

**DIRECT-ENTRY MIDWIFE ACT**

2005 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jackie Biskupski**

Senate Sponsor: Parley G. Hellewell

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**LONG TITLE**

**General Description:**

This bill modifies the Occupations and Professions Code by enacting the Direct-entry Midwife Act and makes related changes to the Health Care Providers Immunity from Liability Act.

**Highlighted Provisions:**

This bill:

- ▶ provides for licensing of Direct-entry midwives by the Division of Occupational and Professional Licensing;
- ▶ provides for definitions relating to the practice of Direct-entry midwifery;
- ▶ creates the Licensed Direct-entry Midwife Board and sets forth its membership and duties;
- ▶ requires the division to establish a Licensed Direct-entry Midwife Formulary Committee and a licensed Direct-entry midwife formulary to define which prescription drugs can be obtained and administered by licensed Direct-entry midwives and to provide guidelines for their use;
- ▶ provides for disciplinary action, including administrative penalties, against licensed Direct-entry midwives;
- ▶ defines and provides penalties for unlawful and unprofessional conduct;
- ▶ sets standards for consultation with, collaboration with, referral to, and transfer to other health care providers and sets standards for liability under those circumstances; and
- ▶ brings licensed Direct-entry midwives within the scope of the Health Care Providers

Immunity From Liability Act.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**58-13-2**, as last amended by Chapter 3, Laws of Utah 2003

**58-13-3**, as last amended by Chapter 207, Laws of Utah 2003

**78-14-3**, as last amended by Chapter 280, Laws of Utah 2004

ENACTS:

**58-77-101**, Utah Code Annotated 1953

**58-77-102**, Utah Code Annotated 1953

**58-77-201**, Utah Code Annotated 1953

**58-77-202**, Utah Code Annotated 1953

**58-77-203**, Utah Code Annotated 1953

**58-77-301**, Utah Code Annotated 1953

**58-77-302**, Utah Code Annotated 1953

**58-77-303**, Utah Code Annotated 1953

**58-77-304**, Utah Code Annotated 1953

**58-77-401**, Utah Code Annotated 1953

**58-77-501**, Utah Code Annotated 1953

**58-77-502**, Utah Code Annotated 1953

**58-77-503**, Utah Code Annotated 1953

**58-77-601**, Utah Code Annotated 1953

**58-77-602**, Utah Code Annotated 1953

**58-77-603**, Utah Code Annotated 1953

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

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

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

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

- (a) osteopathic physician;
- (b) physician and surgeon;
- (c) naturopathic physician;
- (d) dentist or dental hygienist;
- (e) chiropractic physician;
- (f) physician assistant;
- (g) optometrist;
- (h) nurse licensed under Section 58-31b-301 or 58-31c-102;
- (i) podiatrist;
- (j) certified nurse midwife;
- (k) respiratory therapist; ~~or~~
- (l) pharmacist, pharmacy technician, and pharmacy intern~~[-];~~ or
- (m) Direct-entry midwife licensed under Section 58-77-301.

(2) (a) This Subsection (2) applies to health care professionals:

- (i) described in Subsection (1);
- (ii) who are under no legal duty to respond to the circumstances described in Subsection (2)(b);
- (iii) who are acting within the scope of the health care professional's license, or within the scope of practice as modified under Subsection 58-1-307(4); and
- (iv) who are acting in good faith without compensation or remuneration as defined in

Subsection 58-13-3(2).

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

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

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

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

(3) The immunity in Subsection (2) is in addition to any immunity or protection in state or federal law that may apply.

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

**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 individuals licensed under Title 58, Occupations and Professions, as physicians and surgeons, osteopaths, podiatrists, optometrists, chiropractors, dentists, dental hygienists, registered nurses, certified nurse midwives, ~~and~~ other nurses licensed under Section 58-31b-301[-], and licensed Direct-entry midwives.

(c) "Remuneration or compensation":

(i) (A) means direct or indirect receipt of any payment by the physician and surgeon, health care facility, other health care professional, or organization, 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 any grant or donation to the health care facility used to offset direct costs associated with providing the uncompensated health care such as medical supplies or drugs.

(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, 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 that in exchange for

receiving uncompensated health care, the patient consents 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) 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.

Section 3. Section **58-77-101** is enacted to read:

**CHAPTER 77. DIRECT-ENTRY MIDWIFE ACT**

**Part 1. General Provisions**

**58-77-101. Title.**

This chapter is known as the "Direct-entry Midwife Act."

Section 4. Section **58-77-102** is enacted to read:

**58-77-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Licensed Direct-entry Midwife Board created in Section 58-77-201.

(2) "Certified nurse-midwife" means a person licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act.

(3) "Client" means a woman under the care of a Direct-entry midwife and her fetus or newborn.

(4) "Direct-entry Midwife" means an individual who is engaging in the practice of Direct-entry midwifery.

(5) "Licensed Direct-entry midwife" means a person licensed under this chapter.

(6) "Physician" means an individual licensed as a physician and surgeon, osteopathic physician, or naturopathic physician.

(7) "Practice of Direct-entry midwifery" means practice of providing the necessary supervision, care, and advice to a client during essentially normal pregnancy, labor, delivery, postpartum, and newborn periods that is consistent with national professional midwifery standards and that is based upon the acquisition of clinical skills necessary for the care of pregnant women and newborns, including antepartum, intrapartum, postpartum, newborn, and limited interconceptual care and includes:

(a) obtaining an informed consent to provide services;

(b) obtaining a health history, including a physical examination;

(c) developing a plan of care for a client;

(d) evaluating the results of client care;

(e) consulting and collaborating with and referring and transferring care to licensed health care professionals, as is appropriate, regarding the care of a client;

(f) obtaining medications, as specified in this Subsection (7)(f), to administer to clients, including:

(i) prescription vitamins;

(ii) Rho D immunoglobulin;

(iii) sterile water;

(iv) one dose of intramuscular oxytocin after the delivery of the placenta to minimize blood loss;

(v) one dose of intramuscular oxytocin if a hemorrhage occurs, in which case the licensed Direct-entry midwife must either consult immediately with a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and initiate transfer, if requested, or if the client's condition does not

immediately improve, initiate transfer and notify the local hospital;

(vi) oxygen;

(vii) local anesthetics without epinephrine used in accordance with Subsection (7)(l);

(viii) vitamin K to prevent hemorrhagic disease of the newborn;

(ix) eye prophylaxis to prevent ophthalmia neonatorum as required by law; and

(x) any other medication approved by a licensed health care provider with authority to prescribe that medication;

(g) obtaining food, food extracts, dietary supplements, as defined by the Federal Food, Drug, and Cosmetic Act, homeopathic remedies, plant substances that are not designated as prescription drugs or controlled substances, and over-the-counter medications to administer to clients;

(h) obtaining and using appropriate equipment and devices such as Doppler, blood pressure cuff, phlebotomy supplies, instruments, and sutures;

(i) obtaining appropriate screening and testing, including laboratory tests, urinalysis, and ultrasound;

(j) managing the antepartum period;

(k) managing the intrapartum period including:

(i) monitoring and evaluating the condition of mother and fetus;

(ii) performing emergency episiotomy; and

(iii) delivering in any out-of-hospital setting;

(l) managing the postpartum period including suturing of episiotomy or first and second degree natural perineal and labial lacerations, including the administration of a local anesthetic;

(m) managing the newborn period including:

(i) providing care for the newborn, including performing a normal newborn examination;  
and

(ii) resuscitating a newborn;

(n) providing limited interconceptual services in order to provide continuity of care including:



- (i) breastfeeding support and counseling;
- (ii) family planning, limited to natural family planning, cervical caps, and diaphragms;
- and
- (iii) pap smears, where all clients with abnormal results are to be referred to an appropriate licensed health care provider; and
- (o) executing the orders of a licensed health care professional, only within the education, knowledge, and skill of the Direct-entry midwife.
- (8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-77-501.
- (9) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-77-502 and as may be further defined by rule.

Section 5. Section **58-77-201** is enacted to read:

**Part 2. Board**

**58-77-201. Board.**

- (1) There is created the Licensed Direct-entry Midwife Board consisting of four licensed Direct-entry midwives and one member of the general public.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3) (a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
  - (b) The board shall designate one of its members on a permanent or rotating basis to:
    - (i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensed Direct-entry midwife; and
    - (ii) advise the division in its investigation of these complaints.
  - (c) (i) For the years 2006 through 2011, the board shall present an annual report to the Legislature's Health and Human Services Interim Committee describing the outcome data of licensed Direct-entry midwives practicing in Utah.
    - (ii) The board shall base its report on data provided in large part from the Midwives' Alliance of North America.
- (4) A board member who has, under Subsection (3), reviewed a complaint or advised in

its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

(5) Qualified faculty, board members, and other staff of Direct-entry midwifery learning institutions may serve as one or more of the licensed Directed-entry midwives on the board.

Section 6. Section **58-77-202** is enacted to read:

**58-77-202. Licensed Direct-entry Midwife Formulary Committee -- Adoption of licensed Direct-entry midwife formulary.**

(1) The division shall establish a Licensed Direct-entry Midwife Formulary Committee under Subsection 58-1-203(1)(f) to make recommendations to the board and the division regarding which additional prescription drugs are appropriate for the scope of practice of licensed Direct-entry midwives and guidelines for their use.

(2) The committee shall consist of five members as follows:

(a) two licensed Direct-entry midwives;

(b) one licensed physician who has professional experience consulting for and collaborating with Direct-entry midwives;

(c) one certified nurse midwife who has professional experience consulting for and collaborating with Direct-entry midwives; and

(d) one licensed pharmacist.

(3) The committee members shall:

(a) be appointed by the director of the division; and

(b) serve without compensation, travel costs, or per diem for their services.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall adopt by rule a licensed Direct-entry midwife formulary which includes:

(a) those additional prescription drugs which may be obtained and administered by licensed Direct-entry midwives as defined in Subsection 58-77-102(7)(f)(xi); and

(b) standards, conditions, and guidelines for use of the prescription drugs included in the formulary.

Section 7. Section **58-77-203** is enacted to read:

**58-77-203. Licensed Direct-entry Midwife Temporary Rules Committee -- Rules recommendations.**

(1) The division shall establish a Licensed Direct-entry Midwife Temporary Rules Committee under this section to make recommendations to the board and division regarding the condition types listed in Subsection 58-77-601(2).

(2) The committee shall consist of the following six members appointed by the director of the division:

(a) three Direct-entry midwives;

(b) one licensed physician who has professional experience consulting for and collaborating with Direct-entry midwives;

(c) one certified nurse midwife who has professional experience consulting for and collaborating with Direct-entry midwives; and

(d) a licensed physician or certified nurse midwife who has practiced obstetrics or midwifery in an out-of-hospital setting.

(3) The director of the division shall appoint one of the three Direct-entry midwives to serve as committee chair.

(4) Committee members shall serve without compensation and may not receive travel costs or per diem for their services on the committee.

(5) Qualified committee members may also serve on the Licensed Direct-entry Midwife Formulary Committee and the Licensed Direct-entry Midwife Board established under this chapter.

(6) The director shall make appointments to the committee by July 1, 2005, and the committee shall cease to function after March 31, 2006.

(7) (a) The committee shall recommend rules under Subsection (1) based on convincing evidence presented to the committee.

(b) At least four members must vote in the affirmative on any recommendation made by the committee to the board or the division.

(c) If the committee is unable to complete its recommendations by March 31, 2006, it

shall develop a recommended plan of action which, along with its work product and responsibilities, shall be transferred to the board on April 1, 2006.

Section 8. Section **58-77-301** is enacted to read:

**Part 3. Licensure**

**58-77-301. Licensure.**

The division shall issue to a person who qualifies under this chapter a license as a licensed Direct-entry midwife.

Section 9. Section **58-77-302** is enacted to read:

**58-77-302. Qualifications for licensure.**

Each applicant for licensure as a licensed Direct-entry midwife shall:

- (1) submit an application in a form prescribed by the division;
- (2) pay a fee as determined by the department under Section 63-38-3.2;
- (3) be of good moral character;
- (4) hold a Certified Professional Midwife certificate in good standing with the North American Registry of Midwives or equivalent certification approved by the division in collaboration with the board;
- (5) hold current adult and infant CPR and newborn resuscitation certifications through an organization approved by the division in collaboration with the board; and
- (6) provide documentation of successful completion of an approved pharmacology course as defined by division rule.

Section 10. Section **58-77-303** is enacted to read:

**58-77-303. Term of license -- Expiration -- Renewal.**

- (1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule.
- (b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
- (2) Each license automatically expires on the expiration date shown on the license unless the individual renews it in accordance with Section 58-1-308.

(3) At the time of renewal, the licensed Direct-entry midwife shall be in current compliance with the requirements of Section 58-77-302.

Section 11. Section **58-77-304** is enacted to read:

**58-77-304. Parents' rights.**

Nothing in this chapter abridges, limits, or changes in any way the right of parents to deliver their baby where, when, how, and with whom they choose, regardless of licensure under this chapter.

Section 12. Section **58-77-401** is enacted to read:

**Part 4. Licensure Denial and Discipline**

**58-77-401. Grounds for denial of license -- Disciplinary proceedings.**

Grounds for refusing to issue a license to an applicant, for refusing to renew a license, for revoking, suspending, restricting, or placing on probation a license, for issuing a public or private reprimand, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Section 13. Section **58-77-501** is enacted to read:

**Part 5. Unlawful and Unprofessional Conduct -- Penalties**

**58-77-501. Unlawful conduct.**

(1) In addition to the definition in Subsection 58-1-501(1), "unlawful conduct" includes:

(a) representing or holding oneself out as a licensed Direct-entry midwife when not licensed under this chapter; and

(b) using prescription medications, except oxygen, while engaged in the practice of Direct-entry midwifery when not licensed under this chapter.

(2) (a) Except as provided in Subsections (1)(a) and (b), it is lawful to practice Direct-entry midwifery in the state without being licensed under this chapter.

(b) The practice of Direct-entry midwifery is not considered the practice of medicine, nursing, or nurse-midwifery.

Section 14. Section **58-77-502** is enacted to read:

**58-77-502. Unprofessional conduct.**

In addition to the definition in Subsection 58-1-501(2), "unprofessional conduct"

includes:

- (1) failing to obtain informed consent as described in Subsection 58-77-601(1);
- (2) disregarding a client's dignity or right to privacy as to her person, condition, possessions, or medical record;
- (3) failing to file or record any medical report as required by law, impeding, or obstructing the filing or recording of the report, or inducing another to fail to file or record the report;
- (4) breaching a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a client, unless ordered by the court;
- (5) inappropriately delegating Direct-entry midwifery duties;
- (6) using advertising or an identification statement that is false, misleading, or deceptive;
- (7) using in combination with the term "midwife" the term "nurse" or another title, initial, or designation that falsely implies that the Direct-entry midwife is licensed as a certified nurse midwife, registered nurse, or licensed practical nurse; and
- (8) submitting a birth certificate known by the person to be false or fraudulent.

Section 15. Section **58-77-503** is enacted to read:

**58-77-503. Penalty for unlawful conduct.**

A person who violates the unlawful conduct provisions defined in this chapter is guilty of a class A misdemeanor.

Section 16. Section **58-77-601** is enacted to read:

**Part 6. Standards of Practice**

**58-77-601. Standards of practice.**

- (1) (a) Prior to providing any services, a licensed Direct-entry midwife must obtain an informed consent from a client.
- (b) The consent must include:
  - (i) the name and license number of the Direct-entry midwife;
  - (ii) the client's name, address, telephone number, and primary care provider, if the client has one;

(iii) the fact, if true, that the licensed Direct-entry midwife is not a certified nurse midwife or a physician;

(iv) all sections required by the North American Registry of Midwives in its informed consent guidelines, including:

(A) a description of the licensed Direct-entry midwife's education, training, continuing education, and experience in midwifery;

(B) a description of the licensed Direct-entry midwife's peer review process;

(C) the licensed Direct-entry midwife's philosophy of practice;

(D) a promise to provide the client, upon request, separate documents describing the rules governing licensed Direct-entry midwifery practice, including a list of conditions indicating the need for consultation, collaboration, referral, transfer or mandatory transfer, and the licensed Direct-entry midwife's personal written practice guidelines;

(E) a medical back-up or transfer plan;

(F) a description of the services provided to the client by the licensed Direct-entry midwife;

(G) the licensed Direct-entry midwife's current legal status;

(H) the availability of a grievance process; and

(I) client and licensed Direct-entry midwife signatures and the date of signing; and

(v) whether the licensed Direct-entry midwife is covered by a professional liability insurance policy.

(2) A licensed Direct-entry midwife shall appropriately recommend and facilitate consultation with, collaboration with, referral to, or transfer or mandatory transfer of care to a licensed health care professional when the circumstances require that action in accordance with standards established by division rule.

(3) If after a client has been informed that she has or may have a condition indicating the need for medical consultation, collaboration, referral, or transfer and the client chooses to decline, then the licensed Direct-entry midwife shall:

(a) terminate care in accordance with procedures established by division rule; or

(b) continue to provide care for the client if the client signs a waiver of medical consultation, collaboration, referral, or transfer.

(4) If after a client has been informed that she has or may have a condition indicating the need for mandatory transfer, the licensed Direct-entry midwife shall, in accordance with procedures established by division rule, terminate the care or initiate transfer by:

- (a) calling 911 and reporting the need for immediate transfer;
- (b) immediately transporting the client by private vehicle to the receiving provider; or
- (c) contacting the physician to whom the client will be transferred and following that physician's orders.

(5) For the period from 2006 through 2011, a licensed Direct-entry midwife must submit outcome data to the Midwives' Alliance of North America's Division of Research on the form and in the manner prescribed by rule.

(6) This chapter does not mandate health insurance coverage for midwifery services.

Section 17. Section **58-77-602** is enacted to read:

**58-77-602. Immunity and liability.**

(1) If a Direct-entry midwife seeks to consult with, refer, or transfer a client to a licensed health care provider or facility, the responsibility of the provider or facility for the client does not begin until the client is physically within the care of the provider or facility.

(2) A licensed health care provider who examines a Direct-entry midwife's client is only liable for the actual examination and cannot be held accountable for the client's decision to pursue an out-of-hospital birth or the services of a Direct-entry midwife.

(3) (a) A licensed health care provider may, upon receiving a briefing data from a Direct-entry midwife, issue a medical order for the Direct-entry midwife's client, without that client being an explicit patient of the provider.

(b) Regardless of the advice given or order issued, the responsibility and liability for caring for the client is that of the Direct-entry midwife.

(c) The provider giving the order is responsible and liable only for the appropriateness of the order given the data received.



(d) The issuing of an order for a Direct-entry midwife's client does not constitute a delegation of duties from the other provider to the Direct-entry midwife.

(4) A licensed health care provider may not be held civilly liable for rendering emergency medical services that arise from prohibited conduct in Section 57-77-603, or from care rendered under a waiver as specified in Subsection 58-77-601(3)(b), unless the emergency medical services constitute gross negligence or reckless disregard for the client.

(5) A licensed Direct-entry midwife shall be solely responsible for the use of medications under this chapter.

Section 18. Section **58-77-603** is enacted to read:

**58-77-603. Prohibited practices.**

A Direct-entry midwife may not:

(1) administer a prescription drug to a client in a manner that violates this chapter;

(2) effect any type of surgical delivery except for the cutting of an emergency episiotomy;

(3) administer any type of epidural, spinal, or caudal anesthetic, or any type of narcotic analgesia;

(4) use forceps or a vacuum extractor;

(5) manually remove the placenta, except in an emergency that presents an immediate threat to the life of the client; or

(6) induce abortion.

Section 19. Section **78-14-3** is amended to read:

**78-14-3. Definitions.**

As used in this chapter:

(1) "Audiologist" means a person licensed to practice audiology under Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act.

(2) "Certified social worker" means a person licensed to practice as a certified social worker under Section 58-60-205.

(3) "Chiropractic physician" means a person licensed to practice chiropractic under Title

58, Chapter 73, Chiropractic Physician Practice Act.

(4) "Clinical social worker" means a person licensed to practice as a clinical social worker under Section 58-60-205.

(5) "Commissioner" means the commissioner of insurance as provided in Section 31A-2-102.

(6) "Dental hygienist" means a person licensed to practice dental hygiene as defined in Section 58-69-102.

(7) "Dentist" means a person licensed to practice dentistry as defined in Section 58-69-102.

(8) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(9) "Future damages" includes damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering of the judgment creditor.

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

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

(12) "Health care provider" includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, registered nurse, licensed practical nurse, nurse-midwife, licensed Direct-entry midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker,

social service worker, marriage and family counselor, practitioner of obstetrics, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of their employment.

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

(14) "Licensed Direct-entry midwife" means a person licensed under the Direct-entry Midwife Act to practice midwifery as defined in Section 58-77-102.

~~[(14)]~~ (15) "Licensed practical nurse" means a person licensed to practice as a licensed practical nurse as provided in Section 58-31b-301.

~~[(15)]~~ (16) "Malpractice action against a health care provider" means any action against a health care provider, whether in contract, tort, breach of warranty, wrongful death, or otherwise, based upon alleged personal injuries relating to or arising out of health care rendered or which should have been rendered by the health care provider.

~~[(16)]~~ (17) "Marriage and family therapist" means a person licensed to practice as a marriage therapist or family therapist under Sections 58-60-305 and 58-60-405.

~~[(17)]~~ (18) "Naturopathic physician" means a person licensed to practice naturopathy as defined in Section 58-71-102.

~~[(18)]~~ (19) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife under Section 58-44a-301.

~~[(19)]~~ (20) "Optometrist" means a person licensed to practice optometry under Title 58, Chapter 16a, Utah Optometry Practice Act.

~~[(20)]~~ (21) "Osteopathic physician" means a person licensed to practice osteopathy under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

~~[(21)]~~ (22) "Patient" means a person who is under the care of a health care provider, under a contract, express or implied.

~~[(22)]~~ (23) "Pharmacist" means a person licensed to practice pharmacy as provided in Section 58-17b-301.

~~[(23)]~~ (24) "Physical therapist" means a person licensed to practice physical therapy under Title 58, Chapter 24a, Physical Therapist Practice Act.

~~[(24)]~~ (25) "Physician" means a person licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act.

~~[(25)]~~ (26) "Podiatric physician" means a person licensed to practice podiatry under Title 58, Chapter 5a, Podiatric Physician Licensing Act.

~~[(26)]~~ (27) "Practitioner of obstetrics" means a person licensed to practice as a physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

~~[(27)]~~ (28) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to practice psychology as defined in Section 58-61-102.

~~[(28)]~~ (29) "Registered nurse" means a person licensed to practice professional nursing as provided in Section 58-31b-301.

~~[(29)]~~ (30) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact, or other legal agent of the patient.

~~[(30)]~~ (31) "Social service worker" means a person licensed to practice as a social service worker under Section 58-60-205.

~~[(31)]~~ (32) "Speech-language pathologist" means a person licensed to practice speech-language pathology under Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act.

~~[(32)]~~ (33) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another.