

Date: March 7, 2011

To: Senator Tim Owens
Senate Judiciary Committee
Members of the Senate Judiciary Committee

From: Shelley Koltnow, JD
VP, Corporate Responsibility
Via Christi Health

Re: Substitute for HB 2069

Testimony on Substitute for House Bill 2069

*Expressions of apology, sympathy, compassion or benevolent acts
by health care providers not admissible as evidence*

Via Christi Health supports the Substitute for HB 2069 and urges the Committee to recommend its passage. Substitute for HB 2069 would establish the "Kansas Adverse Medical Outcome Transparency Act" to encourage open and honest dialogue between physicians and other health care providers and their patients when an adverse event occurs. We believe passage of this bill is a good first step in fostering communication between health care providers and their patients. However, we also believe the amendments offered by the Sisters of Charity at Leavenworth represent valid changes necessary to clarify the bill's intent.

The premise of an "apology law" is that medical mistakes do happen and a health care provider's expression of apology, sympathy, compassion or benevolent act should not be used as evidence of negligence or wrongdoing in a subsequent civil malpractice claim. However, Substitute for HB 2069 does allow a health care provider who is a defendant in a malpractice claim the option to surrender the inadmissibility of such statements if request is made in writing.

Substitute for HB 2069 offers physicians and other health care providers some assurance that if they do express a statement of sympathy, it will not equate to an admission of wrongdoing. Human gestures such as saying, "I'm Sorry", reinforce the fact that health care providers are human. Having this reassurance will help foster trust between the two parties.

Studies have shown that many patients pursue legal remedies to an adverse outcome simply because they want to know what happened. Knowing they can ask questions of a provider with the expectation of receiving a response, helps many patients achieve closure. Some legal experts even suggest that those health care providers who offer patients a simple "I'm sorry", make a more sympathetic defendant in any subsequent malpractice lawsuit than those who say absolutely nothing.

Proponents of apology laws maintain that having a state apology law is one way to address the high cost of medical malpractice claims which contribute to the rising cost of health care in the United States. In fact, the "Patient Protections and Affordable Care Act of 2010 (ACA) offers grants to states to develop alternative approaches to settle disputes between providers and patients other than through civil litigation. Having a state apology law could contribute to such an effort in Kansas.

Opponents of apology laws point to the lack of evidence showing such laws actually help reduce the number of civil lawsuits against health care providers or that they help reduce the cost of settlements. But in 2001, the University of Michigan Health Service conducted a study following their adoption of an apology and disclosure program and found that their payments for each case dropped by 47% while the time involved in their settlements also dropped from 20 months to 6 months.¹

Via Christi Health encourages its health care providers to communicate openly with patients and we urge the adoption of the amendments offered by the Sisters of Charity of Leavenworth and the Committee's favorable recommendation for Senate passage of Substitute for HB 2069. Doing so would not harm either providers or patients but could go a long way in facilitating transparency.

Via Christi Health's rich history of serving the people of Kansas and the surrounding region dates back more than 100 years to the healing ministries of our founding congregations. Today, Via Christi Health is the largest provider of health care services in Kansas. We serve Kansas and northeast Oklahoma through our 10-owned or co-owned medical centers, 12 senior services villages and programs, and our retail (home-based) and outpatient services.

In FY 2010, Via Christi Health provided \$82.8 million in benefit to the communities we serve. This included more than \$48.5 million in charity care and more than \$17 million in unpaid costs of Medicaid services provided. Via Christi Health employed more than 10,000 and generated \$989 million in revenue in 2009. We are affiliated with the Marian Health System and Ascension Health.

¹ Boothman, M., A. Blackwell, D. Campbell, E. Commiskey and S. Anderson (2009): "A better approach to medical malpractice claims? The University of Michigan experience." *Journal of Health Life Science Law*, Jan(2), 125-59.