WEST VIRGINIA CODE: §55-7-11A

§55-7-11a. Settlement, release or statement within twenty days after personal injury; disavowal; certain expressions of sympathy inadmissible as evidence.

(a) If a person sustains a personal injury, no person shall within twenty days from the date of the personal injury while the injured person is either: (i) An inpatient in any hospital; or (ii) partially or totally unable to engage in his or her usual trade, profession or occupation:

(1) Negotiate or attempt to negotiate a settlement of any claim for such personal injury with or for and on behalf of the injured person;

(2) Obtain or attempt to obtain from the injured person a partial or general release of liability for such injury; or

(3) Obtain or attempt to obtain any statement, either written or oral, from the injured person for use in negotiating a settlement or obtaining a partial or general release of liability with respect to the personal injury: Provided, That nothing herein shall prohibit a person acting or intending to act for and on behalf of the injured person from obtaining any statement, oral or written, from an injured person upon the express request of the injured person.

Nothing herein shall prevent a person who may be liable for damages on account of the personal injury from making an advance payment of all or any part of his or her liability for the damages; any sum paid during the twenty days by a person liable for damages on account of the personal injury is allowed as full credit against any damages which may be finally determined to be due an injured person.

Any settlement, release of liability or statement entered into, obtained or made in violation of this section may be disavowed by the injured person at any time within one hundred eighty days from the date of the personal injury by executing a written statement of disavowal and thereupon forwarding a copy of the same to the person violating this section, in which event the settlement, release or statement may not be admissible in evidence for any purpose in any court or other proceeding relating to the personal injury, if any consideration paid for the settlement of or the general release of liability for the personal injury, at the time of the forwarding of the copy of the written statement of disavowal, is repaid or returned to the person who paid the consideration.

(b) (1) No statement, affirmation, gesture or conduct of a healthcare provider who provided healthcare services to a patient, expressing apology, sympathy, commiseration, condolence, compassion or a general sense of benevolence, to the patient, a relative of the patient or a representative of the patient and which relate to the discomfort, pain, suffering, injury or death of the patient shall be admissible as evidence of an admission of liability or as evidence of an admission against interest in any civil action brought under the provisions of article seven-b, chapter fifty-five of this code, or in any arbitration, mediation or other

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alternative dispute resolution proceeding related to such civil action.

(2) Terms not otherwise defined in this section have the meanings assigned to them in article seven-b, chapter fifty-five of this code. For purposes of this section, unless the context otherwise requires, "relative" means a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister or spouse's parents. The term includes said relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a patient.

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