



STATE OF ARIZONA

JANET NAPOLITANO  
GOVERNOR

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April 25, 2005

The Honorable Ken Bennett  
Senate President  
Arizona State Senate  
1700 West Washington  
Phoenix, Arizona 85007

Re: Senate Bill 1036: medical malpractice procedural reforms

Dear President Bennett:

Today I signed into law Senate Bill 1036, related to medical malpractice reforms.

I did so because I support the provision of this bill that enables health care providers to offer apologies, sympathy, commiseration and compassion to patients without fear that the providers' statements could somehow be used against them in a malpractice action. Many patients and families who have experienced an adverse medical outcome simply need to hear compassionate words from their health care providers to ease their minds. It is appropriate that doctors are able to offer such sentiments without fear that doing so will expose them to malpractice liability. I predict that this simple law change will lead to some patients ultimately choosing not to file malpractice lawsuits in response to an adverse outcome.

I am concerned, however, by the effort in this bill to restrict expert witness testimony in malpractice cases. This provision raises significant separation of powers concerns. While I fully support the notion that only qualified medical professionals should be allowed to testify as experts in malpractice actions, I believe our courts, not the legislature, are charged with making the expert witness determination. I am also sympathetic to the arguments of the opponents of this bill that these restrictions on experts may make it unduly onerous on bona fide claimants to introduce the expert testimony they need to prove their cases. Ultimately, the interpretation of this provision will be left up to our courts. Given our Supreme Court's ruling in *Barsema v. Susong*, 156 Ariz. 309, 314, 751 P.2d 969, 974 (1998), that the legislature lacks the authority to set aside the courts' evidentiary rules, I question whether this portion of Senate Bill 1036 will survive judicial scrutiny.

Yours very truly,

A handwritten signature in black ink that reads "Janet Napolitano".

Janet Napolitano  
Governor

JN:TN/jm

cc: Honorable Jim Weiers  
Honorable Carolyn Allen