

Relias Media/Healthcare Risk Management article: Apologizing Still Works, But Ensure It Is Done Correctly, quoted Henry Norwood, Esq., 2-1-2024

Expressing regret for an adverse event has become best practice. However, the apology must be carefully executed.

Some State Laws Protect Apologies

“Apology laws” protect in some states, says Henry Norwood, JD, an attorney with Kaufman Dolowich in San Francisco. An “apology law” is a law that makes apologetic statements by health professionals inadmissible in legal proceedings. Approximately 39 states have some form of apology law, he says. An attempt was made in 2005 to pass a federal apology law (the National Medical Error Disclosure and Compensation Act), but the bill was not passed. (More information is available at: <https://www.congress.gov/bill/...>)

Apology laws vary by state in the scope of their protection. Some states protect what can be referred to as “complete apologies,” that is, expressions of sympathy along with responsibility or fault, Norwood says. Laws protecting complete apologies prohibit the admission of apologies even if the health professional admits to wrongdoing.

Other states protect what can be referred to as “limited apologies.” These states protect expressions of sympathy, but not responsibility or fault, Norwood says. Therefore, the limited apology states would not prohibit the admission of apologies if the health professional admitted to wrongdoing.

“Even in states with complete apology laws, whether an expression falls under an apology law will ultimately be an arguable point in any legal proceeding. For this reason, risk managers should make efforts in advance to control how and under what circumstances medical apologies are made,” Norwood says.

Admissions of fault or responsibility should be limited or prohibited even in states with complete apology laws, Norwood notes.

“Apologies should also be provided in writing or in the presence of a person uninvolved in the patient’s care to minimize the risk that the content of the apology will later be falsified or misconstrued,” he says.