

January 30, 2014

To: Members of the Senate Committee on Judiciary and Labor
From: Senator Glenn Grothman
Re: Senate Bill 518

Thank you for the opportunity to testify in support of Senate Bill 518 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* 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.

Senate Bill 518 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.

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TO: Chairman Glenn Grothman and Members of the Senate Judiciary & Labor Committee
FROM: Peter Theo, Executive Vice President - Wisconsin Optometric Association
RE: Support of SB 518
DATE: January 30, 2014

On behalf of the Wisconsin Optometric Association (WOA) and our statewide membership, we would like to thank Chairman Grothman and members of this committee for allowing the Wisconsin Optometric Association to provide this statement in support of SB 518.

The WOA supports SB 518 because we believe it is important that the law regarding informed consent be consistent among health care providers, especially in the case of primary care providers such as optometrists, whose scope of practice intersects with other providers.

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. Through a comprehensive eye health exam, doctors of optometry are able to identify abnormalities and conditions such as diabetes, glaucoma, hypertension, and other conditions 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 and within the ability of the doctor.

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 optometrists' responsibility to weed out the information that does not pertain to their patients. Optometry's concern is that under the current "reasonable patient standard," an optometrist's professional and clinical judgment may take second seat to sources outside an optometrist's care that have little or no relevance to an optometry patient's specific condition or diagnosis. Therefore, we believe it is important that there is consistency with regard to our informed consent laws based on a healthcare provider's reasonable standard of care.

The Wisconsin Optometric Association and its members statewide support SB 518 and ask for this committee's support of the bill as well.

Thank you again.

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January 30, 2014

Senator Glenn Grothman
P.O. Box 7882
Madison, WI 53707-7882

RE: Senate Bill 518: Informed Consent

Dear Senator Grothman and members of the Senate Judiciary and Labor Committee:

Due to the recent introduction of Senate Bill 518 (SB-518) and the short notice of the public hearing, I or another member of WAJ could not attend this public hearing today. We do, however, want to register against the bill and voice our continued objection to the gutting of Wisconsin's informed consent law, which affects everyone's right to know.

SB-518 codifies similar legislation to 2013 Wisconsin Act 111, which lessened the responsibility of doctors to inform you, as a patient, about treatment options from a "reasonable patient standard" to a so-called "reasonable physician standard." If the "reasonable health care provider" language were the only language codified, WAJ could reluctantly support that change. However, the bill goes beyond that again.

The new law created an exception that the physician's responsibility does not require the sharing of information about alternate medical treatments for any condition the physician has not included in his or her diagnosis at the time the physician informs the patient.

SB-518 takes the same language from 2013 Wisconsin Act 111 so that the informed consent law would now apply to other health care professionals: chiropractors, dentists, podiatrists, and optometrists.

WAJ continues to oppose to the exception created in the statutes because it appears to adopt an inconsistent subjective standard in the exceptions, "*Information about alternate medical modes of treatment for any condition the [podiatrist, chiropractor, dentist, or optometrist] has not included in his or her diagnosis at the time the [podiatrist, chiropractor, dentist, or optometrist] informs the patient,*" rather than the consistent objective "reasonable physician standard."

The bill clearly states that the "reasonable health care provider" standard applies. So, the exception creates a conflict between the "reasonable health care provider standard" and a standard that appears unreliably subjective. Shouldn't the diagnosis of the health care

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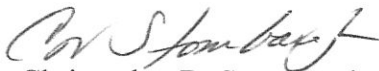
provider be judged by whether the health care provider's decision to reject the condition in the diagnosis was itself what a reasonable health care provider in the same or similar medical specialty would have known or concluded? That doesn't make Wisconsin patients safer, just the opposite.

If the law is not interpreted in this fashion, Wisconsin will be an aberration compared to the other states. Attached is a chart showing that Wisconsin stands alone in adopting this subjective standard.

This is critical since experience show that missed diagnoses result in an estimated 40,000 to 80,000 Americans dying each year. David E. Newman-Toker, a neurologist at Johns Hopkins University School of Medicine said, "Diagnostic errors are the most common, the most costly and the most deadly of all medical errors."

SB-518 continues Wisconsin's backward slide in patient safety. The legislation degrades the patient's right to know and make informed decisions about their health care to the benefit of the careless health care provider. This change is bad medicine for all of us.

Sincerely,



Christopher D. Stombaugh
President

Informed Consent State Laws			
Number	States that have Reasonable Patient Standard in Case Law or Statute for proving informed consent (Lay Opinion Allowed)	States that have Professional or Reasonable Physician Standard in Case Law or Statute for proving informed consent (Expert Opinion Required)	Exception: Patient does not have to be informed of treatments if the health care provider does not include the condition in the diagnosis
1	Alaska**	Alabama	<i>Wisconsin</i>
2	California	Arizona	Wisconsin would stand alone and be the <i>only state</i> to have a standard that is based on the subjective diagnosis of the physician, podiatrist, chiropractor, dentist, and optometrist.
3	Connecticut	Arkansas	
4	D.C. Circuit	Colorado	
5	Georgia**	Delaware	
6	Illinois*	Florida**	
7	Iowa	Hawaii**	
8	Louisiana	Idaho	
9	Maryland	Indiana	
10	Massachusetts	Kansas	
11	Minnesota	Kentucky**	
12	New Jersey	Maine	
13	New Mexico	Michigan	
14	Ohio	Mississippi	
15	Oklahoma	Missouri	
16	Oregon**	Montana	
17	Pennsylvania**	Nebraska	
18	Rhode Island	Nevada**	
19	South Dakota	New Hampshire	
20	Texas*	New York**	
21	Utah	North Carolina	
22	Washington**	North Dakota	
23	West Virginia	South Carolina	
24	Wisconsin**	Tennessee	
25		Vermont**	
26		Virginia	
27		Wyoming	

* Illinois and Texas follow the reasonable patient standard, but require that expert opinion be used to meet this standard.

** States with disclosure of alternative medical treatments in their informed consent statutes.

***Under SB-518, § 446.08, § 447.40, § 448.697, and § 449.25 each create an exception to the informed consent law: “Information about alternate medical modes of treatment for any condition *the [podiatrist, chiropractor, dentist, or optometrist] has not included in his or her diagnosis* at the time the [podiatrist, chiropractor, dentist, or optometrist] informs the patient.”