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*Promoting Fairness and Equity in Wisconsin's Civil Justice System*

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## Memorandum

To: Members, Senate Committee on Health and Human Services  
From: Andrew Cook, Wisconsin Civil Justice Council  
Date: March 6, 2014  
Re: **Support for AB 120, Inadmissibility of a Statement of Apology or  
Condolence by a Health Care Provider**

The Wisconsin Civil Justice Council (WCJC) supports AB 120 (inadmissibility of a statement of apology or condolence by a health care provider) as amended in the Assembly.

If AB 120 were to be enacted, Wisconsin would join the majority of states with “apology” laws. (Currently, 34 states have some form of an apology law.<sup>i</sup>) Many states have weaker apology laws that recent research has shown may not foster needed physician-patient discussions. AB 120 is a stronger version, designed to allow for the wide-ranging conversations needed at what is often a very emotional and difficult time for patients and their families. The language in AB 120 protecting different topic areas will ensure the conversations can be unfettered. The amendment to AB 120 ensures that this protection does not infringe on a plaintiff’s rights when a lawsuit is filed – the amendment ends any protection of statements when a lawsuit is filed.

Research has found that apologies by physicians decrease the costs associated with litigation. For example, one study found that an apology “gave the patient a sense of satisfaction and closure, which led to faster settlements and less demand for damages.”<sup>ii</sup>

Other studies have found that an apology can undo the negative effects and help defuse an individual’s anger. Thus, an apology can encourage communication and reduce the need to file a lawsuit.<sup>iii</sup>

Additionally, studies have found that patients who file lawsuits are motivated to find out what happened and to prevent future injury.<sup>iv</sup> One study surveyed medical malpractice claimants about the reasons they filed the lawsuit. Of the respondents, 90 percent indicated they wanted to prevent the same thing from happening, to receive an explanation, and for the doctor to realize what had happened.<sup>v</sup> In addition, 40 percent of the respondents stated that if they had received an explanation and an apology, they would not have felt the need to file the lawsuit.<sup>vi</sup> Thus, it is clear that in many instances, allowing the physician to have a conversation with their patient without fearing the threat of a lawsuit would have significant positive results.

AB 120 is reasonable legislation that will ensure better communication between a physician and his or her patient and their loved ones, and likely lead to fewer costly lawsuits. **Therefore, WCJC supports AB 120 as amended.**

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<sup>i</sup> Saitta, Nicole; Hodge, Samuel Jr., “Efficacy of a Physician’s Words of Empathy: An Overview of State Apology Laws.” *JAOA* 112 No 5, p. 305, May 2012. (To see all the states with an apology law, visit p. 4 of the website link - <http://www.jaoa.org/content/112/5/302.full.pdf>.)

<sup>ii</sup> Ibid.

<sup>iii</sup> Ibid., citing Ho V. Liu E., “Does sorry work? The impact of apology laws on medical malpractice.” *J. Risk Uncert.*, 2001;43(2):141-167. DOI:10.1007/s11166-011-9126-0.

<sup>iv</sup> Robbennolt, Jennifer. “Apologies and Medical Error.” *Clinical Orthopaedics and Related Research*. February 2009, 462 No. 2; 376-382. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2628492/>.

<sup>v</sup> Ibid.

<sup>vi</sup> Ibid.