



FINLEY

LAW FIRM

# Medical Malpractice

Stacie Codr

Erik Bergeland

[scodr@finleylaw.com](mailto:scodr@finleylaw.com)

[ebergeland@finleylaw.com](mailto:ebergeland@finleylaw.com)

[www.finleylaw.com](http://www.finleylaw.com)

515.288.0145

135P.2. Confidentiality of open discussions, IA ST § 135P.2

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Iowa Code Annotated Title IV. Public Health [Chs. 123-158] Subtitle 2. Health-Related Activities [Chs. 135-146a] (Refs & Annos) Chapter 135P. Adverse Health Care Incidents--Communications--Confidentiality (Refs & Annos)
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I.C.A. § 135P.2

135P.2. Confidentiality of open discussions

Effective: July 1, 2015

Currentness

1. Open discussion communications and offers of compensation made under section 135P.3:
  - a. Do not constitute an admission of liability.
  - b. Are privileged, confidential, and shall not be disclosed.
  - c. Are not admissible as evidence in any subsequent judicial, administrative, or arbitration proceeding and are not subject to discovery, subpoena, or other means of legal compulsion for release and shall not be disclosed by any party in any subsequent judicial, administrative, or arbitration proceeding.
2. Communications, memoranda, work products, documents, and other materials, otherwise subject to discovery, that were not prepared specifically for use in a discussion under section 135P.3, are not confidential.
3. The limitation on disclosure imposed by this section includes disclosure during any discovery conducted as part of a subsequent adjudicatory proceeding, and a court or other adjudicatory body shall not compel any person who engages in an open discussion under this chapter to disclose confidential communications or agreements made under section 135P.3.
4. This section does not affect any other law, regulation, or requirement with respect to confidentiality.

**Credits**

Added by Acts 2015 (86 G.A.) ch. 33, S.F. 426, § 2, eff. July 1, 2015.

I. C. A. § 135P.2, IA ST § 135P.2

Current with immediately eff. legislation signed as of 4/11/16 from the 2016 Reg.Sess.

135P.3. Engaging in an open discussion, IA ST § 135P.3

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Iowa Code Annotated

Title IV. Public Health [Chs. 123-158]

Subtitle 2. Health-Related Activities [Chs. 135-146a] (Refs & Annos)

Chapter 135P. Adverse Health Care Incidents--Communications--Confidentiality (Refs & Annos)

I.C.A. § 135P.3

135P.3. Engaging in an open discussion

Effective: July 1, 2015

Currentness

1. If an adverse health care incident occurs in a health facility, the health care provider, or the health care provider jointly with the health facility, may provide the patient with written notice of the desire of the health care provider, or of the health care provider jointly with the health facility, to enter into an open discussion under this chapter. If the health care provider or health facility provides such notice, such notice must be sent within one hundred eighty days after the date on which the health care provider knew, or through the use of diligence should have known, of the adverse health care incident. The notice must include all of the following:

a. Notice of the desire of the health care provider, or of the health care provider jointly with the health facility, to proceed with an open discussion under this chapter.

b. Notice of the patient's right to receive a copy of the medical records related to the adverse health care incident and of the patient's right to authorize the release of the patient's medical records related to the adverse health care incident to any third party.

c. Notice of the patient's right to seek legal counsel.

d. A copy of section 614.1, subsection 9, and notice that the time for a patient to bring a lawsuit is limited under section 614.1, subsection 9, and will not be extended by engaging in an open discussion under this chapter unless all parties agree to an extension in writing.

e. Notice that if the patient chooses to engage in an open discussion with the health care provider or health facility, that all communications made in the course of such a discussion under this chapter, including communications regarding the initiation of an open discussion, are privileged and confidential, are not subject to discovery, subpoena, or other means of legal compulsion for release, and are not admissible in evidence in a judicial, administrative, or arbitration proceeding.

2. If the patient agrees in writing to engage in an open discussion, the patient, health care provider, or health facility engaged in an open discussion under this chapter may include other persons in the open discussion. All additional parties shall also be advised in writing prior to the discussion that discussions are privileged and confidential, are not subject to discovery, subpoena, or other means of legal compulsion for release, and are not admissible in evidence in a judicial, administrative, or arbitration proceeding. The advice in writing must indicate that communications, memoranda, work products, documents, and

**135P.3. Engaging in an open discussion, IA ST § 135P.3**

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other materials, otherwise subject to discovery, that were not prepared specifically for use in a discussion under this section, are not confidential.

3. The health care provider or health facility that agrees to engage in an open discussion may do all of the following:

a. Investigate how the adverse health care incident occurred and gather information regarding the medical care or treatment provided.

b. Disclose the results of the investigation to the patient.

c. Openly communicate to the patient the steps the health care provider or health facility will take to prevent future occurrences of the adverse health care incident.

d. Determine either of the following:

(1) That no offer of compensation for the adverse health care incident is warranted and orally communicate that determination to the patient.

(2) That an offer of compensation for the adverse health care incident is warranted and extend such an offer in writing to the patient.

4. If a health care provider or health facility makes an offer of compensation under subsection 3 and the patient is not represented by legal counsel, the health care provider or health facility shall advise the patient of the patient's right to seek legal counsel regarding the offer of compensation.

5. Except for offers of compensation under subsection 3, discussions between the health care provider or health facility and the patient about the compensation offered under subsection 3 shall remain oral.

**Credits**

Added by Acts 2015 (86 G.A.) ch. 33, S.F. 426, § 3, eff. July 1, 2015.

I. C. A. § 135P.3, IA ST § 135P.3

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147.137. Consent in writing, IA ST § 147.137

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Iowa Code Annotated  
Title IV. Public Health [Chs. 123-158]  
Subtitle 3. Health-Related Professions [Chs. 147-158]  
Chapter 147. General Provisions, Health-Related Professions (Refs & Annos)  
Malpractice

I.C.A. § 147.137

147.137. Consent in writing

Currentness

A consent in writing to any medical or surgical procedure or course of procedures in patient care which meets the requirements of this section shall create a presumption that informed consent was given. A consent in writing meets the requirements of this section if it:

1. Sets forth in general terms the nature and purpose of the procedure or procedures, together with the known risks, if any, of death, brain damage, quadriplegia, paraplegia, the loss or loss of function of any organ or limb, or disfiguring scars associated with such procedure or procedures, with the probability of each such risk if reasonably determinable.
2. Acknowledges that the disclosure of that information has been made and that all questions asked about the procedure or procedures have been answered in a satisfactory manner.
3. Is signed by the patient for whom the procedure is to be performed, or if the patient for any reason lacks legal capacity to consent, is signed by a person who has legal authority to consent on behalf of that patient in those circumstances.

**Credits**

Added by Acts 1975 (66 G.A.) ch. 239, § 17.

I. C. A. § 147.137, IA ST § 147.137

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622.31. Evidence of regret or sorrow, IA ST § 622.31

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Iowa Code Annotated  
Title XV. Judicial Branch and Judicial Procedures [Chs. 595-686]  
Subtitle 3. Civil Procedure [Chs. 611-631] (Refs & Annos)  
Chapter 622. Evidence (Refs & Annos)  
General Principles

I.C.A. § 622.31

622.31. Evidence of regret or sorrow

Effective: July 1, 2007  
Currentness

In any civil action for professional negligence, personal injury, or wrongful death or in any arbitration proceeding for professional negligence, personal injury, or wrongful death against a person in a profession regulated by one of the boards listed in section 272C.1 or in any other licensed profession recognized in this state, a hospital licensed pursuant to chapter 135B, or a health care facility licensed pursuant to chapter 135C, based upon the alleged negligence in the practice of that profession or occupation, that portion of a statement, affirmation, gesture, or conduct expressing sorrow, sympathy, commiseration, condolence, compassion, or a general sense of benevolence that was made by the person to the plaintiff, relative of the plaintiff, or decision maker for the plaintiff that relates to the discomfort, pain, suffering, injury, or death of the plaintiff as a result of an alleged breach of the applicable standard of care is inadmissible as evidence. Any response by the plaintiff, relative of the plaintiff, or decision maker for the plaintiff to such statement, affirmation, gesture, or conduct is similarly inadmissible as evidence.

**Credits**

Added by Acts 2006 (81 G.A.) ch. 1128, H.F. 2716, § 4. Amended by Acts 2007 (82 G.A.) ch. 10, S.F. 74, § 180; Acts 2007 (82 G.A.) ch. 126, S.F. 333, § 102.

I. C. A. § 622.31, IA ST § 622.31

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Iowa Code Annotated  
Title XV. Judicial Branch and Judicial Procedures [Chs. 595-686]  
Subtitle 3. Civil Procedure [Chs. 611-631] (Refs & Annos)  
Chapter 614. Limitations of Actions (Refs & Annos)  
General Provisions

I.C.A. § 614.1

614.1. Period

Effective: July 1, 2013  
Currentness

Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:

**1. Penalties or forfeitures under ordinance.** Those to enforce the payment of a penalty or forfeiture under an ordinance, within one year.

**2. Injuries to person or reputation--relative rights--statute penalty.** Those founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years.

**2A. With respect to products.**

a. Those founded on the death of a person or injuries to the person or property brought against the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of a product based upon an alleged defect in the design, inspection, testing, manufacturing, formulation, marketing, packaging, warning, labeling of the product, or any other alleged defect or failure of whatever nature or kind, based on the theories of strict liability in tort, negligence, or breach of an implied warranty shall not be commenced more than fifteen years after the product was first purchased, leased, bailed, or installed for use or consumption unless expressly warranted for a longer period of time by the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product. This subsection shall not affect the time during which a person found liable may seek and obtain contribution or indemnity from another person whose actual fault caused a product to be defective. This subsection shall not apply if the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product intentionally misrepresents facts about the product or fraudulently conceals information about the product and that conduct was a substantial cause of the claimant's harm.

b. (1) The fifteen-year limitation in paragraph "a" shall not apply to the time period in which to discover a disease that is latent and caused by exposure to a harmful material, in which event the cause of action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause. This subsection shall not apply to cases governed by subsection 11 of this section.

**614.1. Period, IA ST § 614.1**

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(2) As used in this paragraph, “harmful material” means silicone gel breast implants, which were implanted prior to July 12, 1992; and chemical substances commonly known as asbestos, dioxins, tobacco, or polychlorinated biphenyls, whether alone or as part of any product; or any substance which is determined to present an unreasonable risk of injury to health or the environment by the United States environmental protection agency pursuant to the federal Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., or by this state, if that risk is regulated by the United States environmental protection agency or this state.

**3. Against sheriff or other public officer.** Those against a sheriff or other public officer for the nonpayment of money collected on execution within three years of collection.

**4. Unwritten contracts--injuries to property--fraud--other actions.** Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years, except as provided by subsections 8 and 10.

**5. Written contracts--judgments of courts not of record--recovery of real property and rent.**

a. Except as provided in paragraph “b”, those founded on written contracts, or on judgments of any courts except those provided for in subsection 6, and those brought for the recovery of real property, within ten years.

b. Those founded on claims for rent, within five years.

**6. Judgments of courts of record.** Those founded on a judgment of a court of record, whether of this or of any other of the United States, or of the federal courts of the United States, within twenty years, except that a time period limitation shall not apply to an action to recover a judgment for child support, spousal support, or a judgment of distribution of marital assets.

**7. Judgment quieting title.** No action shall be brought to set aside a judgment or decree quieting title to real estate unless the same shall be commenced within ten years from and after the rendition thereof.

**8. Wages.** Those founded on claims for wages or for a liability or penalty for failure to pay wages, within two years.

**9. Malpractice.**

a. Except as provided in paragraph “b”, those founded on injuries to the person or wrongful death against any physician and surgeon, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, physician assistant, or nurse, licensed under chapter 147, or a hospital licensed under chapter 135B, arising out of patient care, within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action, whichever of the dates occurs first, but in no event shall any action be brought more than six years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death unless a foreign object unintentionally left in the body caused the injury or death.



**614.1. Period, IA ST § 614.1**

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b. An action subject to paragraph “a” and brought on behalf of a minor who was under the age of eight years when the act, omission, or occurrence alleged in the action occurred shall be commenced no later than the minor's tenth birthday or as provided in paragraph “a”, whichever is later.

**10. Secured interest in farm products.** Those founded on a secured interest in farm products, within two years from the date of sale of the farm products against the secured interest of the creditor.

**11. Improvements to real property.** In addition to limitations contained elsewhere in this section, an action arising out of the unsafe or defective condition of an improvement to real property based on tort and implied warranty and for contribution and indemnity, and founded on injury to property, real or personal, or injury to the person or wrongful death, shall not be brought more than fifteen years after the date on which occurred the act or omission of the defendant alleged in the action to have been the cause of the injury or death. However, this subsection does not bar an action against a person solely in the person's capacity as an owner, occupant, or operator of an improvement to real property.

**12. Sexual abuse or sexual exploitation by a counselor, therapist, or school employee.** An action for damages for injury suffered as a result of sexual abuse, as defined in section 709.1, by a counselor, therapist, or school employee, as defined in section 709.15, or as a result of sexual exploitation by a counselor, therapist, or school employee shall be brought within five years of the date the victim was last treated by the counselor or therapist, or within five years of the date the victim was last enrolled in or attended the school.

**13. Public bonds or obligations.** Those founded on the cancellation, transfer, redemption, or replacement of public bonds or obligations by an issuer, trustee, transfer agent, registrar, depository, paying agent, or other agent of the public bonds or obligations, within eleven years of the cancellation, transfer, redemption, or replacement of the public bonds or obligations.

**14. County collection of taxes.** No time limitation shall apply to an action brought by a county under section 445.3 to collect delinquent real property taxes levied on or after April 1, 1992.

**Credits**

Amended by Acts 1963 (60 G.A.) ch. 326, § 707, eff. Jan. 1, 1964; Acts 1967 (62 G.A.) ch. 405, § 12, eff. July 27, 1967; Acts 1975 (66 G.A.) ch. 239, § 26; Acts 1983 (70 G.A.) ch. 69, §§ 1, 2; Acts 1986 (71 G.A.) ch. 1120, § 1; Acts 1991 (74 G.A.) ch. 130, § 3; Acts 1992 (74 G.A.) ch. 1199, § 1; Acts 1993 (75 G.A.) ch. 89, § 3; Acts 1995 (76 G.A.) ch. 108, § 21; Acts 1997 (77 G.A.) ch. 175, § 235; Acts 1997 (77 G.A.) ch. 197, §§ 5, 6; Acts 1998 (77 G.A.) ch. 1100, § 78; Acts 2002 (79 G.A.) ch. 1050, § 51; Acts 2003 (80 G.A.) ch. 180, § 62; Acts 2007 (82 G.A.) ch. 40, S.F. 450, § 1; Acts 2008 (82 G.A.) ch. 1032, S.F. 2320, § 83; Acts 2008 (82 G.A.) ch. 1088, S.F. 2338, § 141; Acts 2013 (85 G.A.) ch. 95, H.F. 356, § 1.

I. C. A. § 614.1, IA ST § 614.1

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**668.11. Disclosure of expert witnesses in liability cases involving..., IA ST § 668.11**

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Iowa Code Annotated  
Title XV. Judicial Branch and Judicial Procedures [Chs. 595-686]  
Subtitle 5. Special Actions [Chs. 639-686] (Refs & Annos)  
Chapter 668. Liability in Tort--Comparative Fault (Refs & Annos)

I.C.A. § 668.11

668.11. Disclosure of expert witnesses in liability cases involving licensed professionals

Currentness

1. A party in a professional liability case brought against a licensed professional pursuant to this chapter who intends to call an expert witness of their own selection, shall certify to the court and all other parties the expert's name, qualifications and the purpose for calling the expert within the following time period:

a. The plaintiff within one hundred eighty days of the defendant's answer unless the court for good cause not ex parte extends the time of disclosure.

b. The defendant within ninety days of plaintiff's certification.

2. If a party fails to disclose an expert pursuant to subsection 1 or does not make the expert available for discovery, the expert shall be prohibited from testifying in the action unless leave for the expert's testimony is given by the court for good cause shown.

3. This section does not apply to court appointed experts or to rebuttal experts called with the approval of the court.

**Credits**

Acts 1986 (71 G.A.) ch. 1211, § 40, eff. June 8, 1986.

I. C. A. § 668.11, IA ST § 668.11

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