



Report on Public Policy Position

Name of Section or Committee:

Alternate Dispute Resolution Section

Contact Person:

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Bill Number:

HB 4259

(Hune, Kahn, Ward, Robertson, Shaffer, Ball, Acciavatti, Nitz, David Law, Gaffney, Drolet, Zelenko, Condino, Marleau and Nofs)

Civil procedure; evidence; introduction of evidence of an expression of sympathy as an admission of liability in a civil action; prohibit. Amends [1961 PA 236](#) (MCL [600.101](#) - [600.9947](#)) by adding sec. 2155.

Date position was adopted:

4/22/05

Process used to take the ideological position:

Review and Recommendation by Effective Practices and Procedures Action Team; Discussion and vote at Alternate Dispute Resolution Section Council Meeting

Number of members in the decision-making body:

22

Number who voted in favor and opposed to the position:

11 in favor; 0 against

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

We support HB 4259, which would make certain statements, writings, or actions that express sympathy or compassion relating to the pain, suffering, or death of an individual and that are made to that individual or the individual's family inadmissible as evidence of an admission of liability in an action for medical malpractice.

Mediators have found that expressions of regret or compassion, made in mediation or elsewhere, can help parties move beyond impasse and find mutually satisfactory resolutions of their disputes. Although statements made in mediation are protected as confidential by court rule, parties may still be hesitant, even in this setting, to make such statements. This bill would add another protection that could lead parties in a malpractice case to be able to resolve their disputes in mediation.

In addition, research by Dr. Leonard Marcus and others has shown that parties are more likely to be able to resolve malpractice cases earlier, and without litigation, if three interests of patients are met:

1. To learn what happened.
2. To receive an apology or acknowledgment from the caregiver.
3. To know that steps were taken to reduce the likelihood that the problem would recur.

Specifically allowing the apology or acknowledgement to be given without fear of its use in a later litigation can be the first step in resolving malpractice disputes satisfactorily to all involved through alternative dispute resolution.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4259>