

LEGISLATIVE BILL 373

Approved by the Governor May 21, 2007

Introduced by Schimek, 27; Adams, 24; Johnson, 37; Nelson, 6; Pedersen, 39;
Wightman, 36

FOR AN ACT relating to public health and welfare; to provide for inadmissibility of apologies regarding medical care as evidence; and to define terms.

Be it enacted by the people of the State of Nebraska,

Section 1. (1) In any civil action brought by an alleged victim of an unanticipated outcome of medical care, or in any arbitration proceeding related to such civil action, any and all statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a health care provider or an employee of a health care provider to the alleged victim, a relative of the alleged victim, or a representative of the alleged victim and which relate to the discomfort, pain, suffering, injury, or death of the alleged victim as a result of the unanticipated outcome of medical care shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest. A statement of fault which is otherwise admissible and is part of or in addition to any such communication shall be admissible.

(2) For purposes of this section, unless the context otherwise requires:

(a) Health care provider means any person licensed or certified by the State of Nebraska to deliver health care under the Uniform Licensing Law and any health care facility licensed under the Health Care Facility Licensure Act. Health care provider includes any professional corporation or other professional entity comprised of such health care providers;

(b) Relative means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, stepbrother, stepsister, half brother, half sister, or spouse's parents. Relative includes persons related to the patient through adoptive relationships. Relative also includes any person who has a family-type relationship with the patient;

(c) Representative means a legal guardian, attorney, person designated to make health care decisions on behalf of a patient under a power of attorney, or any person recognized in law or custom as a patient's agent; and

(d) Unanticipated outcome means the outcome of a medical treatment or procedure that differs from the expected result.