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# A BILL FOR AN ACT

RELATING TO HEALTH CARE PROVIDERS.

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

1           SECTION 1. The legislature finds that the physician-  
2 patient relationship is essential to the practice of medicine  
3 and the proper diagnosis and treatment of illness and disease.  
4 A good physician-patient relationship facilitates the transfer  
5 of information between the physician and patient, enhances  
6 accuracy of the diagnosis, and increases the patient's knowledge  
7 about the patient's diagnosis and treatment. A patient should  
8 feel comfortable to confide in the physician and in return a  
9 physician should be honest and provide reassurance and comfort  
10 to the patient.

11           Historically, physicians have been advised, and sometimes  
12 are even required, to stay silent when an unanticipated medical  
13 care event occurs that results in pain and suffering for or even  
14 death of the patient. In absence of any laws that shield  
15 physicians, an apology in which the physician admits fault may  
16 be considered an admission against interest and may be  
17 admissible in a malpractice proceeding as evidence of  
18 acknowledgment of fault. However, medical standards require



1 that health care providers disclose to patients any  
2 unanticipated event, including details of, reasons for, and any  
3 consequences of the unanticipated event. This type of  
4 conversation can be difficult to conduct with a patient without  
5 expressing sympathy or regret for unanticipated and sometimes  
6 negative outcomes.

7 The physician-patient relationship is threatened by the  
8 rising number of medical malpractice lawsuits and increasing  
9 medical malpractice insurance premiums. Physician apology laws  
10 enable candid communication between a physician and the  
11 physician's patient following an unanticipated medical care  
12 outcome, and appear to reduce overall medical malpractice  
13 liability costs by reducing the number of lawsuits and  
14 consequent attorney's fees and claim costs. Studies show that  
15 patients are far less likely to sue when provided a full  
16 explanation and apology.

17 In response, states have passed legislation to create  
18 apology exemptions. Massachusetts was the first state to adopt  
19 a physician apology law to protect physicians from statements  
20 they might make to their patients regarding complications their  
21 patients may have suffered while under their care. More  
22 recently enacted apology laws specifically declare that a



1 statement of apology by a physician to a patient is inadmissible  
2 as evidence of liability in court.

3 In Hawaii, section 626-1, rule 409.5, Hawaii Rules of  
4 Evidence, allows individuals and entities to express sympathy  
5 and condolence concerning the consequences of an event in which  
6 the declarant was a participant without the expression being  
7 used to establish liability. However, this rule does not  
8 specifically protect communication that amounts to an apology,  
9 which could be admissible as evidence to establish liability.  
10 Under section 626-1, rule 104, Hawaii Rules of Evidence, the  
11 court is authorized to determine whether the utterance amounts  
12 to an expression of sympathy or an acknowledgement of fault.  
13 Furthermore, section 626-1, rule 409.5, Hawaii Rules of  
14 Evidence, generally applies to individuals and entities and  
15 fails to specifically address the communications with health  
16 care providers regarding the consequences of an unanticipated  
17 medical care outcome involving pain, suffering, or death.

18 The purpose of this Act is to remove the obstacles that may  
19 discourage physicians from apologizing by establishing that  
20 statements of apology made by a health care provider concerning  
21 an unanticipated medical care outcome are inadmissible to prove  
22 liability for any claim arising out of the event.



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

4 "Rule Inadmissibility of unanticipated medical  
5 outcomes; health care provider apologies. Evidence of  
6 statements, affirmations, gestures, or conduct that expresses  
7 apology, sympathy, commiseration, condolence, compassion, or a  
8 general sense of benevolence that are made by a health care  
9 provider or an employee of a health care provider concerning the  
10 consequences of an unanticipated outcome of medical care  
11 resulting in discomfort, pain, suffering, injury, or death is  
12 not admissible to prove liability for any claim arising out of  
13 the event."

14 SECTION 3. This Act does not affect rights and duties that  
15 matured, penalties that were incurred, and proceedings that were  
16 begun before its effective date.

17 SECTION 4. New statutory material is underscored.

18 SECTION 5. This Act shall take effect on January 1, 2050.

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**Report Title:**

Evidence; Apology; Health Care Providers

**Description:**

Establishes a new rule of evidence that statements or conduct that expresses apology that are made by a health care provider concerning an unanticipated medical care outcome are inadmissible to prove liability for any claim arising out of the event. Effective 01/01/50. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

