



## The Republican.

### Bills focus on doctor apologies

Monday, January 14, 2008

By **MICHAEL McAULIFFE**  
mmcauliffe@repub.com

While it would seem to be an error, admitting a mistake may actually keep a doctor out of court.

Massachusetts is among 34 states that have some kind of apology law covering physicians, however the Bay State statute provides doctors a shield from liability only for expressing apology or regret for a poor medical outcome - not for also admitting responsibility for what occurred.

Now, proposed legislation would allow physicians to apologize and take responsibility following a mistake without fear that what they say could be used against them in a civil lawsuit.

"If it was an avoidable injury, there ought to be an open, honest apology to the patient," says Dr. Alan C. Woodward, vice chairman of the Massachusetts Medical Society's Committee on Professional Liability. "Right now, physicians live in fear that anything they say will be used against them."

State Sen. Richard T. Moore, D-Uxbridge, co-chairman of the Joint Committee on Health Care Financing, has filed a bill which would establish a Health Apology Pilot Program.

Under the legislation, participating hospitals and doctors "shall promptly acknowledge and apologize for mistakes in patient care and promptly offer fair settlements." The apology will not be admissible in court, and the legislation also states that hospitals shall encourage patients and their families to retain their own lawyers to protect their rights.

The program shall be based on the efforts of the Sorry Works! Coalition in Illinois. Created in 2005, the coalition advocates that a provider should initially offer an apology, without assigning any fault. It also suggests providers take care of food, lodging, counseling and other needs of the patient and family and promise a swift and thorough investigation.

Fault should be admitted if the investigation reveals the doctor made a mistake. The coalition believes there should then be a discussion of fair compensation.

Moore and state Rep. Denise Provost, D-Somerville, have also filed identical bills to ensure that an apology relating to the suffering or death of a patient "which is not the result of intentional misconduct ... shall be inadmissible as evidence of an admission of liability" in a malpractice case.

Timothy M. Hoppe, who is Moore's legislative director, said the senator believes his bills will reduce the number of lawsuits brought against doctors. "They don't have to be afraid of expressing remorse and guilt and (an) apology for something that went wrong," Hoppe said of physicians.

Douglas B. Wojcieszak, who founded Sorry Works! after his brother, James, died during open heart surgery, said there has been the erroneous belief that greed motivates patients and families to sue following a medical mistake. But in almost every instance patients and families go to court because they are angry and feel they have been stonewalled, he said.

They want answers, accountability, and someone to listen to their story, Wojcieszak said. "What motivates ... a trial lawyer is a cover-up. Lies. Deceit," he said. "How do you stay angry at someone

who's trying to do the right thing?"

The Massachusetts Bar Association has taken no position on the pending bills, though President David W. White Jr. said the association generally opposes any measure that restricts the rights of someone to recover damages.

White also said chances are good the association's house of delegates, which decides the organization's policy positions, will oppose the legislation. "Based upon past history, there's a likelihood this will be opposed," White said.

In Springfield, Baystate Health System created a program about a year ago with the goal of improving communication between doctors and patients. The program includes a partnership with the organization Medically Induced Trauma Support Services.

In cases where there is an adverse outcome Baystate pays for counseling for a patient, family members, doctors and nurses, according to Lynn M. Tenerowicz, director of risk management . In situations where it is determined that a Baystate doctor made a mistake, the patient or family is offered compensation, Tenerowicz said.

Baystate also pays for a lawyer chosen by the patient or family to review the offer, Tenerowicz said. "There haven't been that many situations in which we felt that we had any kind of liability where there would be litigation," she said.

Linda K. Kenney, who founded Medically Induced Trauma Support Services after she nearly died when she went to a Boston hospital for ankle surgery in 1999, praised the Baystate effort.

"Their leadership stepped up and said they're not waiting for laws to be passed," Kenney said. "They're putting their money where their mouth is."

©2008 The Republican

© 2008 MassLive.com All Rights Reserved.