

MEMORANDUM

To: Members of the Assembly

From: Atty. Lisa Roys
Public Affairs Director
State Bar of Wisconsin

Date: April 21, 2010

Re: State Bar of Wisconsin Support for Senate Bill 127 – State notification
in medical malpractice cases

The State Bar of Wisconsin supports Senate Bill 127. The Senate approved Senate Substitute Amendment 1 to Senate Bill 127 on a bipartisan 26-7 vote on February 16, 2010. On April 13, 2010, the Assembly Committee on Insurance approved the bill by a 10-0 vote. SB 127 is on the Assembly calendar for Thursday, April 22, 2010.

As amended in the Senate, this legislation removes the requirement that a person injured by medical malpractice involving a state officer, employee, or agent serve notice of claim with the Attorney General within 180 days of the injury. As the bill provides, persons so injured should be allowed to commence that action within the same time period that is required when a claim is against a private health care provider. The bill would effectively apply the same 3-year statute of limitations for medical malpractice cases for privately run health systems to state officers and other governmental bodies.

Under current law, injured patients must notify the state or other governmental body of a potential malpractice claim within 180-days if they were treated by physicians or other health care professionals at a health facility operated by a governmental body and medical malpractice results in injury or death to a family member. Privately run health systems are subject to a three-year statute of limitations for the same claims.

This unequal treatment is problematic in several respects. Obtaining medical records can be a burdensome process, which can create problems with the short time period allowed to file a claim. Also, most people do not know about the 180-day period for state-run facilities since no one is legally obligated to inform patients of the length of the statute of limitations, creating a trap for the unwary. Victims of medical malpractice should not be penalized by losing their right to proceed in court for failure to know about the notice requirement and comply within 180 days.

Wisconsin families should be afforded fair and equal protection under the law, regardless of which hospital or doctor they use.

The State Bar of Wisconsin strongly urges you to support SB 127.

State Bar of Wisconsin