I’m Sorry Laws

Summary of State Laws

At least thirty states have enacted an “I’m Sorry” law for health care providers, including Arizona, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming, and the District of Columbia. Generally these laws protect health care providers who express sympathy to a patient for an unanticipated outcome from having such statement used against the physician in a subsequent lawsuit.

One of the criticisms of the current litigation system is that it stymies a provider from expressing any sort of apology for an unanticipated outcome because of the fear of being sued. The purpose of an “I’m sorry” or “apology” law is to encourage open communication between patients and physicians without fear of reprisal. The type of expressions covered by the law and their level of protection, however, vary among the states. Following is a summary of state I’m sorry laws.

The laws in Arizona, Colorado, Connecticut, Georgia, Idaho, Indiana, Iowa, Maine, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, Utah, Washington and Wyoming are virtually identical and apply to any statements, gestures, or expressions of apology, benevolence, sympathy, or commiseration made by a health care provider to an alleged victim of an unanticipated outcome or the victim’s relative or representative. Specifically the statement, gesture or expression must be related to the discomfort, pain, suffering, injury or death of the alleged victim in all of the laws except for the North Dakota and Utah laws. Colorado’s law also specifically applies to statements of fault. Employees of health care providers are also afforded protection under the law. The laws in Delaware, Missouri, New Hampshire, and Virginia are slightly different and cover any statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to pain, suffering, or death of a person and made to that person or the person’s family. Maryland and Oregon’s laws apply to any expression of regret or apology made orally, in writing, or by conduct. Hawaii’s statute applies to evidence of written or oral apologies and evidence of benevolent gestures made in connection with such apologies. Vermont’s law only applies to oral expressions of regret or apology. The North Carolina and South Dakota laws address statements made by a health care provider apologizing for an adverse outcome, offers to provide corrective or remedial treatment, and gratuitous acts to help affected persons. Illinois’ law is limited to expressions of grief, apology or explanation made within 72 hours of when the provider knew or should have known of the potential cause of such outcome. The District of Columbia ordinance applies to the use of expressions of sympathy or regret made in writing, orally, or by conduct to the injured patient, the patient’s family, or anyone who claims damages through the victim.
States also vary in the level of protection afforded to the communication. For example, the laws in Arizona, Colorado, Connecticut, Georgia, Maine, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, Utah, and Wyoming provide that the communication is inadmissible as an admission of liability or an admission against interest, while Oregon, Montana, and the District of Columbia specify that the communication does not constitute an admission of liability for any purpose. The Delaware law states that the communication is inadmissible in a civil action that is brought against a health care provider. North Carolina’s law states that the communication is inadmissible to prove negligence or culpable conduct. Louisiana’s law provides that the communication is inadmissible as an admission of liability, admission against interest, or for any other purpose, including impeachment. The Vermont law states that the statement shall not constitute a legal admission of liability and shall be inadmissible in any civil or administrative proceeding. The Washington, Hawaii, and Iowa laws state that such communication shall not be admissible as evidence. Still, nine states, including, Idaho, Indiana, Louisiana, Maine, Maryland, Missouri, New Hampshire, South Dakota, and Virginia specify that a statement of fault is not inadmissible as evidence.

Admissibility of Sympathetic Gestures Related to an Accident
At least five states, California, Florida, Massachusetts, Texas, and Washington have broader laws protecting sympathetic statements made to a person involved in an accident. Specifically these laws protect statements, writings, or benevolent gestures made to a victim of an accident or the victims’ family, that express sympathy or a general sense of benevolence and relate to the pain, suffering, or death of a person involved in an accident. Such expressions shall be inadmissible as evidence in a civil action. With the exception of Massachusetts, these laws specify that a statement of fault shall not be inadmissible as evidence.