

HEALTH CARE MALPRACTICE ACT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Health Care Malpractice Act.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ subjects acupuncturists to the provisions of the Utah Health Care Malpractice Act by including them in the definition of "health care provider" used within the act;
- ▶ clarifies the definition of nursing; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-3-403, as last amended by Laws of Utah 2013, Chapter 104

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

Section 1. Section **78B-3-403** is amended to read:

78B-3-403. Definitions.



28 As used in this part:

29 (1) "Acupuncturist" means a person licensed to engage in the practice of acupuncture
30 under Title 58, Chapter 72, Acupuncture Licensing Act.

31 [~~(1)~~] (2) "Audiologist" means a person licensed to practice audiology under Title 58,
32 Chapter 41, Speech-Language Pathology and Audiology Licensing Act.

33 [~~(2)~~] (3) "Certified social worker" means a person licensed to practice as a certified
34 social worker under Section 58-60-205.

35 [~~(3)~~] (4) "Chiropractic physician" means a person licensed to practice chiropractic
36 under Title 58, Chapter 73, Chiropractic Physician Practice Act.

37 [~~(4)~~] (5) "Clinical social worker" means a person licensed to practice as a clinical
38 social worker under Section 58-60-205.

39 [~~(5)~~] (6) "Commissioner" means the commissioner of insurance as provided in Section
40 31A-2-102.

41 [~~(6)~~] (7) "Dental hygienist" means a person licensed to engage in the practice of dental
42 hygiene as defined in Section 58-69-102.

43 [~~(7)~~] (8) "Dentist" means a person licensed to engage in the practice of dentistry as
44 defined in Section 58-69-102.

45 [~~(8)~~] (9) "Division" means the Division of Occupational and Professional Licensing
46 created in Section 58-1-103.

47 [~~(9)~~] (10) "Future damages" includes a judgment creditor's damages for future medical
48 treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and
49 suffering.

50 [~~(10)~~] (11) "Health care" means any act or treatment performed or furnished, or which
51 should have been performed or furnished, by any health care provider for, to, or on behalf of a
52 patient during the patient's medical care, treatment, or confinement.

53 [~~(11)~~] (12) "Health care facility" means general acute hospitals, specialty hospitals,
54 home health agencies, hospices, nursing care facilities, assisted living facilities, birthing
55 centers, ambulatory surgical facilities, small health care facilities, health care facilities owned
56 or operated by health maintenance organizations, and end stage renal disease facilities.

57 [~~(12)~~] (13) "Health care provider" includes any person, partnership, association,
58 corporation, or other facility or institution who causes to be rendered or who renders health

59 care or professional services as a hospital, health care facility, physician, registered nurse,
60 licensed practical nurse, nurse-midwife, licensed direct-entry midwife, dentist, dental hygienist,
61 optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist
62 assistant, podiatric physician, psychologist, chiropractic physician, naturopathic physician,
63 osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language
64 pathologist, clinical social worker, certified social worker, social service worker, marriage and
65 family counselor, practitioner of obstetrics, licensed athletic trainer, acupuncturist, or others
66 rendering similar care and services relating to or arising out of the health needs of persons or
67 groups of persons and officers, employees, or agents of any of the above acting in the course
68 and scope of their employment.

69 ~~[(13)]~~ (14) "Hospital" means a public or private institution licensed under Title 26,
70 Chapter 21, Health Care Facility Licensing and Inspection Act.

71 ~~[(14)]~~ (15) "Licensed athletic trainer" means a person licensed under Title 58, Chapter
72 40a, Athletic Trainer Licensing Act.

73 ~~[(15)]~~ (16) "Licensed direct-entry midwife" means a person licensed under ~~[the]~~ Title
74 58, Chapter 77, Direct-Entry Midwife Act, to engage in the practice of direct-entry midwifery
75 as defined in Section 58-77-102.

76 ~~[(16)]~~ (17) "Licensed practical nurse" means a person licensed to practice as a licensed
77 practical nurse as provided in Section 58-31b-301.

78 ~~[(17)]~~ (18) "Malpractice action against a health care provider" means any action against
79 a health care provider, whether in contract, tort, breach of warranty, wrongful death, or
80 otherwise, based upon alleged personal injuries relating to or arising out of health care rendered
81 or which should have been rendered by the health care provider.

82 ~~[(18)]~~ (19) "Marriage and family therapist" means a person licensed to practice as a
83 marriage therapist ~~[or]~~ and family therapist under Sections 58-60-305 and 58-60-405.

84 ~~[(19)]~~ (20) "Naturopathic physician" means a person licensed to engage in the practice
85 of naturopathic medicine as defined in Section 58-71-102.

86 ~~[(20)]~~ (21) "Nurse-midwife" means a person licensed to engage in practice as a
87 certified nurse midwife under Section 58-44a-301.

88 ~~[(21)]~~ (22) "Optometrist" means a person licensed to practice optometry under Title 58,
89 Chapter 16a, Utah Optometry Practice Act.

90 ~~[(22)]~~ (23) "Osteopathic physician" means a person licensed to practice ~~[osteopathy]~~
91 osteopathic medicine under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

92 ~~[(23)]~~ (24) "Patient" means a person who is under the care of a health care provider,
93 under a contract, express or implied.

94 ~~[(24)]~~ (25) "Periodic payments" means the payment of money or delivery of other
95 property to a judgment creditor at intervals ordered by the court.

96 ~~[(25)]~~ (26) "Pharmacist" means a person licensed to practice pharmacy as provided in
97 Section 58-17b-301.

98 ~~[(26)]~~ (27) "Physical therapist" means a person licensed to practice physical therapy
99 under Title 58, Chapter 24b, Physical Therapy Practice Act.

100 ~~[(27)]~~ (28) "Physical therapist assistant" means a person licensed to practice physical
101 therapy, within the scope of a physical therapist assistant license, under Title 58, Chapter 24b,
102 Physical Therapy Practice Act.

103 ~~[(28)]~~ (29) "Physician" means a person licensed to practice medicine and surgery under
104 Title 58, Chapter 67, Utah Medical Practice Act.

105 ~~[(29)]~~ (30) "Podiatric physician" means a person licensed to practice podiatry under
106 Title 58, Chapter 5a, Podiatric Physician Licensing Act.

107 ~~[(30)]~~ (31) "Practitioner of obstetrics" means a person licensed to practice as a
108 physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58,
109 Chapter 68, Utah Osteopathic Medical Practice Act.

110 ~~[(31)]~~ (32) "Psychologist" means a person licensed under Title 58, Chapter 61,
111 Psychologist Licensing Act, to engage in the practice of psychology as defined in Section
112 58-61-102.

113 ~~[(32)]~~ (33) "Registered nurse" means a person licensed to engage in the practice of
114 [professional] nursing ~~[as provided in]~~ under Section 58-31b-301.

115 ~~[(33)]~~ (34) "Relative" means a patient's spouse, parent, grandparent, stepfather,
116 stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The
117 term includes relationships that are created as a result of adoption.

118 ~~[(34)]~~ (35) "Representative" means the spouse, parent, guardian, trustee,
119 attorney-in-fact, person designated to make decisions on behalf of a patient under a medical
120 power of attorney, or other legal agent of the patient.

121 [~~(35)~~] (36) "Social service worker" means a person licensed to practice as a social
122 service worker under Section 58-60-205.

123 [~~(36)~~] (37) "Speech-language pathologist" means a person licensed to practice
124 speech-language pathology under Title 58, Chapter 41, Speech-Language Pathology and
125 Audiology Licensing Act.

126 [~~(37)~~] (38) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act
127 or omission proximately causing injury or damage to another.

128 [~~(38)~~] (39) "Unanticipated outcome" means the outcome of a medical treatment or
129 procedure that differs from an expected result.

Legislative Review Note
Office of Legislative Research and General Counsel