



**JOHN M. SCHAFF, CIA
AUDITOR GENERAL**

STATE OF UTAH

Office of the Legislative Auditor General

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Audit Subcommittee of the Legislative Management Committee
President Michael G. Waddoups, Co-Chair • Speaker David Clark, Co-Chair
Senator Patricia W. Jones • Representative David Litvack

December 2, 2009
Report No: ILR 2009-C

Representative Lorie D. Fowlke
Utah House of Representatives
596 W. 1200 N.
Orem, UT 84057

Subject: Performance Audit of Emergency Care in Utah

Representative Fowlke,

In 2007 our office was asked to conduct a performance audit of the delivery of emergency care in Utah. Specifically, we were asked to:

1. Evaluate the current status and provision of emergency services in Utah hospitals;
2. Determine if there is a "litigation crisis" in hospital emergency departments; and
3. Determine whether legislative action is needed to address any issues in emergency care delivery.

At that time the information needed to answer the audit request resided with private non-profit medical associations that were under no obligation to provide our office with the information required to answer these questions. Furthermore, what little aggregate data was provided by both the Utah Medical Association and the Utah Medical Insurance Association was unverifiable, which is required under our audit standards. We were informed by our general counsel that our office possessed neither the constitutional nor statutory authority to compel these non-governmental organizations to provide us access to the proprietary and confidential data needed. As a result, the audit was put on hold.

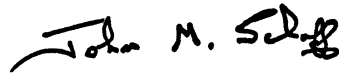
In August 2009, the audit was re-prioritized by the Audit Subcommittee, and audit survey work resumed on the request. Soon after reopening the audit we discovered that the barriers to accessing the data that existed previously were still present. In addition, during

the 2009 Legislative General Session, Senate Bill 79, Health Reform – Medical Malpractice Amendments was passed. The key points of this bill as it pertains to the audit were:

1. Raising the standard of proof necessary for a malpractice claim in an emergency room from preponderance of the evidence to clear and convincing.
2. Including a sunset of the clear and convincing standard of proof on July 1, 2013.

The new law took effect June 1, 2009. The result is that for the purposes of additional audit work, there have been no new cases regarding medical malpractice in emergency departments available for review. Given the barriers to accessing the data, and the absence of new litigation to examine, we cannot conduct the audit and have asked the Audit Subcommittee to drop the audit request for a review of emergency care in Utah.

Sincerely,

A handwritten signature in black ink that reads "John M. Schaff". The signature is written in a cursive style with a large, stylized initial "J".

John M. Schaff, CIA
Auditor General

JMS:CTO