

Nebraska Adopts “I’m sorry” Legislation

There has been a sweeping movement across the nation regarding health care legislation. More than 30 states have passed what has been coined “I’m sorry” legislation with most of the statutes passed in the last four years. Nebraska has jumped onboard.

“I’m sorry” legislation allows physicians and other medical professionals to provide an apology to a patient, family member of patient, etc. after an unexpected medical result occurs. In the absence of “I’m sorry” laws, statements or conduct communicating compassion or sympathy are often used against a health care provider as evidence of liability in medical malpractice suits. As a result, health care providers are often put in an unenviable position in which they are unable to provide sympathetic communications following an unanticipated medical result out of fear of the legal ramifications. “I’m sorry” laws provide that such communications are inadmissible in civil court as an admission of liability

On May 21, 2007, Gov. Dave Heineman signed LB 373. LB 373 is Nebraska’s “I’m sorry” bill and took effect September 1, 2007. The bill provides that any statement or conduct expressing apology, condolence, etc. to an alleged victim of an unanticipated medical result, a relative or representative of the alleged victim is inadmissible as evidence of an admission of liability or as evidence of an admission against interest. As originally introduced, LB 373 provided that statements of fault were also inadmissible evidence. However, the final version provides that statements of fault are still admissible evidence against a health care provider. As a result, health care providers must be cautious of this distinction when communicating with patients, family members, and representatives.

The reasoning behind “I’m sorry” statutes is that an upfront apology or expression of sympathy can relieve anger and frustration following an unanticipated medical outcome. An apology can reduce the level of emotion felt by the patient and family members and can pave the way for a quick settlement rather than lengthy and costly litigation. It is believed, that for the most part, patients do not sue because they are greedy but because they want to know what went wrong and are seeking acknowledgement of an error. Various empirical studies have shown “I’m sorry” laws foster quicker settlements with a lower settlement amount in most cases and the avoidance of claims entirely in some cases. Quicker settlements with smaller payouts can ultimately result in lower malpractice insurance premiums for health care providers. Also, by encouraging honest, open communication, “I’m sorry” laws facilitate the continuation of the patient-physician relationship following an adverse event.