

FILED

2005 MAY -4 P 4: 17

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 3174

(By Delegate Amores)



Passed April 9, 2005

In Effect Ninety Days from Passage

FILED

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FOR

H. B. 3174

(BY DELEGATE AMORES)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §55-7-11a of the Code of West Virginia, 1931, as amended, relating to the admissibility of expressions of apology, sympathy, commiseration, condolence, compassion or general sense of benevolence made by a healthcare provider to a patient, or relatives or representatives of the patient; inadmissibility of statements as evidence of admission of liability; and definition of terms.

Be it enacted by the Legislature of West Virginia:

That §55-7-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

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

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

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

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

11 (3) Obtain or attempt to obtain any statement, either written
12 or oral, from the injured person for use in negotiating a settle-
13 ment or obtaining a partial or general release of liability with
14 respect to the personal injury: *Provided*, That nothing herein
15 shall prohibit a person acting or intending to act for and on
16 behalf of the injured person from obtaining any statement, oral
17 or written, from an injured person upon the express request of
18 the injured person.

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

26 Any settlement, release of liability or statement entered
27 into, obtained or made in violation of this section may be
28 disavowed by the injured person at any time within one hundred
29 eighty days from the date of the personal injury by executing a
30 written statement of disavowal and thereupon forwarding a
31 copy of the same to the person violating this section, in which
32 event the settlement, release or statement may not be admissible

33 in evidence for any purpose in any court or other proceeding
34 relating to the personal injury, if any consideration paid for the
35 settlement of or the general release of liability for the personal
36 injury, at the time of the forwarding of the copy of the written
37 statement of disavowal, is repaid or returned to the person who
38 paid the consideration.

39 (b) (1) No statement, affirmation, gesture or conduct of a
40 healthcare provider who provided healthcare services to a
41 patient, expressing apology, sympathy, commiseration, condo-
42 lence, compassion or a general sense of benevolence, to the
43 patient, a relative of the patient or a representative of the patient
44 and which relate to the discomfort, pain, suffering, injury or
45 death of the patient shall be admissible as evidence of an
46 admission of liability or as evidence of an admission against
47 interest in any civil action brought under the provisions of
48 article seven-b, chapter fifty-five of this code, or in any
49 arbitration, mediation or other alternative dispute resolution
50 proceeding related to such civil action.

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



Chairman House Committee

Originating in the House.

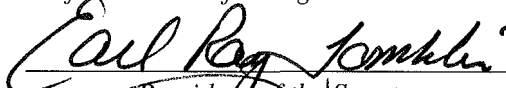
In effect ninety days from passage.



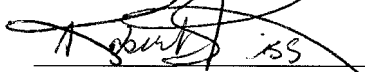
Clerk of the Senate



Clerk of the House of Delegates

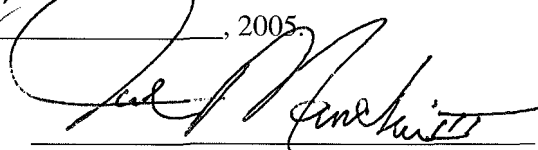


President of the Senate



Speaker of the House of Delegates

The within is approved this the 4th
day of May, 2005.



Governor

PRESENTED TO THE
GOVERNOR

APR 22 2005

Time

2:05pm