

Chapter 5.64 RCW
ADMISSIBILITY OF CERTAIN GESTURES OF APOLOGY, SYMPATHY, FAULT, ETC. IN
CIVIL ACTIONS AGAINST HEALTH CARE PROVIDERS
(Formerly: Admissibility—Furnishing, offering,
or promising to pay medical expenses)

Sections

5.64.010 Civil actions against health care providers—Admissibility of evidence of furnishing or offering to pay medical expenses—Admissibility of expressions of apology, sympathy, fault, etc.

RCW 5.64.010 Civil actions against health care providers—Admissibility of evidence of furnishing or offering to pay medical expenses—Admissibility of expressions of apology, sympathy, fault, etc. (1) In any civil action against a health care provider for personal injuries which is based upon alleged professional negligence, or in any arbitration or mediation proceeding related to such civil action, evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible.

(2) (a) In a civil action against a health care provider for personal injuries that is based upon alleged professional negligence, or in any arbitration or mediation proceeding related to such civil action, a statement, affirmation, gesture, or conduct identified in (b) of this subsection is not admissible as evidence if:

(i) It was conveyed by a health care provider to the injured person, or to a person specified in RCW 7.70.065 (1) (a) or (2) (a) within thirty days of the act or omission that is the basis for the allegation of professional negligence or within thirty days of the time the health care provider discovered the act or omission that is the basis for the allegation of professional negligence, whichever period expires later; and

(ii) It relates to the discomfort, pain, suffering, injury, or death of the injured person as the result of the alleged professional negligence.

(b) (a) of this subsection applies to:

(i) Any statement, affirmation, gesture, or conduct expressing apology, fault, sympathy, commiseration, condolence, compassion, or a general sense of benevolence; or

(ii) Any statement or affirmation regarding remedial actions that may be taken to address the act or omission that is the basis for the allegation of negligence. [2006 c 8 s 101; 1975-'76 2nd ex.s. c 56 s 3.]

Rules of court: Cf. ER 409.

Findings—Intent—2006 c 8: "The legislature finds that access to safe, affordable health care is one of the most important issues facing the citizens of Washington state. The legislature further finds that the rising cost of medical malpractice insurance has caused some physicians, particularly those in high-risk specialties such as obstetrics and emergency room practice, to be unavailable when and where the citizens need them the most. The answers to these problems are varied and complex, requiring comprehensive solutions that

encourage patient safety practices, increase oversight of medical malpractice insurance, and making the civil justice system more understandable, fair, and efficient for all the participants.

It is the intent of the legislature to prioritize patient safety and the prevention of medical errors above all other considerations as legal changes are made to address the problem of high malpractice insurance premiums. Thousands of patients are injured each year as a result of medical errors, many of which can be avoided by supporting health care providers, facilities, and carriers in their efforts to reduce the incidence of those mistakes. It is also the legislature's intent to provide incentives to settle cases before resorting to court, and to provide the option of a more fair, efficient, and streamlined alternative to trials for those for whom settlement negotiations do not work. Finally, it is the intent of the legislature to provide the insurance commissioner with the tools and information necessary to regulate medical malpractice insurance rates and policies so that they are fair to both the insurers and the insured." [2006 c 8 s 1.]

Part headings and subheadings not law—2006 c 8: "Part headings and subheadings used in this act are not any part of the law." [2006 c 8 s 401.]

Severability—2006 c 8: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 8 s 407.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.