



CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE
27TH ASSEMBLY DISTRICT

MEMO

November 17, 1997

TO: Members,
Assembly Committee on Consumer Affairs

FROM: Representative Clifford Otte, Chair *C.O.*

RE: November 20th Executive Session

Please find attached amendment (LRBa1170/1) to AB 547
for the executive session on November 20, 1997.



Tommy G. Thompson
Governor

State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

STATEMENT OF
William Dusso, Representing the
DEPARTMENT OF REGULATION AND LICENSING
Before The
ASSEMBLY COMMITTEE ON CONSUMER AFFAIRS
Concerning

1997 Assembly Bill 547

October 23, 1997
Room 417 North, State Capitol

Chairperson Otte and members of the Committee, thank you for the opportunity to present information concerning 1997 Assembly Bill 547. I am William Dusso and serve as the legal counsel for the Department of Regulation and Licensing. In this bill the department requests a modest addition to the disciplinary authority of the department and attached boards.

Assembly Bill 547 authorizes the boards and the department to utilize an administrative warning to close an investigation. The department receives more than 1,000 complaints each year. These "informal" complaints are screened and investigated to determine whether the professional complained about should be disciplined by a reprimand, suspension, revocation, limitation or forfeiture. Routinely, evidence collected in an investigation reveals evidence of misconduct. In some of these cases it seems appropriate for the agency to close the file on the basis of a warning to the credential holder, that his or her conduct was unlawful and if repeated would be the basis for discipline. Under current law it is not

Regulatory Boards

Accounting; Architects; Landscape Architects, Professional Geologists, Professional Engineers; Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

Committed to Equal Opportunity in Employment and Licensing

possible to close any file by issuing a warning unless a formal complaint is filed and the credential holder is given opportunity for a full due process hearing.

Examples of violations where an administrative warning might be used include: a health care professional fails to provide copies of medical records to a patient; a minor building code violation by an architect or professional engineer; or, an accountant withholds client financial records to induce payment of an overdue bill.

As proposed in this bill, the effect of an administrative warning is to put the credential holder on notice. Administrative warnings are private and confidential. An administrative warning may not be used as evidence that the holder of the credential is guilty of the alleged misconduct. However, if a subsequent allegation of misconduct is received against a person who has been warned, the administrative warning matter may be reopened. The administrative warning may also be used in a disciplinary proceeding following the warning as evidence that the holder of the credential had actual knowledge that certain practices were contrary to law.

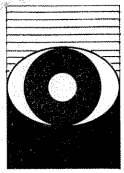
Authority for an administrative warning would enable boards and the department to take action in cases where there is substantial evidence of misconduct, but without expending the resources needed for a full contested hearing. By speeding the process of case resolution in cases of minor importance where there is no immediate danger to the public, the administrative warning

procedure would allow the Board and staff more time for disciplinary matters where the health and safety of the public is at risk.

Safeguards for credential holders are included in the procedure: credential holders may request review of an administrative warning by appearing before the board and the board's decision is subject to court review.

Use of an administrative warning is not a new idea. A 1986 task force study of the department recommended a law change to permit warnings. Other states, including New York, Kentucky, Arizona and Illinois, use administrative warnings.

Thank you for the opportunity to present the department's reasons for supporting this proposal.



WISCONSIN OPTOMETRIC ASSOCIATION

Affiliated with
American Optometric Association

5721 ODANA ROAD • MADISON, WISCONSIN 53719-1288 • PHONE: 608/274-4322
FAX: 608/274-8646 • IN STATE WATTS 1-800-678-5357

October 22, 1997

To: Chairperson Cliff Otte and Members of the
Assembly Consumer Affairs Committee

Copy: Secretary Marlene Cummings

From: Scott Jens, President
Wisconsin Optometric Association

Re: AB 547 - Administrative Warnings

The statewide membership of the Wisconsin Optometric Association supports AB 547 and urges its favorable consideration.

The Department of Regulation and Licensing Boards, including the Optometry Examining Board need effective enforcement "tools" to address the range of consumer complaints that they receive. The ability to issue administrative warnings will provide regulators with an effective means of sending a corrective "message" to a licensee, with that warning accomplished in a time-efficient manner. By dealing with relatively minor complaints through this mechanism, the Boards can concentrate more of their time and resources on the more serious consumer complaints.

Once again, the Wisconsin Optometric Association supports AB 547 and urges a favorable vote in the Assembly consumer Affairs Committee.

g:\wpfiles\oeb\ab547

President
SCOTT A. JENS, O.D.
3225 E. Washington Ave.
Madison, WI 53704
608/249-5548

President Elect
DOUGLAS M. HINSON, O.D.
6020 South Packard Ave.
Cudahy, WI 53110
414/769-6900

Vice President
CHAPMAN LEFFINGWELL, O.D.
207 W. Seven Hills Road
Port Washington, WI 53074
414/284-4488

Secretary
BRIAN J. HAMMES, O.D.
1836 Wisconsin Avenue
New Holstein, WI 53061
414/898-5531

Treasurer
JULIA B. EDWARDS, O.D.
P.O. Box 436 - 128 W. Holum St.
DeForest, WI 53532
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Immediate Past President
GARRY G. BROWN, O.D.
509 S. Washburn
Oshkosh, WI 54904
414/236-4160

Executive Vice President
C.B. BROWNLOW, O.D.
5721 Odana Road
Madison, WI 53719
608/274-4322



AB547

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

DATE: August, 1997
TO: All Interested Parties
FROM: Marlene A. Cummings, Secretary *Marlene*
SUBJECT: LRB 3398/1-relating to the issuance of administrative warnings to holders of credentials issued by the Department of Regulation and Licensing.

This legislative proposal will authorize the Department and the Boards to issue an administrative warning without a contested case hearing where there is substantial evidence of a minor violation and not enough to effect a prosecution.

Proposal Rationale:

Current law does not include administrative warnings for an enforcement, non-disciplinary, response to complaints. It does allow for "letters of concern" when discipline will not be imposed. Frequently, there are times where there has been substantial evidence compiled for a minor violation and yet, not enough to progress to a formal complaint and discipline. The Boards and the Department need to strengthen the "letter of concern" by warning the credential holder that certain practices are unacceptable, refer to the code governing the practice and warn that subsequent allegations of misconduct, may be used in proceedings as evidence that the credential holder had actual knowledge that certain practices were contrary to law.

Consumer Benefits and Complaint Processing Improves:

- 1) Some credential holders are not aware of all regulations related to their practices. These are usually minor violations that could progress to major consumer harm ones if not remedied.
- 2) Boards and the Department are often reluctant to close a case due to lack of evidence when the body of evidence we do have creates a need to communicate our concern to the credential holder. Lack of authority to at least spell out the known problem(s) and consequences of repeat performances sometimes causes unnecessary delays in processing the cases.

* Please see attached chart

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

LEGISLATIVE DRAFT ON ADMINISTRATIVE WARNINGS

LRB -3249/1 (Senate) and LRB-3398/1 (Assembly)

CURRENT LAW

- A. Current law does not recognize that a credentialing authority may warn a credential holder.
- B. Remedies available in a disciplinary matter are limited to revocation, suspension, limitation, reprimand and, in some cases, forfeiture.
- C. A 1986 task force study of the department recommended a law change to permit warnings.
- D. Other states, including New York, Kentucky, Arizona and Illinois, use administrative warnings.

PROPOSAL - REASON FOR CHANGE

1. Authorizes the boards and the department to warn a credential holder. Administrative warnings are private and confidential.
2. The effect of an administrative warning is to put the credential holder on notice. Often, evidence collected in an investigation reveals a minor violation; no harm has resulted from the violation. In this situation, instead of starting a formal disciplinary case it would be appropriate to warn the credential holder that his or her conduct was unlawful and if repeated would be the basis for discipline.
3. If an allegation of misconduct is received against a person who has been warned, the administrative warning matter may be reopened. The administrative warning may also be used in a disciplinary proceeding following the warning as evidence that the holder of the credential had actual knowledge that certain practices were contrary to law.
4. Authority for an administrative warning would enable boards to take some action in cases where there is substantial evidence of a minor violation, but without expending the resources needed for a full contested hearing. By speeding the process of case resolution in cases of minor importance where there is no immediate danger to the public, the administrative warning procedure would allow boards and staff more time for disciplinary matters where the health and safety of the public is at risk.
5. Safeguards for credential holders are included in the procedure: credential holders may request review of an administrative warning by appearing before the disciplinary authority that issued the warning; an administrative warning may not be used as evidence that the holder of the credential is guilty of the alleged misconduct.

Vote Record

Assembly Committee on Consumer Affairs

Date: 11-20-97
Moved by: Johnsrud Seconded by: Urban
AB: 547 Clearinghouse Rule: _____
AB: _____ SB: _____ Appointment: _____
AJR: _____ SJR: _____ Other: _____
A: _____ SR: _____

A/S Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____
A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:
 Passage, *as amended*
 Introduction
 Adoption
 Rejection

Indefinite Postponement
 Tabling
 Concurrence
 Nonconcurrence
 Confirmation

Committee Member

Rep. Clifford Otte, Chair
Rep. DuWayne Johnsrud
Rep. Alvin Ott
Rep. Michael Lehman
Rep. Frank Urban
Rep. Annette Polly Williams
Rep. Donald Hasenohrl
Rep. Spencer Black

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Clifford Otte, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. DuWayne Johnsrud	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Alvin Ott	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Michael Lehman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Frank Urban	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Annette Polly Williams	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Donald Hasenohrl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Spencer Black	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 7 0 1 0

Motion Carried

Motion Failed

Vote Record

Assembly Committee on Consumer Affairs

Date: 11-20-97
 Moved by: Johnsrud Seconded by: Black
 AB: _____ Clearinghouse Rule: _____
 AB: _____ Appointment: to AB 547
 AJR: _____ Other: AA 21 - to be drafted by LRB
 A: _____ verbal - based on
 last sentence of 1st para.
 of 11-17-97 Dussow memo.

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Clifford Otte, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. DuWayne Johnsrud	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Alvin Ott	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Michael Lehman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Frank Urban	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Annette Polly Williams	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Donald Hasenohrl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Spencer Black	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>6</u>	<u>1</u>	<u>1</u>	<u>0</u>

Motion Carried

Motion Failed

Vote Record

Assembly Committee on Consumer Affairs

Date: 11-20-97
 Moved by: Johnsrud Seconded by: Urban
 AB: ~~547~~ Clearinghouse Rule: _____
 AB: _____ Appointment: _____
 AJR: _____ Other: LRBa 1107
 A: _____ AA1 to AB 547

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

Rep. Clifford Otte, Chair
 Rep. DuWayne Johnsrud
 Rep. Alvin Ott
 Rep. Michael Lehman
 Rep. Frank Urban
 Rep. Annette Polly Williams
 Rep. Donald Hasenohr
 Rep. Spencer Black

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 7 0 1 0

Motion Carried

Motion Failed

Vote Record

Assembly Committee on Consumer Affairs

Date: 11-20-97
Moved by: Johnsrud Seconded by: Urban
AB: _____ Clearinghouse Rule: _____
AB: _____ SB: _____ Appointment: _____
AJR: _____ SJR: _____ Other: LRBa 1107
A: _____ SR: _____ AA 1 to AB 547

A/S Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____
A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- | | |
|--|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input checked="" type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrence |
| | <input type="checkbox"/> Confirmation |

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Clifford Otte, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. DuWayne Johnsrud	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Alvin Ott	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Michael Lehman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Frank Urban	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Annette Polly Williams	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Donald Hasenohrl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Spencer Black	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>7</u>	<u>0</u>	<u>1</u>	<u>0</u>

Motion Carried Motion Failed

FISCAL ESTIMATE

DOA-2048 (R10/94)

- ORIGINAL
- UPDATE
- CORRECTED
- SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.	Amendment No.
AB 547	

Subject
Issuance of administrative warnings to holders of credentials issued by the department of regulation and licensing

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Decrease Costs

Local: No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of local government units affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations 20.165 (1) (g)
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Assumptions Used in Arriving at Fiscal Estimate

This bill neither increases nor decreases department revenues or expenditures.

Long-Range Fiscal Implications

Agency/Prepared by: Department of Regulation and Licensing Patricia C. McCormack (608) 267-2435	Authorized Signature <i>Patricia C. McCormack</i>	Date 10/13/97
--	--	------------------

FISCAL ESTIMATE WORKSHEET

1997 Session

Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATE
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.	Amendment No.
AB 547	

DOA-2047 (R10/94)

Subject

Issuance of administrative warnings to holders of credentials issued by the department of regulation and licensing

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$	\$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$ 0	\$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Costs	Decreased Costs
GPR Taxes	\$	\$ -
GPR Earned		
FED		-
PRO/PRS		
SEG/SEG-S		-
TOTAL State Revenues	\$ 0	\$

NET ANNUALIZED FISCAL IMPACT


STATE

LOCAL

NET CHANGE IN COSTS \$ 0 _____

NET CHANGE IN REVENUES \$ 0 _____

Agency/Prepared by:
 Department of Regulation and Licensing
 Patricia C. McCormack

Authorized Signature


Date
 10/13/97

Assembly Hearing Slip

(Please print plainly)

Date: 10-23-97
Bill No. Assembly Bill 547
Or.
Subject William Dusso, General Counsel
(Name)
1400 E. Washington Ave
(Street Address or Route Number)
Madison 53703
(City & Zip Code)
Dept. of Regulation & Licensing
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 10/23/97
Bill No. ABS47
Or.
Subject Admin's Warnings
(Name) Tom Drissen
Quarles & Brady
411 E. WIS AVE
(Street Address or Route Number)
Milw WI 53202
(City & Zip Code)
Wisc Optometric Assn
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 10/23/97
Bill No. ABS47
Or.
Subject Admin's Warnings
(Name) Tom Drissen
Quarles & Brady
411 E. WIS AVE
(Street Address or Route Number)
Milw WI 53202
(City & Zip Code)
Wisc Assn of Nurse
(Representing) ANWA/Phets/S

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 10/23/97
Bill No. AB547
Or
Subject Adm'd warning
Long Dresses
(Name) Charles & Brad
411 E. WISCONSIN AVE, MILWAU
(Street Address or Route Number)
MILWAUKEE 53202
(City & Zip Code)
WISC SOCIETY OF PEDIATRIC MEDICINE
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 10-23-97
Bill No. AB 547
Or
Subject PETRO THEO
(Name) 5721 ADANA ROAD
(Street Address or Route Number)
MADISON, WI 53719-1088
(City & Zip Code)
WISCONSIN OPTOMETRIC ASSOCIATION
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly

Committee Report

The committee on Consumer Affairs, reports and recommends:

Assembly Bill 547

Relating to: the issuance of administrative warnings to holders of credentials issued by the department of regulation and licensing and granting rule-making authority.

By Representative Otte, by request of the Department of Regulation and Licensing Secretary Marlene A. Cummings.

INTRODUCTION OF ASSEMBLY AMENDMENT 1 TO
ASSEMBLY BILL 547, Ayes 7, Noes 0, Absent
1

Ayes: (7) Representative Otte, Johnsrud, Ott, M.
Lehman, Urban, Hasenohrl and Black.

Noes: (0) None.

Absent: (1) Representative Williams.

ADOPTION OF ASSEMBLY AMENDMENT 1 TO ASSEMBLY
BILL 547, Ayes 7, Noes 0, Absent 1

Ayes: (7) Representative Otte, Johnsrud, Ott, M.
Lehman, Urban, Hasenohrl and Black.

Noes: (0) None.

Absent: (1) Representative Williams.

INTRODUCTION AND ADOPTION OF ASSEMBLY
AMENDMENT 2 TO ASSEMBLY BILL 547,
Ayes 6, Noes 1, Absent 1

Ayes: (6) Representative Otte, Johnsrud, Ott, M.
Lehman, Hasenohrl and Black.

Noes: (1) Representative Urban.

Absent: (1) Representative Williams.

PASSAGE AS AMENDED RECOMMENDED, Ayes 7, Noes 0,
Absent 1

Ayes: (7) Representatives Otte, Johnsrud, Ott, M.
Lehman, Urban, Hasenohrl and Black.

Noes: (0) None.

Absent: (1) Representative Williams.

NOTE: Representative Williams was delayed arriving and asked that the record show that she would have voted "aye" on all of the motions.



Representative Clifford Otte
Chair

Assembly

Record of Committee Proceedings

Committee on Consumer Affairs

Assembly Bill 547

Relating to: the issuance of administrative warnings to holders of credentials issued by the department of regulation and licensing and granting rule-making authority.

By Representative Otte, by request of the Department of Regulation and Licensing Secretary Marlene A. Cummings.

October 2, 1997 Referred to committee on Consumer Affairs.

October 23, 1997 **PUBLIC HEARING HELD**

Present: (7) Representatives Otte, Johnsrud, Ott, M.
Lehman, Urban, Williams and Black.

Absent: (1) Representative Hasenohrl.

Appearances for

- William Dusso, General Counsel, Department of Regulation & Licensing

Appearances against

- None.

Appearances for Information Only

- None.

Registrations for

- Tony Driessen, Milwaukee, for Wisconsin Optometric Association, Wisc. Assn. of Nurse Anesthetists, and Wisc. Society of Podiatric Medicine
- Peter Theo, Madison, Wisconsin Optometric Association

Registrations against

- None.

November 20, 1997 **EXECUTIVE SESSION**

Present: (7) Representatives Otte, Johnsrud, Ott, M.
Lehman, Urban, Hasenohrl and Black.

Absent: (1) Representative Williams.

Moved by Representative Johnsrud, seconded by Representative Urban, that **Assembly Amendment 1 to Assembly Bill 547** be recommended for introduction.

Ayes: (7) Representative Otte, Johnsrud, Ott, M.
Lehman, Urban, Hasenohrl and Black.
Noes: (0) None.
Absent: (1) Representative Williams.

INTRODUCTION RECOMMENDED, Ayes 7, Noes 0, Absent 1

Moved by Representative Johnsrud, seconded by Representative Urban, that **Assembly Amendment 1 to Assembly Bill 547** be recommended for adoption.

Ayes: (7) Representative Otte, Johnsrud, Ott, M.
Lehman, Urban, Hasenohrl and Black.
Noes: (0) None.
Absent: (1) Representative Williams.

ADOPTION RECOMMENDED, Ayes 7, Noes 0, Absent 1

Moved by Representative Johnsrud, seconded by Representative Black, that **Assembly Amendment 2 to Assembly Bill 547** be recommended for introduction and adoption.

Ayes: (6) Representative Otte, Johnsrud, Ott, M.
Lehman, Hasenohrl and Black.
Noes: (1) Representative Urban.
Absent: (1) Representative Williams.

INTRODUCTION AND ADOPTION RECOMMENDED, Ayes 6,
Noes 1, Absent 1

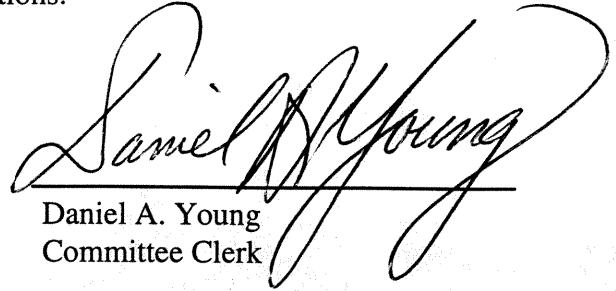
Moved by Representative Johnsrud, seconded by Representative Urban, that **Assembly Bill 547** be recommended for passage as amended.

Ayes: (7) Representatives Otte, Johnsrud, Ott, M.
Lehman, Urban, Hasenohrl and Black.
Noes: (0) None.

Absent: (1) Representative Williams.

PASSAGE AS AMENDED RECOMMENDED, Ayes 7, Noes 0,
Absent 1

NOTE: Representative Williams was delayed arriving and asked that the record show that she would have voted "aye" on all of the motions.



Daniel A. Young
Committee Clerk



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: January 20, 1998
TO: INTERESTED LEGISLATORS
FROM: Russ Whitesel, Senior Staff Attorney
SUBJECT: 1997 Assembly Bill 547, Relating to the Issuance of Administrative Warnings to Holders of Credentials Issued by the Department of Regulation and Licensing

This memorandum briefly describes the provisions of 1997 Assembly Bill 547, relating to the issuance of administrative warnings to holders of credentials issued by the Department of Regulation and Licensing (DRL). This memorandum also describes the provisions of Assembly Amendments 1 and 2 to the Bill and provides a brief legislative history of the proposal.

1. Legislative History

1997 Assembly Bill 547 was introduced on October 2, 1997 by Representative Otte by the request of Regulation and Licensing Secretary Marlene A. Cummings. The Bill was referred to the Assembly Committee on Consumer Affairs and a public hearing was held on October 23, 1997. At an executive session on November 20, 1997, the Committee adopted Assembly Amendment 1 on a vote of Ayes, 7; Noes, 0, and Assembly Amendment 2 on a vote of Ayes, 6; Noes 1. The Committee recommended passage of the Bill, as amended, on a vote of Ayes, 7; Noes, 0.

2. Provisions of 1997 Assembly Bill 547

Under current law, with certain specified exceptions, the DRL and the boards, examining boards or affiliated credentialing boards in DRL may conduct investigations and impose discipline on holders of credentials issued by the DRL. Discipline may consist of revoking, suspending or imposing limits on a credential or reprimanding a credential holder or, in some cases, imposing forfeitures.

Assembly Bill 547 allows DRL and a board, examining board or affiliated credentialing board in DRL, as appropriate, to close an investigation by issuing an administrative warning to

a credential holder if DRL or the board determines that there is "substantial evidence of misconduct" by the credential holder. Assembly Amendment 1 *deletes* the term "substantial" from the phrase, allowing an administrative warning to be issued if there is evidence of misconduct by the credential holder. Assembly Amendment 1 also deletes the specific authority of DRL to adopt in rules a definition of "substantial evidence of misconduct."

Assembly Amendment 2 adds a provision to the Bill restricting the authority to issue an administrative warning. Specifically, the Amendment provides that DRL or a board, examining board or affiliated credentialing board in DRL may issue an administrative warning under the provisions of the Bill only if the DRL or a board, examining board of affiliated credentialing board in DRL determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the issuance of an administrative warning adequately protects the public by putting the credential holder on notice that any subsequent violation may result in disciplinary action.

If you have any questions regarding this legislation, please feel free to contact me directly at the Legislative Council Staff offices.

RW:jmm:rv;lah



State of Wisconsin

DEPARTMENT OF REGULATION AND LICENSING

CORRESPONDENCE/MEMORANDUM

This distribution has been
authorized by

Cheryl D. H.
Signature

DATE: January 21, 1998
TO: Members, Wisconsin State Assembly
FROM: Marlene Cummings, Secretary *Marlene*
Department of Regulation and Licensing
SUBJECT: AB 547 - Administrative Warnings

Assembly Bill 547 authorizes boards and the department to issue warnings in incidents of first-time, minor violations, without filing charges and holding a hearing. Passage of AB 547 will assist the boards and the department in improving the process of handling and resolving complaints from the public and maximizing use of staff and board-member time.

What is an administrative warning? A warning is not a disciplinary action like a reprimand or suspension. Instead, a warning admonishes a credentialed professional against future misconduct by informing the professional that certain conduct is prohibited. A warning puts the professional "on notice" that if the misconduct is repeated, the incident that was the basis for the warning can be reopened and, for subsequent violations, the warning may be used to prove that the person warned knew the conduct was prohibited.

Use of the warning is restricted. AB 547 authorizes use of a warning only if the disciplinary authority determines that:

- The complaint involves a first occurrence of a minor violation;
- The warning adequately protects the public by putting the credential holder on notice that similar violations in the future may be prosecuted.

Why private and confidential? Rep. Underheim has proposed to amend the bill to make the fact that the warning was issued a public record, but keep the contents confidential. I have no objection to this change. The contents should remain confidential because the warning is issued without bringing formal charges and without providing an opportunity for a hearing.

Why the authority to warn is needed? The Department does not currently have authority to issue an administrative warning. The only warning currently permitted by law is a warning that is issued after a formal prosecution and hearing.

Authority to warn will enhance public protection. The authority to issue a warning allows the Boards and the Department to educate credential holders about prohibited practices and build a record against substandard practitioners.

Due process protections are included. A credential holder may have a warning reviewed during a personal appearance before the department or board that issued the warning. The bill requires the department to promulgate rules establishing uniform procedures for administrative warnings.