

NONPATIENT CAUSE OF ACTION

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay L. McIff

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill repeals and enacts provisions of the Utah Health Care Malpractice Act.

Highlighted Provisions:

This bill:

- ▶ repeals provisions concerning prelitigation panels; and
- ▶ provides requirements for a nonpatient plaintiff to establish a malpractice action

against a health care provider.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-3-418, as last amended by Laws of Utah 2013, Chapter 275

ENACTS:

78B-3-426, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-3-418** is amended to read:

78B-3-418. Decision and recommendations of panel -- No judicial or other review.

(1) (a) The panel shall issue an opinion and the division shall issue a certificate of compliance with the pre-litigation hearing requirements of this part in accordance with this

30 section.

31 (b) A certificate of compliance issued in accordance with this section is proof that the
32 claimant has complied with all conditions precedent under this part prior to the commencement
33 of litigation as required in Subsection 78B-3-412(1).

34 ~~[(c)(i) Notwithstanding any other provision of this part, any party in a medical
35 malpractice action or arbitration hearing may request a prelitigation panel review as to a health
36 care provider and obtain a certificate of compliance for that specific, individual health care
37 provider for the purpose of allocating fault to that health care provider. A party in a medical
38 malpractice action or arbitration hearing may not attempt to allocate fault to any health care
39 provider unless a certificate of compliance has been issued in accordance with this section for
40 that specific, individual health care provider. A health care provider exempted from the
41 requirement of a prelitigation hearing by statute or an arbitration agreement, may nevertheless
42 be joined in a prelitigation hearing to satisfy the requirements of this section. Participation in a
43 prelitigation hearing may not waive any right to enforce an arbitration agreement.]~~

44 ~~[(ii) The party making the claim against, or seeking to allocate fault to, a health care
45 provider is required to seek and obtain the certificate of compliance required by this Subsection
46 (1)(c).]~~

47 (2) (a) The panel shall render its opinion in writing not later than 30 days after the end
48 of the proceedings, and determine on the basis of the evidence whether:

- 49 (i) each claim against each health care provider has merit or has no merit; and
- 50 (ii) if a claim is meritorious, whether the conduct complained of resulted in harm to the
51 claimant.

52 (b) There is no judicial or other review or appeal of the panel's decision or
53 recommendations.

54 (3) The division shall issue a certificate of compliance to the claimant, for each
55 respondent named in the intent to file a claim under this part, if:

- 56 (a) for a named respondent, the panel issues an opinion of merit under Subsections
57 (2)(a)(i) and (ii);

58 (b) for a named respondent, the claimant files an affidavit of merit in accordance with
59 Section 78B-3-423 if the opinion under Subsection (1)(a) is non-meritorious under either
60 Subsection (2)(a)(i) or (ii);

61 (c) the claimant has complied with the provisions of Subsections 78B-3-416(3)(c) and
62 (d); or

63 (d) the parties submitted a stipulation under Subsection 78B-3-416(3)(e).

64 Section 2. Section 78B-3-426 is enacted to read:

65 **78B-3-426. Nonpatient cause of action.**

66 (1) For purposes of this section, a nonpatient plaintiff does not include a patient, as
67 defined in Subsection 78B-3-403(23).

68 (2) This section does not apply to a healthcare malpractice action brought or seeking
69 recovery under Section 30-2-11, 78B-3-106, 78B-3-107, or 78B-3-502.

70 (3) To establish a malpractice action against a health care provider, a nonpatient
71 plaintiff shall be required to show that:

72 (a) the nonpatient plaintiff suffered an injury;

73 (b) the nonpatient plaintiff's injury was proximately caused by an act or omission of the
74 health care provider; and

75 (c) the health care provider's act or omission was conduct that manifests a knowing and
76 reckless indifference toward, and a disregard of, the injury suffered by the nonpatient plaintiff.