



Wisconsin Medical Society

TO: Assembly Committee on Health
Representative Erik Severson, MD, Chair

FROM: Mark Grapentine, JD
Senior Vice President - Government Relations

DATE: May 29, 2013

RE: Support for Assembly Bill 120

On behalf of more than 12,000 members statewide, the Wisconsin Medical Society thanks the committee for this opportunity to share our strong support for Assembly Bill 120, promoting statements of apology or condolence following an unexpected or negative health care event. The bill would provide statutory protection for such statements, promoting more full and frank communications between a physician and a patient or the patient's family at a time when such communication is needed the most. We urge the committee to approve the bill.

The Society believes physicians should not be forced into a situation where they feel compelled to avoid frank or sympathetic conversations with patients or family members because they fear that any statements could be used against them in a lawsuit. In today's litigation environment, that is too often the case. Studies show that timely communication with a patient and/or a patient's family following an adverse event can greatly reduce the incidence of medical liability lawsuits. Laws such as AB 120 promote that goal of timely communication between physicians and patients or patients' families.

The Society supports broad protections for these important conversations – the corollary is that the Society opposes amending the bill to restrict the types of statements, gestures or forms of conduct that are covered under the introduced version of the bill. Indeed, recent analysis of various states' laws show that ideally, nothing should interfere with potential physician-patient communication – including any situation where a physician is forced to choose his or her words carefully for fear of stepping over a legal line. All topics need to be covered in order for the law to work as intended. Otherwise, rather than a frank discussion, physicians might worry about the legal ramifications of their word choice and limit their communication with a patient or patient's family due to fear of legal exposure.

The attached *Health Affairs* article, "The Flaws in State 'Apology' And 'Disclosure' Laws Dilute Their Intended Impact on Malpractice Suits," analyzes the weaknesses in some statutory constructs that do not go far enough to protect statements of sympathy as well as responsibility. The article specifically discusses states with laws protecting statements of sympathy or promoting disclosure of an adverse event:

Our analysis reveals that most of these laws have structural weaknesses that may discourage comprehensive disclosures and apologies and weaken the laws' impact on malpractice suits. Disclosure laws do not require, and most apology laws do not protect, the key information that patients want communicated to them following an unanticipated outcome. Patients view the apology and disclosure processes as inextricably intertwined, seeking not only an expression of sympathy but also information about the nature of the event and why it happened, and how recurrences will be prevented.

- - -

Legislation can be ineffective or even counter-productive if it is drafted too narrowly, if health care providers overestimate the protection it offers, or if the resulting disclosures or apologies are interpreted by patients as insincere.

Therefore, in order to promote the overall goal of better communication between a physician and a patient/patient's family, the breadth of the kinds of protected language in AB 120 needs to remain as it is currently drafted. When emotions are running strong, that is not the time for a physician to feel a need to choose words cautiously – the discussion needs to be full and frank for the patient or family members to trust what the physician is saying. And in the current lawsuit environment, those conversations will not occur as often as they could without legislative protection.

Finally, it is important to note what the bill does not do. It does nothing to remove the ability of a capable plaintiff's attorney to utilize current discovery methods and other legal means to explore whether a medical outcome warrants a lawsuit. AB 120 is a well-reasoned bill in the critical area of physician-patient communications, nothing more.

Thank you again for this opportunity to share the Society's support for Assembly Bill 120. If you have questions about this or other issues, please feel free to contact us at any time.