

JAN 19 2007

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# A BILL FOR AN ACT

RELATING TO MEDICAL LIABILITY.

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

1           SECTION 1. The legislature recognizes that when health  
2 care providers, such as physicians, take responsibility for  
3 medical errors and offer expressions of sympathy or benevolence,  
4 trust builds and patients and family members have less  
5 inclination to sue. Such a communication also can lead to open  
6 discussion from which the hospital may obtain information that  
7 will help avoid similar errors in the future. A growing number  
8 of states have passed laws that protect these communications  
9 from being used against health care providers in court as  
10 evidence of liability.

11           The purpose of this Act is to protect these communications  
12 from being used against health care providers in medical  
13 malpractice actions.

14           SECTION 2. Section 626-1, Hawaii Revised Statutes, is  
15 amended by adding to article IV a new rule to be appropriately  
16 designated and to read as follows:



1            "Rule            Admissibility of expressions of sympathy or

2 benevolence. (a) In any civil action that is brought against a  
3 health care provider as defined in section 671-1, or in any  
4 arbitration proceeding that relates to the civil action, any  
5 statements, writings, or benevolent gestures that:

6            (1) Express sympathy or a general sense of benevolence  
7            relating to the pain, suffering, or death of the  
8            patient involved in the incident with the health care  
9            provider; and

10           (2) Is made to the patient or to the family of the  
11           patient,

12 are inadmissible as evidence of an admission of liability. A  
13 statement of fault, however, which is part of, or in addition  
14 to, any of the above shall be admissible.

15           (b) For purposes of this section:

16           (1) "Benevolent gestures" means actions that convey a  
17           sense of compassion or commiseration emanating from  
18           human impulses; and

19           (2) "Family" means the spouse, parent, grandparent,  
20           stepparent, child, grandchild, sibling, stepsibling,  
21           adopted children of a parent, or spouse's parent of  
22           the injured party."



1 SECTION 3. This Act does not affect the rights or duties  
 2 that matured, penalties that were incurred, or proceedings that  
 3 were begun before its effective date.

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.  
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**Report Title:**

Medical Liability

**Description:**

Makes expressions of sympathy or benevolence made to a patient or family member of the patient inadmissible as evidence of an admission of liability in civil proceedings brought against a health care provider.

