

JAN 19 2007

A BILL FOR AN ACT

RELATING TO MEDICAL LIABILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature recognizes that when health
2 care providers, such as physicians, take responsibility for
3 medical errors and offer expressions of sympathy or benevolence,
4 trust builds and patients and family members have less
5 inclination to sue. Such a communication also can lead to open
6 discussion from which the hospital may obtain information that
7 will help avoid similar errors in the future. A growing number
8 of states have passed laws that protect such communications from
9 being used against health care providers in court as evidence of
10 liability.

11 The purpose of this Act is to protect such communications
12 from being used against health care providers in medical
13 malpractice actions.

14 SECTION 2. Section 626-1, Hawaii Revised Statutes, is
15 amended by adding to article IV a new rule to be appropriately
16 designated and to read as follows:



1 "Rule Admissibility of expressions of sympathy or
2 benevolence. (a) In any civil action that is brought against a
3 health care provider, as defined in section 671-1, or in any
4 arbitration proceeding that relates to the civil action, any
5 statement, writing, or benevolent gesture that:

6 (1) Expresses sympathy or a general sense of benevolence
7 relating to the pain, suffering, or death of the
8 patient involved in the incident with the health care
9 provider; and

10 (2) Is made to the patient or to the family of the
11 patient;

12 is inadmissible as evidence of an admission of liability. A
13 statement of fault, however, which is part of, or in addition
14 to, any of the above shall be admissible.

15 (b) As used in this rule:

16 "Benevolent gesture" means any action which conveys a sense
17 of compassion or commiseration emanating from human impulses.

18 "Family" means the spouse, reciprocal beneficiary, parent,
19 grandparent, stepmother, stepfather, child, grandchild, brother,
20 sister, half brother, half sister, adopted children of parent,
21 or spouse's parent of the injured party."



1 SECTION 3. This Act does not affect the rights or duties
 2 that matured, penalties that were incurred, and proceedings that
 3 were begun, before its effective date.

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.
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INTRODUCED BY:

J. Pamela English
A.S.T.

Rosely H Baker
 Arvid Nyberg
 J. Hill
 Karne Johnson
 Suzanne Chun Oakland
Madeline J.
 Will Egan
 Burreus. Kohler



Report Title:

Evidence; Medical Liability; Benevolent Gestures

Description:

Makes benevolent gestures regarding a medical error inadmissible as evidence of an admission of liability in medical malpractice claims.

