

HOUSE BILL NO. 250

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES OLSON, Gruenberg

Introduced: 1/21/14

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act making an expression of apology, responsibility, liability, sympathy,**
2 **commiseration, compassion, or benevolence by a health care provider inadmissible in a**
3 **medical malpractice case; requiring a health care provider to advise a patient or the**
4 **patient's legal representative to seek legal advice before making an agreement with the**
5 **patient to correct an unanticipated outcome of medical treatment or care; and amending**
6 **Rules 402, 407, 408, 409, and 801, Alaska Rules of Evidence."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * **Section 1.** AS 09.55 is amended by adding new sections to read:

9 **Sec. 09.55.544. Evidence.** (a) In a civil action or arbitration under
10 AS 09.55.530 - 09.55.560, notwithstanding AS 09.43.050(2), 09.43.420(a), or
11 09.43.440(e), the following are not admissible as evidence:

12 (1) an expression of apology, responsibility, liability, sympathy,
13 commiseration, compassion, or benevolence made orally, by conduct, or in writing by

1 a health care provider or an employee of a health care provider to a patient, the
 2 patient's relative, or a legal representative of a patient concerning an unanticipated
 3 outcome of medical treatment or care regarding the patient's discomfort, pain,
 4 suffering, injury, or death;

5 (2) evidence of an offer made by a health care provider to a patient, the
 6 patient's relative, or a legal representative of a patient to correct or remediate an
 7 unanticipated outcome of medical treatment or care;

8 (3) evidence of conduct or statements by a health care provider to
 9 furnish, offer, accept, or promise to furnish or accept valuable consideration to
 10 compromise or attempt to compromise or settle a medical malpractice claim disputed
 11 as to validity or amount;

12 (4) evidence of furnishing, offering, or promising to pay medical,
 13 hospital, or similar expenses by a health care provider following an unanticipated
 14 outcome of medical treatment or care.

15 (b) This section does not apply to an offer of judgment under AS 09.30.065.

16 (c) In this section,

17 (1) "legal representative" means a legal guardian, attorney, person
 18 designated to make decisions on behalf of a patient under a power of attorney, or
 19 patient's agent;

20 (2) "relative" means

21 (A) the spouse of the patient;

22 (B) a parent, grandparent, stepparent, child, stepchild,
 23 grandchild, brother, sister, half brother, or half sister of the patient;

24 (C) a parent of the patient's spouse; or

25 (D) an individual adopted by the patient.

26 **Sec. 09.55.545. Agreement to correct unanticipated outcome or settle**
 27 **claim; legal advice.** An agreement to correct an unanticipated outcome of medical
 28 treatment or care or to settle a claim of medical malpractice made between a health
 29 care provider and a patient or the patient's legal representative is voidable if the health
 30 care provider has not advised the patient or the patient's legal representative to seek
 31 legal advice.

1 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 INDIRECT COURT RULE AMENDMENT. AS 09.55.544, added by sec. 1 of this
4 Act, has the effect of changing the following court rules in the manner specified:

5 (1) Rule 402, Alaska Rules of Evidence, by prohibiting the admission of an
6 expression of apology, responsibility, liability, sympathy, commiseration, compassion, or
7 benevolence by a health care provider in a medical malpractice cause of action regardless of
8 its relevance;

9 (2) Rule 407, Alaska Rules of Evidence, by modifying the admissibility of
10 evidence of subsequent remedial measures so that evidence of subsequent remedial measures
11 in a malpractice cause of action is not admissible for any purpose;

12 (3) Rule 408, Alaska Rules of Evidence, by modifying the admissibility of
13 evidence of compromise and offers of compromise or settlement in a medical malpractice
14 cause of action so that evidence of compromise or settlement in a medical malpractice cause
15 of action is not admissible for any purpose;

16 (4) Rule 409, Alaska Rules of Evidence, by modifying the admissibility of
17 evidence of furnishing, offering, or promising to pay medical, hospital, or similar expenses by
18 a health care provider in a medical malpractice cause of action;

19 (5) Rule 801, Alaska Rules of Evidence, by prohibiting the admission of an
20 offer of correction, remediation, or settlement by a health care provider in a medical
21 malpractice cause of action.

22 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 APPLICABILITY. AS 09.55.544 and 09.55.545, as enacted by sec. 1 of this Act,
25 apply to causes of action that accrue on or after the effective date of this Act.

26 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 CONDITIONAL EFFECT. AS 09.55.544, as enacted by sec. 1 of this Act, takes effect
29 only if sec. 2 of this Act receives the two-thirds majority vote of each house required by art.
30 IV, sec. 15, Constitution of the State of Alaska.