

ARIZONA COURT OF APPEALS UPHOLDS CONSTITUTIONALITY OF “I’M SORRY”

DERS



Coleman v. Amon

Arizona Court of Appeals | August 17, 2021

By: [Cory Tyszka](#) & [Eileen GilBride](#)

Jodie was pregnant with twin boys. Because she was considered high-risk, her obstetrician, Dr. Amon, planned to deliver the twins via C-section. Jodie, however, went into labor sooner than expected. Dr. Amon was occupied with another C-section at the time, so laborist Dr. Brown stepped in to handle the delivery. Dr. Brown recommended a vaginal delivery as the safest approach, and Jodie agreed. The first twin was born without complications, but the second twin got stuck in the birth canal. The baby was eventually delivered but suffered brain damage. Jodie and her husband sued Dr. Amon and others.

By the time of trial, Dr. Amon was the only remaining defendant. Jodie testified at deposition that after the birth, Dr. Amon said he was sorry about the outcome and felt he had let her and her husband down. Dr. Amon filed a motion in limine to preclude Jodie’s testimony pursuant to Arizona’s “I’m Sorry” statute, A.R.S. § 12-2605. That statute renders any statement by a health care provider of apology, responsibility, condolence, or compassion inadmissible to show the health care provider’s liability. The trial court granted the motion and precluded the testimony to show Dr. Amon’s liability, but left open the possibility that the testimony might be admitted for a different purpose (such as impeachment) depending on what might occur at trial. At trial, however, the subject of Jodie’s testimony was not raised. The jury rendered a defense verdict.

On appeal, Plaintiffs argued that the I’m Sorry statute violates the separation of powers, the prohibition against special laws, and the prohibition against privileges and immunities, and is thus unconstitutional. Plaintiffs also argued the trial court erred in precluding them from using the statement to impeach Dr. Amon.

The court of appeals affirmed. It found no constitutional violation, and noted that the statute reasonably fosters health care provider-patient relationships by encouraging health care providers to speak compassionately with patients about adverse medical outcomes without worrying that the conversations will be used against them in a future lawsuit. On the impeachment issue, the court noted that the plaintiffs failed to preserve their argument by asking the trial court during trial to allow the evidence as impeachment. It therefore did not discuss how such statements might be used as impeachment.

[Read the Court Opinion](#)

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Cory Tyszka focuses her practice in the areas of medical malpractice and health care liability defense, products liability, and wrongful death and personal injury defense. She represents all manner of medical service providers—including hospitals, physicians and nurses—as well as pharmaceutical and supplement manufacturers. She built a solid foundation for her medical legal practice by earning B.A. in Biology from Wheaton College (MA) and continued her medical academic career in the Cancer Biology Interdisciplinary Program at the University of Arizona.

ctyszka@jshfirm.com | 602.263.1739 | jshfirm.com/ctyszka

Eileen GilBride leads JSH’s Appellate Department. She focuses her practice on representing clients in federal and state appellate matters and dispositive motions. She also counsels and assists trial lawyers in the substantive areas of their practices, from the answer stage through the post-trial motion stage. Eileen has handled more than 500 appeals at every level of the state and federal courts, in Arizona and other states, which have resulted in more than 80 published decisions.

