

1 ACUPUNCTURIST LIABILITY AMENDMENTS

2 2022 GENERAL SESSION

3 STATE OF UTAH

4

5 LONG TITLE

6 General Description:

7 This bill amends the Health Care Providers Immunity from Liability Act and the
8 Retired Volunteer Health Care Practitioner Act.

9 Highlighted Provisions:

10 This bill:

- 11 ▶ adds licensed acupuncturists to those health care professionals who have limited
- 12 immunity under certain circumstances for providing volunteer services; and
- 13 ▶ adds licensed acupuncturist to the definition of a health care practitioner under the
- 14 Retired Volunteer Health Care Practitioner Act.

15 Money Appropriated in this Bill:

16 None

17 Other Special Clauses:

18 None

19 Utah Code Sections Affected:

20 AMENDS:

- 21 58-13-2, as last amended by Laws of Utah 2013, Chapter 44
- 22 58-13-3, as last amended by Laws of Utah 2016, Chapters 108 and 238
- 23 58-81-102, as last amended by Laws of Utah 2016, Chapter 238

24

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

26 Section 1. Section 58-13-2 is amended to read:

27 **58-13-2. Emergency care rendered by licensee.**

28 (1) A person licensed under Title 58, Occupations and Professions, to practice as any
 29 of the following health care professionals, who is under no legal duty to respond, and who in
 30 good faith renders emergency care at the scene of an emergency gratuitously and in good faith,
 31 is not liable for any civil damages as a result of any acts or omissions by the person in
 32 rendering the emergency care:

- 33 (a) osteopathic physician;
- 34 (b) physician and surgeon;
- 35 (c) naturopathic physician;
- 36 (d) dentist or dental hygienist;
- 37 (e) chiropractic physician;
- 38 (f) physician assistant;
- 39 (g) optometrist;
- 40 (h) nurse licensed under Section 58-31b-301 or 58-31d-102;
- 41 (i) podiatrist;
- 42 (j) certified nurse midwife;
- 43 (k) respiratory care practitioner;
- 44 (l) pharmacist, pharmacy technician, and pharmacy intern;
- 45 (m) direct-entry midwife licensed under Section 58-77-301; [or]
- 46 (n) veterinarian[;]; or
- 47 (o) acupuncturist licensed under Chapter 72, Acupuncture Licensing Act.
- 48 (2) This Subsection (2) applies to a health care professional:
- 49 (a) (i) described in Subsection (1); and
- 50 (ii) who is under no legal duty to respond to the circumstances described in Subsection
- 51 (3);
- 52 (b) who is:
- 53 (i) (A) activated as a member of a medical reserve corps as described in Section
- 54 26A-1-126 during the time of an emergency or declaration for public health related activities as
- 55 provided in Subsection 26A-1-126(2); or
- 56 (B) participating in training to prepare the medical reserve corps to respond to a
- 57 declaration of an emergency or request for public health related activities pursuant to
- 58 Subsection 26A-1-126(2);
- 59 (ii) acting within the scope of:
- 60 (A) the health care professional's license; or
- 61 (B) practice as modified under Subsection 58-1-307(4) or Section 26A-1-126; and
- 62 (iii) acting in good faith without compensation or remuneration as defined in
- 63 Subsection 58-13-3(2); or

64 (c) who is acting as a volunteer health practitioner under Title 26, Chapter 49, Uniform
65 Emergency Volunteer Health Practitioners Act.

66 (3) A health care professional described in Subsection (2) is not liable for any civil
67 damages as a result of any acts or omissions by the health care professional in rendering care as
68 a result of:

69 (a) implementation of measures to control the causes of epidemic and communicable
70 diseases and other conditions significantly affecting the public health or necessary to protect
71 the public health as set out in Title 26A, Chapter 1, Local Health Departments;

72 (b) investigating and controlling suspected bioterrorism and disease as set out in Title
73 26, Chapter 23b, Detection of Public Health Emergencies Act; and

74 (c) responding to a national, state, or local emergency, a public health emergency as
75 defined in Section 26-23b-102, or a declaration by the President of the United States or other
76 federal official requesting public health-related activities.

77 (4) The immunity in Subsection (3) is in addition to any immunity or protection in state
78 or federal law that may apply.

79 (5) For purposes of Subsection (2)(b)(iii) remuneration does not include:

80 (a) food supplied to the volunteer;

81 (b) clothing supplied to the volunteer to help identify the volunteer during the time of
82 the emergency; or

83 (c) other similar support for the volunteer.

84 Section 2. Section **58-13-3** is amended to read:

85 **58-13-3. Qualified immunity -- Health professionals -- Charity care.**

86 (1) (a) (i) The Legislature finds many residents of this state do not receive medical care
87 and preventive health care because they lack health insurance or because of financial
88 difficulties or cost.

89 (ii) The Legislature also finds that many physicians, charity health care facilities, and
90 other health care professionals in this state would be willing to volunteer medical and allied
91 services without compensation if they were not subject to the high exposure of liability
92 connected with providing these services.

93 (b) The Legislature therefore declares that its intention in enacting this section is to
94 encourage the provision of uncompensated volunteer charity health care in exchange for a

95 limitation on liability for the health care facilities and health care professionals who provide
96 those volunteer services.

97 (2) As used in this section:

98 (a) "Continuing education requirement" means the requirement for hours of continuing
99 education, established by the division, with which a health care professional must comply to
100 renew the health care professional's license under the applicable chapter described in
101 Subsection (2)(c).

102 (b) "Health care facility" means any clinic or hospital, church, or organization whose
103 primary purpose is to sponsor, promote, or organize uncompensated health care services for
104 people unable to pay for health care services.

105 (c) "Health care professional" means a person licensed under:

106 (i) Chapter 5a, Podiatric Physician Licensing Act;

107 (ii) Chapter 16a, Utah Optometry Practice Act;

108 (iii) Chapter 17b, Pharmacy Practice Act;

109 (iv) Chapter 24b, Physical Therapy Practice Act;

110 (v) Chapter 31b, Nurse Practice Act;

111 (vi) Chapter 40, Recreational Therapy Practice Act;

112 (vii) Chapter 41, Speech-Language Pathology and Audiology Licensing Act;

113 (viii) Chapter 42a, Occupational Therapy Practice Act;

114 (ix) Chapter 44a, Nurse Midwife Practice Act;

115 (x) Chapter 49, Dietitian Certification Act;

116 (xi) Chapter 60, Mental Health Professional Practice Act;

117 (xii) Chapter 67, Utah Medical Practice Act;

118 (xiii) Chapter 68, Utah Osteopathic Medical Practice Act;

119 (xiv) Chapter 69, Dentist and Dental Hygienist Practice Act;

120 (xv) Chapter 70a, Utah Physician Assistant Act;

121 (xvi) Chapter 71, Naturopathic Physician Practice Act; [~~and~~]

122 (xvii) Chapter 72, Acupuncture Licensing Act; and

123 (xviii) Chapter 73, Chiropractic Physician Practice Act.

124 (d) "Remuneration or compensation":

125 (i) (A) means direct or indirect receipt of any payment by a health care professional or

126 health care facility on behalf of the patient, including payment or reimbursement under
127 Medicare or Medicaid, or under the state program for the medically indigent on behalf of the
128 patient; and

129 (B) compensation, salary, or reimbursement to the health care professional from any
130 source for the health care professional's services or time in volunteering to provide
131 uncompensated health care; and

132 (ii) does not mean:

133 (A) any grant or donation to the health care facility used to offset direct costs
134 associated with providing the uncompensated health care such as:

135 (I) medical supplies;

136 (II) drugs; or

137 (III) a charitable donation that is restricted for charitable services at the health care
138 facility; or

139 (B) incidental reimbursements to the volunteer such as:

140 (I) food supplied to the volunteer;

141 (II) clothing supplied to the volunteer to help identify the volunteer during the time of
142 volunteer services;

143 (III) mileage reimbursement to the volunteer; or

144 (IV) other similar support to the volunteer.

145 (3) A health care professional who provides health care treatment at or on behalf of a
146 health care facility is not liable in a medical malpractice action if:

147 (a) the treatment was within the scope of the health care professional's license under
148 this title;

149 (b) neither the health care professional nor the health care facility received
150 compensation or remuneration for the treatment;

151 (c) the acts or omissions of the health care professional were not grossly negligent or
152 willful and wanton; and

153 (d) prior to rendering services:

154 (i) the health care professional disclosed in writing to the patient, or if a minor, to the
155 patient's parent or legal guardian, that the health care professional is providing the services
156 without receiving remuneration or compensation; and

157 (ii) the patient consented in writing to waive any right to sue for professional
158 negligence except for acts or omissions which are grossly negligent or are willful and wanton.

159 (4) A health care facility which sponsors, promotes, or organizes the uncompensated
160 care is not liable in a medical malpractice action for acts and omissions if:

161 (a) the health care facility meets the requirements in Subsection (3)(b);

162 (b) the acts and omissions of the health care facility were not grossly negligent or
163 willful and wanton; and

164 (c) the health care facility has posted, in a conspicuous place, a notice that in
165 accordance with this section the health care facility is not liable for any civil damages for acts
166 or omissions except for those acts or omissions that are grossly negligent or are willful and
167 wanton.

168 (5) A health care professional who provides health care treatment at a federally
169 qualified health center, as defined in Subsection 1905(1)(2)(b) of the Social Security Act, or an
170 Indian health clinic or Urban Indian Health Center, as defined in Title V of the Indian Health
171 Care Improvement Act, is not liable in a medical malpractice action if:

172 (a) the treatment was within the scope of the health care professional's license under
173 this title;

174 (b) the health care professional:

175 (i) does not receive compensation or remuneration for treatment provided to any
176 patient that the provider treats at the federally qualified health center, the Indian health clinic,
177 or the Urban Indian Health Center; and

178 (ii) is not eligible to be included in coverage under the Federal Tort Claims Act for the
179 treatment provided at the federally qualified health center, the Indian health clinic, or the Urban
180 Indian Health Center;

181 (c) the acts or omissions of the health care professional were not grossly negligent or
182 willful and wanton; and

183 (d) prior to rendering services:

184 (i) the health care professional disclosed in writing to the patient, or if a minor, to the
185 patient's parent or legal guardian, that the health care professional is providing the services
186 without receiving remuneration or compensation; and

187 (ii) the patient consented in writing to waive any right to sue for professional

188 negligence except for acts or omissions that are grossly negligent or are willful and wanton.

189 (6) Immunity from liability under this section does not extend to the use of general
190 anesthesia or care that requires an overnight stay in a general acute or specialty hospital
191 licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

192 (7) The provisions of Subsection (5) apply to treatment provided by a healthcare
193 professional on or after May 13, 2014.

194 (8) A health care professional:

195 (a) may, in accordance with Subsection (8)(b), fulfill up to 15% of the health care
196 professional's continuing education requirement with hours the health care professional spends
197 providing health care treatment described in Subsection (3) or (5); and

198 (b) subject to Subsection (8)(a), earns one hour of the health care professional's
199 continuing education requirement for every four documented hours of volunteer health care
200 treatment.

201 Section 3. Section **58-81-102** is amended to read:

202 **58-81-102. Definitions.**

203 For purposes of this chapter:

204 (1) "Board" means the state licensing board created for each of the health care
205 practitioners included in Subsection (2).

206 (2) "Health care practitioner" includes:

207 (a) a podiatrist licensed under Chapter 5a, Podiatric Physician Licensing Act;

208 (b) a physical therapist licensed under Chapter 24b, Physical Therapy Practice Act;

209 (c) a nurse or advanced practice registered nurse licensed under Chapter 31b, Nurse
210 Practice Act;

211 (d) a recreational therapist licensed under Chapter 40, Recreational Therapy Practice
212 Act;

213 (e) an occupational therapist licensed under Chapter 42a, Occupational Therapy
214 Practice Act;

215 (f) a nurse midwife licensed under Chapter 44a, Nurse Midwife Practice Act;

216 (g) a mental health professional licensed under Chapter 60, Mental Health Professional
217 Practice Act;

218 (h) a psychologist licensed under Chapter 61, Psychologist Licensing Act;

- 219 (i) a physician licensed under Chapter 67, Utah Medical Practice Act;
- 220 (j) an osteopath licensed under Chapter 68, Utah Osteopathic Medical Practice Act;
- 221 (k) a dentist or dental hygienist licensed under Chapter 69, Dentist and Dental
222 Hygienist Practice Act;
- 223 (l) a physician assistant licensed under Chapter 70a, Utah Physician Assistant Act;
- 224 (m) a pharmacist licensed under Chapter 17b, Pharmacy Practice Act; [or]
- 225 (n) an optometrist licensed under Chapter 16a, Utah Optometry Practice Act[-]; or
- 226 (o) an acupuncturist licensed under Chapter 72, Acupuncture Licensing Act.
- 227 (3) "Qualified location" means:
- 228 (a) a clinic, hospital, church, or organization whose primary purpose is to sponsor,
229 promote, or organize uncompensated health care services for people unable to pay for health
230 care services; and
- 231 (b) is a location approved by the division.
- 232 (4) "Remuneration or compensation" means the same as that term is defined in Section
233 58-13-3.
- 234 (5) "Supervising professional" means a health care practitioner:
- 235 (a) who has an active license in the state in good standing;
- 236 (b) with a scope of practice that is appropriate for supervising the applicant as
237 determined by the division and board; and
- 238 (c) who is practicing at the qualified location.
- 239 (6) "Supervision" means:
- 240 (a) the level of supervision required for:
- 241 (i) a social service worker in Chapter 60, Mental Health Professional Practice Act;
- 242 (ii) a dental hygienist in Chapter 69, Dentist and Dental Hygienist Practice Act;
- 243 (iii) a recreational therapist technician in Chapter 40, Recreational Therapy Practice
244 Act; and
- 245 (iv) an occupational technician assistant in Chapter 42a, Occupational Therapy Practice
246 Act; and
- 247 (b) for the health care practitioners listed in Subsections (2)(a) through (m) and not
248 included in Subsection (5)(a):
- 249 (i) entering into a delegation of service agreement with a supervising professional in

250 accordance with Subsection 58-81-103(2);

251 (ii) having the ability to contact the supervising professional during the time the
252 volunteer is providing volunteer services; and

253 (iii) for every 40 hours of volunteer service hours, meeting with the supervising
254 professional.

255 (7) "Volunteer" means the individual health care practitioner:

256 (a) will devote the health care practitioner's practice exclusively to providing care to
257 the needy and indigent in the state:

258 (i) within:

259 (A) the practitioner's scope of practice; and

260 (B) the delegation of service agreement between the volunteer and the supervising
261 professional; and

262 (ii) at a qualified location;

263 (b) will agree to donate professional services in a qualified location; and

264 (c) will not receive remuneration or compensation for the health care practitioner's
265 services.