



THE HOSPITAL & HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA

## Medical Liability “Apology/ Benevolent Gestures” Legislation

### Frequently Asked Questions

Pennsylvania's physicians and hospitals face some of the highest medical liability costs in the nation. The high legal costs paid by Pennsylvania health care providers, employers, and governments inhibit job growth, increase health care costs, and limit access to medical care. Pennsylvania needs to enact meaningful legal reforms that will inject fairness, common sense, and personal responsibility into our legal system. Medical liability reform is necessary to support patient access to health care and to help reduce health care costs. An important reform is to permit medical professionals to express empathy for and take ownership of an unforeseen outcome without the risk of retaliatory litigation based solely on statements made at the time of an apology.

#### **Do apologies work?**

There is a growing consensus that open communication with patients has a dramatic effect on making a patient more empowered, and gives them more control as a part of the health care team. An open discussion of the error, within the guidelines of state and federal law, has been shown to decrease the likelihood of the patient filing a lawsuit, and can decrease the costs of defending a meritorious claim by taking anger out of the equation. The University of Michigan Health System in 2002 adopted a policy of investigating adverse events, sharing the findings with patients and families, and apologizing and offering compensation when appropriate. The system says it has cut litigation costs in half and seen new claims fall by more than 40 percent.

#### **What is apology/benevolent gestures legislation?**

Adoption of this legislation means that prior to any medical professional liability 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 plaintiff, a relative of the plaintiff, or a representative of the plaintiff and which relate solely to discomfort, pain, suffering, injury, or death as the result of medical treatment, shall be inadmissible as evidence of an admission of liability.

#### **Why is the legislation necessary?**

Health care providers are often reluctant to explain to patients and their families what happened when procedures go wrong because they fear the information will be used against them in court.

#### **Have other states adopted apology/benevolent gestures laws?**

Thirty-five states have passed immunity for apology laws. These statutes allow physicians and health care providers to apologize and offer expressions of grief without their words being used against them in court.

### **Who supports such legislation?**

The American Bar Association supports legislation that provides that apologies, expressions of sympathy, and commiseration or condolence and compassion by a health care provider to a patient or the patient's family relating to "unanticipated outcomes" of medical care should be inadmissible. The American Medical Association ethical opinion states that when a doctor errs, "the physician is ethically required to inform the patient of all the facts necessary to ensure understanding of what has occurred" and that liability concerns should not impede disclosure. In 2002, The Joint Commission (TJC) began requiring disclosure to patients in sentinel event cases. In Pennsylvania, the following organizations support this type of legislation:

- Pennsylvania Medical Society
- Pennsylvania Health Care Association
- The Hospital & Healthsystem Association of Pennsylvania

### **Are there plans to address this issue in 2011?**

The House approved House Bill 495, sponsored by Representative Keith Gillespie (R-York). Senator Patricia Vance (R-Cumberland) introduced Senate Bill 565 which is the same bill.