

Penn. Joins States With Doctor 'I'm Sorry' Law

Pennsylvania Gov. Tom Corbett this week signed a bill that allows doctors to apologize for medical mistakes without fear that the apology will be part of a medical malpractice lawsuit.

But while the apology will be protected, any admission of negligence by the doctor will not be, so patients can still present that evidence to a jury.

"Mistakes are going to happen, they do. And I think people need to hear regret."

More than half of states have this kind of law. Critics say there's too much grey area between apologies and admissions of neglect.

Bioethicist **Art Caplan** says he is a "strong supporter" of such laws.

"Having an apology when an error or mistake takes place is something that patients and their families deserve," Caplan told [Here & Now](#)'s Robin Young. "Mistakes are going to happen, they do. And I think people need to hear regret [Doctors and nurses] are not going to do it if they are worried about lawsuits."

Caplan says that these laws do not excuse doctors for medical negligence or malpractice, but malpractice lawyers argue there is too much of a grey area between an apology and an admission of neglect.

"It doesn't prohibit lawsuits, it just says you can talk about regret, you can talk about your feelings, without having that held against you or being the trigger to your lawsuit," Caplan said. "I think many of these apologies are absolutely sincere, absolutely not done to deflect a lawsuit. It's because people really do feel bad, and I think they really ought to get that chance."

Guest

- [Art Caplan](#), bioethicist and founding head of the [Division of Bioethics](#) at New York University [Langone Medical Center](#). He tweets [@ArthurCaplan](#).

<http://hereandnow.wbur.org/2013/10/25/im-sorry-law>

Transcript

ROBIN YOUNG, HOST:

This week, Pennsylvania joined more than 30 other states in passing legislation that's being called the I'm sorry law. It allows doctors to apologize to patients if something goes wrong without fear that that apology will be used in court in a malpractice lawsuit. What do these laws mean for doctors and for patients?

Art Caplan is head of the Division of Bioethics at New York University's Langone Medical Center. Art, you support these laws. Why?

ART CAPLAN: I'm a strong supporter of them. I think that having an apology when an error or a mistake takes place is something that patients and their families deserve. They need to know if something went wrong and that the doctor or nurse is sorry for it. It's just basic human dignity to show that kind of compassion. Mistakes are going to happen, they do, and I think people need to hear regret.

Now there are, you know, there are different kinds of errors. If you show up drunk and make a mistake, that's one thing. But if you're tired, and you mix up a blood bag and hurt someone because you gave them the wrong type of blood, I would like to see people talk about that, admit to that and make that part of their practice, and they're not going to do it if they're worried about lawsuits.

YOUNG: Well, that's been the criticism in the past, that doctors are afraid to say I'm sorry because they think it will be used. But let's be clear. As you said, and as others have said this week, you can't say, well, the knife slipped because I was drunk, I'm sorry. That disclosure of malpractice will still be able to be used in court. But there are things that you can say and maybe even just I'm sorry without even saying why that won't go into court.

CAPLAN: Right. So part of the problem here, Robin, is an apology, as you just said, maybe I'm sorry or I really regret what happened, or it tortures me that your loved one died and maybe did not have to. You can't introduce the apology part in court. It can't be used against you. But if you keep talking and say yes, and I was drunk, and I have an addiction problem, and I'm not well-trained, either, then you're starting to move from the apology component over into, if you will, a cause and effect or some type of attribution of why the thing went wrong.

It isn't clear, in Pennsylvania's new law or in the other states, how far you can go down that road. So I think the best strategy and the one that still is overdue is to let people apologize for bad outcomes and say so. You may need to train them to be relatively apologetic and know more, but even that would be a big advance.

YOUNG: Well, and you mentioned the gray area. Medical malpractice lawyers who are critics of the law say that that is a problem, that there's too much gray area between an apology and an admission of neglect. Of course we'll probably see how this plays out in courts. But I'm wondering, too, backers of the so-called benevolent gesture laws say that it cuts down on

malpractice suits because sometimes all the family wants, all a loved one wants is to hear the words I'm sorry and an explanation of what happened.

The cynics might say that this is simply an attempt to get apologies out there to cut down on what might be legitimate lawsuits.

CAPLAN: Well, I think there are enough lawyers swirling around in the United States that if there's a legitimate lawsuit, and a death or severely disabling injury takes place, they're going to find the family anyway. And this doesn't prohibit lawsuits; it just says you can talk about regret, you can talk about your feelings without having that held against you or being the trigger to a lawsuit.

So I'm not really worried, I know some lawyers are, that somehow or another they're going to lose business or, if you will, bad conduct will go unpunished because of these apologies. But I think people in health care - patients, families - they want to hear really what the doctor feels. And I think many of these apologies are absolutely sincere, absolutely not done to deflect a lawsuit. It's because people really do feel bad. And I think they ought to get that chance.

YOUNG: Well, just to flip it around a bit, the law says that if a doctor simply apologizes, it can't be used as the basis of a malpractice suit. But what if a doctor wants his apology to be his defense in a suit? Can it be introduced?

CAPLAN: It could be introduced; it just wouldn't work. Liability is not going to be determined, if you will, by the fact that you feel bad about an error, if the error was blameworthy. If you did something that really shouldn't have happened or that could have been easily prevented, you're still going to be responsible. So no, it's not going to help you in the other direction.

YOUNG: By the way, do we know in other states, the 30 or so before Pennsylvania that passed this law, has it led to more empathy and apologies?

CAPLAN: It's a great question, and the state laws are relatively new. We don't have any hard data. But I can tell you that just in my own experience, I have heard more apologies than, say, five years ago in states where the law is present. It definitely has led people to be franker, letting doctors and nurses feel more comfortable about expressing really legitimate emotions (unintelligible).

YOUNG: Art Caplan, while we have you, you're also tracking new research on the effect that payment for kidney donations would have on the organ supplies. Surveys show that if it's something like \$10,000 was offered for a kidney, there would be a five percent increase in kidney donation. But you say what?

CAPLAN: I say I still think it's not a great idea. You'd get a small increase, perhaps, but you're going to trigger major opposition from religious groups like the Catholic Church. And you might see the quality of organs diminish because when people get paid, they don't tell you the truth about their health.

YOUNG: Not to mention that that leaves a lot of people with one kidney who may then need help down the road if they, as you say, weren't healthy.

CAPLAN: Absolutely, right. We don't have great data on that. So that's another risk.

YOUNG: Art Caplan, head of the Division of Bioethics at New York University's Langone Medical Center, thanks so much.

CAPLAN: My pleasure.

JEREMY HOBSON, HOST:

Now an update on a story we have been following. DNA tests confirm that a Bulgarian woman is the mother of that young girl found in a Roma settlement in Greece. The woman says she gave birth to the child while working as an olive picker but couldn't afford to raise her. So she gave her away. Greek officials took the child from a Roma couple and charged them with child abduction. Authorities are now investigating if the child was illegally sold. You're listening to **HERE AND NOW**. Transcript provided by NPR, Copyright NPR.