



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL

ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 53 (as reported without amendment)  
Sponsor: Senator Jim Marleau  
Committee: Judiciary

(as enrolled)

Date Completed: 1-28-11

### **RATIONALE**

Many states have enacted what have come to be known as "I'm sorry" laws, which exclude from admissibility as evidence in a medical malpractice suit a health care provider's statements or actions expressing sympathy or compassion for a negative outcome of medical care. Experience in states that have enacted these laws, and at health care organizations that have adopted similar policies, apparently has shown that they result in lower claims costs and fewer malpractice actions filed. Some people believe that Michigan should follow the lead of 35 other states by preventing statements of sympathy and compassion from being admitted as evidence of liability in a medical malpractice case.

### **CONTENT**

The bill would amend the Revised Judicature Act to specify that a statement, writing, or action expressing sympathy, compassion, commiseration, or a general sense of benevolence relating to the pain, suffering, or death of an individual, that was made to that individual or to his or her family, would be inadmissible as evidence of an admission of liability in a medical malpractice action.

The bill would not apply to a statement of fault, negligence, or culpable conduct that was part of or made in addition to a statement, writing, or action described above.

"Family" would mean spouse, parent, grandparent, stepmother, stepfather, child, adopted child, grandchild, brother, sister, half brother, half sister, father-in-law, or mother-in-law.

The bill would apply only to civil actions filed on or after its effective date.

Proposed MCL 600.2155

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Physicians and other medical professionals and institutions often are reluctant to express compassion or sympathy, even simply saying "I'm sorry", when there are negative outcomes to medical care. Many health care providers reportedly fear that doing so could expose them to liability in the event the patient or his or her family pursued a medical malpractice action. Experience shows, however, that people are less likely to sue doctors and hospitals and that settlement costs tend to be lower when open and direct communication is encouraged.

According to an article in *American Medical News*, in 1987 the Lexington Veterans Affairs Medical Center in Kentucky changed how it reacted after adverse medical events. Reportedly, the hospital's policy is to investigate medical outcomes and disclose the results, even if they reveal that an adverse event was the result of error. An apology and financial settlement are offered when appropriate. The hospital found that if appropriate behavior—such as disclosure of facts, apology, and compensation—were taken when bad things happened, the hospital got good publicity, and the number

of claims against the hospital as well as the average size of a claim settlement were significantly lower than for other Veterans Administration hospitals.

Other medical institutions have adopted similar policies, and at least 35 states have offered some liability protections by enacting so-called "I'm sorry" laws. Michigan would do the same by enacting this proposal. Because it would not apply to a statement of fault, negligence, or culpable conduct, however, the bill would not give negligent medical professionals an escape route from actual liability.

### **Supporting Argument**

Offering words or actions of sympathy and compassion in the event of a bad medical outcome is simply the right thing to do. An apology also can be therapeutic for both the patient and the health care provider. An expression of sympathy and regret can restore the patient's self-respect and dignity, relieve feelings of helplessness, and show that the practitioner cares about the well-being of the patient or family. If the patient views the provider as sympathetic, remorseful, and accepting of responsibility, he or she may feel less desire to seek punishment and compensation for a medical mistake. At the same time, an apology may relieve the practitioner's feelings of guilt, shame, and fear of retaliation. Although some practitioners might want to offer an apology, they may be dissuaded by insurers and defense attorneys. Rather than jeopardizing the parties' relationship, however, an apology actually can strengthen it.

The bill would encourage open communication with and decent treatment of patients and their families, without endangering medical professionals and institutions.

### **Supporting Argument**

According to testimony before the Senate Judiciary Committee by the chief risk officer for the University of Michigan Health Systems, policies encouraging open communication and expressions of sympathy help to move medical malpractice claims out of an adversarial process that is financially and emotionally draining for both sides. Protecting health professionals and institutions from exposure to liability for showing compassion and sympathy in the

aftermath of negative medical outcomes would keep the intimate doctor-patient relationship out of the courtroom.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.