would be able to make them. This is consistent with current law pertaining to physicians and psychologists making these determinations. An advanced practice provider who made a determination without the required training, education and experience would face action against his or her license; this is consistent with how other medical practice is regulated.



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

October 16, 2019

**Assembly Committee on Health
Testimony on Assembly Bill (AB) 287**

Good morning!

Thank you Chair Sanfelippo and committee members for hearing Assembly Bill 287 (AB 287), which makes changes to the statute for certifications for advance directives and findings of incapacity related to powers of attorney (POA) for health care.

AB 287 updates Wisconsin's Advanced Directives and health care POA laws to recognize the ability of advanced practice registered nurses (APRNs) and physician assistants (PAs) to make professional, medical determinations required under those statutes.

The bill allows a PA or APRN to determine incapacity, persistent vegetative state, or terminal illness for purposes of activating a patient's wishes under his or her advanced directive or health care POA. An additional physician must also reach the same conclusion for the directive or POA to activate. Under current law the decision must be made by two physicians or a physician and a psychologist.

It also allows a health care professional, defined as a person licensed as a physician, PA, or APRN to issue a Do-Not-Resuscitate (DNR) order following a request from the patient that conforms with the advanced directive statute. AB 287 does not change the process for issuing a DNR, but adds PAs and APRNs to the list of people who can issue the order.

Rep. Snyder and I have introduced this proposal at the request of the Wisconsin Hospital Association (WHA). You will hear testimony from WHA and other stakeholders that could be impacted by the proposed changes.

My district covers a large portion of southwestern Wisconsin, including many rural communities. Wisconsin health care facilities are facing a dire workforce shortage from medical assistants to physicians, and the problem is more acute for rural hospitals. This issue, coupled with an aging population and antiquated statutes, has created challenges for health care providers, patients, and their families.

By introducing AB 287, we are seeking to ease that burden by enabling additional members of the health care workforce – APRNs and PAs – to act under Wisconsin's advanced directives and health care POA statutes consistent with their existing licensed scope of practice.

Under their existing scope of practice, APRNs and PAs are permitted to make the professional, medical decisions made under the advanced directive and POA statutes. However, current law refers only to physicians and has not been updated to recognize APRN and PA practice. This bill updates statute to align with current scope of practice, thus removing a regulatory burden impacting individuals, and their families and providers that have specified their wishes through advanced directives or a health care POA document.

As the average age of Wisconsin's population continues to trend older and the workforce shortage in the near future is likely to increase, it is critical that we update statute now to reflect the current scope of practice of PAs and APRNs to get ahead of future challenges.

After introduction of AB 287, we drafted an amendment, Assembly Amendment 1 that would clarify that the determination of incapacity could also be made for the purpose of admission to hospice. The amendment comes after conversations with constituents/stakeholders—they are very supportive of the legislation, but believe this would improve it even more.

Thank you again for hearing AB 287, and your consideration of the bill.



NURSE PRACTITIONER FORUM

October 16, 2019

To: Chairperson Representative Spiros and members of the Assembly Committee on Health

RE: Support AB 287/SB 254 Relating to: certifications for advance directives and findings of incapacity related to powers of attorney for health care.

The Nurse Practitioner Forum of the Wisconsin Nurses Association is the largest organization of nurse practitioners in Wisconsin. In Wisconsin, there are about 3000 nurse practitioners with the majority of them providing primary care. This legislation impacts our practice tremendously.

The NP Forum of the Wisconsin Nurses Association is in support of the changes being offered in SB254/AB287. These suggested changes would be very beneficial to the patients served by nurse practitioners. This legislation, if enacted, would allow nurse practitioners to provide continued care to many patients that we had developed a relationship with, when these patients are in a vulnerable health state. This legislation would improve access to care especially in rural and underserved areas, where many times there is only one physician present, and it becomes difficult to find access to another physician to complete the incapacity process.

The citizens of Wisconsin deserve access to the best health care that we can provide and this is well within our scope of practice as nurse practitioners. As nurse practitioners, we want to provide seamless care to the patients we serve no matter where they reside. This legislation would be a start to improve access especially in light of that fact there is a shortage of physicians in Wisconsin and this is only anticipated to get worse.

Thank you for your consideration.

Tina Bettin DNP, MSN, RN, FNP-BC, APNP, FAANP

Tina Bettin DNP, MSN, RN, FNP-BC, APNP, FAANP

President, Nurse Practitioner Forum of Wisconsin Nurses Association

ELDER LAW AND SPECIAL NEEDS SECTION

REAL PROPERTY, PROBATE & TRUST LAW SECTION

To: Assembly Committee on Health

Date: October 16, 2019

Re: Opposition of AB 287

The Real Property Probate Trust (RPPT) Section and Elder Law and Special Needs (ELSN) Section of the State Bar of Wisconsin oppose Assembly Bill 287 as proposed.

Presently, Wisconsin law requires that, unless otherwise specified in the individual's power of attorney for health care instrument (POA), the activation of an individual's POA takes effect upon a finding of incapacity by (i) 2 physicians or (ii) 1 physician and 1 licensed psychologist, who personally examine the individual. SB 254/AB 287 seeks to allow advanced practice registered nurses (APRNs) and physician assistants (PAs), along with 1 physician, the authority to activate a POA. RPPT and ELSN sections have concerns that these proposed changes could result in the improper activation of an individual's POA or Living Will, which could irreparable harm to the individual.

APRNs and PAs are a valued and integral part of our health care system, but due to the seriousness of the activation of a POA and/or a Living Will, both sections agree that the protections provided by current law should remain. While the bill does require "sufficient education, training and expertise", the sections would like a better understanding of the education and training requirements as prescribed by the proposed bill. Additionally, there is a risk that an APRN or PA may not feel free to make a decision under the POA or Living Will that is contrary to the decision made by the physician with whom such APRN or PA is either supervised by or works with in a health care setting.

Advanced planning and alternative decision making are important tools for Wisconsin residents to determine how their own care when they can't speak for themselves. Residents often with the assistance of attorneys have carefully drafted these documents so their choices are fulfilled and maintained.

If you have any additional questions please contact Cale Battles, Government Relations Coordinator, at (608) 250-6077 or cbattles@wisbar.org.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



STATE BAR OF WISCONSIN



ADVOCATE. ADVANCE. LEAD.

5510 Research Park Drive
P.O. Box 259038
Madison, WI 53725-9038
608.274.1820 | FAX 608.274.8554 | www.wha.org

TO: Members of the Assembly Committee on Health

FROM: Matthew Stanford – General Counsel
Ann Zenk, Vice President – Workforce & Clinical Practice
Kyle O’Brien, Senior Vice President – Government Relations

DATE: October 16, 2019

RE: WHA Supports AB 287 – Bipartisan Legislation Recognizing Advanced Practice Nurse and Physician Assistant Diagnoses in the Advanced Directive Statutes

Issue in Brief

- *Patients, hospitals, nursing homes, and hospices in rural and urban Wisconsin rely every day on advanced practice nurses and physician assistants to make independent and critical health care diagnoses.*
- *AB 287 removes barriers to fulfilling a patient’s wishes in their Power of Attorney or Living Will document by recognizing the modern education, training, and licensure of an advanced practice nurse or physician assistant to make the independent health care diagnoses necessary to activate the patient’s advanced directive.*
- *The bill maintains the requirement that a physician independently examine and concur with the advanced practice nurse’s or physician assistant’s independent diagnosis to activate the patient’s wishes under their Living Will or Power of Attorney document.*
- *Like physicians, making such a diagnosis without sufficient education, training, and experience will subject an advanced practice nurse or physician assistant to licensure discipline.*

WHA is pleased to support AB 287, bipartisan legislation co-authored by Representatives Snyder and Doyle and Senators Marklein and Ringhand to update Wisconsin’s Power of Attorney and Living Will (advanced directives) statutes to recognize the ability of advanced practice nurses (APRNs) and physician assistants (PAs) to make the professional, medical diagnoses required under those statutes. Wisconsin’s Power of Attorney and Living Will statutes enable individuals to express and have health care providers act upon the individual’s advanced wishes regarding their health care.

This legislation is necessary to address outdated statutory language that does not recognize modern APRN and PA education and training, resulting in delays in fulfilling patients’ expressed advanced directives.

Patients throughout Wisconsin now rely on APRNs and PAs as primary and specialty care providers that work within care teams in diverse health care settings, including hospitals, clinics, nursing homes and hospices. Over the years, as the education and training of APRNs and PAs has evolved so too has the practice of APRNs and PAs in team-based care delivery settings.

However, in some cases Wisconsin law has not similarly evolved, creating an unnecessary regulatory bottleneck on Wisconsin’s health care workforce – particularly in rural and other areas of the state that heavily rely on care teams that include APRNs and PAs to provide care in their communities.

This bill removes a regulatory burden impacting individuals that have specified their wishes through a Living Will or health care Power of Attorney instrument, as well as their families and health care providers, by updating those laws to reflect the current licensed scope of practice of the APRN and PA professions. Although their existing licensed scope of practice can include the types of professional, medical diagnoses made under the Living Will and Power of Attorney

statutes, those statutes currently refer only to physicians and have never been updated to recognize the APRN and PA professions. This bill makes those updates to Wisconsin law.

Under the bill, what is the role of an APRN or PA in activating a patient's wishes stated in their advanced directive?

- **Activation of an individual's wishes under the individual's Living Will.** Under current law, an individual's treatment wishes under a living will can only be acted upon following a determination by two physicians that the individual has a terminal condition or is in a persistent vegetative state. The bill modifies current law to require that the determination be made by one physician plus one physician, PA, or APRN, if the individual PA or APRN has sufficient education, training, and experience to make that diagnosis.
- **Activation of an individual's health care Power of Attorney.** Under current law, an individual may create a health care Power of Attorney instrument that authorizes an agent to make health care decisions for the individual should he/she become incapacitated. Also under current law, the agent's authority is only activated under the Power of Attorney document when two physicians or one physician and one psychologist examine the individual and determine that the individual is incapacitated. The bill modifies current law to require that the exam and determination be made by one physician plus one physician, psychologist, nurse practitioner, or physician assistant, if the individual nurse practitioner or PA has sufficient education, training, and experience to make that diagnosis.
- **Do-not-resuscitate orders for emergency medical personnel.** Chapter 154 of the state statutes currently authorizes a statutorily-recognized do-not-resuscitate bracelet that a patient may use to direct emergency medical personnel to not perform CPR. Subject to several conditions, a patient can request that his/her attending physician issue the do-not-resuscitate order bracelet. For purposes of issuing a DNR order bracelet, the bill changes "attending physician" to include PAs and APRNs serving as the "attending health care professional," *if the individual APRN or PA has sufficient education, training, and experience to make that order.*

The bill addresses competency and redundancy to ensure quality evaluations under the advanced directive statutes.

- **Pursuant to the bill, APRNs and PAs cannot activate a Power of Attorney or Living Will without having the education, training and experience to make the statutorily required diagnosis.** Sections 35 and 36 of the bill explicitly amend the nursing and physician assistant licensure statutes to make clear that an APRN or PA must have sufficient education, training, and experience to perform the diagnoses required under the Power of Attorney and Living Will statutes. Like other critical diagnoses currently made by these licensed professionals, it is a violation of their licensure statute to perform such actions without the education, training, and experience to do so as determined by their licensing board.
- **Unlike other critical diagnoses made by APRNs and PAs, the bill requires a physician to personally examine the individual and agree with the APRN's or PA's independent evaluation and diagnosis in order for the patient's Power of Attorney or Living Will wishes to be effectuated.** APRNs and PAs have independent medical judgment under Wisconsin law and their diagnoses and actions are independent medical determinations. The bill recognizes the independent medical evaluation of APRNs and PAs; however, the bill provides redundancy by requiring a physician to independently examine the patient and reach the same medical conclusion as the APRN or PA in order for the patient's Power of Attorney or Living Will wishes to be fulfilled.
- **The bill does not change individuals' existing advance directive documents and preserves the ability of an individual to continue to require two physicians to activate the individual's advanced directive wishes.** At the individual's direction, the bill gives an option to individuals to utilize an APRN or PA to activate their Power of Attorney or Living Will document.

WHA is pleased to support this targeted and meaningful statutory change that preserves high quality, team-based care in Wisconsin while removing an unnecessary regulatory bottleneck on Wisconsin's health care workforce impacting patients.

If you have any questions, contact Kyle O'Brien, Senior Vice President Government Relations, at kobrien@wha.org or (608) 274-1820.



Wisconsin Medical Society

TO: Assembly Committee on Health
FROM: George Morris, MD
President, Wisconsin Medical Society
DATE: October 16, 2019
RE: Opposition to Assembly Bill 287 – Certifications to advance directives and findings of incapacity related to powers of attorney for health care

Good afternoon Mr. Chairman and esteemed members of the Health Committee. My name is Dr. George Morris and I am a board-certified neurologist with over 30 years of practice. I am also the current President of the Wisconsin Medical Society and am here today to testify **in opposition to AB 287**.

The Wisconsin Medical Society (Society) has long been a leader in promoting the use of advance care directives and health care powers of attorney (HCPOA) for both patients and physicians. Through our sponsorship of numerous advance care planning events, facilitated conversations, materials and our Honoring Choices Wisconsin program we have helped thousands of Wisconsinites fill out their advance care directives and HCPOAs. It is because of our extensive work with this issue that we are here today to help inform the conversation surrounding the proposed changes contained within AB 287.

Our foremost concern is the changing of the standard regarding certifications of a terminal condition or persistent vegetative state. Chapter 154 of the state statutes requires that two physicians personally examine a patient before a determination of a terminal condition or persistent vegetative state can be made. This standard helps to ensure and maintain patient care and protection. AB 287 would alter this standard and allow physician assistants and advanced practice registered nurses to make this same determination. We appreciate the concerns regarding access, but stress that it is vitally important that we get this decision right, particularly when such determinations would result in critical life-sustaining treatment decisions. Physicians are almost exclusively the only ones who can accurately interpret the information utilized to determine a terminal condition or a persistent vegetative state for appropriate patient care. These determinations require careful, specific examinations and ancillary testing through the use of electroencephalograms (EEGs), evoked potentials, or other specialized scans; which often can't be interpreted and contextualized by advanced practice clinicians.

I had a patient a while back who had suffered a severe brain injury. It looked like she would not survive, and she had very minimal obvious brain activity on her exam. With careful evaluations it was clear that she did have some preserved brain function and was young, so we recommended supportive care when the family asked about withdrawing care. After almost a year she is living at home with assistance. I am not sure an advanced practice clinician could have had the correct discussion with the family, in which case she would not be with us today.

The gravity of the situation regarding determinations of a terminal condition or persistent vegetative state are not ones that I, or my peers take lightly. We are keenly aware of the shortages of health care practitioners across this state and the burdens that face clinicians, patients and their families when access proves difficult.

Indeed, we support numerous efforts to grow our workforce, reduce burnout, and improve practice efficiency. However, when it comes to some of the most vital and sensitive decisions that patients and their families will ever make, we want to make sure that we get that decision right.

We do agree with some of the provisions within AB 287 and welcome an opportunity to work towards helping increase access to care and improving practice efficiency. But we sincerely hold that the changes in AB 287 regarding the threshold for determining a persistent vegetative state or terminal condition could unnecessarily jeopardize patient care.

October 16, 2019

Representative Sanfelippo, Chair and
Members of the Assembly Committee on Health
Room 314 North
State Capitol
PO Box 8953
Madison, WI 53708

RE: Wisconsin Nurses Association Support of AB 287/SB 254

Good afternoon Chairperson Sanfelippo and members of the Assembly Committee on Health. My name is Gina Dennik-Champion and I am a Registered Nurse and the Executive Director of the Wisconsin Nurses Association (WNA). Thank you for holding a hearing on AB 287/SB 254 which allows for Advanced Practice Nurses to certify advance directives and findings of incapacity related to powers of attorney for health care that are found in Wisconsin State Statute Chapter 154.

WNA supports the inclusion of Advanced Practice Nurses as a health care provider that can:

1. Personally examine a patient/resident of a nursing home and make findings of incapacity upon which a health care power of attorney becomes effective.
2. Issue a do-not-resuscitate or under a declaration to physicians, also called a living will.
3. Certify that a patient or nursing home resident is afflicted with a terminal condition or is in a persistent vegetative state.

This legislation will allow advanced practice nurses to provide on-going care to patients or nursing home residents, who are in a vulnerable state. AB 287/SB 254 will improve access to care for those patients residing in rural and underserved areas, where there may be only one physician present and there is a need to complete the incapacity process.

WNA supports the rights of patients for self-determination. This right includes the right to a natural death without resuscitative efforts. The American Nurses Association's *Code of Ethics for Nurses* (2015), Provision 1.4, supports the right of patient self-determination. In addition, the ANA *Nursing: Scope and Standards of Practice* 3rd Edition, (2015) supports nursing care that protects patient autonomy, dignity, and rights, as well as nursing care that contributes to the resolution of ethical issues. Nurses have an ethical obligation to support patients in their choices, and, when needed, support surrogate decision-makers when they make decisions on patient's behalf, when the decisions of the patient/surrogate do not violate the principle of nonmaleficence. WNA supports mechanisms that encourage advanced practice nurses and registered nurses to more fully participate in end-of-life discussions with patients and families, including discussions surrounding DNR orders.

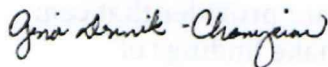
As with any standard and scope of nursing practice, Advanced Practice Nurses will respond to requests for determining incapacitation, issue a do-not-resuscitate order or certify that the patient or nursing home resident is in a persistent vegetative state providing they have the education, training and experience to do so. AB 287/SB 254 includes amending Wisconsin's Nurse Practice Act 441.07 by creating a condition of unprofessional conduct if the nurse does not demonstrate the education, training and experience needed to determine and/or certify those acts that are identified in § 154.

It is WNA's position that Wisconsin's patients benefit when registered nurses and advanced practice registered nurses are actively involved in all aspects of planning, advocacy, implementation, care coordination and direct care within a transforming healthcare system. AB 287/SB 254 is a reflection of this goal.

On behalf of WNA we would like to thank Representative Snyder, Senators Marklein and Ringhand for authoring and those who signed on as co-sponsors of this legislation. We thank you Chairperson Sanfelippo and members of the Committee on Health for listening to my testimony today.

I will gladly answer any questions you may have.

Sincerely,



Gina Dennik-Champion, MSN, RN, MSHA
WNA Executive Director

Sources:

ANA Code of Ethics for Nurses (2015) <https://www.nursingworld.org/practice-policy/nursing-excellence/ethics/code-of-ethics-for-nurses/>

ANA Standards and Scope of Practice for Nurses (2015).

<https://www.nursingworld.org/practice-policy/scope-of-practice/>