



The goal of our monthly newsletter is to keep you abreast of changes in the legislature affecting your industry as well as important court decisions. Should you have any questions regarding any of this information, please feel free to contact us via phone or email.

“APOLOGY” LEGISLATION REVISITED IN PENNSYLVANIA

Pennsylvania lawmakers are again considering legislation commonly referred to as the “I’m sorry law” or “apology rule.” A prior attempt was made in 2012, but after passing the House, the law stalled in the Senate and never passed before the end of 2012. Both houses are considering the law for the 2013-2014 session.

The legislation would change the current evidence rule regarding admissions of liability as it applies to health care providers’ communications with patients. Currently, a doctor may tell a patient that he/she is sorry for a bad result and such a statement would not be admissible at trial. However, an actual admission of negligence, such as an apology for negligent care or treatment is currently admissible. The pending legislation precludes all apologetic statements including apologies for negligent care or treatment. Thirty-six other states have passed some form of the apology law.

Opponents argue that the bill unconstitutionally usurps the judiciary role. Opponents also argue that the law is too broad because the legislation makes any benevolent gesture or admission regarding discomfort, pain, suffering, injury or death as a result of treatment or care inadmissible in medical malpractice cases. Supporters argue that physicians are ethically bound to disclose significant medical complications to patients, and the pending legislation provides much-needed protection. The law encourages full disclosure of errors, but eliminates fear that an admission will be used in court.

The goal is stated in the bill as follows: “The commonwealth has an interest in controlling medical professional liability costs and ensuring the medical professional liability insurance market is robust. Requiring medical professional liability insurance carriers to encourage benevolent gestures by insured health care providers will help to promote early resolution of issues and help to control medical professional liability insurance costs.”

Supporters believe that if a health care provider accepts responsibility and shows compassion, candor and a positive bedside manner, it is less likely that a lawsuit will be filed because the patient may feel satisfied and more likely to accept a faster and lower settlement. The belief is that the legislation will reduce the number of medical malpractice claims, thereby lowering health care costs and attracting medical professionals to Pennsylvania.

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