

1 **AN ACT** *to amend* 441.15 (3) (c) and 448.02 (3) (a); and *to create* 441.15 (4m),
 2 448.35 and 448.40 (2) (am) of the statutes; **relating to:** requiring informed consent
 3 for performance of certain elective procedures prior to full gestational term of the
 4 fetus.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council’s Special Committee on Infant Mortality.

Under current law, any physician who treats a patient must inform the patient about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments. A physician who violates this requirement is guilty of unprofessional conduct and is subject to discipline by the Medical Examining Board (MEB), which may warn or reprimand the physician, or limit, suspend, or revoke any license, certificate, or limited permit granted by the MEB to the physician.

The statutes direct the MEB to promulgate rules implementing this requirement. Those rules are ch. Med 18, Wis. Adm. Code.

Under current law there is no requirement that a mother be specifically informed about possible negative effects to her infant of inducing labor or performing a caesarean section prior to full gestational term.

This draft prohibits a physician from performing an elective caesarean section or an elective procedure intended to induce labor in a woman prior to 39 weeks gestation unless the physician has first obtained the informed consent of the woman. The draft specifies that a woman’s consent is informed only if she receives timely information orally and in person from the attending provider regarding potential negative effects to the child of early delivery, including long-term learning and behavioral problems.

Under the draft, violations of the newly created prohibition are subject to the same penalties that violations of the duty to provide information on alternate modes of treatment are subject under current law; i.e., the MEB

may warn or reprimand the physician, or limit, suspend, or revoke any license, certificate, or limited permit granted by the board to the physician.

The draft directs the MEB to promulgate rules implementing the provisions of the newly created prohibition and defining “elective” for purposes of the prohibition.

The draft also prohibits a nurse–midwife from performing an elective caesarean section or an elective procedure intended to induce labor in a woman prior to 39 weeks gestation unless the nurse–midwife has first obtained the informed consent of the woman. The draft specifies that a woman’s consent is informed only if she receives timely information regarding potential negative effects to the child of early delivery, including long–term learning and behavioral problems. A nurse–midwife who is found to have violated this prohibition could be found to have engaged in misconduct or unprofessional conduct and be subject to penalties imposed by the Board of Nursing including a reprimand or limiting, suspending, revoking or denying renewal of the nurse–midwife’s license.

1 **SECTION 1.** 441.15 (3) (c) of the statutes is amended to read:

2 441.15 (3) (c) The board shall promulgate rules necessary to administer this section,
3 including the establishment of appropriate limitations on the scope of the practice of
4 nurse–midwifery, the definition of “elective” for purposes of the prohibition in sub. (4m), the
5 facilities in which such practice may occur and the granting of temporary permits to practice
6 nurse–midwifery pending qualification for certification.

7 **SECTION 2.** 441.15 (4m) of the statutes is created to read:

8 441.15 (4m) No nurse–midwife may perform an elective caesarean section or an
9 elective procedure intended to induce labor in a woman prior to 39 weeks gestation unless the
10 nurse–midwife has first obtained the informed consent of the woman. A woman’s consent is
11 informed only if she receives timely information orally and in person from the attending
12 provider regarding potential negative effects to the child of early delivery, including
13 long–term learning and behavioral problems.

1 **SECTION 3.** 448.02 (3) (a) of the statutes is amended to read:

2 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct and
3 negligence in treatment by persons holding a license, certificate or limited permit granted by
4 the board. An allegation that a physician has violated s. 253.10 (3), 448.30, 448.35 or 450.13
5 (2) or has failed to mail or present a medical certification required under s. 69.18 (2) within
6 21 days after the pronouncement of death of the person who is the subject of the required
7 certificate or that a physician has failed at least 6 times within a 6-month period to mail or
8 present a medical certificate required under s. 69.18 (2) within 6 days after the pronouncement
9 of death of the person who is the subject of the required certificate is an allegation of
10 unprofessional conduct. Information contained in reports filed with the board under s. 49.45
11 (2) (a) 12r., 50.36 (3) (b), 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated
12 by the board. Information contained in a report filed with the board under s. 655.045 (1), as
13 created by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with
14 the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the basis
15 of an investigation of a person named in the report. The board may require a person holding
16 a license, certificate or limited permit to undergo and may consider the results of one or more
17 physical, mental or professional competency examinations if the board believes that the
18 results of any such examinations may be useful to the board in conducting its investigation.

19 **SECTION 4.** 448.35 of the statutes is created to read:

20 **448.35 Informed consent for certain elective procedures.** No physician may
21 perform an elective caesarean section or an elective procedure intended to induce labor in a
22 woman prior to 39 weeks gestation unless the physician has first obtained the informed
23 consent of the woman. A woman's consent is informed only if she receives timely information

1 orally and in person from the attending provider regarding potential negative effects to the
2 child of early delivery, including long-term learning and behavioral problems.

3 **SECTION 5.** 448.40 (2) (am) of the statutes is created to read:

4 448.40 (2) (am) Implementing s. 448.35 and defining “elective” for purposes of that
5 section.

6 (END)