

**A joint news release from  
Massachusetts Medical Society, Massachusetts Bar Association and  
Massachusetts Academy of Trial Attorneys**

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**Landmark agreement between physicians and attorneys  
provides for medical liability reforms in Massachusetts**

*Consensus on legislative language allowed for bold move toward  
Disclosure, Apology, and Offer to settle medical malpractice claims*

Waltham/Boston – August 7 – An historic and unprecedented partnership between physicians and attorneys in Massachusetts has led to significant reforms to the medical liability system, allowing for improvements to resolving malpractice cases that both sides say could greatly benefit patients by reducing some unnecessary and protracted lawsuits while improving patient safety.

The health care cost control bill recently passed by the Massachusetts legislature and signed by Governor Deval Patrick on August 6 contains specific language that facilitates an approach of Disclosure, Apology, and Offer (DA&O) to address medical malpractice claims.

Representatives from the physicians' and attorneys' groups have described their agreement as "unprecedented" and applaud the Legislature and governor for their support of the reforms and including them in the cost control reform bill.

An agreement on language in the bill among three principal groups – the Massachusetts Medical Society, Massachusetts Bar Association, and Massachusetts Academy of Trial Attorneys – made the changes possible. The agreement was part of a multi-year open dialogue between doctors and lawyers. Once agreement was reached, support came from the Massachusetts House and Senate and Governor Patrick. Approval of the law makes Massachusetts the first in the nation to have comprehensive legislation that will enable the conduct of a DA&O program in different practice environments with different insurance arrangements.

Changes include provisions for a six-month, pre-litigation resolution period that affords the time to go through a DA&O process with sharing of all pertinent medical records by the patient, full disclosure by providers, and for statements of apology by providers to be inadmissible in court.

Alan Woodward, M.D., chair of the Massachusetts Medical Society's Committee on Professional Liability and a past president of the organization said "This agreement is an extraordinary accomplishment. It will encourage transparency and honesty, protect the rights of patients who have been harmed by avoidable events, improve patient safety, reduce litigation, and ultimately cut health care costs."

"I applaud the members of the legal profession for their collaboration to bring about this agreement and thank the legislature and the Governor for their support," said Woodward. "This is yet another example of Massachusetts national leadership in health care reform."

“Fairness is the child of transparency. Too many victims of medical errors are delayed or denied needed compensation due to lack of transparency. The MBA is pleased and honored to have worked with MMS, the governor, and the legislature to create a law that is in the best interests of patients in that it requires full disclosure, and encourages early resolution while also protecting a patient's right to seek legal assistance to ensure fair compensation,” said Massachusetts Bar Association Vice President Jeffrey N. Catalano, a partner at Todd & Weld in Boston.

“Hopefully, full disclosure will also nurture learning that will reduce medical errors in Massachusetts that cost too many injuries and deaths each year,” Catalano said. “Importantly, this collaborative effort resulted from the fact that both doctors and lawyers appreciate that disclosure of mistakes also allows healing for both the patient and the physician.”

Timothy C. Kelleher III, president of the Massachusetts Academy of Trial Attorneys said, “This legislation is intended to ensure that patients will be provided with full disclosure regarding their medical treatment and why they were harmed by avoidable events. Honesty and transparency are paramount to the success of this bill and improving patient safety. We applaud the Massachusetts Medical Society’s commitment to these important goals. MATA thanks the Legislature and governor for their incredible effort on this bill.”

Physicians describe the DA&O approach as an improvement to the current tort system, which observers say can sometimes lead to a culture of silence and a “deny and defend” attitude in the medical community, impedes improvements in patient safety efforts, and motivates physicians to practice defensive medicine that contributes to higher health care costs.

Under the DA&O model, healthcare professionals and institutions and their insurers disclose to patients and families when unanticipated adverse outcomes occur; investigate and explain what happened; establish systems to improve patient safety and prevent the recurrence of such incidents; and, where appropriate, apologize and offer fair financial compensation without the patient having to resort to legal action. Patients will always have the right to consult an attorney to advise them of their rights and to evaluate the fairness of any offer or to bring legal action if they so choose.

The Disclosure, Apology, and Offer approach to settling medical liability claims in the commonwealth was announced in April as an initiative launched by an alliance of six major health care and patient advocacy organizations.

The alliance launched its effort with the release of a Roadmap to Reform, outlining the DA&O approach that will serve as an alternative to the current tort system. Development of the Roadmap was led by the Medical Society and Beth Israel Deaconess Medical Center and was the result of a 2010 planning grant from the President’s Patient Safety and Medical Liability Initiative. The coalition also announced that seven hospitals will begin pilot programs to test its feasibility in different practice environments with different insurance arrangements.

Physicians believe the DA&O model, which has been highly successful in multiple hospital systems across the country, most notably at the University of Michigan Health Care System for a decade, is gaining broad support and is regarded as a successful approach to medical liability reform and patient safety by such groups as The Joint Commission, an independent, not-for-profit organization that accredits and certifies more than 19,000 health care organizations and programs in the U.S.

**The Massachusetts Medical Society** is the statewide professional association of physicians with more than 24,000 members. It publishes the New England Journal of Medicine, a leading global medical journal and web site, and Journal Watch alerts and newsletters covering 12 specialties. The Society is also

a leader in continuing medical education for health care professionals throughout Massachusetts, conducting a variety of medical education programs for physicians and health care professionals. Founded in 1781, MMS is the oldest continuously operating medical society in the country. For more information please visit [www.massmed.org](http://www.massmed.org), [www.nejm.org](http://www.nejm.org), or [www.jwatch.org](http://www.jwatch.org).

**Massachusetts Bar Association** Founded in 1910, the Massachusetts Bar Association is a non-profit organization that serves the legal profession and the public by promoting the administration of justice, legal education, professional excellence and respect for the law. The MBA represents a diverse group of attorneys, judges and legal professionals across the commonwealth.

**Massachusetts Academy of Trial Attorneys** was incorporated in 1975 and is a non-profit organization. MATA is the only statewide bar association in Massachusetts that primarily represents plaintiffs' attorneys, who represent individuals and their family members in civil matters across the commonwealth. MATA strives to protect and improve the civil justice system and to uphold the honor and dignity of the legal profession. The current president of MATA is Timothy C. Kelleher III, who has also been the chair of MATA's Legislation Committee for many years.

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