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**Assembly Bill 692 – Informed Consent**  
**Assembly Committee on Judiciary**  
**February 6th, 2014**

Thank you, Chairman Ott and members of the Judiciary Committee for holding a public hearing on Assembly Bill 692 today. This legislation is a follow-up to the informed consent language for physicians that passed earlier this session (now 2013 WI Act 111). AB 692 will apply the “reasonable physician standard” language to Chiropractors, Podiatrists, Optometrists and Dentists.

Under AB 692, a reasonable provider standard is established that the above providers must meet when informing patients about risks and benefits of treatment or procedures after a diagnosis has been given. This helps to more clearly define the medical specialist’s duty to their patient and allows clear expectations for patients of the information they will receive.

As committee members know, the original informed consent legislation was drafted by Chairman Ott and my co-author Senator Grothman in response to the 2012 Wisconsin Supreme Court’s *Jandre* decision. Other Court decisions have specifically held that a chiropractor has the same duty to inform (*Hanneman v. Boyson, 2005*). AB 692 will codify this duty into statute for these four medical professions.

This bill has the support of the Wisconsin Society of Pediatric Medicine, the Wisconsin Dental Association, the Chiropractic Society of Wisconsin, the Wisconsin Chiropractic Association and the Wisconsin Optometric Association.

February 6, 2014

To: Members of the Senate Committee on Judiciary and Labor  
From: Senator Glenn Grothman  
Re: Assembly Bill 692

Thank you for the opportunity to testify in support of Assembly Bill 692 relating to informed consent for Chiropractors, Podiatrists, Optometrists and Dentists.

This legislation mirrors the informed consent language recently passed for physicians (2013 ACT 111) which passed the Senate and Assembly on voice votes late last year. This bill applies the “reasonable physician standard” language to these other medical specialties and helps to define the medical specialist’s duty to their patients.

The original informed consent legislation was drafted in response to the Wisconsin Supreme Court’s recent *Jandre* decision which dramatically expanded the scope of information a physician would have to provide to their patients. This expanded and unclear standard only encourages the costly practice of “defensive medicine” and reverses what has been the positive trend from volume to value-based healthcare.

Other Court decisions have also influenced this duty. In the case *Hannemann v. Boyson, 2005*, the Wisconsin Supreme Court held that the duty to inform a patient about treatment options was not necessarily limited to physicians. The Court specifically wrote that a chiropractor had such a duty. This duty to inform patients of treatment options for these other health care professionals was not previously in statute but is applied to these professions through case law. This bill codifies this duty into statute for these four medical professionals.

Assembly Bill 692 establishes a “reasonable provider standard” that podiatrists, chiropractors, optometrists and dentists must meet when informing the patient about the risks and benefits of the treatments or procedures within their specific specialties after a diagnosis has been given. This will help to more clearly define the medical specialist’s duty to their patient and will also help the patient to have a defined expectation of the information they will receive. This will only help to protect and uphold a positive doctor-patient relationship.

This legislation has the support of the Wisconsin Society of Podiatric Medicine, the Wisconsin Dental Association, the Chiropractic Society of Wisconsin, the Wisconsin Chiropractic Association and the Wisconsin Optometric Association.



## **Chiropractic Support for Assembly Bill 692: Informed Consent**

The statewide Chiropractic Society of Wisconsin would like to thank Chairman Jim Ott and the members of the Assembly Judiciary Committee for their consideration of AB 692. Our statewide members strongly support this legislation and encourage the Committee to pass it expeditiously.

The chiropractic profession is simply requesting the same informed standard of care as MDs and DOs. As noted in the Hannemann case, chiropractors are required to be held to the same informed consent standard as MDs.

AB 692 corrects the inconsistency and brings all primary healthcare providers under the same uniform informed consent standard.

The patients who come to our members' offices for chiropractic care range from infants to geriatric. Our members take great care in making sure their patients understand all aspects, benefits and known risks before they agree to any procedure or treatment. Chiropractors want patients to fully understand the treatment options that can be provided in our offices, the alternative treatment options available outside of our offices, and most importantly the risks and benefits associated with the various options, including not receiving any treatment. Once a patient indicates that they truly understand all of the options available to them, chiropractors then let the patient decide if they want to consent to treatment in our offices. In many cases, our recommendations are to refer them to their MD/DO or one of the other healthcare providers represented here today.

The difficulty associated with the "reasonable patient standard", which is vastly more subjective in nature, is that chiropractors must determine what the average patient, not the person sitting in front of them, would need to know before they could consent to treatment. Because of the diversity of the patients that we treat, and the truly unlimited amounts of medical information available on the Internet, be it real or not, patients today come in with much different expectations.

In direct contrast, the reasonable chiropractic standard is not subjective. It is very objective as it is based on a comparison to all other chiropractors. Chiropractic is a highly regulated profession. In order to obtain a license in Wisconsin, all chiropractors have to successfully pass the multiple rigorous standardized national NBCE examinations. AB 692 also requires the Chiropractic Board of Examiners to promulgate rules associated with informed consent to greater protect the public.

This legislation will align Wisconsin's informed consent law for specialty providers such as chiropractors to the law recently signed for MDs and DOs.

*We will serve from our abundance, educate freely and empower all to reach their full potential.*

It only makes sense to have a statewide uniformed informed consent standard for healthcare providers in Wisconsin.

Please support and recommend for passage AB 692.

Wade Anunson, DC  
On behalf of the Chiropractic Society of Wisconsin

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Testimony in Support of 2013 AB 692

Relating to the Duty of Podiatrists, Chiropractors, Dentists and Optometrists to Inform  
Patients of Treatment Options and Granting Rulemaking Authority

Testimony by Dr. Julio Rodriguez, WDA President

February 6, 2014 – 412 East Hearing Room

Good morning Chairperson Ott and members of the Committee. Thank you for the opportunity to testify before you today and to share our reasons for supporting the passage of Assembly Bill 692 which, if passed, will simply codify the standards on informed consent for all providers in our state. As the other provider groups have mentioned, this policy debate has already taken place - the state of Wisconsin has determined the parameters of informed consent with regards to medical practice when you passed 2013 Assembly Bill 139. What this bill simply does is simply add all other providers who have diagnostic skills to the current standard.

My name is Dr. Julio Rodriguez and I'm the current president of the Wisconsin Dental Association which represents over 80% of the more than 3,000 licensed dentists in the state. I'm a general dentist who currently owns and practices in Brodhead, Wisconsin. I'm original from Peru and my journey to Wisconsin to fulfill my dream of being a dentist

is a very long one but I can tell you that my wife Marissa and I couldn't think of a better and more fulfilling place to live and raise our three children than right here in southwestern Wisconsin.

Currently, under the Wisconsin Dental Practice Act, the only mention of "informed consent" comes in relation to when the dental hygienist is practicing in the dental office without the dentist present. The current mention of this appears in 447.06(2)(c) where it reads that along with three other criteria, *the dental hygienist can only perform the specific procedures or services under the written or oral prescription of a dentist and only with the informed consent of the patient, or if applicable, the patient's parent or legal guardian.* Given all the potential public safety issues and need for clarification on informed consent, it seems odd that this is the only existing mention of it in our state Dental Practice Act. As professionals, this is a bit embarrassing because I think we all realize that we have a duty to inform our patients of treatment options available to them - having this codified clarifies the expectations of dentists.

The dentists of the WDA believe it is in the best interest of both the public and of those of us in the dental profession to first make sure that all dentists are required to seek informed consent of the patient prior to providing treatment and to also clearly have it spelled out in state statute as to what "informed consent" means and what the boundaries are with regards to the practical expectations of the providers with regard to seeking informed consent. This type of provision and any potential rule-making that will follow will only help to clarify the practice of dentistry and enhance the communications and relations between providers and their patients.

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Thank you for your time and attention to this issue, we hope you support its passage out of this committee and its continued movement through the legislature. We appreciate, Chairman Ott, your willingness to hold a prompt hearing on this bill. Finally, I welcome the opportunity to do my best to answer any questions you may have.

 Wisconsin Society of Podiatric Medicine

**Support for Assembly Bill 692  
regarding Informed Consent Requirements for Podiatrists**

The statewide membership of the Wisconsin Society of Podiatric Medicine **strongly supports** AB 692. We urge its expeditious passage, without amendments.

Doctors of podiatric medicine and surgery are regulated by Chapter 448, Wisconsin's Medical Practices Act. That Chapter specifically defines "podiatric medicine and surgery" as "that branch or system of the practice of medicine and surgery that involves treating the sick, which is limited to conditions affecting the foot and ankle..." Podiatrists do not administer general anesthesia but rather look to anesthesiologists or nurse anesthetists to provide that care.

Earlier this legislative session, both houses passed Act 111. It specified the duty of MDs to inform a patient about treatment options. This legislation, AB 692, simply puts in Wisconsin statutes a similar duty for podiatrists to inform a patient about their treatment options.

The specialized foot and ankle care that podiatrists provide to consumers is also provided by MDs. Since the care is the same, the informed consent disclosure requirement should be the same.

It makes no sense for the informed consent standard for podiatrists to be different from that required for MDs. Both provide the same care and collaborate well in hospital, surgical and clinic settings.

Please therefore support AB 692 and pass it as expeditiously as possible. Thank you!

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TO: Chairman Jim Ott and Members of the Assembly Judiciary Committee  
FROM: Peter Theo, Executive Vice President - Wisconsin Optometric Association  
RE: Support of AB 692  
DATE: February 6, 2014

The members of the Wisconsin Optometric Association (WOA) would like to thank Chairman Ott and the members of this committee for the opportunity to provide information in support of AB 692.

Wisconsin optometrists are educated, trained, and licensed to diagnose, treat, and manage diseases of the eye through the use of medical prescriptions and by performing minor surgical procedures such as the removal of foreign bodies from the eye. Through a comprehensive eye health exam, doctors of optometry are able to identify conditions such as diabetes, glaucoma, hypertension, and other abnormalities affecting a patient's overall health. Because optometry's scope of practice overlaps with other professions, it is critically important that optometrists present patients with the best treatment option available within their scope of practice, education, and training based upon their clinical diagnosis of the patient.

Optometry patients, like all health care patients, have unprecedented access to information and technology through the internet and commercial advertisements. They receive an overwhelming amount of data, and it is the responsibility of the optometrist to weed out the information that does not pertain to their patient's condition. Our concern is that under the current "reasonable patient standard," the professional and clinical judgment of the doctor may take a back seat to sources outside their scope of care which have little or no relevance to the patient's specific condition or diagnosis. Therefore, we believe there must be consistency in Wisconsin's informed consent laws based on a healthcare provider's reasonable standard of care.

The Wisconsin Optometric Association and its members statewide support AB 692 and ask for this committee's support of the bill as well.

Thank you again.