

2012 -- H 7172

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LC00672
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - EVIDENCE

Introduced By: Representatives McNamara, and Bennett

Date Introduced: January 18, 2012

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. The legislature hereby finds and declares that effective July 1, 2001, the
2 Joint Committee on Accreditation of Healthcare Organizations (“JCAHO”) requires, as part of its
3 standards for accreditation, that health care providers report all medical/health care errors to the
4 overseeing health care facility. Providers are further required to provide a clear explanation to the
5 patient and, when appropriate, their families of the outcome of any treatment or procedure,
6 including unanticipated outcomes. The premise of the standards is that more open communication
7 within a health care facility and with patients will lead to a reduction of medical/health care errors
8 and other factors which contribute to unintended adverse patient outcomes. In order to create an
9 environment which encourages recognition and acknowledgment of medical/health care errors,
10 the standards call for minimization of individual blame or retribution for involvement in a
11 medical/health care error. The legislature hereby intends to create such an environment by
12 excluding from evidence in a civil action any statements made by providers in accordance with
13 the JCAHO standards as well as any statements of sympathy expressed by the provider to the
14 patient or to the patient’s family. The legislature further finds that to the extent such statements
15 are mandated by the JCAHO standards, it would be unfair to introduce such statements into
16 evidence as voluntary admissions of the provider.

17 SECTION 2. Chapter 9-19 of the General Laws entitled "Evidence" is hereby amended
18 by adding thereto the following section:

19 **9-19-45. Accessibility of health care provider's reports of medical and health care**

1 **errors.** – (a) For purposes of this section:

2 (1) “Family” means the spouse, parent, grandparent, stepparent, child, grandchild,
3 brother, sister, half brother, half sister, uncle, aunt, adopted children of parent, or spouse’s
4 parents, whether by whole or half blood, adoption or marriage, of a patient;

5 (2) “Health care facility” means any institutional health service provider licensed
6 pursuant to the provisions of chapter 17 of title 23;

7 (3) “Health care provider” or “provider” shall have the same meaning as the meaning
8 contained in subdivision 23-17.13-2(1);

9 (4) “JCAHO’s standards” means the patient safety and medical/health care error
10 reduction standards of the joint commission on accreditation of healthcare organizations effective
11 July, 1, 2001; and

12 (5) “Medical/health care errors” means the events and conditions required to be reported
13 to a health care facility’s error reporting system under JCAHO’s standards.

14 (b) In any claim or civil action against a health care provider or health care facility, or in
15 any arbitration proceeding or other method of alternative dispute resolution that relates to the
16 claim or civil action, and in any civil or administrative proceeding against a health care provider
17 or health care facility, the following shall be inadmissible as evidence of an admission of liability
18 or as evidence of an admission against interest, or in any way to prove negligence or culpable
19 conduct:

20 (1) Statements or writings of a health care provider made to a patient, or to the family or
21 representative of such patient, regarding the outcome of such patient’s medical care and
22 treatment, including reports of medical/health care errors or unanticipated outcomes as required
23 by or in accordance with the JCAHO’s standards or similar standards.

24 (2) Statement or writings of a health care provider made to a patient, or to the family or
25 representative of such patient, expressing or conveying sympathy, apology, responsibility,
26 commiseration, condolence, compassion, regret, grief, mistake, error or a general sense of
27 benevolence (including the word “sorry”) relating to the pain, suffering or death of such patient in
28 connection with or relating to the patient’s condition or the outcome of such patient’s medical
29 care and treatment.

30 (3) Any offers made by a health care provider to a patient, or to the family or
31 representative of such patient, to undertake corrective actions to assist the patient in connection
32 with or relating to the patient’s condition or the outcome of such patient’s medical care and
33 treatment.

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1 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would provide that expressions of sympathy, statements by a health care
2 provider to a patient or to the patient's family regarding the outcome of such patient's medical
3 care and treatment, including reports of medical/health care errors or unanticipated outcomes as
4 required be in accordance with JCAHO's standards, and any offers by a health care provider to
5 undertake corrective action to assist the patient shall be inadmissible as evidence or an admission
6 of liability in any claim or action against the provider.

7 This act would take effect upon passage.

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