

28-LS0967\O
Wallace
2/10/14

CS FOR HOUSE BILL NO. 250()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES OLSON, Gruenberg

A BILL

FOR AN ACT ENTITLED

1 **"An Act making an expression of apology, responsibility, sympathy, commiseration,**
2 **compassion, or benevolence by a health care provider inadmissible in a medical**
3 **malpractice case; requiring a health care provider to advise a patient or the patient's**
4 **legal representative to seek legal advice before making an agreement with the patient to**
5 **correct an unanticipated outcome of medical treatment or care; and amending Rules**
6 **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, sympathy, commiseration,
13 compassion, or benevolence made orally, by conduct, or in writing by a health care

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

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

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

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

14 (5) evidence of a health care provider requesting, demanding,
15 inquiring, or directing another to write-off, offer, or promise to pay medical, hospital,
16 or similar expenses, in whole or in part, following an unanticipated outcome of
17 medical treatment or care.

18 (b) If an expression of apology, responsibility, sympathy, commiseration,
19 compassion, or benevolence made under (a)(1) of this section is made in conjunction
20 with an admission of liability, fault, or negligence, only the expression of apology,
21 responsibility, sympathy, commiseration, compassion, or benevolence is inadmissible,
22 and the admission of liability, fault, or negligence may be admissible as evidence.

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

24 (d) In this section,

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

28 (2) "relative" means

29 (A) the spouse of the patient;

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

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

(D) an individual adopted by the patient.

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

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

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

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

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

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

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

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

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

APPLICABILITY. AS 09.55.544 and 09.55.545, as enacted by sec. 1 of this Act,

1 apply to causes of action that accrue on or after the effective date of this Act.

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

4 **CONDITIONAL EFFECT.** AS 09.55.544 and 09.55.545, as enacted by sec. 1 of this
5 Act, take effect only if sec. 2 of this Act receives the two-thirds majority vote of each house
6 required by art. IV, sec. 15, Constitution of the State of Alaska.