

Effective 5/13/2014

Superseded 5/10/2016

58-13-3 Qualified immunity -- Health professionals -- Charity care.

- (1)
 - (a)
 - (i) The Legislature finds many residents of this state do not receive medical care and preventive health care because they lack health insurance or because of financial difficulties or cost.
 - (ii) The Legislature also finds that many physicians, charity health care facilities, and other health care professionals in this state would be willing to volunteer medical and allied services without compensation if they were not subject to the high exposure of liability connected with providing these services.
 - (b) The Legislature therefore declares that its intention in enacting this section is to encourage the provision of uncompensated volunteer charity health care in exchange for a limitation on liability for the health care facilities and health care professionals who provide those volunteer services.
- (2) As used in this section:
 - (a) "Health care facility" means any clinic or hospital, church, or organization whose primary purpose is to sponsor, promote, or organize uncompensated health care services for people unable to pay for health care services.
 - (b) "Health care professional" means a person licensed under:
 - (i) Chapter 5a, Podiatric Physician Licensing Act;
 - (ii) Chapter 16a, Utah Optometry Practice Act;
 - (iii) Chapter 17b, Pharmacy Practice Act;
 - (iv) Chapter 24b, Physical Therapy Practice Act;
 - (v) Chapter 31b, Nurse Practice Act;
 - (vi) Chapter 40, Recreational Therapy Practice Act;
 - (vii) Chapter 41, Speech-Language Pathology and Audiology Licensing Act;
 - (viii) Chapter 42a, Occupational Therapy Practice Act;
 - (ix) Chapter 44a, Nurse Midwife Practice Act;
 - (x) Chapter 49, Dietitian Certification Act;
 - (xi) Chapter 60, Mental Health Professional Practice Act;
 - (xii) Chapter 67, Utah Medical Practice Act;
 - (xiii) Chapter 68, Utah Osteopathic Medical Practice Act;
 - (xiv) Chapter 69, Dentist and Dental Hygienist Practice Act;
 - (xv) Chapter 70a, Physician Assistant Act; and
 - (xvi) Chapter 73, Chiropractic Physician Practice Act.
 - (c) "Remuneration or compensation":
 - (i)
 - (A) means direct or indirect receipt of any payment by a health care professional or health care facility on behalf of the patient, including payment or reimbursement under Medicare or Medicaid, or under the state program for the medically indigent on behalf of the patient; and
 - (B) compensation, salary, or reimbursement to the health care professional from any source for the health care professional's services or time in volunteering to provide uncompensated health care; and
 - (ii) does not mean:
 - (A) any grant or donation to the health care facility used to offset direct costs associated with providing the uncompensated health care such as:

- (I) medical supplies;
 - (II) drugs; or
 - (III) a charitable donation that is restricted for charitable services at the health care facility;
- or
- (B) incidental reimbursements to the volunteer such as:
 - (I) food supplied to the volunteer;
 - (II) clothing supplied to the volunteer to help identify the volunteer during the time of volunteer services;
 - (III) mileage reimbursement to the volunteer; or
 - (IV) other similar support to the volunteer.
- (3) A health care professional who provides health care treatment at or on behalf of a health care facility is not liable in a medical malpractice action if:
- (a) the treatment was within the scope of the health care professional's license under this title;
 - (b) neither the health care professional nor the health care facility received compensation or remuneration for the treatment;
 - (c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and
 - (d) prior to rendering services:
 - (i) the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation; and
 - (ii) the patient consented in writing to waive any right to sue for professional negligence except for acts or omissions which are grossly negligent or are willful and wanton.
- (4) A health care facility which sponsors, promotes, or organizes the uncompensated care is not liable in a medical malpractice action for acts and omissions if:
- (a) the health care facility meets the requirements in Subsection (3)(b);
 - (b) the acts and omissions of the health care facility were not grossly negligent or willful and wanton; and
 - (c) the health care facility has posted, in a conspicuous place, a notice that in accordance with this section the health care facility is not liable for any civil damages for acts or omissions except for those acts or omissions that are grossly negligent or are willful and wanton.
- (5) A health care professional who provides health care treatment at a federally qualified health center, as defined in Subsection 1905(1)(2)(b) of the Social Security Act, or an Indian health clinic or Urban Indian Health Center, as defined in Title V of the Indian Health Care Improvement Act, is not liable in a medical malpractice action if:
- (a) the treatment was within the scope of the health care professional's license under this title;
 - (b) the health care professional:
 - (i) does not receive compensation or remuneration for treatment provided to any patient that the provider treats at the federally qualified health center, the Indian health clinic, or the Urban Indian Health Center; and
 - (ii) is not eligible to be included in coverage under the Federal Tort Claims Act for the treatment provided at the federally qualified health center, the Indian health clinic, or the Urban Indian Health Center;
 - (c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and
 - (d) prior to rendering services:

- (i) the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation; and
 - (ii) the patient consented in writing to waive any right to sue for professional negligence except for acts or omissions that are grossly negligent or are willful and wanton.
- (6) Immunity from liability under this section does not extend to the use of general anesthesia or care that requires an overnight stay in a general acute or specialty hospital licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.
- (7) The provisions of Subsection (5) apply to treatment provided by a healthcare professional on or after May 13, 2014.