

**Committee Name:**  
**Senate Committee –**  
**Judiciary, Corrections and Privacy**  
**(SC–JCP)**

**Appointments**

03hr\_SC–JCP\_Appt\_pt00

**Committee Hearings**

03hr\_SC–JCP\_CH\_pt00

**Committee Reports**

03hr\_SC–JCP\_CR\_pt00

**Clearinghouse Rules**

03hr\_SC–JCP\_CRule\_03–

**Executive Sessions**

03hr\_SC–JCP\_ES\_pt00

# Hearing Records

03hr\_ab0000

## 03hr\_sb0187a\_pt02

**Misc.**

03hr\_SC–JCP\_Misc\_pt00

**Record of Committee Proceedings**

03hr\_SC–JCP\_RCP\_pt00

**FACTS AND WHY**  
**THE 180-DAY NOTICE RULE FOR MEDICAL MALPRACTICE FOR STATE**  
**RUN INSTITUTIONS AND STATE PHYSICIANS**  
**MUST BE REPEALED RETROACTIVELY**  
**February 28, 2003**

SB-187

**Madison, WI.** Did you know that if you are treated by physicians at UW Hospital & Clinics or UW Health/Physicians Plus and medical malpractice results in injury or death to your family member, you will not be able to bring a claim forward unless you have given notice to the state attorney general within 180 days after the event occurs? The current statute allows for discovery after this period, however the courts (case law) have made this tough to do. If you are late with your notice, not only will it be difficult or impossible to ever bring a case, but you may never find out what really happened, you and your family will never see justice, and the physicians won't talk and will never be held accountable for their errors/mistakes. Wisconsin law favors state physicians over private ones. Did you also know that state-employed physicians do not have to pay medical malpractice insurance? The state self-insures them. Private physicians and organizations remain outraged by this and the 180-day notice rule.

Again, Wisconsin families who have suffered the loss of a family member due to apparent medical negligence have found the courthouse door slammed shut in their faces.

A group of Wisconsin families who suffered the loss of a family member due to apparent medical negligence have been fighting hard to fix Wisconsin law. We are a small group of families and we have few resources, but we must get the message out to the unsuspecting public, voters, media, and work with legislators to get the law changed!

The focus of the Wisconsin Family Justice Network (WFJN)—rapidly growing since being formed last year to about 45 families across the state—is now turning to the State Legislature, where Network members are working to build bi-partisan support for the passage of the Wisconsin Family Justice Bill and now, the repeal of the 180-day notice rule for medical malpractice by state healthcare employees. These are not political issues! Republicans and Democrats together should recognize that these problems needs fixing as soon as possible. We will work to get the retroactive repeal of the 180-day notice bill passed by the legislature and signed by Governor Doyle. Senator Fred Risser has agreed to again sponsor this year's bill. The language of the law as proposed last year is given as Attachment B. It passed the Senate by voice vote, but never was introduced to the Assembly.

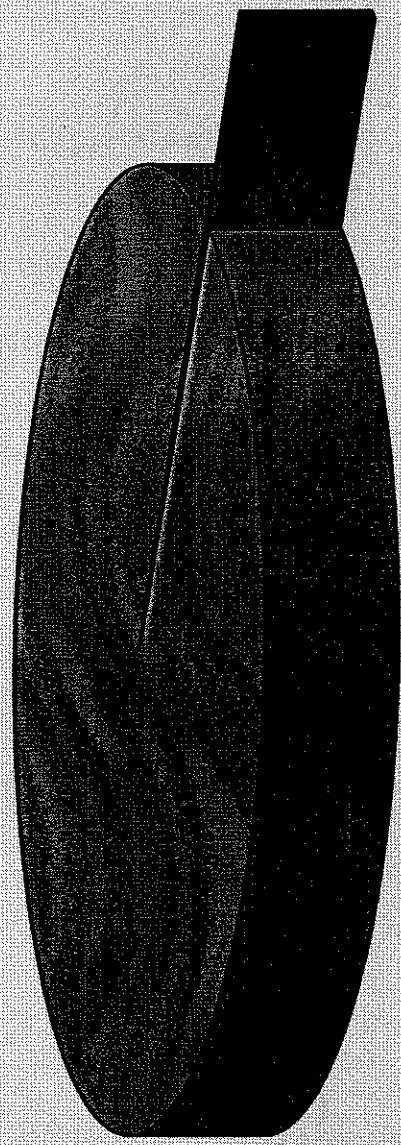
The Wisconsin Family Justice Network suggests that once you, as a representative of the people of this great State of Wisconsin, honestly considers the thoughts below that you will be compelled to support and sign on as a co-sponsor of the repeal of the 180-day notice for medical malpractice claims for state healthcare employees.

- For example, how would you deal with the awful prospect of the loss of a loved one due to gross medical errors at UW Hospital? After much grief, you finally get around to talking with an attorney and then the attorney tells you how sorry he or she is, but you missed the 180-day notice deadline and your potential legal claim is now void! You, like almost everyone, thought you had 3 years to respond. This happens all the time!
- How would you react to the fact that you can't get any legal representation because you are not allowed to have a case under this current Wisconsin law if you are late with your notice of claim?

- ❑ Was it really the intent of the Wisconsin State Legislature to implement a biased law that denies Wisconsin citizens their rights for justice and accountability?
- ❑ How are you ever to know about the 180-day notice rule? Have you ever heard of it before? The public does not know. Check out your constituents – ask them if they know.
- ❑ If you loose a loved one at the UW Hospital, do they tell you have only 180 days to file a claim for malpractice with the Attorney General's Office? No. Of all the forms one has to sign in the hospital, is form that you sign in the hospital that says you have 180 days to file a notice of claim if the hospital were to perform malpractice? No.
- ❑ Private health care providers (HMO's etc.) and UW co-mingle their employees at the HMO and UW Hospital facilities. How do you really know which physician is a UW employee and which one is with the HMO private provider? Which ones do you give notice to, if you knew of the rule?
- ❑ If medical malpractice occurs, it seems to take for ever to get a copy of the medical records. This cuts into your time to assess and decide if you have a claim or not with the 180-day rule. We don't need to be filing notices of claim if we are not sure! Time is needed to assess the medical records and review what happened.
- ❑ For sure, the 180-day rule is likely never to be known by a grieving family.
- ❑ One should believe that there should be fairness and equal protection under the law for all Wisconsinites, regardless of what hospital one goes to, but is not currently the case.
- ❑ It's obvious that this law is aligned to protect the insurance companies and the UW physicians; not the patients and their families. The law is biased to benefit state employees and state-run medical facilities.

The Wisconsin Family Justice Network and the rest of the citizens of this state simply want a single standard of access to the courts and accountability for all citizens. It is a fundamental matter of equity and equality; the current law is biased, discriminating and totally unfair and must be changed (see Attachment B). The retroactive repeal of the 180-day notice for state medical employees needs to be made ASAP so more people are not totally defeated by this unfair and biased favoritism.

# Total malpractice costs as share of medical expenses



■ Medical Expense-\$100

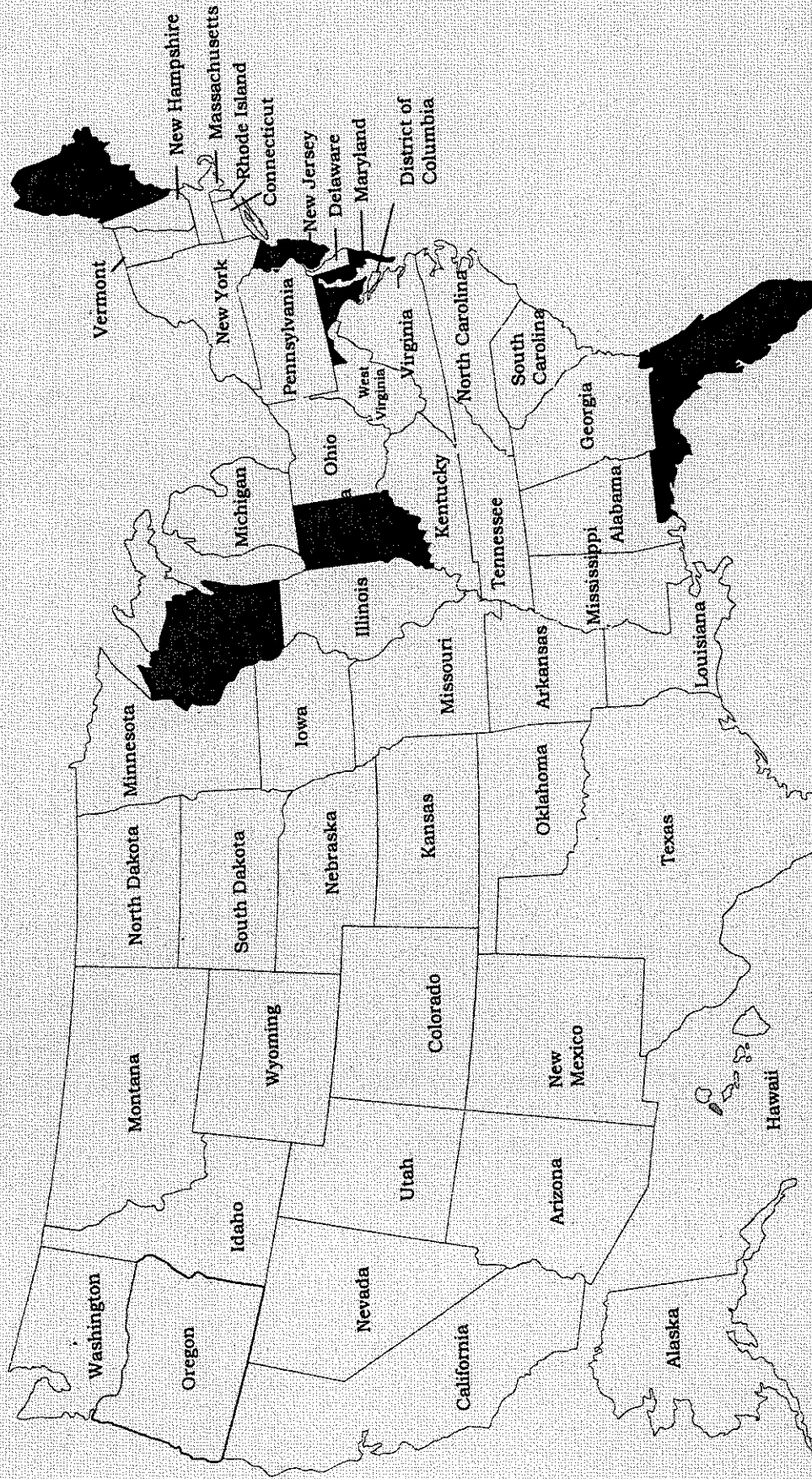
■ Medical MalPractice-\$.55

Source: Consumer Federation of America

## 10 Facts You Should Know About ... MEDICAL MALPRACTICE

1. Insurance companies are paying victims of medical negligence on average approximately \$30,000. Average payouts have stayed virtually flat for the last decade.  
*Source: Center of Justice & Democracy Memo with attached spreadsheet prepared by J. Robert Hunter, Director of Insurance, Consumer Federation of America, November 14, 2001.*
2. Medical malpractice costs, as a percentage of national health care expenditures, are at an all time low, 0.55 percent.  
*Source: Center of Justice & Democracy Memo with attached spreadsheet prepared by J. Robert Hunter, Director of Insurance, Consumer Federation of America, November 14, 2001.*
3. According to the National Academy of Sciences, up to 98,000 people are killed each year by medical errors in hospitals — far more than die from car accidents, breast cancer or AIDS.  
*Source: Kohn, Corrigan, Donaldson, Eds., To Err is Human: Building a Safer Health System, Institute of Medicine, National Academy Press: Washington, DC, 1999.*
4. Total national costs (lost income, lost household production, disability and health care costs) of negligence in hospitals are estimated to be between \$17 billion and \$29 billion each year.  
*Source: Kohn, Corrigan, Donaldson, Eds., To Err is Human: Building a Safer Health System, Institute of Medicine, National Academy Press: Washington, DC, 1999.*
5. Eight times as many patients are injured by medical malpractice as ever file a claim; 16 times as many suffer injuries as receive any compensation.  
*Source: Harvard Medical Practice Study, Patients, Doctors and Lawyers: Medical Injury, Malpractice Litigation, and Patient Compensation in New York, 1990.*
6. Injured medical malpractice patients win before juries in only 23 percent of cases; in 1992, the rate was 7.5 percent higher at 30.5 percent.  
*Source: "Tort Trials and Verdicts in Large Counties, 1996," U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ-179769 (August 2000), pp. 4, 9.*
7. Only 1.1 percent of medical malpractice plaintiffs who prevail at trial are awarded punitive damages.  
*Source: "Tort Trials and Verdicts in Large Counties, 1996," U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ-179769 (August 2000), p. 7.*
8. According to studies in several states, there is no correlation between where physicians decide to practice and state liability laws or insurance rates.  
*Source: "Doctors not leaving Pittsburgh despite costly insurance," Associated Press, Nov. 12, 2001; Goldstein, Josh, "Recent Census of Doctors Show No Flight from Pennsylvania," Philadelphia Inquirer, Oct. 2, 2001, Leonard, Martha, "State has seen sharp increase in number of doctors," Sunday Gazette Mail, Feb. 25, 2001; Kinney and Gronfein, "Indiana's Malpractice System: No-Fault by Accident," 54 Law & Contemp. Probs. 169, 188 (1991), cited in Galanter, Marc, "Real World Torts," 55 MDL Rev. 1093, 1152-1153 (1996); Kinney, "Malpractice Reform in the 1990s, Past Disappointment, Future Success?" 20 J. Health Pol. Pol'y & L. 99,120 (1996), cited in Galanter, Marc, "Real World Torts," 55 MDL Rev. 1093, 1152 (1996).*
9. Tort law limits do not lower insurance rates; states with little or no tort law restrictions have experienced approximately the same changes in insurance rates as those states that have enacted severe restrictions on victims' rights.  
*Source: J. Robert Hunter and Joanne Doroshov, Premium Deceit: The Failure of "Tort Reform" to Cut Insurance Prices, Center for Justice & Democracy (1999).*
10. Numerous hospital and medical procedures have been made safer as a result of lawsuits, including anesthesia procedures, catheter placements, drug prescriptions, hospital staffing levels, infection control, nursing home care and trauma care.  
*Source: Meghan Mulligan and Emily Gottlieb, Lifesavers: CJ&D's Guide to Lawsuits that Protect Us All, Center for Justice & Democracy (2001).*

# Wrongful Death Statutes Limiting Adult Child's Right to Recover



- Of the 50 states and the District of Columbia, only seven states bar or limit adult children's right to recover in wrongful death actions. There is an absolute bar on adult children's recovery for loss of society and companionship, *Czapinski v. St. Francis Hospital*, 613 N.W.2d 120 (Wis. 2000). Under general wrongful death statute, § 895.04, adult children can recover only after spouse and minor children recover.
1. Wisconsin: Only minor children can recover under medical malpractice statute, § 655.007, Wis. Stat. There is an absolute bar on adult children's recovery for loss of society and companionship, *Czapinski v. St. Francis Hospital*, 613 N.W.2d 120 (Wis. 2000). Under general wrongful death statute, § 895.04, adult children can recover only after spouse and minor children recover.
  2. Indiana: Adult children barred from recovery unless they are dependent, § 34-23-1-1, In. Stats.
  3. Florida: Only allows recovery for companionship for adult children if there is no surviving spouse, § 768.21(3), Fl. Stats. Adult children are not allowed to recover in medical malpractice cases, § 768.21(8), Fl. Stats.
  4. Maine: Adult children only allowed to recover if there is no surviving spouse or minor child, Me. St. T. 18-A § 2-804.
  5. Maryland: Adult children (over 21) barred from recovery unless they are dependent, Md. Cts. & Jud. Proc. § 3-904(c).
  6. New Jersey: Dependents given priority, with age taken into account, for distribution of wrongful death damage awards, N.J. St. § 2A:31-4.
  7. District of Columbia: Follows intestate succession rule and minor children take precedence, D.C. Code §§ 16-2701, 19-101, 20-701.

# JUSTICE FOR ALL WISCONSIN FAMILIES

*Ending the double standard in current law*

	<u>Fact Situation</u>	<u>Current Law</u>
<b>Loss of Child in Medical Malpractice Case</b>	If child is under 17 . . .	Parents may bring a claim for loss of society and companionship
	If child is 18 or over . . .	Parents <i>may not</i> bring a claim for loss of society and companionship
<b>Loss of Parent in Medical Malpractice Case</b>	If parent is married with no minor children . . .	Surviving spouse may bring a claim for loss of society and companionship
	If parent is unmarried, widowed, divorced with no minor children . . .	<u>No</u> family member may bring a claim for loss of society and companionship
<b>Negligence by Doctor</b>	If behind the wheel of a car . . .	Subject to same accountability as other members of society
	In operating room . . .	<u>Exempt</u> from accountability in cases of adult children and parents without spouses or minor children

## Latest GAO Report Denies Medical Malpractice Crisis

*AMA and Other Cap Advocates Mislead Public, Legislators, Media...Even Doctors*

The latest report of the non-partisan General Accounting Office, the research arm of Congress, proves that the supposed "crisis" of access to medical care as a result of medical malpractice insurance premium increases—as alleged by the American Medical Association (AMA), the insurance industry, and some politicians—doesn't exist, or has been extremely overblown.

The comprehensive analysis suggests that the AMA, which had sought to delay release of the report until it could influence the data, misled the American people, state and federal legislators, the news media and even doctors.

"The problems we confirmed were limited to scattered, often rural, locations and in most cases providers identified long-standing factors in addition to malpractice pressures that affected the availability of services," said the report, *Medical Malpractice: Implications of Rising Premiums on Access to Health Care*, GAO-03-836, August 28, which can be found online at: <http://www.gao.gov/cgi-bin/getrpt?GAO-03-836>.

The report also said, "We also determined that many of the reported physician actions and hospital-based service reductions were not substantiated or did not widely affect access to health care."

Below are the major findings of this latest GAO report, which concludes that there are many reasons for health care access problems; just as another GAO report earlier this summer concluded that there are many reasons for the increase in medical malpractice premiums for doctors.

In Wisconsin, the Wisconsin Medical Society (WMS) has often raised the specter of higher health care costs or the loss of doctors with passage of the Family Justice Bill (Senate Bill 187). The GAO report once again debunks the phony propaganda that victims of medical malpractice who exercise their legal rights are responsible for high medical malpractice premiums and reduced access to medical care. It's just not true, and this report proves it.

The WMS and its allies offered no material to refute these facts.

- ❑ The relatively small number of wrongful death cases makes clear that passage of the Family Justice Bill will have no measurable effect on health-insurance rates or access to health insurance.
- ❑ Similarly, given the small number of cases potentially covered by the Family Justice Bill and the microscopic cost of all malpractice-related expenses (0.55%) there is no danger of a surge in malpractice costs.
- ❑ Certainly, with 44 other states already imposing no barriers based on age or marital status, there will be no sudden exodus of doctors from our state.



## Conclusions of the August 2003 GAO Report on Medical Malpractice

1. There is no medical malpractice crisis. In its study of five states without major tort reforms, the report concludes that the doctors have wildly overstated their case. E.g. "We also determined that many of the reported physician actions and hospital-based service reductions were not substantiated or did not widely affect access to health care" (p. 12). "Although some reports have received extensive media coverage, in each of the five states we found that actual numbers of physician departures were sometimes inaccurate or involved relatively few physicians" (p. 17). "Contrary to reports of reductions in mammograms in Florida and Pennsylvania, our analysis showed that utilization of these services among Medicare beneficiaries is higher than the national average in both [states]" (p. 21).
2. The report was "commissioned" by the proponents of tort reform, who clearly wanted the GAO to buttress their case, but this independent report actually undercuts it.
3. The report notes that the AMA wanted the GAO to withhold release of the report until "state and national medical and specialty associations" could provide better information. But these were the very groups that had supplied much of the data that the GAO used as the basis for many of its findings (p. 38).
4. The report strongly supports the case that there are lots of reasons for the few problems of access to care the GAO could confirm, while the AMA blames everything on medical malpractice litigation. "The problems we confirmed were limited to scattered, often rural, locations and in most cases providers identified long-standing factors in addition to malpractice pressures that affected the availability of services" (p. 13).
5. The GAO is extremely skeptical of the claim that the tort system encourages unnecessary defensive medicine. The report takes the offense against the AMA position by noting that (1) some defensive medicine is good medicine, (2) managed care discourages bad defensive medicine, and (3) doctors do defensive medicine because they make money from defensive medicine (p. 26-27).
6. It characterizes the CBO study on the supposed savings resulting from HR5 as actually finding that state tort laws have no impact on medical spending (p. 29).
7. It criticizes the HHS study for publishing a wildly inflated estimate, based on an improper methodology, of potential savings from defensive medicine (p. 29).
8. It measures growth in claims on a per capita basis, not an aggregate basis. This is the right way to do it, making it clear that claims payments have grown far slower than any measure of inflation, in both cap states and non-cap states (p. 35).
9. The report consistently emphasizes that the surveys upon which the AMA bases its claims have a low response rate and thus "preclude the ability to reliably generalize the survey results to all physicians" (p. 38).
10. It specifically criticizes as unreliable the two data sources relied on by the doctors: PIAA ("it does not share proprietary state-level claims data"); and Jury Verdict Research ("a varied and unsystematic data collection process") (p. 52).
11. The analysis supports the case that the doctors, in effect, blackmailed the legislatures and governors in Nevada, Pennsylvania and West Virginia (p. 14-15).
12. The one unhelpful finding in the report—that claims and premiums have risen faster in states with caps than without—is explained by reference to the experience in just two jurisdictions, the District of Columbia and Pennsylvania: if these two states are eliminated, then for the time period 1996-2002, average claims payments in the states without caps were about the same as in those states with caps (p. 34-35).
13. It emphasizes that, to the extent that premiums or claims are lower in cap states than non-cap states, multiple factors are responsible—which is the same conclusion as the first GAO report.

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 occurred from medical malpractice that led 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 Burleigh Street, my phone number is (414) 444-7787.

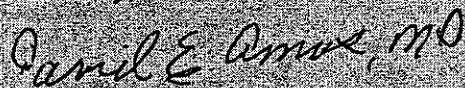
Ms. McIntyre was under the care of a physician in my office by the name of Dr. Gloria Abacan. She was seen on August 17, 2000. Her blood urea nitrogen was 25 and the creatinine was 1.6. At that time the creatinine level was already high and Dr. Abacan did nothing about it.

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 penicillin. 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 nitrogen went up to 181 with a creatinine of 10.9 requiring emergency dialysis. She was in a very serious condition, all of this could have 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

WISCONSIN DEPARTMENT OF  
REGULATION & LICENSING

Scott McCallum  
Governor  
Oscar Herrera  
Secretary



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PO Box 8935  
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30 NOVEMBER 2001

JEANINE MARIE KNOX  
1820 N 40<sup>TH</sup> 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.

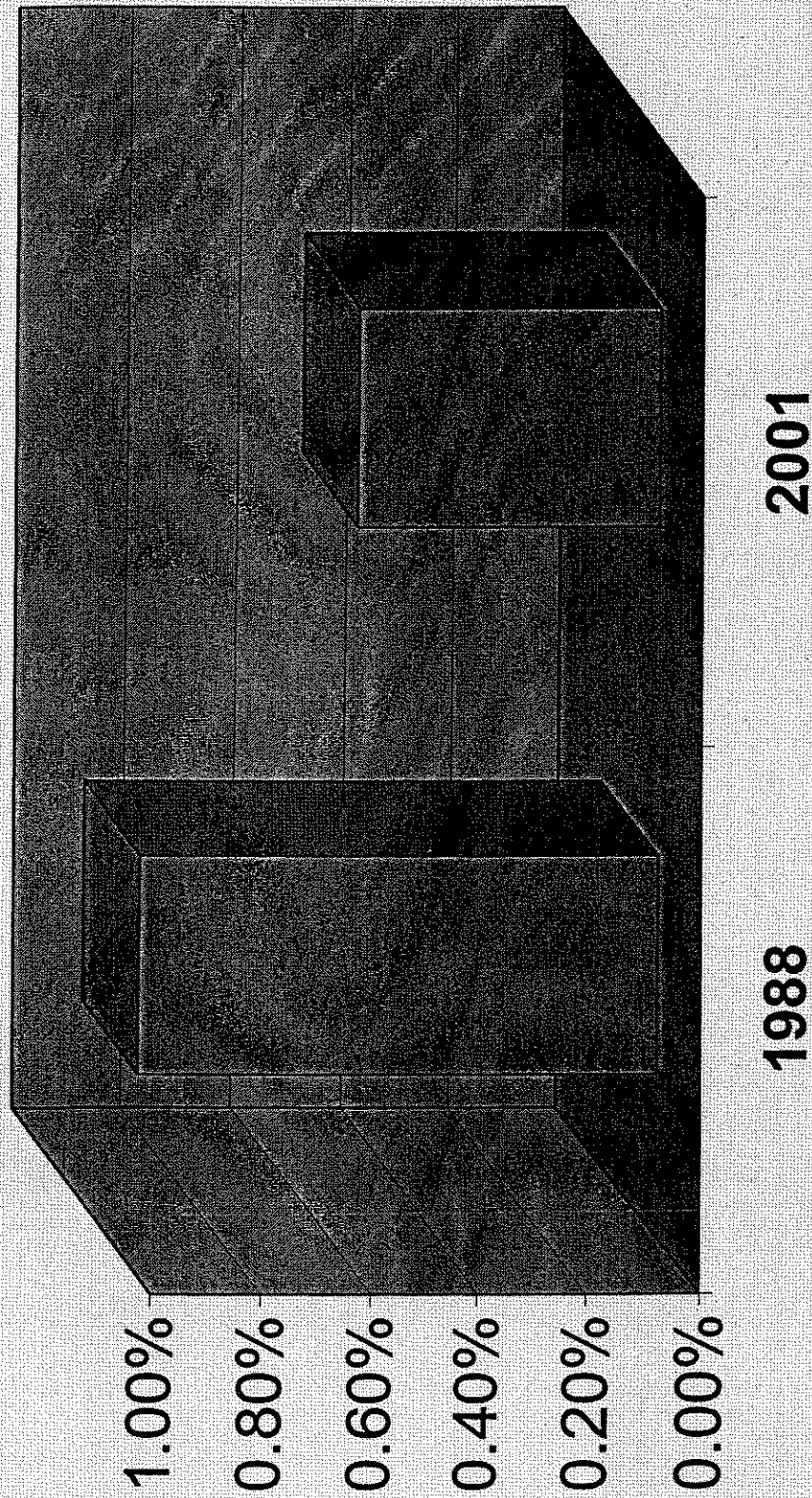
Thank you for bringing this matter to our attention.

With respect,

A handwritten signature in cursive script that reads "Dennie L. Petersen".

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

# Malpractice Costs decline to all-time low



Source: Consumer Federation of America

*“Claims against physicians  
should not be treated any  
differently than claims resulting  
from automobile accidents or  
against any other individual.”*

Dr. Bruce Krause, testimony on behalf of State Medical Society before  
the Assembly Insurance, Securities and Corporate Policy Committee on  
January 19, 1995.

# State should close malpractice loophole

**I**t's real hard to justify this: Just because you are over 18 but not married, any medical professional who screws up when they treat you will get off scot-free in a state court.

That's because Wisconsin is one of six states that prevents a small class of people from filing medical malpractice lawsuits in state courts, claiming loss of society and companionship.

Here's the way it works: A family can file a suit claiming malpractice for a child if that child isn't over age 18.

Furthermore, a husband or wife can file a lawsuit claiming malpractice over the treatment of his or her spouse.

But because of legislative action and Supreme Court decisions, if you are over 18 but with no spouse, no medical malpractice suit is possible.

**Editorial:** That doesn't sit well with a group who have organized to support a measure they call the Family Justice Bill, or Senate Bill 187.

It would close the aforementioned loopholes. It deserves hearings in the Senate and Assembly, as well as adoption. Then Gov. Jim Doyle should sign the measure.

Members of the group make good arguments that it's unfair to exclude a small class of people from going to court to seek relief from a medical wrong.

There are many stories of families devastated by what they believe are medical errors who then have turned to lawyers for advice on lawsuits, only to be told that the door is closed to them.

**The issue:** Some Wisconsin families can't file medical malpractice lawsuits because of a loophole in state law.

**Our view:** All families deserve their day in court, and the loophole should be closed.

Such is the case with Christine and Doug Spindler, of Stillwater, Minn., whose son Erik was a student at UW-River Falls and got sick. The 20-year-old died in November 2002 of meningococcal disease.

The family maintains that the doctor who treated Erik didn't realize in time what their son was dying from. An early treatment of antibiotics would have saved Erik's life, the family claims. But the Spindlers say they may never know the truth because they can't go to court to sue the doctor or the hospital.

"We just want the doctor investigated, and we have no right to do that," Christine Spindler said.

Same with Jim Bollig, of Cottage Grove, whose father died two years ago of heart failure. Bollig claims his father would have been saved had the doctor in Mauston recognized the right symptoms and applied the correct treatment.

Because Bollig's father was divorced from Bollig's mother, no one in the family has legal standing to sue.

"Total shock" is what Bollig said was the family's reaction when they heard that no legal action was possible. "We couldn't believe that law existed."

That law does exist, and the Spindlers and the Bolligs want to change it so that all families have equal footing for medical malpractice claims.

They picked up support this week from Doyle, who told the Leader-Telegram's Editorial Board that he supports their cause.

"I think the Legislature went way too far" in restricting the use of the medical-malpractice law, Doyle said.

The Spindlers and the Bolligs think that, too, and they want the Republicans who control the Legislature to act. Their first goal is to get a hearing before the Senate Judiciary Committee, led by state Sen. Dave Zien, R-Eau Claire.

Zien and his colleagues should listen to the pleas of the families who have been hurt twice: by a death of a loved one and then by the state denying those families their day in court.

It's time to make things right.

— Doug Mell, managing editor

# LEADER-TELEGRAM

Serving Eau Claire and West-Central Wisconsin

www.cvl.net

Saturday  
December 20, 2009

# Grieving parents denied day in court

Our 20-year-old son Erik was a lifelong delight to my husband Doug and I. He was a student at UW-River Falls who deeply touched those around him with his kindness and curiosity. He loved serving as a counselor in Japan with the USA Summer Camp during summer 2002, thoroughly enjoying his new Japanese friends and their culture.

But Erik was snatched away from us that fall while studying at UW-River Falls. He became quite ill the morning of Nov. 10, and finally went to the hospital in River Falls later that day after his friends insisted. My husband and I immediately drove from nearby Stillwater, Minn., to be at his side.

Unfortunately, Erik died at 1:10 a.m. the next day due to bacterial meningitis Type B. (Although Erik had his meningitis vaccination two years previous, it does not protect against the Type B meningococcal variety.)

Needless to say, the loss of Erik was shattering. Since his death we have learned much about meningitis, and we believe that if certain steps would have been taken in the hospital he would be alive today.

As our family tried to make sense of his death, we grew determined to make sure that other families did not have to endure the same agony as we did. We also wanted

to see that the physician was held accountable for decisions he made concerning our son's care. Imagine our shock when we discovered that we have no right in Wisconsin to take our son's case to court. Under a loophole in Wisconsin law, families essentially cannot sue for malpractice in the death of a child over 18

## It Seems To Me



**Christy Spindler**

Nor can families sue when malpractice claims the life of a widowed or divorced parent.

In our home state, there is no such artificial distinction based on age or marital status. When you lose a family member, you have a right to sue for loss of society and companionship. But in Wisconsin and just five other states, this basic right does not exist for people in our situation.

Fortunately, there are Wisconsin families and legislators working hard to change the law through the Family Justice Bill (SB 187). The aim is straightforward: provide all families with equal access to the courtroom when they suffer the loss of a family member because of possible malpractice.

But the powerful medical, insurance, and corporate lobbies fiercely oppose this simple principle of justice. As a result, the Family Justice Bill has gathered dust the past two legislative sessions. But dozens of families are committed to the notion that our loved ones did not die in vain, and we will not rest until we have equal justice for all in malpractice death cases.

That is why we are making a special appeal to state Sen. David Zien of Eau Claire, chair of the Senate Judiciary Committee, to hold a hearing and a vote on the Family Justice Bill. We believe that a hearing will allow the victims' families to convince the Legislature that fundamental question of justice is at stake in Wisconsin, and that the Family Justice Bill will have no financial impact on medical costs in the state.

Our ultimate goal is simply to have our day in court, to open the courtroom door for all families. As for now, all we ask is that the Senate Judiciary Committee open its proceedings so we can explain what we and other families have gone through, and why the current inequity in the law must end.

*Spindler, of Stillwater, Minn., is active in the Family Justice Network, which can be contacted at P.O. Box 620852, Milwaukee.*

# LEADER-BLOGRAM

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# LEADER-BLEGRAM

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December 12

## Survivors want justice for their loved ones

*Families say current law discriminates*

By Dan Holtz  
Leader-Telegram staff

Two families who lost loved ones through what they believe was medical malpractice just want their day in court.

But Wisconsin law doesn't allow them that opportunity.

"We don't know if the doctor was negligent or not. And we'll never know," Doug Spindler, of Stillwater, Minn., said Thursday.

"We just want the doctor investigated, and we have no right to do that," said Spindler's wife, Christy.



**Bollig**



**Bybee**



**Christy Spindler**



**Doug Spindler**

The Spindlers' 20-year-old son Erik, who was a junior at UW-River Falls, died Nov. 11, 2002, after contracting meningococcal disease.

The Spindlers believe the attending doctor at River Falls Area Hospital failed to act promptly to counter symptoms of meningitis.

Wisconsin law prohibits parents of adult children from filing

Bollig said, because a Mauston doctor prescribed an improper medication and ignored mounting signs of heart failure.

Bollig's father was divorced. Because he was single, Bollig can't file a lawsuit. If Bollig's father was still married, his wife could have filed a suit.

"Wisconsin's double standard is based on age and marital status," Bollig said.

"I've got a lot of questions about my dad's care yet there's nothing I can do about it," he said. "Just to get closure I need to get these questions answered."

Bollig and the Spindlers, representing a coalition of families who have experienced similar tragedies, were in Eau Claire Thursday to gain support for the Family Justice Bill — officially known as Senate Bill 187.

Sponsors said the bill restores equal treatment of all families in medical malpractice cases that result in death.

Roger Bybee of the Wisconsin Academy of Trial Lawyers supports the efforts of Bollig and the Spindlers.

Wisconsin is just one of six states that makes a distinction as to who can sue for loss of companionship resulting from medical malpractice, Bybee said.

Similar family justice bills have been unsuccessful in the state Legislature for the past six years.

Bybee is encouraging state Sen. David Zien, R-Eau Claire, chairman of the Senate Judiciary Committee, to hold a committee hearing on the bill.

Zien could not be reached for comment.



LETTERS

# Companionship doesn't end at 18

**Editor, The Post-Crescent:**

Our family discovered a cruel double standard in the current Wisconsin law when our 21-year-old daughter died. Under a quirk in state rules, families are denied the right to take legal action for loss of companionship or malpractice simply because the victim is a child over age 18 or a parent who is widowed or divorced.

The only people who have legal rights would be a spouse or child of that 18-year-old. The same is true if a parent is unmarried, widowed or divorced. Wisconsin is one of just six states with such an unfair exemption.

If your single 18-year-old dies, you can do nothing legally, even if you know mistakes a doctor made caused their death. The same is true of a single parent's adult child.

When you lose someone dear to you, you should at least be entitled to a full explanation of what went wrong. If this information will not willingly be provided, you cannot go to a lawyer. They basically cannot take the case, knowing the current law stops all legal action.

You also feel a powerful obligation to see that other families do not have to go through the same trauma. You want to make sure that doctors are not free to make the same fatal mistake again.

This creates a fundamental injustice, shielding incompetent or uncaring doctors while denying basic legal rights to many Wisconsin families who have suffered the needless loss of a dearly loved member.

However, a remedy is at hand: The Family Justice Bill

(SB187). Please contact your state legislators and ask them to support this bill.

We only wanted to find all of the facts, not get money. Unless this bill is passed, we will go to our graves never knowing if a caregiver was responsible.

**Barb Daczyk,**  
Menasha

## Let vitrification process destroy PCBs

**Editor, The Post-Crescent:**

I write to encourage us all to terminate the prospect of PCBs and a host of other deadly chemicals from being deposited in the town of Vinland landfill. This horrible fix could lead to a very deadly problem.

The landfill elevation is higher than Lake Winnebago. How long will it take before we see the horrors described in articles posted at [www.OurStolenFuture.org](http://www.OurStolenFuture.org), contaminating everything east of the landfill, including the lake?

Why were a few million dollars offered for the cleanup? What research did our governor do before he blessed this program? This stinks.

PCBs don't die. We need to do everything in our power to stop this ill-fated plan and let Minergy handle it.

Minergy's proposal has many benefits; most importantly, it destroys PCBs. It boosts the potential of a local company and increases jobs in the Fox Valley.

We cannot afford to be led by those who created this problem.

**Randall Gilbertson,**  
Vinland

Letters must be signed and include a daytime telephone number for the author. Letters must be limited to 300 words. They will be condensed if necessary for clarity or brevity.

We had this published in the  
Post Crescent and wanted to share  
it. May God Bless All

Margot + Barb Daczyk  
1032 Melissa St  
Menasha, WI 54952

## IT'S YOUR CALL

CALL 920-734-5678 TO SHARE YOUR VIEWS ON ANY SUBJECT, GREAT OR SMALL

# EDITORIAL SECTION

*'Let the people have the truth and the freedom to discuss it and all will go well.'*

- William T. Evjue, founding editor and publisher

12A

The Capital Times ■ Thursday, Feb. 7, 2002

## SHERRY ELLIS AND JEANINE KNOX

# Righting a medical wrong

When a family member dies following a commonplace medical procedure, the shock is overwhelming and bewildering.

We should know. We both lost our mothers following routine surgery. In one case, an artery was severed during a kidney biopsy, in another case an aorta was punctured during a pacemaker implant.

Both of us were left reeling. How could a routine, seemingly safe procedure end in our mothers' deaths? In both cases, it appeared that malpractice was involved.

In memory of our mothers, we each sought justice for them in court to prevent other families from suffering the same sudden and unnecessary loss.

To our shock, we discovered that the doors to the courthouse were absolutely closed to us. A loophole in Wisconsin's law does not allow an adult child to recover for loss of society and companionship of a parent who died as a result of medical malpractice.

Conversely, parents of adult children who died as a result of medical malpractice are also denied the right to sue. Wisconsin is one of only seven states that fail to recognize the adult child-parent bond as worthy of legal standing. As a result, these family members have no right to sue for anything in wrongful death cases.

These arbitrary distinctions have nothing to do with the responsibilities and realities of families. In fact, the law is rid-

dled with double standards. For example, if you lose a 17-year-old child due to malpractice, you are entitled to sue for loss of companionship. But once that child reaches his or her 18th birthday, you lose the right to any legal recourse.

Similarly, if your married parent dies because of medical carelessness, the surviving spouse can sue. But if your parent is widowed or divorced, then no one can take legal action to address the matter.

Our democracy should provide justice for all, not just for some. Yet countless Wisconsin families are unable to seek justice and accountability for their loved ones.

This year, Wisconsin can take steps to redress this injustice. The state Senate recently passed a measure that would restore the legal rights of adult children and parents of adult children in cases of death due to apparent malpractice. The measure has been gaining wide bipartisan support in the Assembly.

This broad support is very welcome, but not surprising: Public officials of all stripes recognize that parent-child "companionship" is lifelong, and believe deeply that everyone should be entitled to their day in court when they have suffered a painful loss.

However, some physicians and attorneys, along with Wisconsin Manufacturers & Commerce, the Wisconsin Medical Society and the Wisconsin Insur-

ance Alliance, are making an all-out effort to crush the measure.

The opposition has been predicting disaster to scare off support. These scare tactics include claims that health care costs would soar. In fact, malpractice costs are well under 1 percent of all medical costs in the United States.

Opponents also warn that the supply of doctors will be threatened. However, 43 other states recognize the special parent-child bond in permitting legal actions, with no resulting shortages of doctors.

Of course, there are some costs to be saved: Closing the courtroom doors to adult children and parents of children over 18 will undeniably save some money for the insurance companies that dominate the health system. But we must ask which it values more: enlarging the bottom line of powerful interests, or protecting the right of all Wisconsin families to seek justice?

• • •

**T**he tragic loss of a parent or a child due to malpractice can happen to anyone. No one can bring our lost ones back to us. But we can and must make sure that families get their day in court.

*Sherry Ellis of Oak Creek and Jeanine Knox of Milwaukee are leaders of the Family Justice Network, a consumer rights project of Wisconsin Citizen Action.*

# OPINION

— Wisconsin State Journal —

A8 • Monday, June 24, 2002

## GUEST COLUMN

# Glitch in state's malpractice law needs to be corrected

By Eric Rice and  
Keith R. Clifford

**W**e're sure most Wisconsin citizens believe that all families should be equal in the eyes of the law. Unfortunately, that is not case when dealing with a death caused by medical malpractice.

Wisconsin is among only six states with a blatant double standard for families seeking justice in medical malpractice cases. Under our laws, if a child is under age 18, parents may bring a claim for loss of society and companionship. However, if a child is age 18 or over, parents may not bring a

claim for loss of society and companionship. If a parent is married with no minor children, a surviving spouse may bring a claim for loss of society and companionship. However, if a parent is unmarried, widowed or divorced with no minor children, family members may not bring a claim for loss of society and companionship.

We believe the Legislature and the courts in Wisconsin have created a "glitch" in the law that requires correction. There is scant evidence to demonstrate the Legislature intended to deny adult children the right to bring a claim for wrongful death in medical malpractice cases.

The real irony here is if the doctor were behind the wheel of a car and caused a traffic accident that killed someone, the family — whether a 20-year-old unmarried child or a 60-year-old divorced parent were killed — could hold the doctor accountable. Why is a doctor in an operating room treated differently than when he or she is operating a car?

One of the authors of this column is a father who lost an adult child — 20-year-old daughter Erin Rice — due to apparent medical malpractice. No one can tell us why Erin's loss was any less to her parents and siblings than if she died when she was three years

younger. Wisconsin law basically says Erin's life after her 18th birthday is worth nothing. Erin's family may be denied any chance at justice and accountability unless the Family Justice Bill is passed and made retroactive.

The other author of this column is a lawyer who represents injured consumers and often must tell families about Wisconsin's "unfair" law. Family members are incredulous. It is inconceivable to them that a death caused by a clear case of medical malpractice can go unpunished.

Is it fair and just to close the doors to justice for many Wisconsin families? We don't be-

lieve it is. That is why we are working to ensure passage of the Family Justice Bill in Wisconsin. It would establish one equal standard for all Wisconsin families and assure equal justice for all Wisconsin families that deserve the same basic rights to fairness and justice that the laws of 44 other states give their families.

*Eric Rice, president of Orbital Technologies Corp., Middleton, is a member of the Family Justice Network, Clifford, Academy of the Wisconsin Academy of Trial Lawyers, is the senior shareholder in the Madison law firm of Clifford and Rainala.*

# Change pushed in death suits

By Anita Weiler

The Capital Times

Wisconsin law contains a pitfall for many families whose children or parents have died.

Current state law allows parents to sue for loss of society and companionship of children under 18 who die as a result of medical malpractice, but parents of adult children may not.

Also, adult children may not sue for loss of society and companionship of parents due to medical malpractice. In cases where a spouse is living or not divorced, the spouse may sue.

Claims may be filed for economic loss regardless of age, according to the Legislative Reference Bureau.

In a State Capitol press conference Wednesday, members of the Family Justice Network and a representative of Wisconsin Citizen Action explained why they think changing the law is essential.

"We are hopeful that Wisconsin will be able to join the majority of states that have a single standard of justice," said Roger Bybee, communications director of Wisconsin Citizen Action.

A bill that would make the change was narrowly passed by the state Senate, and Rep. Jeff Pile, D-South Milwaukee, introduced a companion bill in the Assembly this week.

"I've heard criticism that this is a rollback of the tort reform of 1995. It was never the intent of tort reform to stop people from pursuing legal remedies. It was meant to set a cap," Pile said.

"Love and affection does not stop at age 18."

Sherry Ellis of Oak Creek, a leader of the Family Justice Network, said: "We want to put

an end to double standards based on age or marital status. The bond between parent and child is something that lasts the lifetime that they share, and the law ought to recognize that."

Ellis alleges that her mother died in January 2000 because her lung and aorta were punctured during a pacemaker implantation procedure.

One potentially controversial provision of the bill would make it retroactive to May 1995, when the tort reform legislation was passed. The Senate rejected or tabled amendments that would have removed that date from the bill. Courts sometimes allow retroactivity and sometimes not.

Our Nov. 14 news conference generated this *Capital Times* article plus coverage from:

3 TV stations—

- Channel 4 NBC which came over from Milwaukee,
- Channel 3 WISC-TV of (CBS) of Madison,
- Channel 27 WKOW (ABC) of Madison;
- WHA radio (statewide public radio);
- WIBA radio;
- Wis. Radio Network (which serves WTMJ in Milwaukee and WTDY in Madison)



# Wisconsin State Journal



## Man's death shows need for justice in malpractice cases

On Jan. 24 the Wisconsin State Journal published the article "Hospital blamed," by reporter Pat Simms, about the death of my father, Peter Bollig. The story reported that the state Medical Examining Board has agreed to investigate my complaints that doctors were responsible for my father's death...

All Wisconsin citizens should have the right to have immediate family, at least, able to seek justice in a case of malpractice. Is that asking too much? There are at this time many people in Wisconsin who do not even know that Wisconsin is one of six states that do not recognize the parent-child bond after the age of 18. With public awareness, we can change this law.

Right now the family justice bill, Assembly Bill 638, is awaiting action in Rep. Mark Gundrum's office. We have been given a 99.9 percent chance of getting a hearing on this bill by Feb. 24, although it also needs a vote by a Judiciary Committee and to pass through the Assembly by March 14.

Every politician we have talked to is in favor of the family justice bill. Of course many of them did not know the way the law is written. This is not a political issue between Democrats and Republicans. It is a humanitarian problem.

Please contact your local assembly person at (800) 362-9472 to support this bill...

— Jim Bollig, Cottage Grove

## Daughter takes up malpractice fight

**L**ike dozens of other Wisconsin families, Jeanne Knox wonders why she can't sue the doctor she believes contributed to her mother's death.

"If this doctor ran over my mother while driving a car and killed her, we'd be able to hold (the doctor) accountable," said Knox, 47, the mother of two children.

"But in Wisconsin, we can't do it."

Because of a quirky twist in Wisconsin law, adult children are prevented from suing for malpractice if an unmarried or widowed parent dies.

Also, parents are not allowed to sue if they believe a single child over the age of 18 died as a result of malpractice.

That seems patently unfair to Knox and others who grieve over the death of a loved one.

They don't understand why an arbitrary age limit determines their right to sue for compensation of the loss of a family member who might not have had to die.

Wisconsin is one of only six states (and Washington, D.C.) with this particular age limit on surviving family members with regard to malpractice lawsuits.

Knox's mother, Beverly Jean McIntyre, died in October 2000 at the age of 65 while being treated in a Milwaukee emergency room.

McIntyre had been under the care of a doctor whom Knox believes misdiagnosed her symptoms, leading to further complications.

Knox was out of the country on vacation while her mother was being treated.

"We felt it was just a routine thing," Knox recalled. "I wanted to cancel my mother demanded that I take my vacation."

When she returned, her mother was dead.

Soon afterward, Knox and her family had serious questions about the care her mother had received. They filed grievances with the appropriate medical licensing

agency, but the investigation into her mother's death went nowhere.

Knox believed the only way to get answers would be a malpractice lawsuit. That's when she learned that, because her mother had no minor children and no spouse, there was no recourse under existing law.

"It was like pouring salt on the open wound," she said.

That's why Knox has become a vocal supporter of the Family Justice Bill, an attempt to undo the age limits that render adult children helpless.

The bill narrowly passed the Senate last fall and is headed for the Assembly.

Knox said a change in the bill is critical to hold bad doctors accountable.

"What we're saying, at least let us have our day in court," said Knox.

It's not an isolated case.

Adult children in Oak Creek, Eau Claire and West Bend who have lost their parents are fighting for the same change.

And, there are also several Wisconsin parents unable to bring malpractice lawsuits in the deaths of single adult children because of the same law.

The Family Justice Network, a branch of Wisconsin Citizen Action, has been lobbying hard for the passage of the Assembly bill that will give all these families their day in court.

Predictably, there has been a lot of lobbying against the bill. The opposition — mainly doctors and others in the health care industry — have suggested any changes in the age limits on malpractice could lead to soaring health premium costs.

But, according to the Family Justice Network, research has shown that adjusting the current law on medical malpractice wouldn't be that expensive.

For Knox and others, it's not about money. It's a deeply personal campaign, supported by their belief that the physicians being accused of malpractice should face charges in a court of law.

And age shouldn't matter when it comes to loss of love and companionship.

"Why should adult children be denied the right to receive compensation for their loved ones?" asked Knox.

Or, in other words, she wonders, why can't we treat bad doctors the same as bad drivers?



EUGENE KANE

Call Eugene Kane at (414) 223-5521 or e-mail him at ekane@onwis.com

# OUR TOWN



CNS PHOTO BY CHARLES AUER

Sherry Karchar-Ellis (center), her niece Stephanie Karchar (from left) and her children, Ashley, Nick and Amanda Ellis, reminisce about Sherry's mother, who died during a medical procedure.

## Law for love

### Oak Creek woman lobbies for family justice in malpractice

By Heather Clark  
Staff Writer

It is a hot topic for the state Legislature this session, whether adult children or parents of adult children should have the right to seek damages for alleged medical malpractice that results in deaths of the same.

The answer is a no-brainer for Sherry Karchar-Ellis of Oak Creek who has spent the past two years creating and lobbying for a bill that would allow the claims. Her mother, Ellen Karchar, died during what doctors have called "routine" pacemaker surgery Jan. 11, 1999.

"Our society is based on the notion that everybody has the right to go to court, and that's simply not true," she said. "I think legislation needs to realize a bond between a child and parent is lifelong."

"I understand mistakes happen, but we're all held accountable for our mistakes."

Current law, she added, omits certain physicians from that responsibility.

With Karchar-Ellis' aid — the first encounter she has ever had with politics — the question passed the state Senate but by a single vote, 17-16, in fall Assembly Judiciary Committee Chairman Rep. Mark Gundrum, R-New Berlin, said he is fairly confident the Assembly version will receive a hearing, perhaps in mid-February. He will



Ellen Karchar, who died during a surgical procedure, enjoys a party.

be making a decision on that by the end of the month, he said.

There will be a lobby day Wednesday for the bill, AB638, in Madison.

#### Case law established limitations

About seven years ago, tort reform was introduced into the Legislature, establishing a cap of \$350,000 for noneconomic damages in medical malpractice suits. Who is able to recoup those losses still is

#### NEXT STEP

WHAT: Lobby Day

WHEN: 10 a.m. to 4 p.m. Wednesday

WHERE: State Capitol, Madison

WHY: To show support for Assembly Bill 638, which allows for adult children of parents who died due to alleged malpractice or parents of adult children who died of alleged malpractice to seek damages for loss of society and companionship.

debatable.

Case law established in July 2000 with a suit that went to the U.S. Supreme Court says the tort reform bill did not intend to allow adult children or parents of adult children to file claims in alleged medical malpractice situations.

Karchar-Ellis, along with about 30 other families in the state and several state legislators, contest that ruling. Senate Bill 193 reflects that.

"The value of a family relationship doesn't magically end when a child turns 18," said Sen. Richard Grobschmidt, D-South Milwaukee, who co-authored the bill with Rep. Jeff Pate, D-South Milwaukee. "I did not support tort reform when it came about in 1993 and since that time, there

CONTINUED ON PAGE 30

TO CONTACT US: ■ PHONE: 262.317.8559 ■ FAX: 262.938.5001 ■ E-MAIL: jpodolski@add-inc.com

# Law

CONTINUED FROM PAGE 9

"have been a number of situations that have come before the Legislature that did not seem fair, that did not allow families to have their day in court. I support this legislation."

The bill creates a new section of law that would allow a claim by a parent or adult child "for loss of society and companionship."

"It does not guarantee damages awarded," Plale said. "It just gives them access to file a lawsuit. You still have to prove in a court of law there is negligence. It never was intended to shut the courthouse door to anyone. It's unfortunate that the court interpreted it that way."

While that all may be true, Gundrum said, there are still questions he has and concerns with adopting the bill. He fell short of saying he was opposed, just that he needed more information and that is what the hearing would provide.

"My initial impression is I understand where the relatives of individuals who were harmed would have concerns about our present law," Gundrum said.

"My only hesitation is if we do open up a whole new class of individuals who can sue, why stop here?"

It could be opening the door to several additional bills asking for similar law for siblings, for people who live together but are not married, for roommates, — any number of other relationships, he said.

Concerns include some in the proposed bill. "You have people who are adult children who haven't talked to the parents in 20 years or who lives on the other side of the country, and something happens and those people may be looking for a payday, as sad as that sounds," he said. "Why limit it? That's the questions I would have to be convinced on, of the need for it and it's appropriateness."

There are about 20 bills in the state Assembly's Judiciary Committee that still have not had hearings, including AB638, Gundrum said. AB638 is among the top six priorities, although Gundrum admitted just one or two more may see hearings because session ends mid-March and there are still many state budgetary items that need to be dealt with.

If the bill does not go to the floor this session, however, it dies and would have to go through the entire process again, if pursued.

## Strength of ties

In the Senate, there was an alternate bill proposed that would allow only adult children or parents of the adult child who was harmed to file a claim if the survivor was dependent upon the person who died in a financial or health-related manner, such as a disabled person. That version failed.

While that is not the situation with Karchar-Ellis, other Karchar family members say a disability is not needed for there to be dependence.

"She practically raised me," said Stephanie Karchar, Ellen Karchar's 19-year-old granddaughter. "She lived five houses from me. I slept over there practically every night. She taught me how to drive. My life would be so much different (if she hadn't died). We did depend on her."

Stephanie Karchar was one of seven grandchildren Ellen Karchar watched for her children while they worked. Even two years later, Karchar-Ellis says, she is still adjusting to not having that.

Ashley Ellis, an 8-year-old granddaughter, still has trouble sleeping sometimes. She used to call her grandmother, "Ma," every night to say good night, an activity the two shared unbeknownst to Karchar-Ellis. Amanda Ellis, a 16-year-old granddaughter, bursts into tears at the mention of her grandmother, barely able to say how much she misses her.

According to an autopsy report, Ellen Karchar died during surgery due to a "perforation of aorta during pacemaker wire placement." The autopsy also shows pacemaker wires punctured her lung.

Rep. Scott Jensen, R-Waukesha, could not be reached for comment but in a letter to the family said, "Accountability is very important, and that is why I have, and will continue to support legislation that makes doctors responsible for their actions or lack thereof."

And that is all Karchar-Ellis and the rest of her family are seeking.

"I felt that until I see this change, I can't make any type of peace for my mom," she said. "If this goes through, then it's like her death will not have been in vain."



# Middleton Times-Tribune

VOL. 111, NO. 9

THURSDAY, FEBRUARY 27, 2003

Serving the Good Neighbor City Since 1893

## Middleton resident starts crusade for 'family justice'

by GEORGE ZENS  
*Times-Tribune*

Eric Rice's voice trails off and tears fill his eyes when he talks about his daughter Erin.

She was only 20 years old when she died of heart failure April 19, 1999. As far as he is concerned, the doctors are responsible for her death and Wisconsin law is shielding them from being held accountable.

Erin Rice didn't have an easy start in life. When she was born on Oct. 16,

1978 in Columbus, Ohio, the umbilical cord was wrapped around her neck, cutting off the supply of oxygen to her brain. As a result, she suffered mild brain damage, which led to coordination, speech and cognitive challenges.

But according to her father, "Erin fought bravely to reduce these limitations. She never complained and her outlook on life was always sunny and positive. By the time Erin was a young girl, she had made remarkable progress."

Through aggressive therapy, her

speech and physical capabilities were almost completely restored.

With her parents Linda and Eric Rice and her three older siblings, Scott, Matt and Kelley, she moved to Middleton in 1984, where her progress was even more astonishing. Her dad proudly lists her accomplishments:

"Despite her disabilities, she played on a championship co-ed soccer team when she was six years old. She enjoyed summer trips to Lion's Camp in north central Wisconsin and loved weekend excursions to the fam-

ily's lake cottage near Gresham, Wis. She liked to swim and bowl. She really enjoyed miniature golf and could beat almost anyone who challenged her to a game.

"She went on to Middleton High School as a special education student where she pursued her dream of becoming an actress and joined the drama club. She was active in the Middleton football program as a team manager for four years. She graduated in 1998 with a GPA of 3.6 and made the honor roll almost every semester. After graduation, she continued to

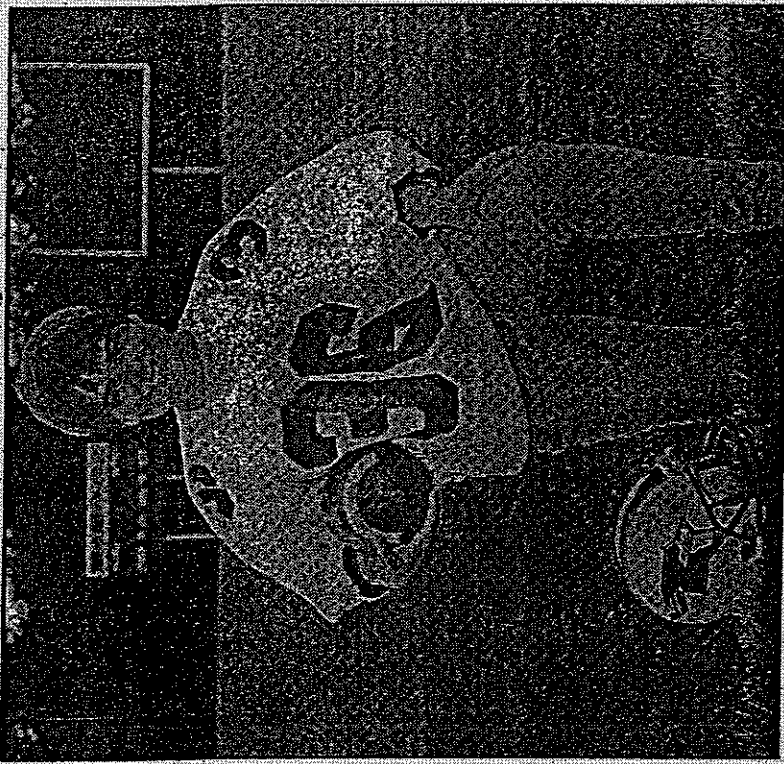
work at E.T.C. (Electronic Theater Controls) in Middleton and took continuing education courses at Middleton High School."

A few months later, events took a tragic turn. On April 5, 1999, she complained of shortness of breath, cough and loss of appetite. Her father recalls the last days of her life.

"She was taken to her HMO and the doctor was concerned about her low blood pressure and possible lung or heart involvement. She was sent to

See ERIN, page 14

## ERIN



After Erin Rice's death, Middleton High School retired her football jersey No. 36 and her parents started a scholarship in her memory (please see box on next page).

Photo submitted

*Continued from page 1*

the emergency room at the UW-Hospital. The ER-doctor took an X-ray, an EKG (electrocardiogram) and checked the lungs for an embolism, but did not do an echocardiogram. Erin was diagnosed with bacterial pneumonia and was treated by antibiotics.

"She went back to school and work four days later, but returned home after not feeling well. An anti-nausea drug was later prescribed. After two weeks, she was not eating and feeling worse and went back to the emergency room. At this point, an echocardiogram was taken and an enlarged heart discovered. Erin was diagnosed with viral cardiomyopathy and with less than 10 percent heart ejection fraction she was in heart failure. She died three days later."

The tragedy of their daughter's death took on a whole new dimension however, when the Rices discovered that "if the proper diagnosis had been made during the first visit (to the doctor), there was an 80 percent chance of survival with the correct treatment," according to her father. He adds:

"The medical records show an enlarged heart was evident, the EKG was grossly abnormal," yet neither he or his wife, nor his daughter was ever told of these results.

The more information Rice found out about his daughter's death, the more it looked like she had become the victim of serious malpractice. According to his research, a special heartpump could have saved her, but the doctors in charge apparently never sent for one. He also says that three kids had died the same way before his daughter and that it was only after her death that the hospital got a pump.

But when he wanted to take legal action, he faced three hurdles, all state-created: a \$350,000 cap for non-

economic damages that could be awarded, a law that prohibits him from suing for wrongful death because his daughter was over 17, unmarried, with no minor children, and a 180-day notice requirement that applies only to state medical employees.

Rice explains that the \$350,000 cap, which now actually stands at about \$400,000 because it is indexed for inflation, effectively prevents anybody from suing who cannot afford to pay an attorney out of his own pocket:

"No contingency attorney will take a case like that because they lose their shirt. National figures show that only about 25 percent of all malpractice suits are successful for the plaintiff. That means that an attorney, when he does the math, divides the \$400,000 by four. The \$100,000 that he can expect pays just about for the expert witnesses. The pot simply isn't big enough for an attorney to take the case."

The Wisconsin law prohibiting family members for suing for wrongful death in many cases has led to the creation of the Wisconsin Family Justice Network. This organization consists of Wisconsin families that have lost a family member due to apparent medical malpractice, and is pushing to get the "Family Justice Bill" passed by the Wisconsin legislature and the 180-day notice repealed. As Sherry Ellis, chairwoman of the Family Justice Network, states in a press release:

"There's nobody to hold accountable. All because your parent was unmarried, widowed or divorced with no minor children, or because your son or daughter was over 17 and was unmarried, with no minor children."

Rice suspects that most people also have no idea that the 180-day rule exists:

"It only applies to state medical employees, including physicians and staff at UW-Hospitals and Clinics, and it means that you have to notify the

## ERIN

Continued from page 14

attorney general within 180 days of the apparent malpractice. All other non-state medical providers are under a three-year statute of limitation law."

The Senate passed bills, the Family Justice Bill and the repeal of the 180-day rule, during the last legislative session; the Family Justice Bill by 17 to 16 votes and the 180-day repeal by a voice vote. They never made it to the floor of the Assembly, though.

In a press release, the Wisconsin Family Justice Network puts the blame on Scott Jensen (R-Waukesha) and the medical and insurance lobbies:

"Because of Scott Jensen, the bills were not put to a vote in the Assembly, it seems many legislators and legislative leaders happen to be well-supported and lobbied by the Medical Profession, the Medical Society, and many Medical Insurance Companies."

For more information about the Wisconsin Family Justice Network, please write to WFJN, P.O. Box 620852, Middleton, WI 53562, or contact Eric Rice at 836-4594 or e-mail [rice84@earthlink.net](mailto:rice84@earthlink.net).

(Next: The views of the legislators and medical professionals.)

THURSDAY, FEBRUARY 27, 2003

MIDDLETON TIMES-TRIBUNE

# The Erin Elisabeth Rice Memorial College Scholarship

Erin Rice's dream of becoming a nurse was shattered by a fatal car accident on Hwy. 54 in 1998. She had dreamed of going to college since she was able to fulfill that dream, and in order to keep her dream alive, the Erin Rice Memorial Scholarship was established. The recipient of the annual scholarship for a nursing field, currently managed by Middleton High School, is dedicated to his or her team and serves as a valuable member of the college-bound student and high academic standards by assisting and caring individuals who accept and supports all different types of individuals.

The scholarship is valued at \$1,000 each year. Past recipients were: Stacey Marie Bliss (1999), Stephanie Elizabeth Howell (2000), Leah Elizabeth Grynitski (2001), Corbin and Erin Elizabeth Brown (2002), and other individuals. For more information about the scholarship, contact Eric Rice, 7622 West Hamstead Court, Middleton, WI 53562.

# LEADER-TELEGRAM

www.leadertelegram.com

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Wednesday, June 6, 2001



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WEATHER

WIRE

## Colfax man wants changes to system

### Mother's death prompts testimony about legal structure

**By Kevin Murphy**  
Leader-Telegram correspondent

MADISON -- A Colfax man, who says he watched his 83-year-old mother die from respiratory arrest complications while hospital staff did nothing, wants the state to allow adult children of medical malpractice victims to sue health care givers.

Peter A. Torgerson told the Senate Judiciary Committee on Tuesday that the "devastation" he felt from the loss of his mother was compounded by the inability of the legal system to provide him with justice.

A bill authored by Sen. Gary George, D-Milwaukee, would expand medical malpractice laws to include the provision for adult children to sue for the loss of their parents.

The committee took no action on the bill Tuesday but is expected to schedule it for a vote this month, said an aide to George.

Torgerson said he had confidence and respect for the medical profession after serving 17 years as a firefighter and emergency medical technician in St. Paul.

But he said that did not prepare him for the night of Aug. 1, 1998, when his mother was flown from an Eau Claire nursing home to Luther Hospital.

After the woman has respiratory problems at the hospital, medics waited for the nurses to act, and the nurses did little but wait for the respiratory therapist who was on her way, Torgerson said. The respiratory therapist arrived within 10 minutes, without equipment, and was indignant when asked what took her so long, Torgerson said.

The stories of those who have lost loved ones as a result of medical malpractice are heart wrenching. But good social policy is sometimes difficult.

— Mark Adams, vice president of the State Medical Society of Wisconsin

The therapist found that Torgerson's mother was not breathing but had a pulse. However, still no action was taken to save her life, Torgerson said.

His mother went into cardiac arrest and died.

The State Bureau of Quality Assurance investigated Torgerson's complaint about the staff's actions found that the flight medics were not authorized to work on the floor where the woman was taken. The investigation also found that the notes in the nurses station was lacking critical times and names surrounding the incident.

Torgerson said Luther changed some procedures because of the bureau's investigation but that was all that came from the incident which he called "surreal" and "bizarre."

A Luther Hospital spokeswoman said patient confidentiality requirements prevent hospital officials from discussing the Torgerson incident.

Attorneys told Torgerson they could not help him because Wisconsin is one of only seven states that prohibits adult children to sue from loss of companionship when their parents die from alleged malpractice. Parents also can not sue for loss of companionship when they believe health care providers negligently caused the death of their adult children.

Medical organizations and health insurers oppose expanding medical malpractice as proposed advanced by Torgerson and nine others testifying on Tuesday because it will increase costs and decrease the affordability of health care.

"The stories of those who have lost loved ones as a result of medical malpractice are heart wrenching. But good social policy is sometimes difficult," said Mark Adams, vice president of the State Medical Society of Wisconsin.

The Legislature has balanced the "desires of the few who are injured by medical negligence and the many who need affordable health care ... and this balance should not be disrupted," Adams said.

Malpractice insurance rates are rising rapidly, not because of more suits being filed, but by higher damages awarded by juries, said William Montel, president of PIC Wisconsin, a company that insurers 4,500 doctors and 35 health care facilities in the state.

The protection doctors enjoy from suits by adult children or parents of adult children is "nonsensical," said Angela Dentice, president of the Wisconsin Academy of Trial Lawyers.

*Murphy is a free-lance writer based in Madison. Gary Johnson Tim Stein, the Leader-Telegram's local news editor, can be reached at 833-9211, (800) 236-7077 or [gary.johnson@ecpc.com](mailto:gary.johnson@ecpc.com).*

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# In Mike's honor

## Death of BD man sparks sister's crusade

By TOM GIESE  
Associate Editor

Mike Lange can't hear the words, but when his sister speaks, she credits him with saving her life.

Roxanne Goeltz is alive today, she says, thanks to her big, burly brother, who enjoyed motorcycle rides and cooking elaborate meals, the Green Bay Packers and family get-togethers.

Just 39, Mike died from blood around the heart. At least that's what the autopsy says, but Roxanne is convinced that he died of neglect. And she's willing to spend the rest of her life making sure the same thing doesn't happen to others.

**INDEED**, Mike didn't expect Sept. 22, 1999, to be his last day. Suffering stomach pains, he entered the emergency room at the local hospital at 6 p.m. the night before. He suspected he had the flu.

It was a hectic night, with nurses called to handle victims from an accident. As a result, Roxanne says, her brother received second-rate treatment. He was administered a self-drip morphine infusion and taken to a second floor room. Ray and Betty Lange, Mike's



Tom Giese

Post Script

parents, expected their son to be discharged the next morning. However, nine hours after his admittance, they received a

call. It was a hospital official telling them to hurry to their son's bedside.

"They said he wasn't good," Ray recalls.

When the elevator door to the second floor opened, the Langes knew something was wrong. Huddled in front of them, they say, was a group of whispering nurses.

Betty suspected the worst. She turned to her husband and said, "He is dead, Ray."

She was right. Down the hall lay the lifeless body of the couple's 6 foot, 200 pound son. His cold body still held the IV. His arm was stiff.

**ROXANNE** says her brother didn't die in vain. She has turned his death into a cause, an effort that has taken her to medical schools and conventions, and recently to an appearance before Congress.

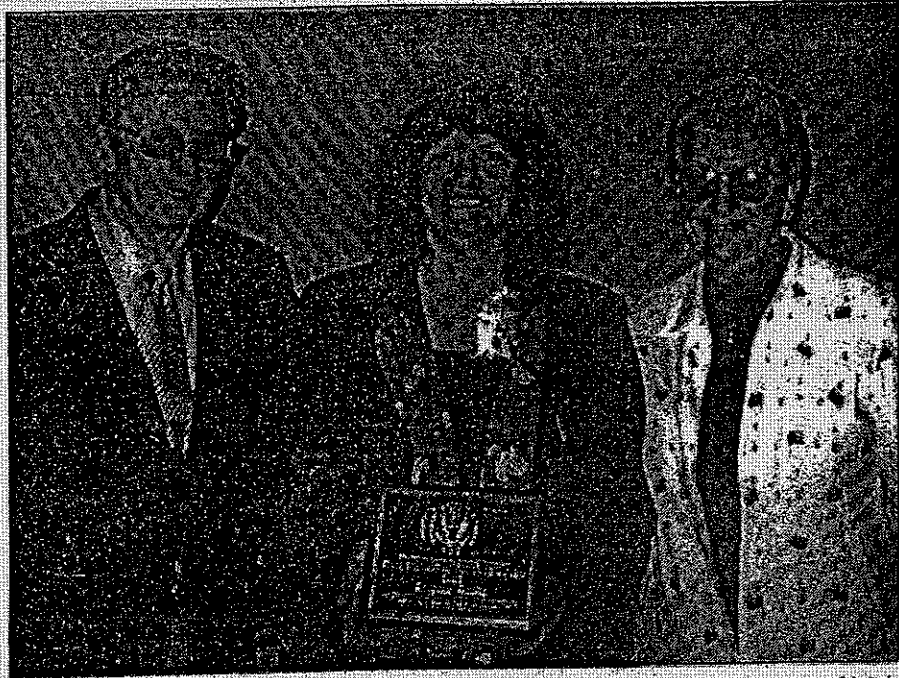
"She's doing a lot of good out of Mike's death," Ray said proudly.

Please see Mike's honor/P. A2



Submitted

Mike Lange was all smiles in this photo taken shortly before his death in 1999. Lange's hospital treatment has motivated his sister to crusade for patient safety measures.



Submitted

Roxanne Lange, center, is flanked by her parents, Ray and Betty Lange of Beaver Dam, after she was recognized recently for her efforts on behalf of patients.

### Tips for your health care

Roxanne Lange offers these three tips for consumers who are confronted by a medical emergency:

- Immerse yourself in the diagnosis and treatment of your disease. Find out as much as possible about the ailment, using every source available.

- Have friends or relatives stay with you around the clock during your surgery and hospital stay. Make sure your companion knows exactly what drugs are being administered and treatment undertaken.

- Participate in your follow-up treatment. You will be surprised how many mistakes can be avoided simply by knowing your circumstances.

# MIKE'S HONOR

Continued from page 1

From her Minnesota home, Roxanne has become a torch bearer for people who feel medical error has taken a loved one. She won't criticize doctors, nurses or administrators, but hopes to create a setting where questions aren't left unanswered. She knows her work can't bring back the brother, whose last visit to her home included homemade pizza and beer, however she's optimistic that a recurrence of a similar tragedy can be averted.

"I forgave," she said. "Now I have to do something positive."

The 1974 Beaver Dam High School graduate has started Consumers Advancing Patient's Safety. In addition, she is a consumer adviser to the National Patient Safety Foundation through the Patient and Family Advisory Council and is a member of the Partnership for Patient Safety advisory council.

"I've gotten away from blaming and punishing," Roxanne said. "I want to help."

**SHE HAS USED** her training as an automation specialist with the Federal Aviation Administration to look at problems in the health care field. She would like to see families dealing with death in a hospital treated like those who've lost a loved one in an airplane accident.

During a June 11 presentation to a Senate subcommittee, Roxanne said families

should be gathered and grief counselors made available. An investigation should be launched to determine if all suitable care was given.

"(My parents) were made to feel they deserved no answers as to what happened to their son," she said, "as if dying under the care of the medical profession relieves the profession of any accountability. To this day, no one will talk to them about their son's last hours alive."

Roxanne believes her brother died of an aneurysm, something that has claimed other members of her family. She's relieved to know that morphine took away his pain in his waning hours. Nonetheless, she wants answers.

"Mike is gone and we cannot understand what happened," she said. "The hospital has no explanation, no apology, no condolences and no help to try and deal with the loss."

Ironically, within months of Mike's death, Roxanne found herself facing a medical emergency when a tumor was discovered in her chest. She says that her brother's difficulties gave her insight into the medical community and helped her avoid the pitfalls that led to Mike's death.

First, she said, she immersed herself in the diagnosis and treatment of the malignant thymoma. She learned a great deal about the disease and asked dozens of questions of her surgeon and other professionals treating her.

Secondly, she was able to have friends with her

around the clock during her surgery and hospital stay.

"Don't go into the hospital without someone with you 24/7," she said. "I encourage it to prevent errors by being a partner in your care."

Even then, Roxanne was allowed to remain in bed for 36 hours after her surgery, which led to a pulmonary embolism. Blood thinning medication prevented further complications.

Finally, she participated in her follow-up treatment. During that phase, she was able to correct a problem that was a result of a miscommunication between her doctor and nurse.

**RECENTLY**, Roxanne was honored for her work on behalf of others when she received a federal civil servant of the year award. She was joined at the May banquet by her parents.

For the Beaver Dam native, the past three-and-one-half years have been both difficult and productive. Mike's death brought anger, frustration and disappointment in the medical field, but also stirred in her a passion to fix some of its ills.

"My little brother's death opened my eyes to the fact that consumers need to be partners in our health care," she said. "I also realized that our health care workers are not infallible gods, and that we should not rely on them to be miracle workers. They are human just like me. They work in a complex system just like I do and they need our help to do their job well and make our journeys as safe as possible."

# Area family's involvement could help change malpractice law

By KEVIN BRALEY  
Daily News Staff

A family's concerns following the death of a West Bend woman last year may help change a law in Wisconsin that currently restricts families from suing doctors they believe were negligent in the treatment of loved ones.

The woman died at age 76, and her family believes the doctor who was treating her ignored her and her family's requests for tests and treatments for serious ailments.

The woman's name is not being used in this story because her family presently has no right under state law to allege misconduct by the doctor in a court of law.

But the last months of her life were spent in pain, her family said, and she was not eating. They say the doctor repeatedly said she just had the flu. The causes of her death were determined to be cancer and cardiac arrest.

Despite the pain she was in and the alleged neglect, the current Wisconsin law says no one can sue on her behalf because she was a single adult. Her husband died in 1989.

Her family is now working with a Milwaukee government watchdog group to change that law.

Wisconsin is one of six states and Washington, D.C., that does not allow lawsuits to be filed on behalf of single people over the age of 17 who die at the hands of a negligent doctor. The other states that bar family members from suing on behalf of single adults are Indiana, Florida, Maine, New Jersey and Maryland.

The current law says "a parent does not have the right to recover for the loss of society and companionship of an adult child who died as a result of medical malpractice." The bill also says an adult child cannot recover for an adult parent as a result of medical malpractice. Only spouses can sue on behalf of their loved ones who died as a result of malpractice.

The Wisconsin State Legislature is considering a bill that would change the law to allow family

members to sue for loss of society and companionship on behalf of the deceased. However, some legislators — including State Sen. Mary Panzer, R-West Bend, — say the new law would increase already high medical insurance rates. The

State Rep. Glenn Grothman, R-West Bend, also has his doubts about a bill that would potentially increase health insurance costs and "would be surprised if the bill goes anywhere."

"In general, medical costs are too high," he said.

"Typically, bills that come to the assembly raise health insurance costs don't get hearings."

Grothman said he has no official stance on the bill, saying he hasn't learned enough about it to take a side.

"I certainly have sympathy for the family," he said. "But, the Assembly is very conscious of rising health costs."

Roger Bybee, communications director for the Wisconsin Citizen Action group, — which is spearheading an initiative to change the current law — said rising health care costs as a result of the bill is "an artificial creation that's been thrust into the public

debate."

Bybee said a 1998 study of insurance companies shows 58 cents per every \$100 goes toward insurance malpractice costs — a small cost in Bybee's mind.

"It's really a very, very tiny cost," he said.

The Wisconsin Citizen Action group — based in Milwaukee — is a public watchdog and the umbrella group for the Family Justice Network, a group fighting for the proposed bill.

Bybee said the Family Justice Network is working with 40 to 50 family members due to alleged negligence but cannot sue on the deceased behalf.

"It's interesting to us that Wisconsin — a state with progressive traditions — denies the chance of justice to a group of people," Bybee said. "We think that is entirely unfair."

On Jan. 24, the Family Justice Network is meeting with families to help them effectively lobby politicians.

"For many of these people, this is their first political experience," Bybee said.

**"On bills like this, I always look for balance. We had a lot of information saying prices would go up with this bill."**

— Sen. Mary Panzer  
on easing restrictions of medical lawsuits

he said "These people were stunned to find out they have no legal rights. They don't want other people to go through this."

Panzer also said she feels doctors would stray away from statistically risky procedures, knowing they could be severely penalized if something were to go wrong.

The West Bend woman's son and daughter, said any filed lawsuits against the doctor who cared for their mother, would not be for financial gain.

"We just want him to answer to us," the woman's son said.

"We want to know why he did what he did and why he didn't listen to us."

He said he believes the law is a double standard.

"If a doctor kills someone in a car accident, the doctor is held accountable in a court of law," he said. "But if one of his patients dies in the doctor's care, the doctor is protected."

"We have to relieve this every day," the woman's daughter said. "There is no closure until something is done."

"(My mother) can't speak for herself, so we will speak for her."

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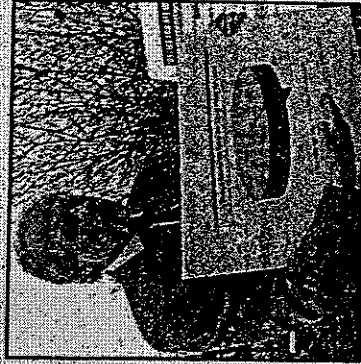


# DAILY NEWS

WASHINGTON COUNTY'S DAILY NEWSPAPER

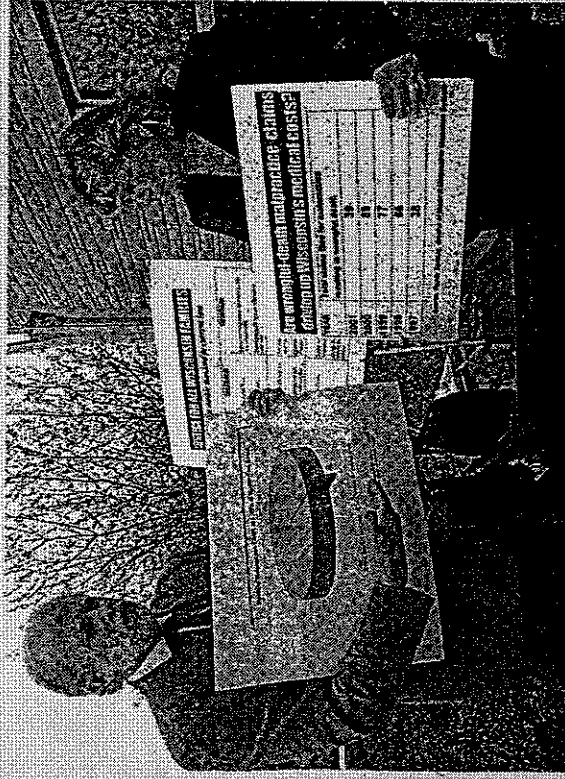
Family justice bill advocated .....A3

WEST BEND May 2, 2001



TOP STORIES

## Family justice bill proponents make case public



Laszlo A. Szakals/Daily News Staff  
Roger Bybee and Sherry Ellis of the Family Justice Network speak outside the Washington County Courthouse Wednesday seeking support for the proposed Family Justice Bill. The bill was shot down in the Assembly earlier this year, but the Family Justice Network plans on continuing its fight next year when it can reintroduce the bill.

By KEVIN BRALEY  
Daily News Staff

Two advocates of a bill that was turned down in the state legislature earlier this year were at the Washington County Courthouse Wednesday promoting "justice for all."

Roger Bybee and Sherry Ellis of the Family Justice Network based in Milwaukee travelled to Madison, Waukesha and later to West Bend Wednesday drumming up support for a bill that would give families their day in court if a loved one dies at the hands of a negligent doctor.

"When the people of Wisconsin hear about this, they will side with us," Bybee said. "We think a lot of the legislators have been listening to the doctors and insurance companies — not the constituents."

Ellis and Bybee targeted West Bend because state Sen. Mary Panzer (R-West Bend) voted against the bill and although Rep. Glenn Groffman (R-West Bend) never got a chance to vote on the

bill, his comments "were not positive," Bybee said.  
"We think it's key that residents of West Bend speak up for justice for all families," Bybee said.

A law in Wisconsin prevents any family member from suing a doctor who allegedly killed a single person over the age of 18. The proposed bill would change that, allowing families to sue doctors for negligence.

Ellis's mother died in Milwaukee County just over two years ago in what was called a routine pacemaker implantation procedure. The doctors allegedly punctured Ellis's mother's aorta causing her to bleed to death.

Ellis's mother was widowed at the time, and because of that, her family could not sue for negligence, Ellis, Bybee and other families, including at least one in West Bend, are looking to change that law.

Earlier this year, the state assembly didn't vote on the proposed bill, leaving it dead.

"(The legislators) were afraid it

had a chance of passing," Ellis said. "(Rep. Mark Gundrum, R-New Berlin) said he wanted facts about the bill, not just sob stories. We presented facts and when we gave him them, he realized the only way not to pass the bill was to not hold a vote on it."

"This is not a bill that lines up on Democrat or Republican lines," Bybee said. "You never know when your family will be affected."

The Family Justice Network will again push the bill on legislators starting in January. Legislators have said the bill would raise the already rising health care costs. But Bybee claims only 55 cents of every \$100 goes toward medical malpractice claims.

The Family Justice Network is kicking off a statewide petition drive to support their cause.

"If enough people know about this, there's no way the legislators can get off the hook," Bybee said.

"These doctors continue to practice with no accountability," Ellis said.

THURSDAY MIDDAY

May 2, 2002

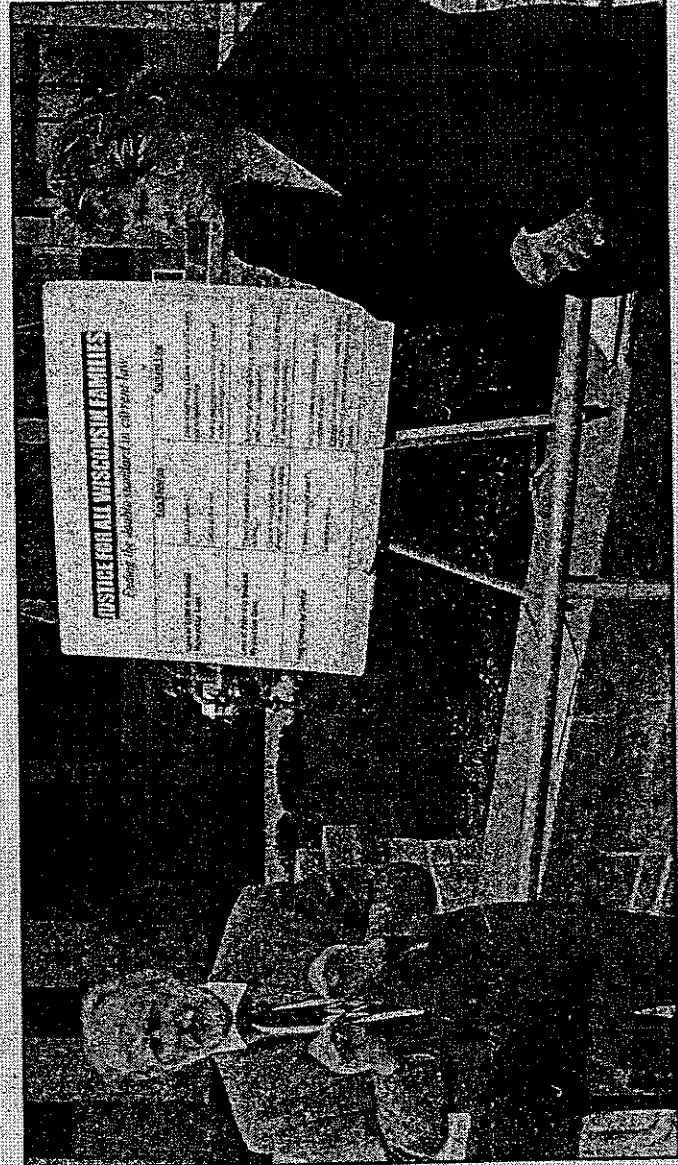
Waukesha

Wisconsin

Volume

# WAUKESHA FREEMAN

WAUKESHA COUNTY'S DAILY NEWSPAPER



Brian Huber/Freeman Staff

## Push to change malpractice law

WAUKESHA — Roger Bybee, left, of the Citizen Action League, and Sherry Ellis, co-chair of the Family Justice Network, announce a statewide petition drive on the steps of the county courthouse Wednesday. They spoke of an effort to change state law to allow adult children of malpractice victims to sue doctors and hospitals for malpractice. A proposal was introduced to the state Senate last year, but never received a vote in the Assembly. Ellis, who lost her mother last year during an operation to install a pacemaker, said, "We are not going to go away. We are going to keep pushing this. I am determined to see that justice is done and we do the right thing." There were 39 deaths in the state last year due to malpractice, which means the costs associated with malpractice suits are a minimal "silver" of state medical costs, Bybee said.



Family

Justice

Network



P.O. Box 620852  
Middleton, WI 53562-0852

## Doctor Perforates Aorta During Pacemaker Wire Placement Family Has No Remedy



**Ellen C. Kachar**  
Milwaukee, WI  
1932-2000

### *As Told By Her Daughter, Sherry*

My mother was Ellen C. Kachar. She died January 11, 2000 at the age of 67. My mother was a widow and had three children, my two brothers and I. We are all adults with families.

On January 11, 2000, my mother went into the hospital for a pacemaker implantation procedure. The doctor told us this would be "a simple procedure." As I sat in my mother's hospital room waiting for her to return, a woman entered the room. I was taken down four floors, there doctors told me that "something" had happened. They didn't know what or why, but it didn't look good. It wasn't; my mother died.

My brothers and I sat next to her lifeless body trying to absorb the unbearable and unbelievable reality that we would have to go on with our lives without the one person who made it complete. After much discussion and difficulty, we decided to have an autopsy performed.

When we called the Medical Examiner's office the next day we found out the reason for my mother's death: Doctors punctured her lung and then, disregarding her complaints of pain and the staff's warning that something was wrong, proceeded to puncture her aorta, causing her to

bleed to death. The most horrible thing to learn was my mother was awake during the whole procedure!

Our mother's death demands answers and accountability. Imagine our shock when we discovered Wisconsin does not allow an adult child or the parent of an adult child to bring a wrongful death claim if the death is caused by medical malpractice.

Our mother's death has been devastating to our family and changes our lives forever. If the doctor performing the pacemaker implantation had instead caused an auto accident killing my mother, my brothers and I would be able to bring a wrongful death claim. Why are careless doctors protected from full accountability?

Our mother will not share her life with her children or her seven grandchildren. We are now forced to live without her loss of aid, comfort, love and affection.

If this law remains, we are saying it is okay to kill someone and nothing will happen as a result. That is wrong. We need Wisconsin to restore the ability of all Wisconsin families to seek justice and accountability for the death of a loved one. Please don't let our mother's death be in vain.

*Pending state legislation, the Family Justice Bill (Senate Bill 187) will restore the remedies of adult children and the parents of adult children, allowing them to once again bring a claim for wrongful death when the death is caused by medical malpractice.*



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## Pulmonary Artery Perforated During Biopsy Patient Goes Into Cardiac Arrest and Dies

**Alma Davis**  
Milwaukee, WI  
1952-1999

*According to Medical Records and Daughter  
Margaret*

Our mother, Alma Davis, died January 12, 1999 in a Milwaukee hospital. She was only 46 years old.

Our mother was admitted to the hospital for tests. She had been complaining about shortness of breath and chest pain. In 1998, she was hospitalized for pulmonary embolus and, all this time, was taking the drug Coumadin.

While in the hospital, doctors recommended a biopsy be done to evaluate an unexplained growth in the chest. A previous biopsy had been performed, but proved inconclusive.

Our mother had three children, brothers Willie, Kerry and myself. While in the hospital, I spoke to my mother and she indicated her hesitation of having another biopsy performed, she even talked to my brothers and her only sister about this as well.

Imagine my shock when I received a call from the hospital on January 12, telling me my mother was dead. My brother Kerry rushed to the hospital and found my mother lying dead, blood still running from her nostrils and mouth.

Doctors had no explanation for the death. At the suggestion of another doctor, we requested an autopsy.

The autopsy revealed the biopsy needle perforated my mother's pulmonary artery trunk causing her to go into cardiac arrest during the biopsy procedure.

When my brother Willie talked to the coroner after the autopsy was performed and the cause of death determined, the coroner told him our mother knew of the ramifications of the biopsy procedure and she agreed to have it performed. However, I have never found a consent form with my mother's signature. The Wisconsin Department of Regulation and Licensing has also told me that the "simple" procedure did not require a signature.

We want to know why my brothers and I weren't aware that she was going to have this procedure done? I personally talked to my mother on the phone the night before and she did not tell me of any intention to have the biopsy performed.

We don't understand how a doctor can kill our mother and not be held accountable in anyway. It is clear to me that our mother's death was a completely unexpected and unacceptable outcome. Another doctor, who has performed hundreds of these kinds of biopsies, examined our mother's medical records and said the biopsy procedure used was "extremely bad form" and failed to meet the standard of care.

It appears to us that no one is very concerned about what happened to our mother. I dream about my mother daily, and I just cannot rest until I have answers about her death.

Our mother's death demands justice. Open the courthouse doors, don't keep them locked to our claim.



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## Dad Suffers Heart Attack and Nothing is Done to Save Him

*According to complaint filed with Medical  
Examining Board and son Jim,*

My Dad, Peter Bollig, was admitted to Mile Bluff Medical Center-Hess Memorial Hospital, Mauston, Wisconsin on December 22, 2001 complaining of chest pains and vomiting. I was vacationing in the Upper Peninsula of Michigan and drove down from there and got to the hospital about 10:30 p.m. that evening. I went in and saw my Dad. He looked somewhat normal and I told him he should go to Madison, but he said everything was ok and he was going home tomorrow. I said ok and went to stay at his house overnight.

I went back the next morning and I could see my Dad was retaining fluid. I was very vocal that I wanted him transferred. At 10:00 a.m. we were repeatedly requesting that my Dad be transferred to a Madison Hospital. My Dad could not breathe while lying down and was obviously getting worse. The Doctor saw no need to transfer my Dad. At 1:00 p.m. something sparked the doctor to transfer Dad to Madison. They must have realized something was wrong because they called Med Flight first, but they weren't flying. It then took them two hours to find an ambulance, another hour to staff it and two plus hours to get him to Madison.

Upon arrival at Meriter Hospital in Madison my Dad was immediately diagnosed and a test run to confirm he was having a heart attack. He went straight to surgery and made it through, however the surgeon told the family there was so much heart damage, he would not make it. My Dad passed away on Christmas Day 2001. He was 70-years-old. We buried him on my wedding anniversary, December 28.



Jim with his father Peter Bollig.

Later I found out that when my Dad arrived at Hess Memorial his myoglobin level was 311.1. The normal range is 116.2. This should have alerted the doctor that something was not right and to keep a close eye on my Dad. The staff did not bother to repeat this test until 5:55 a.m. the next morning. At that time the lab test shows the myoglobin level had risen to 2252.2! Also all other cardiac enzymes had elevated substantially during this time

frame. Why didn't the doctor see my Dad's heart crisis developing? I feel strongly that not transferring my Dad to a qualified facility in a timely manner led to his death.

After my Dad's death, I learned I couldn't bring a wrongful death claim against the doctor because of his negligence. That is wrong. That is why I support passage of the Family Justice Bill.

*Pending state legislation, the Family Justice Bill (Senate Bill 187) will restore the remedies of adult children and the parents of adult children, allowing them to once again bring a claim for wrongful death when the death is caused by medical malpractice.*



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## Son Left Unattended and Unchecked In Hospital Room for Four Hours He Dies and Parents are Left Without Answers

### *As Told By His Mother, Betty*

On September 22, 1999 our 39-year-old son, Mike, died as a result of medical neglect. His death has shaken our belief in the health care system.

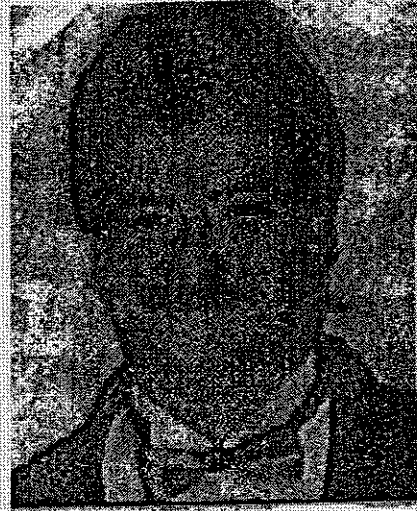
On September 21, our son Mike stopped at our house on the way to work complaining of a stomach pain. He said he felt something move in his stomach and right after that he felt light-headed. As the day progressed, his pain increased and he felt nauseous. Finally at 3:30 p.m. his Dad took him to the emergency room. He sat there for three hours in agony. They put him in a room at approximately 6:30 p.m.

His Dad checked back with Mike later to see how he was doing and Mike said he was in so much pain that he couldn't even talk. At 8:30 p.m. Mike called me and told me the hospital had put him on morphine. He asked me if there was anything in our family history the doctors should know about. I told him I would call the nurse on duty and let her know there was a history of aortic aneurysms in our family. I did call the duty nurse and told her about the family history (two brothers and my father all died from aortic aneurysms) and asked that they do an ultrasound on Mike. She said it wasn't pertinent to Mike's case!

I called Mike back and told him what the nurse said. I said I would see him in the morning. That was the last time I talked to my son.

At 4:00 a.m. the hospital called and said Mike "wasn't doing so well" and we should come to the hospital immediately.

On the way to the hospital, my husband and I discussed plans to take him to another hospital.



Michael P. Lange  
Beaver Dam, WI  
1960-1999

When we arrived, no one met us at the front entrance. We took the elevator up to Mike's room. When we got off the elevator, the whole staff was standing there whispering. They stopped abruptly when they saw us. Immediately we knew our son was already dead.

I ran down the hall to Mike's room. Mike was lying in bed, his arm hanging over the side of the bed with the I.V. still in it. We went to him and he was cold to the touch. As we tried to place his arm back under the sheet, it could not be moved — rigor mortis had already set in. He had been dead several hours.

According to the medical records, they had last checked

Mike at 11:30 p.m. He was dead when they found him at 4:00 a.m. He was left unattended and unchecked for four hours!

An autopsy was performed which found blood around the heart. No explanation has ever been made as to the cause of the blood. In our hearts we know Mike had an aortic aneurysm, which may have been prevented if the doctors had done an ultrasound as we requested.

Maybe our son wouldn't have survived, but at least he would have been given a chance. Nothing was done to try and save our son's life — a handsome and most loveable son. I believe the hospital let my son die.

It is an insult for the legislature to say parents suffer no pain and suffering for the loss of an adult child. There isn't a day that goes by when we don't see our son lying dead in that hospital bed. We want answers and accountability. Only the Family Justice Bill can help us find the answers to our questions about Mike's death.

*Pending state legislation, the Family Justice Bill (Senate Bill 187) will restore the remedies of adult children and the parents of adult children, allowing them to once again bring a claim for wrongful death when the death is caused by medical malpractice.*



Family  
Justice  
Network



Network

P.O. Box 620852  
Middleton, WI 53562-0852

## Mother Goes Into Respiratory Arrest In Hospital Nothing Done to Save Her

*As Told By Her Son, Peter*

My mother died August 2, 1998 in Eau Claire, Wisconsin. She arrived at the emergency room experiencing a problem called diabetic ketoacidosis. She was sedated, stabilized and sent to a hospital room on oxygen.

On the medical floor, a Respiratory Therapist advised family members in attendance that my mother might need suctioning for upper respiratory fluids and to call as needed. My mother also needed to have her I.V. re-sited because it was bleeding. We were advised by nursing personnel the flight medics from the hospital's helicopter would be re-siting my mother's I.V. line.

While the medics were attempting to do this, my mother started to build up fluids in her upper airway and we asked the medics to help her. They replied she was on oxygen. Surely we thought they should know that the oxygen would not do much good if there wasn't a good air exchange.

We continued to ask for help, but my mother's condition grew progressively worse and the medics largely ignored us.

I ran down to the nurse's station and asked for urgent help and was told a Respiratory Nurse was on the way. By the time I returned to my mother's room, her breathing was labored and the medics were not doing anything. By the time the Respiratory Nurse arrived about 10 minutes later, my mother was in respiratory arrest. However, the therapist arrived without any equipment and was



**Elsie Torgerson  
and her five children  
Colfax, WI  
R.I.P.**

very indignant when asked why she took so long. She proceeded to take my mother's radial pulse and stated, "She still has a heartbeat." The therapist and medics stood by while my mother went into cardiac arrest and died.

A subsequent investigation by the State's Bureau of Quality Assurance found that the flight medics were not authorized to work on a medical floor. They also found the nurses station notes listed the times for events leading up to the incident, but did not list any times relating to the incident itself — when the flight medics arrived in the room, when the family members requested help, when the

Respiratory Therapist was notified my mother was having problems breathing, and when the Respiratory Therapist arrived in the room. The notes also do not contain the names of personnel involved in the incident.

We later found out the Respiratory Therapist was eating lunch in the cafeteria.

Since this tragedy occurred, the hospital and its legal staff have stonewalled us at every turn.

We want to be able to hold the hospital accountable for its horrendous treatment of my mother. Adult children should have the right to bring a claim for wrongful death in medical malpractice cases.

*Pending state legislation, the Family Justice Bill (Senate Bill 187) will restore the remedies of adult children and the parents of adult children, allowing them to once again bring a claim for wrongful death when the death is caused by medical malpractice.*

James & Dottie Webb  
207 N. Jefferson St.  
Whitewater, WI 53190

I am speaking in favor of Senate Bill 193 – Family Justice Bill

I am going to tell you a few personal things about our daughter before I explain to you why I am in favor of this bill. The reason I am doing this is I want you to see her as a person. Heather is an only child, she is fun loving, laughs easily, enjoys life. Being an only child she was spoiled up to a point but her heart was full of kindness to other people. Heather worked at the City of Whitewater elections from the time she was 18 as a deputy election clerk. Heather was an avid reader, she never met a book she did not like, loved music, and was interested in everything. She couldn't decide what she wanted to be in college so she changed her major 4 times before she settled on sociology as a major with a minor in criminal justice. Heather graduated from college in May 1999. Heather had started working for Zurich Kemper Life Insurance Company in Lake Zurich IL on November 29, 1999; she was engaged to be married on October 12, 2002.

Now that you have seen Heather as a person I am going to explain to you why I am speaking in favor of Senate Bill 193.

Heather had pain in the calf of her left leg for about 5 days, which would cause the leg to swell and she would not be able to set her foot down, she was walking on the ball of her foot. When she came home on December 23<sup>rd</sup> from work her leg was swollen and she was limping badly. I ask her do you want to go to the doctor tonight. Her response, no Mom I am going to take a long hot bath and put some Ben-Gay on my leg that will make it feel better. I told her that if her leg was not better in the morning I did not care if it was Christmas Eve she was going to the doctor and she said okay. The next morning she got up and the leg was swollen again and she could not put the foot down, we first took her to Mercy Medical Center in Whitewater, they were closed for the Holiday and would not reopen until 12-27-01. My husband drove directly to Fort Atkinson Memorial Hospital and we went to the emergency room. After a long wait Heather came out of the examining room and said the Doctor advised her she had an infected bruise on her leg and gave her an antibiotic and a tetanus shot. Dr. Hermann advised her that he was not ruling out a blood clot and told her that if her leg was not better in 4 to 5 days she should return and they would do additional testing. There were no tests performed on 12-24-99. I told Heather a blood clot was serious on the way to the pharmacy and she said to me. Mom he said I could go up north with Chris and his parents to visit his grandparents for Christmas, the doctors instructions were just don't do a lot of walking and driving. December 26, 1999 we received a call from Sacred Heart Hospital in Tomahawk, WI that our daughter had died that morning. The autopsy report read cause of death "MASSIVE BILATERAL PULMONARY EMBOLI", (blood clots in her lungs). A simple test that could have been performed in the hospital on 12-24-99 that takes about 5 minutes could have possibly saved our daughter's life or at least she would have been hospitalized for treatment of blood clots. A medical expert from New Jersey reviewed Heather's files and in his opinion she was not treated properly for what she was even diagnosed for.

This law needs to be changed to include single adult children and parents of adult children for the loss of society and companionship as a result of medical malpractice. Heather being a single adult person with no minor dependents or a spouse there is no recourse for charges to be brought in her behalf. Heather was a viable person who enjoyed life; my husband and I will and do have a loss of companionship for our child. We will never see the wedding she was planning, see what she would have done in her adult life to contribute to society or ever hold a grandchild. We feel these losses the same as someone feels the loss of a minor child or a spouse. Our lives are existing, you wake up each morning saying what if I had done something else, not I wonder what Heather is doing today and when will I get an update on the wedding and what new crises will there be. None of that will happen today or any day because there isn't a Heather anymore.





***Beverly Jean McIntyre***

**Wisconsin Families Need the  
"Family Justice Bill"**

**Please support our effort  
In memory of our mother**

Our mother, Beverly Jean McIntyre entrusted her life to a negligent doctor who never followed up with her on abnormal test results, which resulted in her bleeding to death from a biopsy on the operating table. And to add insult to the injury . . . Wisconsin's law doesn't allow her adult children to recover for loss of society and companionship!

Our mother began seeing Dr. Gloria Abacan in June of 2000. She saw her again on August 17, 2000. Her blood urea nitrogen (bun) was 25 and her creatinine was 1.6. At that time the creatinine level was already high and *Dr. Abacan did nothing about it*. In February of 2000, her results were normal at a level of 0.9.

Our mother saw Dr. Abacan again on August 23, 2000. At that time the doctor ordered numerous tests, our mother was sent to the hospital for a cat scan of the lungs, a serum creatinine was also ordered. The result at that time was 4.5. The level of the creatinine was up more than four fold, *but she again did nothing about it*. And worse yet, the doctor prescribed cefril, a dose of 500 mg twice daily for ten days. Dr. Abacan knew our mother was allergic to penicillin. The prescribed medicine worsened her renal disease and when given in full dose can be toxic to the kidney. *Again, Dr. Abacan never followed up with my mother on the abnormal findings of her bun and creatinine.*

During these months of negligence, our mother developed severe generalized edema and went to the emergency room at St. Joseph Hospital on September 28, 2000. Her bun was up to 181 and her creatinine up to 10.9 requiring emergency dialysis. Her kidney was gone. Because of this serious complication, her attending physician, Dr. Muche ordered a kidney biopsy. During the procedure the surgeon hit an artery and my mother bled to death. The hospital was also negligent in not having the proper blood available, it took them two hours to obtain blood for my mother.

Because of Dr. Abacan's gross negligence and poor medical judgment, our mother developed a very serious complication from acute renal failure. With proper care and treatment, this could have been prevented.

Wisconsin is one of 7 states, which limit adult children's right to recover in wrongful death actions. Wisconsin is the only state to limit recovery by adult children in two tiers, prioritizing minor children over adult children in its general wrongful death statute, while barring recovery completely in medical malpractice in wrongful death cases. However, if this same doctor had killed our mother while driving her car, we as adult children would be able to bring a cause of action for loss of society and companionship. It boils down to one thing . . . accountability. Why are health care providers treated differently than the driver of a car?

Over

**In memory of our mother**  
**Beverly Jean McIntyre**  
Page 2

Too often, doctors and hospitals will not tell the families the truth of what happened. We have a doctor who is taking a stand for justice, he's willing to testify that Dr. Abacan was negligent, in fact is the proprietor of the medical office she worked in. His name is Dr. David Amos, but yet, because of the current law, we still can't file a claim, at least 5 attorneys have refused our case because the law won't allow us to file a claim. Our mother had no minor children, or a spouse. So we still can't have our day in court.

Our family deserves the right to go to court and hold those accountable for our mother's death. We believe a jury, not legislators should decide what's right.

Senator Gary George is introducing a bill that would change this horrendous injustice. This bill is about family justice. We are working hard to see this pass legislation but are faced with opposition from doctors, defense lawyers and insurance companies. Legislation needs to do the right thing. That is why we need your help. Please contact your legislator by calling the legislative hotline at 1-800-362-9472. Ask them to support this new bill entitled the "Family Justice Bill".

The pain of losing our mother has been devastating. We want our justice, we want our day in court. We want a jury to decide accountability, not age or marital status.

Sincerely,

THE FAMILY OF BEVERLY McINTYRE

Jeanine Knox  
Lauren Knox  
Alexandria Ellis  
Donnie DeDiemar

Maureen McIntyre  
Mirianna Thomas  
Cheryl Johns  
Linda DeDiemar

James McIntyre  
Jade Johns  
Elijah Johns

Judy Edwards  
Jeff Edwards

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**FACTS AND REASONS WHY**

**THE WISCONSIN FAMILY JUSTICE BILL (SB-187)  
MUST BE MADE INTO LAW --**

**AND**

**THE 180-DAY NOTICE RULE FOR MEDICAL  
MALPRACTICE FOR STATE RUN INSTITUTIONS  
AND STATE PHYSICIANS  
MUST BE REPEALED RETROACTIVELY (SB-70)**

**17 February 2004**

**FACTS AND REASONS WHY  
THE WISCONSIN FAMILY JUSTICE BILL (SB-187)  
MUST BE MADE INTO LAW --  
A FACT SHEET FOR THE LEGISLATURE  
February 17, 2004**

**Madison, WI.** Did you know that if your single son or daughter is 18 or older and experiences medical malpractice and dies in Wisconsin that you, as a parent or sibling, will not be able to bring a claim for wrongful death against the wrong doers. Also, did you know if your single parent experiences medical malpractice and dies as a result in Wisconsin, that you as an adult child of that parent will not be able to bring a claim for wrongful death against the wrong doers. You will never find out what really happened, you will never get accountability, you and your family will never see justice. Wisconsin law currently discriminates against two classes of people, single young and single elderly.

What's wrong? It seems that some health care and insurance company lobbyists and contributors worked their magic in the Wisconsin State Legislature in 1995 by sneaking in some language that was made into law, without the any public understanding or awareness. In this time of "family values", it is totally unbelievable that Wisconsin law does not recognize the life-long, and growing with age, bond between parent and child, regardless of the child's or parent's age and regardless of whether the parent is widowed or divorced. Up till now, the state law has been based on the bottom-line values of the health care providers, insurance companies, and manufacturers and other big campaign contributors, not the family values held by the majority of Wisconsin citizens.

Wisconsin, of all states, you would think would be supportive of its citizen's rights. Not currently so. Six other states/districts in the US also have discriminating laws like this one, namely, Indiana, Florida, Maine, New Jersey, Maryland, and DC. Victims in these states are also fighting to change the law there to allow equality under the law. Forty-four states do not discriminate!

Wisconsin families who have suffered the loss of a family member due to apparent medical negligence have found the courthouse door slammed shut in their faces. In response, they have formed the Wisconsin Family Justice Network (WFJN).

A group of Wisconsin families, made up of both Republicans and Democrats from all walks of life, who suffered the loss of a family member due to apparent medical negligence, have been fighting to change the Wisconsin law back to what it was prior to 1995. We are a small group of families who now understand what the law means. The rest of the public still doesn't understand. We have few resources, but we must get the message out to the unsuspecting public, voters, media, and work with our legislators to get the law changed! The current WFJN members, their home towns, and their victimized family member are:

Jeanine & Lauren Knox  
Milwaukee (mother)

Jim & Donna Harvey  
Waterford (mother)

Sandy Gunwaldt  
New Berlin (mother)

Stephanie O'Connell  
Green Bay (father)

Sherry Ellis  
Oak Creek (mother)

Dan & Kim Leister  
Mukwonago (daughter)

Roger Fransway  
Chippewa Falls (sister)

Bernice Watts  
Brown Deer (daughter)

Lonny & Rhonda Brown  
Chippewa Falls (son)

Willie Davis  
Milwaukee (mother)

John Zachar  
Greendale (mother)

Judy Demeuse  
Germantown (father)

Carolyn Walasek  
Park Falls (mother)

Helen Szurovecz  
Milwaukee (mother)

Pam Vertanen  
Manitowoc (mother)

Susan Czapinski  
Madison (mother)

Patty Schey  
Wauwatosa (father)

Steve Janasik  
Park Falls (mother)

Harriet Yancey  
Milwaukee (father)

Sheryl Holdmann  
Milwaukee (mother)

Jake Budrick  
Saukville (mother)

Lee Davis  
Menomonee Falls (brother)

Ray & Betty Lange  
Beaver Dam (son)

Rosemary Halvorson  
Readstown (mother)

Peter Torgerson  
Colfax (mother)

Anita Harris  
Milwaukee (son)

James & Dottie Webb  
Whitewater (daughter)

Eric & Linda Rice  
Middleton (daughter)

Dimitri Jordan  
Milwaukee (mother)

James Bollig  
Cottage Grove (father)

Sharon Kind  
West Bend (mother)

Jonna Fedie  
Hammond (mother)

Mary McBride  
Madison (father)

Mack Kirksey  
Brown Deer (mother)

Mary Siedschlag  
Argyle (mother)

Kathleen Sese  
Kewaskum (son)

Lee Brown  
Milwaukee (mother)

Taron Monroe  
Milwaukee

Michelle Martin  
Green Bay (mother)

Phil Tipke  
Cottage Grove (son)

Jeanne Hanson  
Neenah (son)

Sister of Jackie Hemenway  
Twin Lakes (father)

Mark Lavalle  
Twin Lakes (mother)

Lisa Jacobsen  
Darlington

The focus of the Wisconsin Family Justice Network (WFJN)—rapidly growing since being formed last year to over 45 families across the state—is now turning to the State Legislature, where Network members are working to build bi-partisan support for the passage of the Wisconsin Family Justice Bill (SB-187) and other legislation. This is not a political issue! Republicans and Democrats together should recognize that this problem needs fixing as soon as possible. We will not stop our efforts until we get the Wisconsin Family Justice Bill passed by the legislature and signed by the Governor. The bill is aimed at closing loopholes in current state malpractice law. In 2002, this bill passed the Senate, but failed to be put up in the Assembly.

A barrage of "mis-information" by opponents of the Wisconsin Family Justice Bill may again be upon us. Those trying to protect the unfair status quo will claim that Wisconsin's insurance rates will go up and that we will see doctors leaving the state or refusing to practice in nursing homes. But, malpractice costs are about one-half of one percent (0.55%) of all medical costs, so the claims of skyrocketing medical costs were plain ridiculous. 44 other states allow all families to have legal rights in malpractice cases, and they have not suffered any loss of doctors willing to practice.

Private malpractice insurance carriers are very healthy. The loss ratios for malpractice insurers from 1995 to 2000 are very low. During this period, the average loss ratio is 18. That is only 18¢ of every dollar the insurance company estimates it will pay on all malpractice claims. In addition, private physicians are compelled by state law to pay into the patient's medical compensation fund every year (roughly \$30 to 55M per year). The fund now has grown to over \$576,000,000. Because it is so big, the Governor wants to take some of this surplus to help the state's budget problems. These insurance rates should be going down! But they are not – why?

The Wisconsin Family Justice Network suggests that once you, as a representative of the people of this great State of Wisconsin, honestly consider the thoughts below that you will be compelled to support the Wisconsin Family Justice Bill. Try answering the questions below and we think you will understand exactly what we are fighting for.

- Do you believe that the bond between you and your parent and you and your child is life-long, and not eroded by age or marital status, but actually grows with age? Ponder that thought for a minute.
- How would you deal with the awful prospect of the loss of your own 18-year old son or daughter due to gross medical errors? How would you react with the fact that you can't get any legal representation because you are not allowed to have a wrongful death case under current Wisconsin law?
- Consider the prospect of the loss of your mother or father due to medical errors in a simple medical procedure and you can't get answers, accountability or justice.
- How would you deal with the fact that you can't get any attorney to take your case because of the current law constraints and limits?
- Do you feel comfortable with Wisconsin being one of *just 6 states of 50* that make arbitrary distinctions in legal rights, based on the age and marital status of the victim?
- Think about this, do you have less love? less compassion? less affection? or less connection to your family members when they become 18 or even when they become 60 years old?
- And finally, was it really the intent of the Wisconsin State Legislature to implement an biased and discriminating law that denies equal protection that says your loving son or daughter, over 17 years old and your single mother or father has **ABSOLUTELY NO VALUE**.

The Wisconsin Family Justice Network and the rest of the citizens of this state simply want a single standard of access to the courts and accountability for all citizens. It is a fundamental matter of equity and equality; the current law is biased, discriminating and totally unfair and must be changed!

**FACTS AND WHY**  
**THE 180-DAY NOTICE RULE FOR MEDICAL MALPRACTICE FOR STATE**  
**RUN INSTITUTIONS AND STATE PHYSICIANS**  
**MUST BE REPEALED RETROACTIVELY (SB-70)**

**February 17, 2004**

**Madison, WI.** Did you know that if you are treated by physicians at UW Hospital & Clinics or UW Health/Physicians Plus and medical malpractice results in injury or death to your family member, you will not likely be able to bring a claim forward unless you have given notice to the state attorney general within 180 days after the event occurs? The current statute allows for discovery after this period; however, the most all the courts (case law) have made this tough to do. If you are late with your notice, not only will it be difficult or impossible to ever bring a case, but you may never find out what really happened, you and your family will never see justice, and the physicians won't talk and will never be held accountable for any of their errors/mistakes. Wisconsin law favors state physicians over private ones. Did you also know that state-employed physicians do not have to pay medical malpractice insurance? The state self-insures them. Private physicians and organizations remain outraged by this and the 180-day notice rule.

Again, Wisconsin families who have suffered the loss of a family member due to apparent medical negligence have found the courthouse door slammed shut in their faces.

A group of Wisconsin families, made up of both Republicans and Democrats, who suffered the loss of a family member due to apparent medical negligence have been fighting hard to fix Wisconsin law. We are a small group of families and we have few resources, but we must get the message out to the unsuspecting public, voters, media, and work with legislators to get the law changed!

The focus of the Wisconsin Family Justice Network (WFJN)—rapidly growing since being formed last year to over 45 families across the state—is now turning to the State Legislature, where Network members are working to build bi-partisan support for the passage of the Wisconsin Family Justice Bill and now, the repeal of the 180-day notice rule for medical malpractice by state healthcare employees. These are not political issues! Republicans and Democrats together should recognize that these problems need fixing as soon as possible. We will work to get the retroactive repeal of the 180-day notice bill passed by the legislature and signed by the Governor. Senator Fred Riser, a Democrat, has agreed with Dr. Eric Rice, a Republican constituent of Senator Riser, to again to whole heartedly sponsor this year's bill. Last year, it passed the Senate by voice vote, but never was introduced to the Assembly.

The Wisconsin Family Justice Network suggests that once you, as a representative of the people of this great State of Wisconsin, honestly consider the thoughts below that you will be compelled to support the repeal of the 180-day notice for medical malpractice claims for state healthcare employees.

- For example, how would you deal with the awful prospect of the loss of a loved one due to gross medical errors at UW Hospital? After much grief, you finally get around to talking with an attorney and then the attorney tells you how sorry he or she is, but you missed the 180-day notice deadline and your potential legal claim is now likely void! You, like almost everyone, thought you had 3 years to respond. This happens all the time to grieving families!

- ❑ How would you react to the fact that you can't get any legal representation because you are not likely to have a case under this current Wisconsin law if you are late with your notice of claim?
- ❑ Was it really the intent of the Wisconsin State Legislature to implement a biased law that denies Wisconsin citizens their rights for justice and accountability?
- ❑ How are you ever to know about the 180-day notice rule? Have you ever heard of it before? The public does not know. Check out your constituents – ask them if they know. We would bet that none do, except us and our close friends.
- ❑ If you lose a loved one at the UW Hospital, do they tell you have only 180 days to file a claim for malpractice with the Attorney General's Office? No. Of all the forms one has to sign in the hospital, is there a form that you sign in the hospital that says you have 180 days to file a notice of claim if the hospital were to perform malpractice? No!
- ❑ Private health care providers (HMO's etc.) and UW co-mingle their employees at the HMO and UW Hospital facilities. How do you really know which physician is a UW employee and which one is with the HMO private provider? Which ones do you give notice to, if you knew of the rule?
- ❑ If medical malpractice occurs, it seems to take forever to get a copy of the medical records. This cuts into your time to assess and decide if you have a claim or not with the 180-day rule. We don't need to be filing notices of claim if we are not sure! Time is needed to assess the medical records and have other expert physicians review what happened.
- ❑ For sure, the 180-day rule is likely never to be known by a grieving family.
- ❑ One should believe that there should be fairness and equal protection under the law for all Wisconsinites, regardless of what hospital they go to, but is not currently the case.
- ❑ It's obvious that this law is aligned to protect the insurance companies and the UW physicians; not the patients and their families. The law is biased to benefit state employees and state-run medical facilities.
- ❑ Private physicians are outraged by this discrimination and that the State self insures them at no cost.

The Wisconsin Family Justice Network and the rest of the citizens of this state simply want a single standard of access to the courts and accountability for all citizens. It is a fundamental matter of equity and equality; the current law is biased, discriminating and totally unfair and must be changed! The retroactive repeal of the 180-day notice for state medical employees needs to be made ASAP so more people are not totally defeated by this unfair and biased favoritism.