



2009 ASSEMBLY BILL 336

June 30, 2009 - Introduced by Representatives PRIDEMORE, BROOKS, GUNDERSON and TOWNSEND, cosponsored by Senators SCHULTZ and LASSA. Referred to Committee on Judiciary and Ethics.

1 **AN ACT to create** 146.997 (5m) and 146.997 (5r) of the statutes; **relating to:**
2 immunity from liability for, and disclosure of patient information by, a health
3 care provider, health care facility, or employee of a health care provider or
4 health care facility that, in good faith, reports or provides information about a
5 violation of the law or of a clinical or ethical standard, unprofessional conduct,
6 or negligence in treating a patient by a health care provider, health care facility,
7 or employee or former employee of a health care provider or health care facility.

Analysis by the Legislative Reference Bureau

Under current law, a physician who in good faith provides the Medical Examining Board with information concerning an allegation that another physician has engaged in unprofessional conduct or acted negligently in treating a patient is immune from liability for any damage that results from any act or omission in providing the information and may not be disciplined by that board for providing the information.

Also, current law prohibits retaliation or other employment discrimination against any employee of a health care facility or of a health care provider (employee) who in good faith reports any information, the disclosure of which is not expressly prohibited by law, that would lead a reasonable person to believe that the health care facility, health care provider, or an employee has committed a violation of the law or

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has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard established by a professionally recognized accrediting or standard-setting body (clinical or ethical standard) and that poses a potential risk to public health or safety: 1) to any appropriate state agency; 2) to any professionally recognized accrediting or standard-setting body that has accredited, certified, or otherwise approved the health care facility or health care provider (accrediting or standard-setting body); 3) to any officer or director of the health care facility or health care provider; or 4) to any employee who is in a supervisory capacity or in a position to take corrective action (supervisor). In addition, current law prohibits retaliation or other employment discrimination against any employee who initiates, participates in, or testifies in any action or proceeding in which such a violation is alleged or who provides to any legislator or legislative committee any information relating to such an alleged violation.

This bill provides for immunity from liability for any health care provider, health care facility, or employee that in good faith does any of the following:

1. Reports any information, the disclosure of which is not expressly prohibited by law, relating to an allegation that a health care provider, health care facility, or employee has committed a violation of the law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard and that poses a potential risk to public health or safety (violation of the law or of a clinical or ethical standard), has engaged in unprofessional conduct, or has acted negligently in treating a patient to any state agency; to any accrediting or standard-setting body; or to any officer, director, or supervisor of the health care facility or health care provider.

2. Initiates, participates in, or testifies in any action or proceeding in which it is alleged that a health care provider, health care facility, or employee has committed a violation of the law or of a clinical or ethical standard, has engaged in unprofessional conduct, or has acted negligently in treating a patient.

3. Provides to any legislator or legislative committee any information, the disclosure of which is not expressly prohibited by law, relating to an allegation that a health care provider, health care facility, or employee has committed a violation of the law or of a clinical or ethical standard, has engaged in unprofessional conduct, or has acted negligently in treating a patient.

4. Provides to any prospective employer of an employee or former employee information, the disclosure of which is not expressly prohibited by law, relating to an allegation that the employee or former employee has committed a violation of the law or of a clinical or ethical standard, has engaged in unprofessional conduct, or has acted negligently in treating a patient.

The immunity provided under the bill, however, does not apply to a health care provider, health care facility, or employee that reports or provides any information, or that initiates, participates in, or testifies in any action or proceeding based on information, that the provider, facility, or employee knows or should know is false or misleading or that concerns a violation of the law or of a clinical or ethical standard, unprofessional conduct, or negligence in treating a patient by that provider, facility, or employee.

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Finally, notwithstanding the confidentiality of patient health care records under current law, the bill permits a health care provider, health care facility, or employee reporting information relating to a violation of the law or of a clinical or ethical standard, unprofessional conduct, or negligence in treating a patient to a state agency that has the authority to investigate and take action against the provider, facility, or employee for the type of conduct reported to disclose to the agency the name of the patient who is the subject of, and a description of the event giving rise to, the alleged violation, unprofessional conduct, or negligent act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.997 (5m) of the statutes is created to read:

2 146.997 **(5m)** IMMUNITY FROM LIABILITY. (a) Except as provided in par. (c), any
3 health care provider, health care facility, or employee of a health care provider or
4 health care facility that in good faith reports or provides any information, the
5 disclosure of which is not expressly prohibited by state law or rule or federal law or
6 regulation, or that in good faith initiates, participates in, or testifies in any action or
7 proceeding, is immune from all civil and criminal liability that may result from any
8 act or omission in reporting or providing that information, or in initiating,
9 participating in, or testifying in that action or proceeding, as follows:

10 1. Reports to a person specified in sub. (2) (a) (intro.) any information relating
11 to an allegation that a health care provider, health care facility, or employee of a
12 health care provider or health care facility has committed a violation specified in sub.
13 (2) (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently in
14 treating a patient.

15 2. Initiates, participates in, or testifies in any action or proceeding in which it
16 is alleged that a health care provider, health care facility, or employee of a health care
17 provider or health care facility has committed a violation specified in sub. (2) (a) 1.

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1 or 2., has engaged in unprofessional conduct, or has acted negligently in treating a
2 patient.

3 3. Provides to any legislator or legislative committee any information relating
4 to an allegation that a health care provider, health care facility, or employee of a
5 health care provider or health care facility has committed a violation specified in sub.
6 (2) (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently in
7 treating a patient.

8 4. Provides to any prospective employer of an employee or former employee of
9 a health care provider or health care facility any information relating to an allegation
10 that the employee or former employee has committed a violation specified in sub. (2)
11 (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently in
12 treating a patient.

13 (b) For purposes of par. (a), a health care provider, health care facility, or
14 employee of a health care provider or health care facility is not acting in good faith
15 if the health care provider, health care facility, or employee reports any information
16 under par. (a) 1. that the health care provider, health care facility, or employee knows
17 or should know is false or misleading; initiates, participates in, or testifies in any
18 action or proceeding under par. (a) 2. based on information that the health care
19 provider, health care facility, or employee knows or should know is false or
20 misleading; or provides any information under par. (a) 3. or 4. that the health care
21 provider, health care facility, or employee knows or should know is false or
22 misleading.

23 (c) Paragraph (a) does not apply to a health care provider, health care facility,
24 or employee of a health care provider or health care facility that reports or provides
25 any information or that initiates, participates in, or testifies in any action or

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1 proceeding concerning a violation specified in sub. (2) (a) 1. or 2., unprofessional
2 conduct, or negligence in treating a patient by the health care provider, health care
3 facility, or employee.

4 **SECTION 2.** 146.997 (5r) of the statutes is created to read:

5 146.997 (5r) DISCLOSURE OF PATIENT INFORMATION. Notwithstanding s. 146.82
6 (1), a health care provider, health care facility, or employee of a health care provider
7 or health care facility reporting information as described in sub. (5m) (a) 1. to an
8 agency of this state specified in sub. (2) (a) (intro.) that has the authority to
9 investigate and take action against a health care provider, health care facility, or
10 employee of a health care provider or health care facility for the type of conduct
11 reported may disclose to that agency the name of the patient who is the subject of,
12 and a description of the event giving rise to, the alleged violation, unprofessional
13 conduct, or negligent act. A person receiving identifying information about a patient
14 under this subsection shall keep the information confidential and may not disclose
15 that information except for the purpose of investigating and taking action on the
16 alleged violation, unprofessional conduct, or negligent act, with the informed
17 consent of the patient or of a person authorized by the patient, or as authorized by
18 a court of record.

19 **SECTION 3. Initial applicability.**

20 (1) IMMUNITY FROM LIABILITY FOR, AND DISCLOSURE OF PATIENT INFORMATION BY,
21 HEALTH CARE PROVIDERS, FACILITIES, AND EMPLOYEES. This act first applies to a health
22 care provider, health care facility, or employee of a health care provider or health care
23 facility that reports or provides information, or that initiates, participates in, or
24 testifies in any action or proceeding, as described in section 146.997 (5m) (a) of the
25 statutes, as created by this act, or that discloses patient information, as described in

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SECTION 3

1 section 146.997 (5r) of the statutes, as created by this act, on the effective date of this
2 subsection.

3 (END)