



# LAWS OF ALASKA

2014

**Source**

CSHB 250(HSS) am

**Chapter No.**

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**AN ACT**

Making an expression of apology, sympathy, commiseration, compassion, or benevolence by a health care provider inadmissible in a medical malpractice case; requiring a health care provider to advise a patient or the patient's legal representative to seek legal advice before making an agreement with the patient to correct an unanticipated outcome of medical treatment or care; and amending Rules 402, 407, 408, 409, and 801, Alaska Rules of Evidence.

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

THE ACT FOLLOWS ON PAGE 1



**AN ACT**

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

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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, sympathy, commiseration, compassion,  
13 or benevolence made orally, by conduct, or in writing by a health care provider or an

1 employee of a health care provider to a patient, the patient's relative, or a legal  
2 representative of a patient concerning an unanticipated outcome of medical treatment  
3 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, sympathy, commiseration, compassion, or  
19 benevolence made under (a)(1) of this section is made in conjunction with an  
20 admission of liability or negligence, only the expression of apology, sympathy,  
21 commiseration, compassion, or benevolence is inadmissible, and the admission of  
22 liability 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;

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

2 (D) an individual adopted by the patient.

3 **Sec. 09.55.545. Agreement to correct unanticipated outcome or settle**  
4 **claim; legal advice.** An agreement to correct an unanticipated outcome of medical  
5 treatment or care or to settle a claim of medical malpractice made between a health  
6 care provider and a patient or the patient's legal representative is voidable if the health  
7 care provider has not advised the patient or the patient's legal representative in writing  
8 that the patient or the patient's legal representative may seek legal advice.

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

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

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

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

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

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

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

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

31 **APPLICABILITY.** AS 09.55.544 and 09.55.545, enacted by sec. 1 of this Act, apply

1 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, enacted by sec. 1 of this Act,  
5 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.