



American Academy of Family Physicians

Liability: Doctor Apologies

AAFP State Government Relations

Issue

Following discovery an adverse event or bad outcome, many physicians wish to express their condolences or apologies to patients or their families. However, in many states, they may find such expressions admissible before courts as evidence of wrongdoing. In these states, a liability tort could result in sympathy being construed as admission of guilt. As such, many physicians are advised, if not ordered, to refrain from making statements on adverse events or bad outcomes to patients and families, should the matter end up in court.

At the core of this issue is the patient-physician relationship. Patients and physicians both wish to be treated fairly and honestly in event of an unforeseen outcome. Laws that protect the right of a physician to enter honest and heartfelt dialogue with patients are key in preserving the patient-physician relationship.

Considerations

AAFP constituent chapters have made great progress in advancing this central tenet of effectively addressing the liability insurance crisis. Chapters should continue to educate state legislators, particularly, around the importance of this issue. While doctor apologies—characterized as “Sorry Works!” by the coalition of the same name—have the goal of decreasing the size of settlement awards, advocates indicate apologies could increase the quantity of settlements. However, the goal of doctor apologies is to decrease the number of suits that go to trial, particularly those that result in exorbitant noneconomic damage awards. Sorry Works! indicates that the sum of the increased quantity of settlements ultimately will be less than the current lottery-style awards, while simultaneously lowering legal bills for physicians. A final hope is that allowing physicians to express apologies or condolences will open up the system for review and improvement, leading to greater patient safety and fewer errors.

State Activity

As of October 2005, 30 states (AL, AK, AR, CA, DE, HI, ID, IL, IN, IA, KS, KY, MI, MN, MS, NE, NV, NJ, NM, NY, ND, PA, RI, SC, TN, TX, UT, VT, WA, WI) did not have provisions allowing doctors to apologize or express condolences without fear. Twenty states (AZ, CO, CT, FL, GA, LA, ME, MD, MA, MO, MT, NH, NC, OH, OK, OR, SD, VA, WV, WY) have passed laws allowing, or declaring inadmissible as evidence, some form of expressions of condolence and/or apology by physicians to patients and/or their families. The 2005 state legislative sessions saw great progress on this issue, with a dozen of those 20 states (AZ, CT, GA, IL, LA, ME, MO, MT, NH, SD, VA, WV) enacting laws.

AAFP Policy

The AAFP Professional Medical Liability policy may be viewed at www.aafp.org/x7019.xml.

The AAFP *Medical Liability Strike Force Report* may be viewed at http://members.aafp.org/members/PreBuilt/congress_boardreportI.pdf (*Members Only*)

State	Doctor Apologies
Alabama	<i>No provision.</i>
Alaska	<i>No provision.</i>
Arizona	Enacted 2005: §12-2605. Any statement or conduct expressing apology, responsibility or sympathy made by health care provider to patient or patient's relative relating to injury is inadmissible as evidence of admission of liability or against interest.
Arkansas	<i>No provision.</i>
California	<i>No provision.</i>
Colorado	§13-25-135. Statements or conduct by health care provider expressing apology, sympathy or fault to victim or relative of victim relating to suffering or injury inadmissible as evidence of admission of liability or against interest.
Connecticut	Enacted 2005: §52-195-8. Any statements or conduct expressing apology, sympathy or fault made by health care provider to victim or relative of victim relating to pain or injury inadmissible as evidence of admission of liability or against interest.
Delaware	<i>No provision.</i>
Florida	§90.4026. Statements or gestures expressing sympathy relating to the pain or death of person involved in an accident to person or family member inadmissible as evidence in civil action; statement of fault admissible. In general evidence rules, not solely for medical liability actions.
Georgia	Enacted 2005: §24-3-37.1. In any medical malpractice civil action, any statements or conduct expressing apology, sympathy, mistake or error made by a health care provider to the patient or relative or representative of the patient is inadmissible as evidence of admission of liability or against interest.
Hawaii	<i>No provision.</i>
Idaho	<i>No provision.</i>
Illinois	Enacted 2005: §735 5/8-1901. Any expression of apology or explanation provided by health care provider to patient, family or legal representative about inadequate or unanticipated outcome provided within 72 hours of provider's knowledge of potential cause not be admissible as evidence in any action of any kind.
Indiana	<i>No provision.</i>
Iowa	<i>No provision.</i>
Kansas	<i>No provision.</i>
Kentucky	<i>No provision.</i>
Louisiana	Enacted 2005: RS §13:3715.5. Any communication or conduct by health care provider expressing apology or regret, made to patient or patient's relative inadmissible as admission of liability or against interest. Statement of fault is admissible.
Maine	Enacted 2005: §24.2908. Any statement or conduct by health care practitioner expressing apology, regret or fault made to patient or relative inadmissible as admission of liability or against interest.
Maryland	§10-920. Any expression by health care provider expressing apology or regret inadmissible as admission of liability or against interest. Statement of liability or fault is admissible.
Massachusetts	§233.23D. Statements or gestures expressing sympathy relating to pain or death of person involved in accident made to person or family inadmissible as evidence of admission of liability. Not exclusive to medical profession.
Michigan	<i>No provision.</i>

State	Doctor Apologies
Minnesota	<i>No provision.</i>
Mississippi	<i>No provision.</i>
Missouri	Enacted 2005: §538.229. Statements or gestures expressing sympathy by health care provider relating to pain or suffering made to person or family inadmissible as admission of liability. Statement of fault admissible.
Montana	Enacted 2005: §26.1.1. Any statement or conduct expressing apology or sympathy relating to pain or death of a person made to person, family or friend , not admissible for any purpose in medical malpractice action.
Nebraska	<i>No provision.</i>
Nevada	<i>No provision.</i>
New Hampshire	Enacted 2005: §507-E:4. Any statement or action expressing sympathy or commiseration relating to pain or death of individual made to individual or family is inadmissible as admission of liability. Does not apply to statement of fault or negligence.
New Jersey	<i>No provision.</i>
New Mexico	<i>No provision.</i>
New York	<i>No provision.</i>
North Carolina	§8C-4.413. Statements by health care provider to apologize for treatment not admissible to prove negligence or culpable conduct.
North Dakota	<i>No provision.</i>
Ohio	§2317.43. Any statements or conduct expressing apology or sympathy made by health care provider to alleged victim or relative relating to injury or death inadmissible as admission of liability or against interest.
Oklahoma	§63-1-1708.1H. Expression of apology or sympathy by health care provider not admissible as admission of liability.
Oregon	§677.082. Any expression of regret or apology made by person licensed by Board of Medical Examiners does not constitute admission of liability in civil action.
Pennsylvania	<i>No provision.</i>
Rhode Island	<i>No provision.</i>
South Carolina	<i>No provision.</i>
South Dakota	Enacted 2005: HB 1148. No apology, offer of corrective treatment, or gratuitous act of assistance made by health care provider is admissible to prove negligence. Statement constituting admission against interest is admissible.
Tennessee	<i>No provision.</i>
Texas	<i>No provision.</i>
Utah	<i>No provision.</i>
Vermont	<i>No provision.</i>
Virginia	Enacted 2005: §8.01-581.20:1. Any statement, writing or conduct made by health care provider to patient or relative or representative of patient inadmissible as evidence of admission of liability or against interest. Statement of fault admissible.
Washington	<i>No provision.</i>
West Virginia	Enacted 2005: §55.7.11. Any statement or conduct of healthcare provider expressing apology or condolence to patient, or relative or representative of patient relating to pain, injury or death of patient is inadmissible as evidence of admission of liability or against interest.

State	Doctor Apologies
Wisconsin	<i>No provision.</i>
Wyoming	§1.1.130. Any statement or conduct expressing apology or sympathy made by health care provider to alleged victim, or relative or representative of alleged victim relating to pain, injury or death is inadmissible as evidence of admission of liability or against interest.

Source: National Conference of State Legislatures. *State Medical Malpractice Laws: Section 1.* (<http://www.ncsl.org/standcomm/sclaw/statelaws1.htm>, accessed 13 October 2005.)

Additional Information

The Sorry Works! Coalition may be found at <http://www.sorryworks.net/>