

By: Scott

H.B. No. 2489

A BILL TO BE ENTITLED

AN ACT

relating to the discoverability and admissibility of communications of sympathy in certain civil or administrative actions against a health care provider or physician.

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

SECTION 1. Subchapter C, Chapter 18, Civil Practice and Remedies Code, is amended by adding Section 18.0611 to read as follows:

Sec. 18.0611. COMMUNICATIONS OF SYMPATHY: HEALTH CARE PROVIDERS. (a) In this section:

(1) "Civil or administrative action" means:

(A) a civil action or alternative dispute resolution proceeding relating to a health care liability claim or other civil claim against a health care provider or physician; or

(B) an administrative or disciplinary action against a health care provider or physician by an accreditation, licensure, or certification agency.

(2) "Communication" means:

(A) an oral statement;

(B) a writing; or

(C) a gesture.

(3) "Health care provider," "health care liability claim," and "physician" have the meanings assigned by Section 74.001.

1 (4) "Patient's representative" means:

2 (A) a relative of the patient;

3 (B) a survivor of the patient;

4 (C) a friend or other individual accompanying the
5 patient; or

6 (D) a legal guardian, an attorney, or an
7 individual legally authorized to make health care decisions for a
8 patient.

9 (b) Notwithstanding Section 18.061(c), communications
10 regarding the following topics made by a health care provider or
11 physician, or an employee or other representative of a health care
12 provider or physician, to the patient or patient's representative,
13 shall not, in a civil or administrative action against a health care
14 provider or physician, be subject to discovery, be admissible as
15 evidence against a health care provider or physician, or be
16 considered an admission of liability or an admission against
17 interest:

18 (1) apology;

19 (2) sympathy;

20 (3) commiseration;

21 (4) condolence;

22 (5) compassion;

23 (6) regret;

24 (7) fault;

25 (8) grief;

26 (9) a general sense of benevolence;

27 (10) any explanation of the event giving rise to the

1 communication;

2 (11) an explanation of any action taken to prevent
3 future similar occurrences;

4 (12) any offer to undertake corrective or remedial
5 action;

6 (13) any offer of, or waiver of, payment for the
7 medical or health care services provided; or

8 (14) any gratuitous acts to assist the affected
9 persons.

10 SECTION 2. The change in law made by this Act applies only
11 to a civil or administrative action filed or commenced on or after
12 the effective date of this Act. A civil or administrative action
13 filed or commenced before the effective date of this Act is governed
14 by the law in effect immediately before that date, and that law is
15 continued in effect for that purpose.

16 SECTION 3. This Act takes effect September 1, 2011.