

By: Strama

H.B. No. 2868

A BILL TO BE ENTITLED

AN ACT

relating to full disclosure of certain events for a health care practitioner or health care institution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 260 to read as follows:

CHAPTER 260. REQUIRED DISCLOSURE

Sec. 260.001. DEFINITIONS. In this chapter:

(1) "Communication of sympathy" means a statement or a gesture that conveys a sense of compassion emanating from humane impulses, and expresses sympathy or a general sense of benevolence relating to the pain, suffering, or death of a patient who receives health care from, at, through, or administered by a health care institution.

(2) "Covered event" means an event that causes an unanticipated outcome to a patient who receives health care services from, at, or through a health care institution.

(3) "Disclosure" means a statement, whether in writing or in a face-to-face meeting, that an employee, officer, director, trustee, health care practitioner, or other representative of a health care institution makes to a patient or a patient's representative that notifies the patient or patient's representative of the occurrence of a covered event and explains or acknowledges fault for the occurrence of the covered event, if

1 appropriate.

2 (4) "Health care institution" has the meaning assigned  
3 by Section 74.001, Civil Practice and Remedies Code.

4 (5) "Health care practitioner" means an individual,  
5 including a physician:

6 (A) issued a license, certificate, registration,  
7 title, permit, or other authorization to engage in a health care  
8 profession under Chapter 155, 201, 202, 204, 256, 301, or 558,  
9 Occupations Code; and

10 (B) who has been granted clinical privileges or  
11 is authorized to provide medical or health care services at a health  
12 care institution.

13 (6) "Patient's representative" means:

14 (A) a person related to a patient within the  
15 second degree by consanguinity or affinity, as determined under  
16 Subchapter B, Chapter 573, Government Code; or

17 (B) a legal guardian, trustee, authorized  
18 attorney, or other legal agent authorized to make health care  
19 decisions for a patient.

20 Sec. 260.002. DISCLOSURE POLICY REQUIRED. (a) A health  
21 care institution shall:

22 (1) adopt, implement, and enforce a policy of prompt  
23 disclosure to a patient or the patient's representative of any  
24 occurrence of a covered event;

25 (2) include in a disclosure or a subsequent discussion  
26 about a covered event:

27 (A) an explanation of the event;

1                   (B) an acknowledgment of fault, if appropriate;

2 and

3                   (C) an explanation of the steps the health care  
4 institution is taking to prevent a similar event from occurring in  
5 the future, if appropriate;

6                   (3) provide notice to each patient that the health  
7 care institution has adopted the policy; and

8                   (4) refer all covered events to the health care  
9 institution's existing peer review, quality improvement, or  
10 performance improvement process, as applicable.

11                   (b) A health care institution shall make an initial  
12 disclosure under this chapter as soon as practicable but not later  
13 than 48 hours after the time the health care institution learns of  
14 the occurrence of a covered event. After making an initial  
15 disclosure, a health care institution shall make additional  
16 disclosures as needed to provide a patient or patient's  
17 representative additional information as it becomes available.

18                   Sec. 260.003. RELEVANCE OF DISCLOSURE FOR LICENSING. In  
19 considering an application for a license or renewal of a license  
20 under this title, or in a hearing or other proceeding that may  
21 result in disciplinary action against a health care institution,  
22 the licensing entity may not consider:

23                   (1) a disclosure required by this chapter that is:

24                                   (A) made by an employee, officer, director,  
25 trustee, health care practitioner, or other representative of the  
26 applicant or license holder;

27                                   (B) made to the patient or the patient's

1 representative; and

2 (C) offered to prove liability or fault, in  
3 relation to the patient, of the applicant or license holder; or

4 (2) a communication of sympathy that is:

5 (A) made in connection with a disclosure required  
6 by this chapter;

7 (B) made by an employee, officer, director,  
8 trustee, health care practitioner, or other representative of the  
9 applicant or license holder;

10 (C) made to the patient or the patient's  
11 representative; and

12 (D) offered to prove liability or fault, in  
13 relation to the patient, of the applicant or license holder.

14 SECTION 2. Subtitle A, Title 3, Occupations Code, is  
15 amended by adding Chapter 115 to read as follows:

16 CHAPTER 115. REQUIRED DISCLOSURE

17 Sec. 115.001. DEFINITIONS. In this chapter:

18 (1) "Communication of sympathy" means a statement or a  
19 gesture that conveys a sense of compassion emanating from humane  
20 impulses, and expresses sympathy or a general sense of benevolence  
21 relating to the pain, suffering, or death of a patient who receives  
22 health care administered by a health care practitioner.

23 (2) "Covered event" means an event that causes an  
24 unanticipated outcome to a patient who receives health care  
25 services administered by a health care practitioner.

26 (3) "Disclosure" means a statement, whether in writing  
27 or in a face-to-face meeting, that a health care practitioner makes

1 to a patient or a patient's representative that notifies the  
2 patient or patient's representative of the occurrence of a covered  
3 event and explains or acknowledges fault for the occurrence of the  
4 covered event if appropriate.

5 (4) "Health care practitioner" means an individual,  
6 including a physician, issued a license, certificate,  
7 registration, title, permit, or other authorization to engage in a  
8 health care profession under Chapter 155, 201, 202, 204, 256, 301,  
9 or 558.

10 (5) "Patient's representative" means:

11 (A) a person related to a patient within the  
12 second degree by consanguinity or affinity, as determined under  
13 Subchapter B, Chapter 573, Government Code; or

14 (B) a legal guardian, trustee, authorized  
15 attorney, or other legal agent authorized to make health care  
16 decisions for a patient.

17 Sec. 115.002. DISCLOSURE REQUIRED. (a) A health care  
18 practitioner shall:

19 (1) promptly disclose to a patient or the patient's  
20 representative any occurrence of a covered event; and

21 (2) include in a disclosure or a subsequent discussion  
22 about a covered event:

23 (A) an explanation of the event;

24 (B) an acknowledgment of fault, if appropriate;

25 and

26 (C) an explanation of the steps the practitioner  
27 is taking to prevent a similar event from occurring in the future,

1 if appropriate.

2 (b) A health care practitioner shall make an initial  
3 disclosure under this chapter as soon as practicable but not later  
4 than 48 hours after the time the health care practitioner learns of  
5 the occurrence of a covered event. After making an initial  
6 disclosure, a health care practitioner shall make additional  
7 disclosures as needed to provide a patient or patient's  
8 representative additional information as it becomes available.

9 (c) A health care practitioner is not required to disclose a  
10 covered event under this section if the health care practitioner is  
11 employed by or under contract with a health care institution and the  
12 covered event is disclosed to the patient or the patient's  
13 representative under the disclosure policy of the health care  
14 institution as required by Chapter 260, Health and Safety Code.

15 Sec. 115.003. RELEVANCE OF DISCLOSURE FOR LICENSING. In  
16 considering an application for a license or renewal of a license  
17 under this title, or in a hearing or other proceeding that may  
18 result in disciplinary action against a health care practitioner,  
19 the licensing entity may not consider:

20 (1) a disclosure required by this chapter that is:

21 (A) made by an applicant or license holder;

22 (B) made to the patient or the patient's  
23 representative; and

24 (C) offered to prove liability or fault, in  
25 relation to the patient, of the applicant or license holder; or

26 (2) a communication of sympathy that is:

27 (A) made in connection with a disclosure required

1 by this chapter;

2 (B) made by an applicant or license holder;

3 (C) made to the patient or the patient's  
4 representative; and

5 (D) offered to prove liability or fault, in  
6 relation to the patient, of the applicant or license holder.

7 SECTION 3. Subchapter H, Chapter 74, Civil Practice and  
8 Remedies Code, is amended by adding Section 74.353 to read as  
9 follows:

10 Sec. 74.353. COMMUNICATIONS OF SYMPATHY. (a) In this  
11 section, "communication of sympathy" means a statement or a gesture  
12 that conveys a sense of compassion emanating from humane impulses,  
13 and expresses sympathy or a general sense of benevolence relating  
14 to the pain, suffering, or death of a patient who receives health  
15 care from, at, through, or administered by a defendant.

16 (b) If a health care institution or health care practitioner  
17 makes an offer of settlement in connection with a covered event  
18 under Chapter 260, Health and Safety Code, or Chapter 115,  
19 Occupations Code, conditioned on a release of liability by the  
20 patient or the patient's representative, the health care  
21 institution or health care practitioner shall, prior to settlement  
22 and release of liability, advise the patient or the patient's  
23 representative of the right to seek legal counsel. If a health care  
24 institution or health care practitioner fails to provide notice to  
25 a patient or patient's representative of the right to seek legal  
26 counsel, any settlement and release is voidable by and  
27 unenforceable against the patient or patient's representative.

1        (c) In an action on a health care liability claim, a court  
2 may not admit, nor permit or compel discovery of:

3            (1) a disclosure required by Chapter 260, Health and  
4 Safety Code, or Chapter 115, Occupations Code, that is:

5                    (A) made by the defendant, or by an employee,  
6 officer, director, trustee, or other representative of the  
7 defendant;

8                    (B) made to the patient or the patient's  
9 representative; and

10                   (C) offered to prove liability or fault, in  
11 relation to the patient, of the applicant or license holder;

12            (2) a communication of sympathy that is:

13                    (A) made in connection with a disclosure required  
14 by Chapter 260, Health and Safety Code, or Chapter 115, Occupations  
15 Code;

16                    (B) made by an applicant or license holder;

17                    (C) made to the patient or the patient's  
18 representative; and

19                    (D) offered to prove liability or fault, in  
20 relation to the patient, of the applicant or license holder; and

21            (3) an offer of settlement that is:

22                    (A) made by the defendant or an employee,  
23 officer, director, trustee, or other representative of the  
24 defendant;

25                    (B) made to the patient or the patient's  
26 representative; and

27                    (C) offered to prove the liability or fault, in



1 relation to the patient, of the applicant or license holder.

2 (d) Except as provided by Subsection (f), a communication  
3 made by a patient or the patient's representative in relation to a  
4 communication or disclosure under this section is not discoverable  
5 or admissible in an action on a health care liability claim.

6 (e) Subsections (a), (b), (c), and (d) only affect the  
7 admissibility and discoverability of a communication described by  
8 those subsections and do not affect the admissibility or  
9 discoverability of other information relating to the underlying  
10 event about which the communication was made.

11 (f) This section does not apply to a communication made on  
12 or after the date a notice asserting a health care liability claim  
13 under Section 74.051 is received.

14 (g) Section 18.061 does not apply to an action on a health  
15 care liability claim under this chapter.

16 SECTION 4. The change in law made by this Act applies only  
17 to an action, license application proceeding, or proceeding that  
18 may result in the denial, suspension, or revocation of a license,  
19 commenced on or after the effective date of this Act. An action,  
20 license application proceeding, or proceeding that may result in  
21 the denial, suspension, or revocation of a license, commenced  
22 before the effective date of this Act is covered by the law in  
23 effect when the action was commenced, and the former law is  
24 continued in effect for that purpose.

25 SECTION 5. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this  
2 Act takes effect September 1, 2009.