

“I’m Sorry” Laws with Similar Provisions to  
Subsection (b) of CS Ver. O HB 250

**DELAWARE:**

10 Del. C. 1953, § 4318; 57 Del. Laws, c. 442; 70 Del. Laws, c. 186, § 1;

§ 4318 Compassionate communications.

(a) For purposes of this section:

(1) "Health care provider" means any person licensed or certified by the State of Delaware to deliver health care services, including, but not limited to, any physician, coordinated care organization, hospital, health care facility, dentist, nurse, optometrist, podiatrist, physical therapist, psychologist, chiropractor or pharmacist and an officer, employee or agent of such person acting in the course and scope of employment or agency related to health care services.

(2) "Unanticipated outcome" means the result of a medical treatment or procedure that differs from an expected medical result.

(b) Any and all statements, writings, gestures, or affirmations made by a health care provider or an employee of a health care provider that express apology (**other than an expression or admission of liability or fault**), sympathy, compassion, condolence, or benevolence relating to the pain, suffering, or death of a person as a result of an unanticipated outcome of medical care, that is made to the person, the person's family, or a friend of the person or of the person's family, with the exception of the admission of liability or fault, are inadmissible in a civil action that is brought against a health care provider.

## **FLORIDA:**

90.4026 Statements expressing sympathy; admissibility; definitions.—

(1) As used in this section:

(a) “Accident” means an occurrence resulting in injury or death to one or more persons which is not the result of willful action by a party.

(b) “Benevolent gestures” means actions that convey a sense of compassion or commiseration emanating from human impulses.

(c) “Family” means the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half-brother, half-sister, adopted child of parent, or spouse’s parent of an injured party.

(2) The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident and made to that person or to the family of that person shall be inadmissible as evidence in a civil action.

**A statement of fault, however, which is part of, or in addition to, any of the above shall be admissible pursuant to this section.**

## **HAWAII:**

### **RULE 409.5 ADMISSIBILITY OF EXPRESSIONS OF SYMPATHY AND CONDOLENCE.**

Evidence of statements or gestures that express sympathy, commiseration, or condolence concerning the consequences of an event in which the declarant was a participant is not admissible to prove liability for any claim growing out of the event. **This rule does not require the exclusion of an apology or other statement that acknowledges or implies fault even though contained in, or part of, any statement or gesture excludable under this rule.**

## **IDAHO:**

### TITLE 9 EVIDENCE CHAPTER 2 WITNESSES

9-207. Admissibility of expressions of apology, condolence and sympathy. (1) In any civil action brought by or on behalf of a patient who experiences an unanticipated outcome of medical care, or in any arbitration proceeding related to, or in lieu of, such civil action, all statements and affirmations, whether in writing or oral, and all gestures or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence, including any accompanying explanation, made by a health care professional or an employee of a health care professional to a patient or family member or friend of a patient, which relate to the care provided to the patient, or which relate to the discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated outcome of medical care shall be inadmissible as evidence for any reason including, but not limited to, as an admission of liability or as evidence of an admission against interest.

**(2) A statement of fault which is otherwise admissible and is part of or in addition to a statement identified in subsection (1) of this section shall be admissible.**

(3) For the purposes of this section, unless the context otherwise requires:

(a) "Health care professional" means any person licensed, certified, or registered by the state of Idaho to deliver health care and any clinic, hospital, nursing home, ambulatory surgical center or other place in which health care is provided. The term also includes any professional corporation or other professional entity comprised of such health care professionals as permitted by the laws of Idaho.

(b) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected, hoped for or desired result.

History:

[9-207, added 2006, ch. 204, sec. 1, p. 624.]

## **INDIANA:**

### **IC 34-43.5**

#### **ARTICLE 43.5. EVIDENCE: SPECIFIC COMMUNICATIONS**

### **IC 34-43.5-1**

#### **Chapter 1. Communications of Sympathy**

### **IC 34-43.5-1-1**

#### **Exception**

Sec. 1. This chapter does not apply to a criminal proceeding.

*As added by P.L.76-2006, SEC.1.*

### **IC 34-43.5-1-2**

#### **Application**

Sec. 2. This chapter applies to a cause of action in tort, including a medical malpractice action under IC 34-18-8.

*As added by P.L.76-2006, SEC.1.*

### **IC 34-43.5-1-3**

#### **"Communication of sympathy"**

Sec. 3. As used in this section "communication of sympathy" means a statement, a gesture, an act, conduct, or a writing that expresses:

- (1) sympathy;
- (2) an apology; or
- (3) a general sense of benevolence.

*As added by P.L.76-2006, SEC.1.*

### **IC 34-43.5-1-4**

#### **Prohibited admission of communications of sympathy**

Sec. 4. Except as provided in section 5 of this chapter, a court may not admit into evidence a communication of sympathy that relates to causing or contributing to:

- (1) a loss;
- (2) an injury;
- (3) pain;
- (4) suffering;
- (5) a death; or
- (6) damage to property.

*As added by P.L.76-2006, SEC.1.*

### **IC 34-43.5-1-5**

#### **Admission of statements of fault, including communications of sympathy**

**Sec. 5. A court may admit a statement of fault into evidence, including a statement of fault that is part of a communication of sympathy, if otherwise admissible under the Indiana Rules of Evidence.**

*As added by P.L.76-2006, SEC.1.*

## **MAINE:**

### **2907. Communications of sympathy or benevolence**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Relative" means an alleged victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister or spouse's parents. "Relative" includes these relationships that are created as a result of adoption. In addition, "relative" includes any person who has a domestic partner relationship with an alleged victim. As used in this paragraph, "domestic partner" is a person who has registered as a domestic partner pursuant to Title 22, section 2710. [2005, c. 376, §1 (NEW).]

B. "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under an advance directive or any person recognized in law or custom as a person's agent. [2005, c. 376, §1 (NEW).]

C. "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result. [2005, c. 376, §1 (NEW).]  
[ 2005, c. 376, §1 (NEW) .]

**2. Evidence of admissions.** In any civil action for professional negligence or in any arbitration proceeding related to such civil action, any statement, affirmation, gesture or conduct expressing apology, sympathy, commiseration, condolence, compassion or a general sense of benevolence that is made by a health care practitioner or health care provider or an employee of a health care practitioner or health care provider to the alleged victim, a relative of the alleged victim or a representative of the alleged victim and that relates to the discomfort, pain, suffering, injury or death of the alleged victim as the result of the unanticipated outcome is inadmissible as evidence of an admission of liability or as evidence of an admission against interest. **Nothing in this section prohibits the admissibility of a statement of fault.**

[ 2005, c. 376, §1 (NEW) .]

SECTION HISTORY

2005, c. 376, §1 (NEW).

**MARYLAND:**

**§ 10-920.**

(a) In this section, "health care provider" has the meaning stated in § 3-2A-01 of this article.

(b) (1) Except as provided in paragraph (2) of this subsection, in a proceeding subject to Title 3, Subtitle 2A of this article or a civil action against a health care provider, an expression of regret or apology made by or on behalf of the health care provider, including an expression of regret or apology made in writing, orally, or by conduct, is inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

**(2) An admission of liability or fault that is part of or in addition to a communication made under paragraph (1) of this subsection is admissible as evidence of an admission of liability or as evidence of an admission against interest in an action described under paragraph (1) of this subsection.**

## **MASSACHUSETTS:**

Section 23D. As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Accident", an occurrence resulting in injury or death to one or more persons which is not the result of willful action by a party.

"Benevolent gestures", actions which convey a sense of compassion or commiseration emanating from humane impulses.

"Family", the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of parent, or spouse's parents of an injured party.

Statements, writings or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering or death of a person involved in an accident and made to such person or to the family of such person shall be inadmissible as evidence of an admission of liability in a civil action.

Certain statements, writings, and benevolent gestures inadmissible, when--definitions.

538.229. 1. The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability in a civil action. **However, nothing in this section shall prohibit admission of a statement of fault.**

2. For the purposes of this section, the following terms mean:

(1) "Benevolent gestures", actions which convey a sense of compassion or commiseration emanating from humane impulses;

(2) "Family", the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of a parent, or spouse's parents of an injured party.

(L. 2005 H.B. 393)

## **MICHIGAN:**

### **REVISED JUDICATURE ACT OF 1961 (EXCERPT) Act 236 of 1961**

**600.2155 Statement, writing, or action expressing sympathy, compassion, commiseration, or benevolence; admissibility in action for malpractice; "family" defined.**

Sec. 2155.

(1) A statement, writing, or action that expresses sympathy, compassion, commiseration, or a general sense of benevolence relating to the pain, suffering, or death of an individual and that is made to that individual or to the individual's family is inadmissible as evidence of an admission of liability in an action for medical malpractice.

**(2) This section does not apply to a statement of fault, negligence, or culpable conduct that is part of or made in addition to a statement, writing, or action described in subsection (1).**

(3) As used in this section, "family" means spouse, parent, grandparent, stepmother, stepfather, child, adopted child, grandchild, brother, sister, half brother, half sister, father-in-law, or mother-in-law.

**History:** Add. 2011, Act 21, Imd. Eff. Apr. 20, 2011

**Compiler's Notes:** Former MCL 600.2155, which pertained to obligation of witness to answer, was repealed by Act 274 of 1984, Eff. Mar. 29, 1985. Enacting section 1 of Act 21 of 2011 provides: "Enacting section 1. This amendatory act applies only to civil actions filed on or after the effective date of this amendatory act."

## **MISSOURI:**

538.229. 1. The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability in a civil action. **However, nothing in this section shall prohibit admission of a statement of fault.**

2. For the purposes of this section, the following terms mean:

(1) "Benevolent gestures", actions which convey a sense of compassion or commiseration emanating from humane impulses;

(2) "Family", the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of a parent, or spouse's parents of an injured party.

(L. 2005 H.B. 393)

CROSS REFERENCE:

Applicability of statute changes to cases filed after August 28, 2005, 538.305

## **NEBRASKA:**

### **Revised Statute 27-1201**

Revised Statutes » Chapter 27 » 27-1201

#### **27-1201. Unanticipated outcome of medical care; civil action; health care provider or employee; use of certain statements and conduct; limitations.**

(1) In any civil action brought by an alleged victim of an unanticipated outcome of medical care, or in any arbitration proceeding related to such civil action, any and all statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a health care provider or an employee of a health care provider to the alleged victim, a relative of the alleged victim, or a representative of the alleged victim and which relate to the discomfort, pain, suffering, injury, or death of the alleged victim as a result of the unanticipated outcome of medical care shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest. **A statement of fault which is otherwise admissible and is part of or in addition to any such communication shall be admissible.**

(2) For purposes of this section, unless the context otherwise requires:

(a) Health care provider means any person licensed or certified by the State of Nebraska to deliver health care under the Uniform Credentialing Act and any health care facility licensed under the Health Care Facility Licensure Act. Health care provider includes any professional corporation or other professional entity comprised of such health care providers;

(b) Relative means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, stepbrother, stepsister, half brother, half sister, or spouse's parents. Relative includes persons related to the patient through adoptive relationships. Relative also includes any person who has a family-type relationship with the patient;

(c) Representative means a legal guardian, attorney, person designated to make health care decisions on behalf of a patient under a power of attorney, or any person recognized in law or custom as a patient's agent; and

(d) Unanticipated outcome means the outcome of a medical treatment or procedure that differs from the expected result.

#### **Source**

Laws 2007, LB373, § 1;  
Laws 2009, LB35, § 18.

## **NEW HAMPSHIRE:**

### **507-E:4 Evidence of Admissions of Liability. –**

I. In this section "family" means spouse, parent, grandparent, stepfather, stepmother, child, adopted child, grandchild, brother, sister, half-brother, half-sister, father-in-law, or mother-in-law.

II. A statement, writing, or action that expresses sympathy, compassion, commiseration, or a general sense of benevolence relating to the pain, suffering, or death of an individual and that is made to that individual or to the individual's family is inadmissible as evidence of an admission of liability in a medical injury action.

**III. This section does not apply to a statement of fault, negligence, or culpable conduct that is part of or made in addition to a statement, writing, or action described in paragraph II.**

**Source.** 2005, 144:1, eff. Jan. 1, 2006.

## **SOUTH DAKOTA:**

19-12-14. Statements and actions by health care providers not admissible to prove negligence in medical malpractice actions. No statement made by a health care provider apologizing for an adverse outcome in medical treatment, no offer to undertake corrective or remedial treatment or action, and no gratuitous act to assist affected persons is admissible to prove negligence by the health care provider in any action for damages for personal injury or death alleging malpractice against any health care provider. **Nothing in this section prevents the admission, for the purpose of impeachment, of any statement constituting an admission against interest by the health care provider making such statement.**

**Source:** SL 2005, ch 117, § 1.

## **TENNESSEE:**

### **RULE 409.1: EXPRESSIONS OF SYMPATHY OR BENEVOLENCE.**

**(a)** That portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering or death of a person involved in an accident and made to such person or to the family of such person shall be inadmissible as evidence of an admission of liability in a civil action. **A statement of fault that is part of, or in addition to, any of the above shall not be inadmissible because of this Rule.**

**(b)** For purposes of this Rule:

(1) “Accident” means an occurrence resulting in injury or death to one or more persons which is not the result of willful action by a party.

(2) “Benevolent gestures” means actions which convey a sense of compassion or commiseration emanating from humane impulses.

(3) “Family” means an injured party’s spouse, parent, grandparent, stepparent, child, grandchild, sibling, half sibling, adopted sibling, or parent-in-law.

[Added by order filed January 31, 2003, effective July 1, 2003.]

## **TEXAS:**

### SUBCHAPTER C. ADMISSIBILITY

Sec. 18.061. COMMUNICATIONS OF SYMPATHY. (a) A court in a civil action may not admit a communication that:

- (1) expresses sympathy or a general sense of benevolence relating to the pain, suffering, or death of an individual involved in an accident;
- (2) is made to the individual or a person related to the individual within the second degree by consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code; and
- (3) is offered to prove liability of the communicator in relation to the individual.

(b) In this section, "communication" means:

- (1) a statement;
- (2) a writing; or
- (3) a gesture that conveys a sense of compassion or commiseration emanating from humane impulses.

**(c) Notwithstanding the provisions of Subsections (a) and (b), a communication, including an excited utterance as defined by Rule 803(2) of the Texas Rules of Evidence, which also includes a statement or statements concerning negligence or culpable conduct pertaining to an accident or event, is admissible to prove liability of the communicator.**

Added by Acts 1999, 76th Leg., ch. 673, Sec. 1, eff. Sept. 1, 1999.

## **VIRGINIA:**

§ [8.01-581.20:1](#). Admissibility of expressions of sympathy.

In any civil action brought by an alleged victim of an unanticipated outcome of health care, or in any arbitration or medical malpractice review panel proceeding related to such civil action, the portion of statements, writings, affirmations, benevolent conduct, or benevolent gestures expressing sympathy, commiseration, condolence, compassion, or a general sense of benevolence, together with apologies that are made by a health care provider or an agent of a health care provider to the patient, a relative of the patient, or a representative of the patient, shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest. **A statement of fault that is part of or in addition to any of the above shall not be made inadmissible by this section.**

For purposes of this section, unless the context otherwise requires:

"Health care" has the same definition as provided in § [8.01-581.1](#).

"Health care provider" has the same definition as provided in § [8.01-581.1](#).

"Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister, or spouse's parents. In addition,

"relative" includes any person who has a family-type relationship with the patient.

"Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a medical power of attorney, or any person recognized in law or custom as a patient's agent.

"Unanticipated outcome" means the outcome of the delivery of health care that differs from an expected result

## **WASHINGTON:**

### 5.66.010 Admissibility of sympathetic gestures

(1) The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident, and made to that person or to the family of that person, shall be inadmissible as evidence in a civil action. **A statement of fault, however, which is part of, or in addition to, any of the above shall not be made inadmissible by this section.**

(2) For purposes of this section:

(a) "Accident" means an occurrence resulting in injury or death to one or more persons that is not the result of willful action by a party.

(b) "Benevolent gestures" means actions that convey a sense of compassion or commiseration emanating from humane impulses.

(c) "Family" means the spouse or the domestic partner, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted child of a parent, or spouse's or domestic partner's parents of an injured party.

[2008 c 6 § 403; 2002 c 334 § 1.]

## **WEST VIRGINIA :**

### **§55-7-11a. Settlement, release or statement within twenty days after personal injury; disavowal; certain expressions of sympathy inadmissible as evidence.**

(a) If a person sustains a personal injury, no person shall within twenty days from the date of the personal injury while the injured person is either: (i) An inpatient in any hospital; or (ii) partially or totally unable to engage in his or her usual trade, profession or occupation:

(1) Negotiate or attempt to negotiate a settlement of any claim for such personal injury with or for and on behalf of the injured person;

(2) Obtain or attempt to obtain from the injured person a partial or general release of liability for such injury; or

(3) Obtain or attempt to obtain any statement, either written or oral, from the injured person for use in negotiating a settlement or obtaining a partial or general release of liability with respect to the personal injury: *Provided*, That nothing herein shall prohibit a person acting or intending to act for and on behalf of the injured person from obtaining any statement, oral or written, from an injured person upon the express request of the injured person.

**Nothing herein shall prevent a person who may be liable for damages on account of the personal injury from making an advance payment of all or any part of his or her liability for the damages; any sum paid during the twenty days by a person liable for damages on account of the personal injury is allowed as full credit against any damages which may be finally determined to be due an injured person.**

Any settlement, release of liability or statement entered into, obtained or made in violation of this section may be disavowed by the injured person at any time within one hundred eighty days from the date of the personal injury by executing a written statement of disavowal and thereupon forwarding a copy of the same to the person violating this section, in which event the settlement, release or statement may not be admissible in evidence for any purpose in any court or other proceeding relating to the personal injury, if any consideration paid for the settlement of or the general release of liability for the personal injury, at the time of the forwarding of the copy of the written statement of disavowal, is repaid or returned to the person who paid the consideration.

(b) (1) No statement, affirmation, gesture or conduct of a healthcare provider who provided healthcare services to a patient, expressing apology, sympathy, commiseration, condolence, compassion or a general sense of benevolence, to the patient, a relative of the patient or a representative of the patient and which relate to the discomfort, pain, suffering,

injury or death of the patient shall be admissible as evidence of an admission of liability or as evidence of an admission against interest in any civil action brought under the provisions of article seven-b, chapter fifty-five of this code, or in any arbitration, mediation or other alternative dispute resolution proceeding related to such civil action.

(2) Terms not otherwise defined in this section have the meanings assigned to them in article seven-b, chapter fifty-five of this code. For purposes of this section, unless the context otherwise requires, "relative" means a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister or spouse's parents. The term includes said relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a patient.