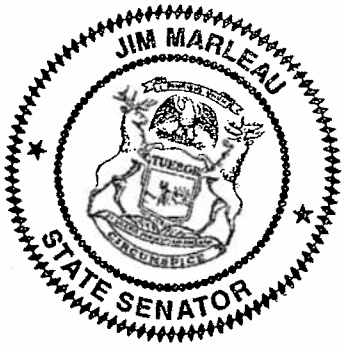

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'I'm sorry' law on the move in Lansing

By Amy Lane

LANSING — Health care providers that express sympathy or compassion when there are negative outcomes to medical care would have greater protection for making those statements, under a bill moving swiftly through the Legislature.

Senate Bill 53, sponsored by Jim Marleau, R-Lake Orion, is Michigan's version of so-called "I'm sorry" laws that have been passed by 35 other states.

The legislation stipulates that statements, writings or actions expressing sympathy, compassion or commiseration related to the pain, suffering or death of an individual would be inadmissible as evidence of liability in medical malpractice suits — a distinction that some say will encourage open communication and alleviate practitioners' concerns of being exposed to liability.

"Sometimes just those two words alone might be what a family wants to hear. It's certainly a concern of ours that we're able to express our compassion and our concern for the family's well-being," said Kenneth Elmassian, president of the **Michigan Society of Anesthesiologists** and a board member of the **Michigan State Medical Society.** He is a physician at **Ingham Regional Medical Center** in Lansing.

"We're instructed at times to say as little as possible, by counsel."

Marleau said the measure improves communication and quality of care and will enable a patient's family "to understand that the medical field really does care," which could ultimately reduce lawsuits.

Supporters include not only members of the health care community but also the **Michigan Association for Justice**, which is the association of Michigan trial lawyers.

"There's absolutely nothing wrong, and nothing currently prohibited, against doctors saying they're sorry. Expressions of sympathy are always a good thing," said Jesse Green, director of communications for the association. "We're just concerned that things be crafted in a way (so) that admissions of liability not be protected."

He said those concerns have been addressed in the current legislation. The bill specifies that the exclusion does not apply to a statement of "fault, negligence or culpable conduct" that is part of, or made in addition to, the expression of sympathy.

Marleau sponsored the measure in the last legislative session when he was in the Democrat-controlled state House, but the bill never saw a committee hearing.

In January, the bill passed out of committee six days after it was introduced and passed the full Senate unanimously on Feb. 8.

It is before the House Judiciary Committee, chaired by John Walsh, R-Livonia. Marleau said he is optimistic it will see attention soon.

Several hospitals in Southeast Michigan have already implemented policies to inform patients and their families of medical mistakes.

The policies, say the hospital administrators, have saved millions of dollars in averted medical malpractice legal costs and reduced amounts needed to be placed in self-insured reserve funds.

Here is how it works at the hospitals.

First, patients or family are notified, usually within 24 hours of the mistake or poor outcome.

A medical-quality team investigates. Compensation, if appropriate, is offered.

If the patient has hired an attorney, hospitals take different approaches at that point.

Henry Ford Health System in Detroit, for example, reduced its medical malpractice expenses 62 percent to $17 million in 2009 from $45 million in 2001.

Other hospital systems using these policies are **University of Michigan Health System** and **St. Joseph Mercy Health System**, both based in Ann Arbor. St. Joseph is part of Novi-based **Trinity Health**.

Jay Greene contributed to this report.

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