2003-04 SESSION COMMITTEE HEARING RECORDS

Committee Name:

Senate Committee on Health, Children, Families, Aging and Long Term Care

(SC-HCFALTC)

Sample:

Record of Comm. Proceedings … RCP

- 03hrAC-EdR_RCP_pt01a
- 03hrAC-EdR_RCP_pt01b
- 03hrAC-EdR_RCP_pt02

- *Appointments … Appt*
- **

- *Clearinghouse Rules … CRule*
- **

- *Committee Hearings … CH*
- **

- *Committee Reports … CR*
- **

- *Executive Sessions … ES*
- **

- *Hearing Records … HR*
- *03hr_sb0227_pt02*

- *Miscellaneous … Misc*
- **

- *Record of Comm. Proceedings … RCP*
- **

Carol -
This went out today. I am also sending you LRB analysis for background
Jennifer

FOR IMMEDIATE RELEASE
Contact: State Senator Carol Roessler, 888-736-8720

August 15, 2003

Roessler Proposes Healthcare Provider Discipline Legislation

Legislation will tighten system for disciplining healthcare professionals

Madison... State Senator Carol Roessler (R-Oshkosh), Chair of the Senate Committee on Health, Families, Children, Aging and Long Term Care, has introduced Senate Bills 226 and 227 to improve the regulatory system within the Department of Regulation and Licensing for use when complaints are filed against healthcare professionals.

"There have been numerous reports that Wisconsin lags in the discipline of health care professionals," said Roessler. "It is imperative that we act to tighten measures to ensure timely and responsible discipline for both patient protection and the integrity of the medical profession."

Five years ago, the Joint Legislative Council's Special Committee on Discipline of Health Care Professionals was directed to study procedures for imposition of discipline for alleged cases of patient neglect or unprofessional conduct by health care-related examining boards and affiliated credentialing boards identified by the Special Committee, for the purpose of ensuring that such procedures are effective, fair and consistent. As a result of their findings, the Committee recommended two legislative proposals.

Senate Bill 226 directs the Medical Examining Board to publicly publish information concerning a physician's education, practice, malpractice history, criminal history and disciplinary history.

Senate Bill 227 establishes specific guidelines the Department of Regulation and Licensing must follow when a complaint is filed against a health care professional. In addition, the bill provides that when a coroner or medical examiner determines that a death was therapeutic-related,

2003

he/she must indicate that determination on the death certificate and inform the Department of Regulation and Licensing.

"In the previous two sessions, public hearings were held on both of these legislative initiatives, but they were never voted on in the state Senate. A public hearing will be held on both SB 226 and 227 on September 4th at 10:00am in room 411 South State Capitol. Now is the time to move forward and address these necessary changes in disciplinary procedures," said Roessler.

###

Halbur, Jennifer

From: Asbjornson, Karen
Sent: Friday, August 29, 2003 3:27 PM
To: Halbur, Jennifer; Halbur, Jennifer
Subject: New Forward Contact Ownership and Assignment

Constituent: Dr. Darold Treffert (13324)
W4065 Maplewood Ln
Fond Du Lac, WI 54935-9562

Home: 920-921-9381
Fax: 920-926-8933
Cell Phone: 920-960-2167

Email: daroldt@dotnet.com
Email: dtreffert@pol.net

Owner: Halbur, Jennifer
Assigned: Halbur, Jennifer
Summary: DLR bills

Issue:
Position:
Status: Pending
Contact Type: E-mail
Description: -----Original Message-----
From: dtreffert@pol.net [mailto:dtreffert@pol.net]
Sent: Friday, August 29, 2003 9:21 AM
To: Carol.Roessler@legis.state.wi.us
Subject: Attn: Carol Roessler and Sara Jermstad

1. Is there a fiscal note as yet attached to the two DLR/MEB bills? Last time there were 12.5 positions attached to the one bill and 5 to the other. I see no reason why, if the web enhancement bill adopts the Massachusetts Board of Registration in Medicine Physician Profile (which I support and does include the information requested in this bill) why 5 positions would be needed.

2. Could you fax me, or e mail me, final versions of these two bills? 9/3 Sent

3. Carol, as you know, I support the thrust of both these bills. I have completed my MEB term though, and if I were to testify, it would not be as a part of MEB as I did in the past. I guess I would be appearing simply privately. I'm not sure what weight that would carry, if any even though my past MEB terms, my role (along with you) in Hal Harlowes/Gov. Earl's task force, and past Presidency of WMS might be pertinent.

My real problem with these bills is not their content, but their implementation. MEB has always supported an increase in Dr. license

a lot that makes sense -

Length of X Days - some cases more than a yr. Fed.

fees IF those monies were to go to MEB for the bill's stated purposes. Unfortunately MEB has the STATUORY AUTHORITY but not the RESOURCE AUTHORITY to carry out its work. All decisions--budget, personnel allocation, prioritie allocation among the boards and individual cases, hiring, firing,
supervision of employees--are all done by DRL, not MEB. Whether an investigator/attorney gets assigned to real estate, barbering, or MEB are decisions made entirely, and only, by DRL. Monies from Dr. license fees presently, and any new such monies, go the the 'department', not MEB. If you don't believe that, maybe you will have more success than I finding where in the DRL did the 3.5 positions approved two sessions ago 'specfically for MEB' go. I have tried to locate those 3.5 positions and have never been given a direct answer. They are somewhere in the 'black hole' of DRL, or even DOA. Personnel decisions are just as problematical, witness the employee you and I have corrresponded about previously. She is now part-time with different responsibilities

ASK

The answer? The best answer would be a separate MEB as was the case before Kellett, and is the case in a least 6 other states at present, and is the case with Atty's in Wisconsin (If DRL is good for all other professions why is the Bar not part of that more global effort?). A separate MEB is probably not likely though; I realize that although it would still, in my view, be the best option for true accountability. Failing that, at least DRL should sign on to the concept of DEDICATED RESOURCES, i.e. increased fees per profession to go directly to efforts with that profession. Before Oscar H. the department actively resisted such dedicated resources. Oscar H. supported the concept but was not around long enough to know where that would go, and there were no fee increases. I don't know where the new Secy. stands on that matter. DEDICATED RESOURCES would mean, as a minimum, MEB would be involved at least in the budgetary process, and in the decision making process regarding priorities which is NOT the case presently (with respect to assignment of attys/investigators/ALJ's etc).

So, in short, I support the thrust of these bills IF there is some honest attempt to have MEB involved in decision-making regarding resource allocation via dedicated resource allocatin. Otherwise MEB gets the heat and DRL gets the resources. The press never attacks DRL. They attack MEB and such scrutiny, and criticism, if fair if MEB has not just the statutory authority, but also resource allocation and prioritization to carry out its work as it sees necessary. If that were the case, Carol, I think you would see that MEB objectives, and Legislative objectives are the same and much of the criticism would be muted.

I hope the Sidney Wolf 'report card' is not used to justify these bills. That report card is flawed as I have written you, and in the Regulatory Digest, before. I have data on a much wider scale that shows Wisconsin to rank #8 in the nation (on 22 quality of care indicators) in quality of care (not 49th as HRG ranks it in discipline. If you put this broad-based quality of care chart next to HRG 'report card'--there is not correlation. I can fax you that side by side chart if you wish. While that report card may come up again by some, I would hope you wouldn't tie these efforts to

the flawed report.

Just some thoughts as to where I am on all of this a present. I'd appreciate seeing a fiscal note, and present versions of the bill.

Darold Treffert

8/29/03

Chris Klein
Reg+Lic
SB 225, SB 226, SB 227
- The Dept. will testify on all of these bills on Sept 4th.

SB225 Cont. Education for Dentists
- Support with the assumption that the Dept. will be doing random audits. Currently, for various things, either random audits are done or complaint audits.
- The Secretary does not see the point of the bill if they aren't going to check on people. Given that people don't typically file complaints against dental hygientists ... the Dept. supports the use of Random audits. (more costly).
- Some objection to section 4 ... uncompensated voluntary hours.

SB226
- Chris needs to know why Carol has link to Medical Society in bill. 3 Key words ... in place of.
- Expensive, even though bill says the Dept can increase fees, the Dept. believes it will need additional staff as well.

SB231

- Do we know how expensive this has been for other states ... how long to implement?

WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR CAROL ROESSLER

FROM: Laura Rose, Deputy Director

RE: 2003 Senate Bills 226 and 227, Relating to the Discipline of Health Care Professionals

DATE: September 3, 2003

This memorandum describes 2003 Senate Bills 226 and 227. Senate Bill 226 relates to making information on a physician's education, practice, and disciplinary history available to the public. It also provides a procedure for health care providers to correct health care information. Senate Bill 227 imposes various duties on the Department of Regulation and Licensing (DRL) related to the discipline of health care professionals, expands the disciplinary options available to the Medical Examining Board (MEB), creates state requirements to report certain information to the MEB and penalties for failing to comply with the requirements, and requires coroners and medical examiners to report therapeutic-related deaths to DRL.

The bills do the following:

1. Senate Bill 226:

   a. Provides that the MEB make available for dissemination to the public, in a format established by the MEB, specified information regarding education, practice, medical malpractice history, disciplinary history, and criminal history of physicians licensed in this state. It further requires that the information made available to the public be reported in nontechnical language that is capable of being understood by the general public, and requires information relating to medical malpractice claims to be accompanied by explanatory information that gives the reported information context.

   b. Requires physicians to report any information requested by the board that the board determines is necessary to comply with the requirements of the draft. Physicians are to be provided a reasonable time to correct factual inaccuracies that appear in the information before the information is released to the public.

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

c. Requires the MEB, if it develops a website, to disseminate the required information by providing a link to the physician directory location on the website of the State Medical Society, in place of providing the information on its own website.

d. Provides that the costs incurred by the DRL under the bill are to be funded by a surcharge on the license renewal fee paid biannually by physicians in the state.

2. Senate Bill 227:

a. Requires DRL to develop a system to establish the relative priority of cases involving possible unprofessional conduct on the part of a health care professional.

b. Requires DRL to develop a system of markers, by rule, for identifying health care professionals who, even if not the subject of a specific allegation of unprofessional conduct, may nonetheless warrant further evaluation and possible investigation. This system of markers must be phased in to apply the system to different health care professionals, as determined by the department. Further, before promulgating any rules, the department must consult with: (1) professional and trade associations that, as determined by DRL, represent the interests of health care professionals; and (2) each health care credentialing authority.

c. Requires DRL to notify a health care professional's place of practice or employment when a formal complaint alleging unprofessional conduct by the health care professional is filed.

d. Requires DRL to give notice to a complainant and a health care professional when: (1) a case of possible unprofessional conduct by the health care professional is closed following screening for a possible investigation; (2) a case of possible unprofessional conduct by the health care professional has been opened for investigation; and (3) a case of possible unprofessional conduct by the health care professional is closed after investigation. In addition, DRL is required to provide a copy of the notices under (2) and (3), above, to an affected patient (when the patient is not also the complainant) or the patient's family members.

e. Requires that a patient or client who has been adversely affected by a health care professional's conduct that is the subject of a state disciplinary proceeding be given opportunity to confer with the DRL's prosecuting attorney concerning the disposition of the case and the economic, physical, and psychological effect of the unprofessional conduct on the patient or client.

f. Requires the DRL to establish guidelines for the timely completion of each stage of the health care professional disciplinary process.

g. Requires, if the DRL establishes panels of health care experts to review complaints against health care professionals, that DRL attempt to include on the panels health care professionals who practice alternative forms of health care to assist in evaluating cases involving alternative health care.

h. Requires, by May 1, 2005, DRL to submit to the Legislature a report on the disciplinary process time lines which the department implemented as guidelines in February 1999.

i. Adds two public members to the MEB, resulting in a 15-member MEB with five public members, nine medical doctor members, and one member who is a doctor of osteopathy.

j. Authorizes the MEB to summarily limit any credential issued by the MEB pending a disciplinary hearing.

k. Authorizes the MEB to assess a forfeiture of not more than $1,000 for each violation against a credential holder found guilty of unprofessional conduct (not including negligence in treatment).

l. Creates a state requirement that reports on medical malpractice payments and on professional review actions by health care entities, which currently must be submitted to the National Practitioner Data Bank (NPDB), must also be submitted to the MEB in accordance with the time limits set forth in federal law. A person or entity that violates the state requirement is subject to a forfeiture of not more than $10,000 for each violation.

m. Provides that when a coroner or medical examiner receives a report of a death under s. 979.01, Stats., and subsequently determines that the death was therapeutic-related, as defined, the coroner or medical examiner forward the information to the DRL.

Please contact me at the Legislative Council staff offices if you have any questions. My direct telephone number is 266-9791.

LR:ksm:wu

when we arrived Pre 1926 (2)

Pre 1999 44 - 29

2001 122

FEES Col

Report

Change in

WISCONSIN EDUCATION ASSOCIATION COUNCIL

Affiliated with the National Education Association

Every kid deserves a Great School!

TO: Members of Senate Health, Children, Families, Aging and Long-Term Care Committee

FR: Bob Burke, Legislative Program Coordinator
Wisconsin Education Association Council

DA: Thursday, September 4, 2003

RE: **Support for 2003 Senate Bill 230**

The mission of the Wisconsin Education Association Council is to promote respect and support for quality public education and to provide for the professional and personal growth and economic welfare of members. WEAC's support of this mission is governed by our constitution and bylaws and modified through a resolution process at our annual Representative Assembly. This assembly of nearly 1,000 delegates represents every local in the state and sets our course for general policy guidelines of the organization.

WEAC resolution A-23 outlines our organization's position on comprehensive educational programs concerning AIDS and the HIV virus and has been in effect since 1993. It reads:

WEAC Resolution A-23: AIDS Guidelines
The WEAC encourages schools to implement comprehensive educational programs concerning AIDS and the HIV virus. These programs should encompass prevention options. The Council further believes that students and education employees should not be denied access to public education nor be penalized with loss of employment opportunities because the individual suffers from AIDS or has the HIV virus. Furthermore, the Council opposes mandatory/involuntary AIDS testing of students and school employees.

WEAC supports SB 230 because it would require mandatory testing only under very limited, extraordinary circumstances in order to safeguard our members' interests. WEAC is opposed to mandatory testing that is not directed at redressing a specific situation such as that contemplated by sec. 252.15, Wis. Stats. and that is not subject to the procedural safeguards contained in that statute. When an educational employee has used universal safety precautions and a physician has certified that the employee was significantly exposed (that is, who sustained a contact that carries a potential for transmission of human immunodeficiency virus, the virus that causes acquired immunodeficiency syndrome) while performing employment duties, that employee should have access to the protections afforded by sec. 252.15, Wis. Stats.

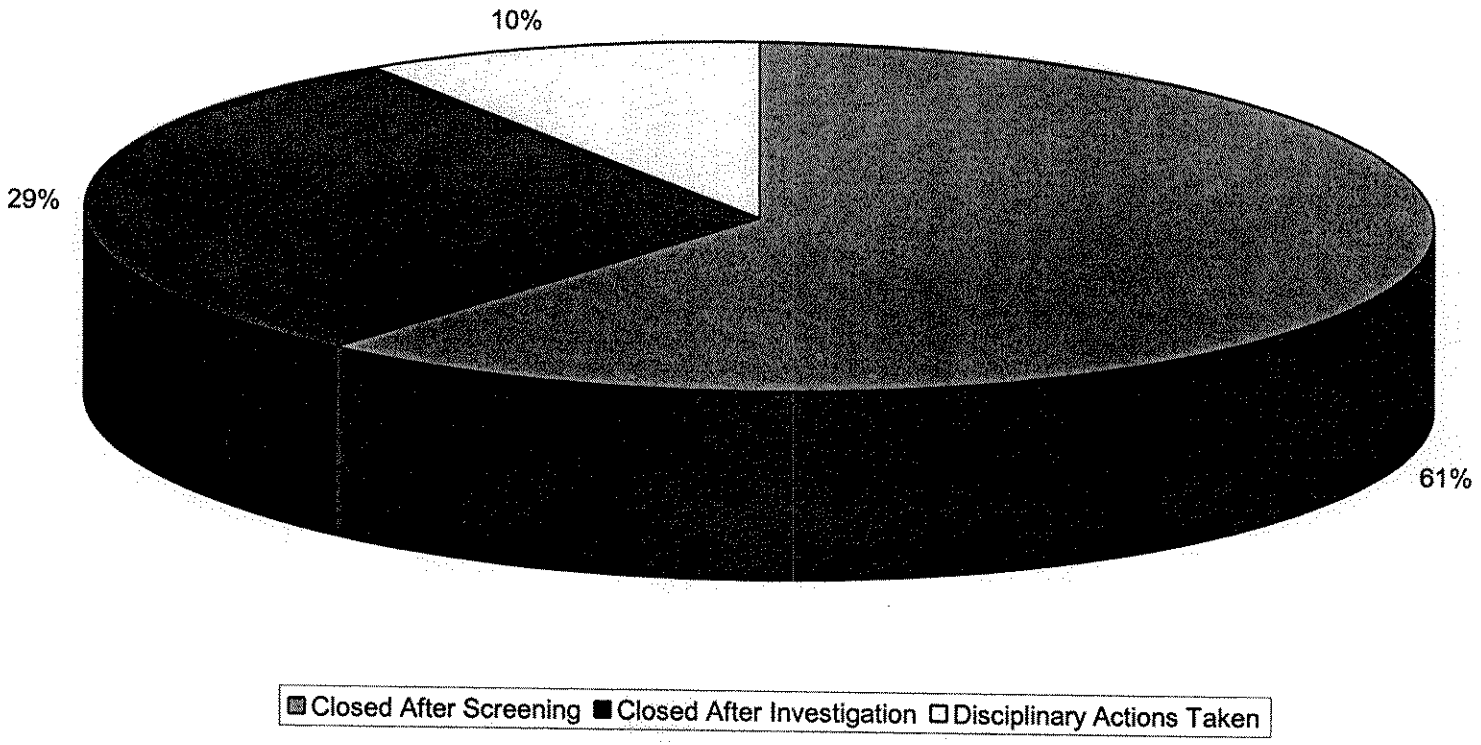
WEAC represents approximately 94,000 education professionals and staff in Wisconsin and is dedicated to supporting legislative policies that place kids in classrooms that work, maintain quality staff in our schools and benefit everyone. **WEAC urges your support for passage of 2003 Senate Bill 230 because we believe it will work to maintain a safe and healthy classroom environment for educators and students.**

If you have any questions regarding this statement of support for 2003 SB 230, please feel free to contact me at burkeb@weac.org or by phone at 800-362-8034 ext. 254. Thank you.

Stan Johnson, President
Michael A. Butera, Executive Director

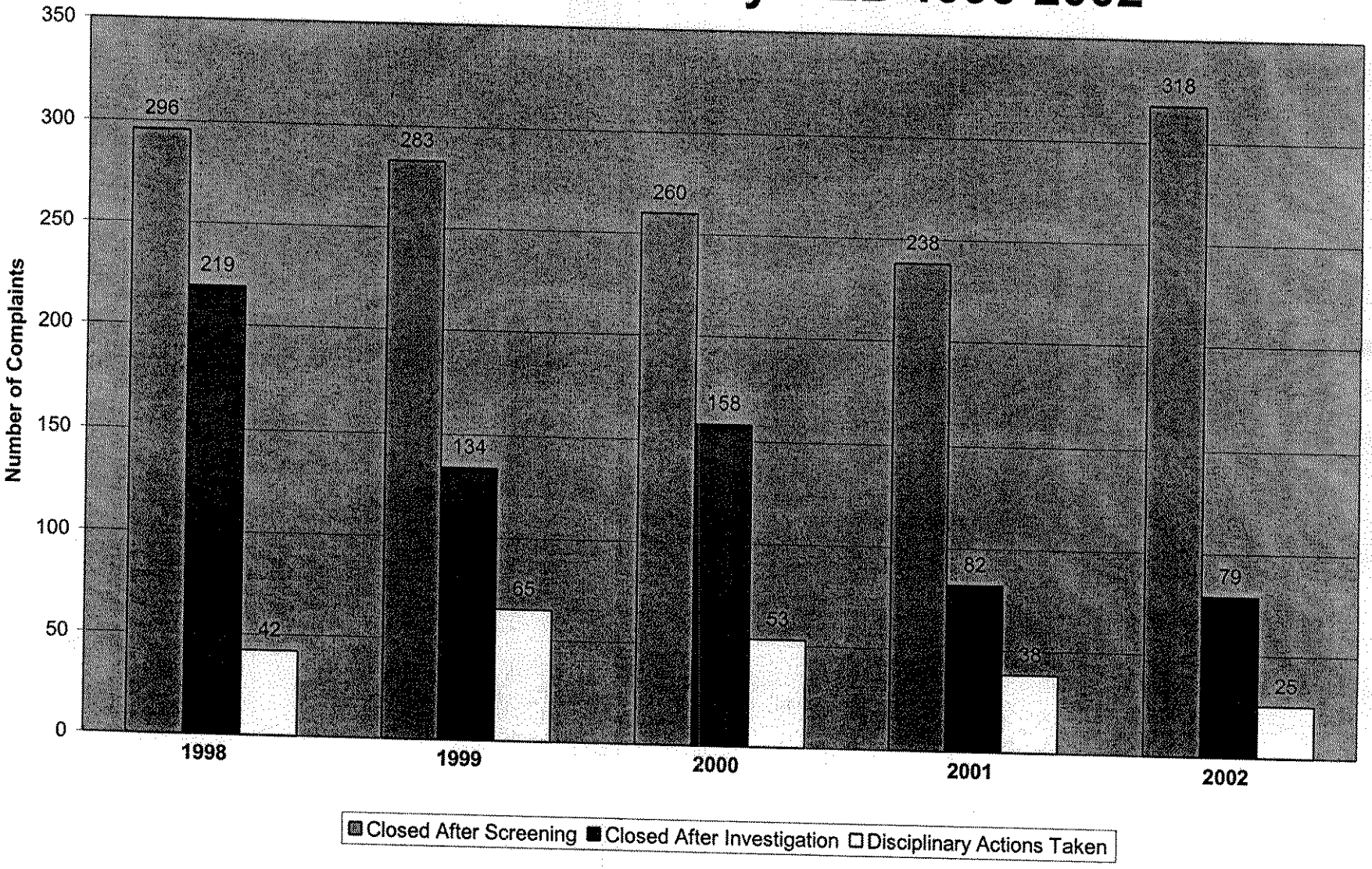
33 Nob Hill Drive PO BOX 8003 Madison, WI 53708-8003 [608]276-7711 [800]362-8034 www.weac.org

Medical Examining Board's Record on Handling Complaints 1998-2002

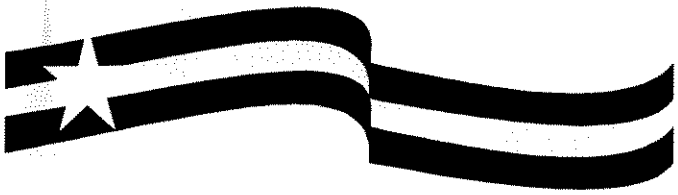


Source: Wisconsin MEB

Complaints Handled by MEB 1998-2002



WISCONSIN
CITIZEN ACTION



Testimony of Carolyn Castore of Wisconsin Citizen Action on
Senate Bill 226 and Senate Bill 227
to the
Senate Committee on Health, Children, Families, Aging and Long-Term Care
Senator Carol Roessler, Chair

Good morning, I am Carolyn Castore, the legislative director of Wisconsin Citizen Action.

As the state's largest public-interest voice, representing 85,000 household members and 200 diverse citizen groups, Wisconsin Citizen Action reflects its members deep and intense concerns about the state of health care in Wisconsin. Our members want to see the state acting fairly and efficiently to insure that the quality of health care is uniformly high, that the tiny-- but destructive-- minority of incompetent or negligent professionals are weeded out, and that all citizens have access to justice and accountability.

Protecting the health and well-being of Wisconsin's 5.3 million citizens is supposed to be the overriding mission of the Medical Examining Board.

This is a serious task. The human cost of improper medical care is incalculable to the victims and their families. Further, the careless or negligent conduct of a mere ***5% of doctors accounts for 54% of all judgments*** in malpractice cases, according to the watchdog group Public Citizen.

However, by even the most charitable measurements, the Medical Examining Board has compiled a record that clearly indicates that it has fallen far short of this mission:

The Medical Examining Board ranks **49th** among such state bodies in the rate of discipline for doctors in the US.. according to a report issued by Public Citizen report on March 27, 2003.

The MEB actually imposes discipline in fewer than one out of 10 complaints. That's right, over 90% are dismissed without any sanctions, based on a review of data from 1998 to 2002 provided by the MEB itself.

Even in some instances when other doctors have complained of negligence by their colleagues, the MEB closed the case without taking any disciplinary action.

Most recently, the case of Peter Bollig shows an appalling lack of aggressiveness. Imagine –in the context of the MEB already imposing no sanctions in 90% of cases—the prosecutor asking for dismissal of charges when the investigation showed the he prescribed a contraindicated medication. If that conduct meets "the standard of care," every citizen in Wisconsin is in very serious jeopardy.

The need for reform of the Medical Examining Board is obvious and urgent, yet the Legislature last session failed to act on an eminently modest and sensible package of recommendations put together by a legislative council.

Essentially, the reform package contained in SB 226 and SB 227 would expand public representation, give the Board more authority: to take decisive action, and create greater public access to doctors' records in terms of their practice. All of these are vitally needed.

At the same time, a stronger MEB is no substitute for insuring that all Wisconsin citizens—regardless of age or marital status—be covered under our state's medical malpractice laws when a wrongful death occurs. The courthouse doors must be open to all citizens.

Finally, the Examining Board must re-discover its mission of protecting Wisconsin health consumers rather than reflexively trying to shield doctors from even the most minimal of sanctions, like merely requiring additional education. It is now tragically obvious that that Medical Examining Board has lost its way and forgotten that its role must be to insist on high-quality health care and see itself as accountable to all of Wisconsin's citizens, not simply doctors.

Thank you.

OFFICE HOURS BY APPOINTMENT ONLY
OFFICE PHONE 444-7787

RESIDENCE PHONE 355-5937

DAVID E. AMOS. M.D., S.C.
FAMILY PRACTITIONER
5800 WEST BURLEIGH STREET
MILWAUKEE, WISCONSIN 53216

TESTIMONY OF DR. DAVID AMOS
Submitted to the Assembly Judiciary Committee
February 21, 2002

Dear Assembly Judiciary Committee Members:

I would like to provide written testimony regarding an injustice that occured from medical malpractice that lead to the death of Beverly McIntyre. I am here to support Senate Bill 193/Assembly Bill 638. My name is Dr. David Amos. I practice general medicine in Milwaukee at 5800 West Bureligh Street, my phone number is (414) 444-7787.

Ms. McIntyre was under the care of a physician in my office by the name of Dr. Gloria Abacan. She was seen on August 17, 2000. Her blood urea nitrogen was 25 and the creatinine was 1.6. At that time the creatinine level was already high and Dr. Abacan did nothing about it.

Ms. McIntyre saw Dr. Abacan again on August 23, 2000. At that time she was sent to the hospital for a cat scan of the lungs, also a serum creatinine was ordered. The result at that time was 4.5. The level of the creatinine was up more than 4 fold but she again did nothing about it. And worse yet she prescribed cefzil, a dose of 500 mg 2 x daily for 10 days - the medical charts showed Ms. McIntyre was allergic to pencilin. As a result of this prescription she developed acute allergic reaction and the medicine worsened her renal disease. The medicine cefzil can be toxic to the kidney when given in full dose. Again, Dr. Abacan never followed up with Ms. McIntyre on the abnormal findings of her creatinine level.

On September 28,2000, Ms. McIntyre went to the emergency room at St. Joseph Hospital, she had developed severe generalized edema. Her blood urea nitgrogen went up to 181 with a creatinine of 10.9 requiring emergency dialysis. She was in a very serious condition, all of this could of been prevented with proper treatment and diagnosis.

I am ashamed that an associate of mine demonstrated such negligence. I am asking you to support Senate Bill 193/Assembly Bill 638 that would allow this family to have justice. Please vote favorable on this important piece of legislation. You all now have the chance to stand for justice and to the right thing. I am providing testimony today because I have to stand for **truth** and **justice**. I hope and pray that you will also.

Sincerely,

David E. Amos, MD

David E. Amos MD

WISCONSIN DEPARTMENT OF
REGULATION & LICENSING

Scott McCallum
Governor
Oscar Herrera
Secretary

1400 East Washington Avenue
PO Box 8935
Madison WI 53708-8935
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FAX: 608-267-0644
TTY: 608-267-2416

30 NOVEMBER 2001

JEANINE MARIE KNOX
1820 N 40TH ST
MILWAUKEE WI 53208

RE: 01 MED 182

Dear Ms. Knox:

The purpose of this letter is to inform you of the results of the review of the complaint filed by you.

The details of your complaint, including information which may have been obtained by us, were reviewed and discussed by a screening panel. Screening panels generally include legal staff, investigative staff and members of the relevant profession.

Based on the screening panel's review and evaluation of your complaint, a decision has been made not to proceed any further with this complaint. However, your complaint will be retained on file in the Division of Enforcement for future reference.

The process of evaluating complaints is often difficult and complex, involving legal issues and professional or technical evaluation. While it may be disappointing to learn a decision has been made that your complaint will not be pursued further, we want to assure you that the decision was made only after serious consideration of the complaint made and the issues you raised.

Because of the volume of complaints screened each year, it is not possible for the panel to review this matter again unless **new, relevant information** can be provided which may have influenced the panel's evaluation of the case if the panel had been aware of that information when the complaint was initially evaluated. Any information of that nature should be provided **in writing** to my attention at the above address.

Thank you for bringing this matter to our attention.

With respect,

Dennie Petersen

Dennie L. Petersen
Administrative Staff Supervisor
Deputy Records Custodian
Division of Enforcement

Keeping Wisconsin Families Safe

www.watl.org

EXECUTIVE DIRECTOR
Jane E. Garrott
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exec@watl.org

Presentation of
Scott Froehlke
on behalf of the
Wisconsin Academy of Trial Lawyers
on
Senate Bill 226 and Senate Bill 227
to the
Senate Committee on Health, Children, Families, Aging
and Long-Term Care
Senator Carol Roessler, Chair
September 4, 2003

Good morning, Senator Roessler and members of the committee. My name is Scott Froehlke, legislative representative for the Wisconsin Academy of Trial Lawyers. On behalf of the Academy, I thank you for the opportunity to appear here today in support of Senate Bills 226 and 227.

The Wisconsin Academy of Trial Lawyers (WATL), established as a voluntary trial bar, is a non-profit corporation organized under the laws of the state of Wisconsin, with approximately 1,000 members located throughout the state. The objectives and goals of WATL are the preservation of the civil jury trial system, the improvement of the administration of justice, the provision of facts and information for legislative action, and the training of lawyers in all fields and phases of advocacy.

We are very pleased to support Senate Bills 226 and 227, the work product of the Legislative Council's Special Committee on Discipline of Health Care Professionals from 1998-99. WATL had two representatives serve on the Special Committee, attorneys Keith Clifford and Susan Rosenberg. Several years have lapsed since the bills were first introduced,

but WATL believes the ideas presented in the bills deserve the Legislature's immediate attention and would like to thank Senator Roessler for reintroducing the bills. The bills include a number of incremental improvements to the disciplinary process of the Medical Examining Board (MEB) and to the consumer's ability to make informed decisions about health care providers.

The bills contain positive steps to advance three very important goals: (1) speed up and focus the disciplinary efforts of the MEB and the Department of Regulation and Licensing; (2) increase the range of sanctions available to the MEB; and (3) make more information available to consumers and increase participation by consumers, both those inside and outside the complaint process.

WATL has been very active in the legislative deliberations on medical malpractice and the medical disciplinary process for more than 20 years. As advocates for those injured due to carelessness, we strongly believe the medical malpractice system is needed to hold health care providers accountable for injuries caused by their carelessness. That accountability includes paying injured patients and their families for the harm done to them. It also means individuals need access to the courts to uphold their rights. Right now access to the courts is being denied to numerous individuals and the Legislature needs to address that important issue through the Family Justice Bill, SB 187.

While our members serve their clients' interests directly, the medical disciplinary process is needed to serve the public at large. We believe a strong disciplinary system is necessary to set standards for licensure, hold providers accountable for other activities that may not come under the legal system, and protect the public from providers who pose a danger to society. The two systems – the civil justice system and the disciplinary system – should be considered complementary and not duplicative. Each serves its own function.

We want to emphasize again our strong commitment to strengthening the medical disciplinary system because weeding out "problem" physicians will help hold down malpractice insurance payouts and, more importantly, may prevent future needless injuries. Studies in several states, including

Wisconsin, have shown that a small percentage of physicians account for a large percentage of the malpractice payouts.[1]

Research has also shown malpractice claims history does have a predictive value of future claims. In an article entitled, "The Relationship Between Physicians' Malpractice Claims History and Later Claims: Does the Past Predict the Future?" (published in the *Journal of the American Medical Association* of November 9, 1994) the authors conclude:

> Claims history had predictive value, even with only unpaid claims. Small paid claims were better predictors than unpaid claims, large paid claims were better predictors than small paid claims, and multiple paid claims were better predictors than single paid claims. Claims history of all kinds is a reasonable statistical measure, e.g., for the screening purposes of the National Practitioner Data Bank.

This predictive future claim quality was shown again in a March 5, 2000 article in the *New York Daily News*, which reviewed the 15 most sued doctors in New York. The article stated,

> According to the national database, 79% of the New York doctors who [each] made 10 malpractice payments were not disciplined in any way. Nationwide, the figure is 64%. The pattern holds for [New York's] 15 most sued practitioners. Five have never been disciplined, six were hit with professional charges and were permitted to stay in practice, one was suspended from podiatry for five years and three lost licenses. The effect of failing to crackdown is stunning, because they are a powerful driving force behind medical malfeasance nationwide. Making three malpractice payments is rare — only 1% of the nation's doctors have crossed that line, according to the national database. But those doctors account for 24% — or $5.6 billion — of the money paid to aggrieved patients.

That is why the work of the MEB is so important. As an organization, we have been critical – highly critical, at times – of the MEB. We have often viewed the MEB's activities, especially as they relate to the quality of care cases that we deal with, to be too timid, too slow, and too lenient.

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[1] In Wisconsin's closed claim study, the top ten physician defendants, ranked by total dollars paid out, accounted for 2.4% of the claims and 23% of the total indemnity payments. Office of the Commissioner of Insurance, "WHCLIP: Preliminary Report on Medical Malpractice in Wisconsin," IP 13-92.

We have recently raised several concerns with the Department of Regulation and Licensing (DRL) about whether the MEB is responsive to citizen complaints. After meeting with Secretary Strong Hill and members of her staff, the department has taken steps to ensure injured patients and their families are kept informed of department proceedings and can, if at all possible, attend disciplinary hearings. We think these are major improvements and thank Secretary Strong Hill and the DRL staff for their prompt action.

Our greatest complaint about the work of the MEB and our strongest suggestion for improvement relate to speeding up the complaint handling and investigative process. Often it is months after a medical malpractice claim is paid — long after the files have been put into storage — before lawyers for injured consumers hear from the MEB about looking at the files. Another complaint is that sometimes the MEB seems intent on "reinventing the wheel" in those cases, even when tens of thousands of dollars have already been spent investigating and litigating a case. It seems logical to ask that there be some way found to speed up this process and also to use whatever information has been developed during the medical malpractice civil case to speed up and help in MEB's investigation and prosecution of these cases.

Senate Bill 227 addresses these concerns in Sections 3 and 4 by requiring that reports currently sent to the National Practitioner Data Bank be sent to the MEB and by formalizing the Department's current process of establishing priorities and completion deadlines. We believe these are both positive steps.

SB 227 also contains two other provisions we believe are very important to improving the disciplinary process: (1) adding two more public members to the MEB; and (2) requiring death certificates to contain an indication whether a death is "therapeutic-related." Both of these provisions are aimed at opening the process to citizens. The death certificate information, in particular, will help individuals who find themselves dealing with the sudden tragic loss of a loved one by a medical error.

We also want to strongly support Senate Bill 226 because it will make a great deal of important information available to consumers. The process is modeled after a Massachusetts profiling system that has been very

successful. While much of the discussion in the special committee centered on the medical malpractice information that will be included in the physician profile, that is only a small part of the profile. The importance of the profile is in giving a complete picture of the physician's training and practice, all in one place. It should provide a type of "one-stop" source for consumers.

As far as the medical malpractice information to be included, it is important to remember that much of it is already available to consumers who take the time to search it out. Currently, three different state departments have some of the information. The MEB can tell a consumer if a formal complaint has ever been considered on a certain provider; the Medical Mediation Panels System can tell a consumer if a Request for Mediation has ever been filed (but not necessarily how the case turned out); and the Patients Compensation Fund can tell a consumer whether the Fund has ever paid a claim on behalf of a health care provider. Three different inquiries and the consumer still may not have a complete picture. SB 226 will not necessarily provide more information about medical malpractice claims, but it will make the inquiry easier and more readily available to consumers.

Finally, since the time the special committee completed its work, important public information has come out about the level of medical errors that occur all too frequently in our health care system. I have attached an article entitled *"Medical Errors Said to Kill Tens of Thousands"* from the November 30, 1999 *Milwaukee Journal-Sentinel*. It describes an important Institute of Medicine report that said anywhere from 44,000 to 98,000 Americans die in hospitals every year from medical mistakes. The problem of medical errors is called "by far the number one problem" in health care, by one of the country's most respected researchers. That is why SB 226 and 227 are particularly relevant for your prompt attention and consideration.

These bills represent some positive steps that Wisconsin can take to face up to the problems of medical errors and provide greater public information and accountability for them. Thank you for the opportunity to appear in support of these bills, and I would be happy to answer any questions you may have.

MILWAUKEE JOURNAL-SENTINEL
NOVEMBER 30, 1999 PG. 1A

Medical errors said to kill tens of thousands

Report cites flaws in how hospitals function, sets goal of 50% reduction

BY LAURAN NEERGAARD
Associated Press

Washington — Medical mistakes kill anywhere from 44,000 to 98,000 hospitalized Americans a year, says a new report that calls the errors stunning and demands major changes in the nation's health care system to protect patients.

The groundbreaking report by the Institute of Medicine says there are ways to prevent many of the mistakes and sets as a minimum goal a 50% reduction in medical errors within five years.

The institute cited two studies that estimate hospital errors cost at least 44,000, and perhaps as many as 98,000, lives, but research on the topic is unable to be more precise.

Even the lower figure exceeds the number of people who die annually from highway accidents (about 43,450), breast cancer (42,300) or AIDS (16,500), the study says.

The problem is less a case of recklessness by individual doctors or nurses than it is the result of basic flaws in the way hospitals, clinics and pharmacies operate, the report says.

Doctors' notoriously poor handwriting too often leaves pharmacists squinting at tiny paper prescriptions. Did the doctor order 10 milligrams or 10 micrograms? Does the prescription call for the hormone replacement Premarin or the antibiotic Primaxin?

Too many drug names sound

Please see MISTAKES *page 10*

Mistakes/Thousands die in medical mishaps

From page 1

alike, causing confusion for doctor, nurse, pharmacist and patient alike. Consider the painkiller Celebrex and the antiseizure drug Cerebyx, or Narcan, which treats morphine overdoses, and Norcuron, which can paralyze breathing muscles.

Medical knowledge grows so rapidly that it is difficult for health care workers to keep up with the latest treatment or newly discovered danger. Technology poses a hazard when device models change from year to year or model to model, leaving doctors fumbling for the right switch.

And most health professionals do not have their competence regularly retested after they are licensed to practice, the report says.

Indeed, health care is a decade or more behind other high-risk industries in improving safety, the report says. It points to the transportation industry as a model. Just as engineers designed cars so they cannot start in reverse and airlines limit pilots' flying time so they're rested and alert, so can health care be improved.

"These stunningly high rates of medical errors ... are simply unacceptable in a medical system that promises first to 'do no harm,' " wrote William Richardson, president of the W.K. Kellogg Foundation and chairman of the institute panel that compiled the report.

In recent years, researchers have begun coming up with ways to avert medical mistakes. Some hospitals now use computerized prescriptions, avoiding the handwriting problem and using software that warns if a particular patient should not use the prescribed drug. Many hospitals now mark patients' arms or legs — while they're awake and watching — to prevent removal of the wrong limb. Anesthesiologists made their field safer by getting manufacturers to standardize anesthesia equipment from one model to the next. The Food and Drug Administration is trying to prevent new drugs from hitting the market with sound-alike names.

But the Institute of Medicine concluded that reducing medical mistakes requires a bigger commitment, and recommended some immediate steps:

- Establish a federal Center for Patient Safety in the Department of Health and Human Services. Congress would have to spend some $35 million to set it up, and it should eventually spend $100 million a year in safety research, even building prototypes of safety systems. Still, that represents just a fraction of the estimated $8.8 billion spent each year as a result of medical mistakes, the report calculates.
- The government should require that hospitals, and eventually other health organizations, report all serious mistakes to state agencies so experts can detect patterns of problems and take action. About 20 states now require such reports, but how much information they require and what penalties they impose for errors varies widely, the report says.
- State licensing boards and medical accreditors should periodically re-examine health practitioners for competence and knowledge of safety practices.

"Any error that causes harm to a patient is one error too many," said Nancy Dickey, past president of the American Medical Association, which already has started a National Patient Safety Foundation designed to address some of these issues.

But she cautioned that some of the changes will be difficult because doctors do face large liability for any mistake. "We may know to talk about a culture of safety, but we still live in an environment of blame," she said.

The Institute of Medicine is part of the National Academy of Sciences, a private organization chartered by Congress to advise the government on scientific matters.

The New York Times contributed to this report.

To read a four-part Knight Ridder series on medical mistakes that the Journal Sentinel ran in September, go to www.jsonline.com.

Carol –
FYI
This may or may not be helpful if questions come up relating to SB 226 & 227

SEPTEMBER 4, 2003
PUBLIC HEARING
SENATE BILLS 226 AND 227

Senator Robson

- She asked if anyone has been hurt because a doctor was not disciplined for a previous act. **CR SAID WE CAN LOOK INTO THIS.**

Senator Jauch

SB 227

- Senator Jauch questioned to what extent do we have a problem? What is in place to measure improvement? He wants more info. on the scope of the problem. He is not convinced that we have people out there that the state knows are bad and are practicing. He further stated, "Yes, some improvements are necessary. Yes, the MEB is holding people accountable."
- He questions the language that requires investigation of those who may warrant investigation. **CR ASKED LAURA ROSE TO LOOK AT TESTIMONY ETC. FROM THE 1999 LEG COUNCIL COMMITTEE. CR WANTS TO KNOW WHAT INFORMATION WAS BEHIND THE SUGGESTION OF THIS LANGUAGE BY THE COMMITTEE.**

Secretary Hill, Department of Reg .and Lic.

SB 226

- She did provide written testimony.
- There is a National Practitioners Website which is only available to those who are in the system. She wonders why states haven't gotten together to gain assess to this database rather than each creating their own.
- Massachusetts paid $200,000 in 1996 to develop its site.
- The Secretary received from Mass. a step by step process on how they implemented their website.

SB 227

- **THE HIGH PRIORITY MANDATE IN THE BILL IS ALREADY BEING IMPLEMENTED.**
- **STATUS OF CASES: PRE 1976: THERE WERE 7, NOW THERE ARE NONE. PRE 1999 THERE WERE 44 AND NOW THERE ARE 29. PRE 2001, THERE WERE 177 NOW THERE ARE 122.**
- **POSSIBLE ADDITION, ALLOW INFO TO BE OBTAINED FROM COURTS ETC. THAT MAY DEMONSTRATE UNPROFESSIONAL CONDUCT.**
- The Dept. of Reg. and Lic. Does have timelines in place for completing cases, however, sometimes these are not always met due to the following: (a) delay in getting info. from a hospital. (b) Lack of resources.

- The Grant and Thorton fee study deserves a second look.
- It is not difficult to file a claim against a doctor. There is a one page complaint form on the DRL website which people can download from their computer free of charge.
- The DRL is working with DHFS to enter a Memorandum of Understanding regarding sharing information on professionals. EX: Folks who have not paid child support- DRL could remove professional lic.
- **CR ASKED THE DRL TO FIND OUT HOW THE STATE CAN FLAG PROFESSIONALS WHO HAVE OWI'S ETC. (FOR EITHER PRACTITIONER LICENSE REMOVAL OR FURTHER INVESTIGATION).**
- The avg. length of time to complete a case from the time it is filed, opened and then closed is discussed on page three of DRL's SB 227 written testimony.

Senator Welch

SB 227

- **HE IS CONCERNED ABOUT INVESTIGATING THOSE WHO WARRANT CONCERN. ARE THERE SPECIFIC THINGS WE ARE LOOKING AT?**
- **THE CORONER LANGUAGE ALSO CONCERNS HIM.**
- **CR DOES NOT THINK THE LANGUAGE IS OUT OF THEIR SCOPE OF PRACTICE BUT WILL REVIEW FURTHER.**

Senator Roessler

- **CR HAS CONCERNS ABOUT FUNDS DEDICATED FOR INTENDED DISCIPLINES ACTUALLY BEING USED FOR THOSE DISCIPLINES. EX: IF THE DENTAL HYGIENISTS FEE IS INCREASED, CR WANTS TO MAKE SURE THAT THOSE FUNDS ACTUALLY SUPPORT THE DENTAL HYGIENIST DISCIPLINE.**

Gary Radloff, DHFS

- DOA and WHA are working on a contract relating to physician data. If this bill moves forward, we need to discuss this with HFS.
- **CR ASKED FOR AMENDMENT DIRECTION FROM GARY.**
- **SHE SAID THAT THE END OF THE MONTH IS THE DEADLINE TO HAVE ALL PIECES OF THIS BILL IN PLACE.**

Dr. Werch, WI Medical Society

- He submitted written testimony.
- **CR WILL BE DELIBERATE IN HAVING A LINK ON DRL WEBSITE TO WI MED. SOCIETY.**

SB 227

- He really likes privatization section.
- MEB given greater flexibility…he likes this.
- He thinks that OWI's, prescriptions for narcotics etc. should cause a red flag.
- Expressed concerns about the coroner section. **CR SAID THIS MAY BE A SEPARATE BILL.**
- The WI Med Soc. Website on physician data had 163,000 hits.

SCOTT FROEHLKE

- His contact, Keith Clifford, is very knowledgeable and will be helpful in remembering events of 1999 Leg Council Committee.

DR Discipline

SENATE COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING AND LONG TERM CARE
SEPTEMBER 4, 2003
411 SOUTH
SENATE BILLS 226 AND 227

- Hal Harlow
- Dr. David Treffert MD - expert DCFS Chair PSMS

FIVE YEARS AGO, THE JOINT LEGISLATIVE COUNCIL'S SPECIAL COMMITTEE ON DISCIPLINE OF HEALTH CARE PROFESSIONALS WAS DIRECTED TO STUDY PROCEDURES FOR IMPOSITION OF DISCIPLINE FOR ALLEGED CASES OF PATIENT NEGLECT OR UNPROFESSIONAL CONDUCT BY HEALTH CARE-RELATED EXAMINING BOARDS AND AFFILIATED CREDENTIALING BOARDS IDENTIFIED BY THE SPECIAL COMMITTEE.

Last Session
Fiscal note:
Cost: $529,572
Revenue: $674,929

AS A RESULT OF THEIR FINDINGS, THE COMMITTEE RECOMMENDED TWO LEGISLATIVE PROPOSALS. IN THE PREVIOUS TWO SESSIONS, PUBLIC HEARINGS WERE HELD ON THE LEGISLATION, BUT THEY WERE NEVER VOTED ON IN THE STATE SENATE.

NOW IS THE TIME TO MOVE FORWARD AND ADDRESS THESE NECESSARY CHANGES IN DISCIPLINARY PROCEDURES.

THERE HAVE BEEN NUMEROUS REPORTS THAT WISCONSIN LAGS IN THE DISCIPLINE OF HEALTH CARE PROFESSIONALS. I FEEL THESE BILLS ARE IMPORTANT BOTH TO PATIENTS AND TO THE INTEGRITY OF THE MEDICAL PROFESSION.

SENATE BILL 227 CONTAINS PROVISIONS THAT APPLY TO DISCIPLINARY PROCEDURES FOR HEALTH CARE PROFESSIONALS GENERALLY, AND PROVISIONS THAT ARE SPECIFIC TO PHYSICIAN DISCIPLINE. PROVISIONS THAT APPLY TO HEALTH CARE PROFESSIONALS GENERALLY INCLUDE:

- REQUIRING THE DEPARTMENT OF REGULATION AND LICENSING TO:
    - DEVELOP A SYSTEM TO ESTABLISH THE RELATIVE PRIORITY OF CASES INVOLVING UNPROFESSIONAL CONDUCT;
    - DEVELOP A SYSTEM FOR IDENTIFYING HEALTH CARE PROFESSIONALS WHO MAY WARRANT FURTHER EVALUATION AND POSSIBLE INVESTIGATION;

- ESTABLISH GUIDELINES FOR THE TIMELY COMPLETION OF DISCIPLINE CASES;

- GIVE NOTICE TO COMPLAINANTS, PATIENTS AND HEALTH CARE PROFESSIONALS AND THEIR PLACES OF PRACTICE, WHEN SPECIFIED STAGES OF THE DISCIPLINARY PROCESS ARE OPENED OR CLOSED;

- REQUIRE THAT A PATIENT OR CLIENT WHO HAS BEEN ADVERSELY AFFECTED BY A HEALTH CARE PROFESSIONAL'S CONDUCT BE GIVEN AN OPPORUTUNITY TO CONFER WITH THE DEPARTMENT'S PROSECUTING ATTORNEY.

PROVISIONS OF THE BILL SPECIFIC TO THE PHYSICIAN DISCIPLINARY PROCESS INCLUDE:

- ADDING TWO PUBLIC MEMBERS TO THE MEDICAL EXAMINING BOARD, RESULTING IN A 15 MEMBER BOARD

WITH FIVE PUBLIC MEMBERS, NINE MEDICAL DOCTORS AND ONE DOCTOR OF OSTEOPATHY;

- AUTHORIZING THE MEDICAL EXAMINING BOARD TO SUMMARILY LIMIT, ANY CREDENTIAL ISSUED BY THE BOARD, PENDING A DISCIPLINARY HEARING;

- AUTHORIZING THE MEDICAL EXAMINING BOARD TO ASSESS A FORFEITURE OF NOT MORE THAN $1,000 AGAINST A CREDENTIAL HOLDER FOUND GUILTY OF UNPROFESSIONAL CONDUCT; AND

- REQUIRING THAT REPORTS ON MEDICAL MALPRACTICE PAYMENTS AND ON PROFESSIONAL REVIEW ACTIONS BY HEALTH CARE ENTITIES, WHICH CURRENTLY MUST BE SUBMITTED TO THE NATIONAL PRACTITIONER DATA BANK, MUST ALSO BE SUBMITTED TO THE MEDICAL EXAMINING BOARD. THE BILL CREATES A PENALTY FOR FAILURE TO SUBMIT SUCH REPORTS.

FINALLY, SENATE BILL 227 PROVIDES THAT WHEN A CORONER OR MEDICAL EXAMINER RECEIVES A REQUIRED REPORT OF A DEATH AND SUBSEQUENTLY DETERMINES THAT THE DEATH WAS "THERAPEUTIC-RELATED," AS DEFINED IN THE BILL, THE CORONER OR MEDICAL EXAMINER MUST INDICATE THAT DETERMINATION ON THE DEATH CERTIFICATE AND FORWARD THE INFORMATION TO THE DEPARTMENT OF REGULATION AND LICENSING.

THE SECOND BILL BEFORE YOU, SENATE BILL 226, DIRECTS THE MEDICAL EXAMING BOARD TO MAKE SPECIFIED INFORMATION AVAILABLE FOR DISSEMINATION TO THE PUBLIC IN A FORMAT ESTABLISHED BY THE BOARD. THAT INFORMATION RELATES TO A PHYSICIAN'S EDUCATION, PRACTICE, MALPRACTICE HISTORY, CIRMINAL HISTORY AND DISCIPLINARY HISTORY.

THE COSTS INCURRED BY THE DEPARTMENT OF REGULATION AND LICENSING IN CONNECTION WITH MAKING THE INFORMATION AVAILABLE TO THE PUBLIC WOULD BE FUNDED

BY A SURCHARGE ON LICENSE RENEWAL FEES PAID BIENNIALLY BY PHYSICIANS LICENSED IN THE STATE.

THE LEGISLATIVE COUNCIL COMMITTEE CONCLUDED THAT MAKING INFORMATION ON INDIVIDUAL PHYSICIANS AVAILABLE AT ONE SOURCE WILL BE CONVENIENT AND USEFUL FOR THE PUBLIC AND, BY INCLUDING THE INFORMATION SPECIFIED IN THE BILL, WILL PROVIDE A BALANCED PHYSICIAN PROFILE.

I URGE THE COMMITTEE TO GIVE THESE BILLS FAVORABLE CONSIDERATION.