

1 **RESTRICTIONS ON USE OF PHYSICIAN**
2 **DISCLOSURES**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David L. Thomas**

6 House Sponsor: _____

7
8 **LONG TITLE**

9 **General Description:**

10 This bill provides admissibility standards for disclosures by health care providers in
11 malpractice actions.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ makes inadmissible statements of health care providers expressing regret, apology,
15 or condolences regarding medical treatment outcomes;
- 16 ▶ defines "relative" as blood relatives and includes relationships by adoption; and
- 17 ▶ defines "unanticipated outcome."

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **78-14-3**, as last amended by Chapter 299, Laws of Utah 2005

25 ENACTS:

26 **78-14-18**, Utah Code Annotated 1953



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

29 Section 1. Section **78-14-3** is amended to read:

30 **78-14-3. Definitions.**

31 As used in this chapter:

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

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

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

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

40 (5) "Commissioner" means the commissioner of insurance as provided in Section
41 31A-2-102.

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

44 (7) "Dentist" means a person licensed to practice dentistry as defined in Section
45 58-69-102.

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

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

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

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

58 (12) "Health care provider" includes any person, partnership, association, corporation,

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

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

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

73 (15) "Licensed practical nurse" means a person licensed to practice as a licensed
74 practical nurse as provided in Section 58-31b-301.

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

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

81 (18) "Naturopathic physician" means a person licensed to practice naturopathy as
82 defined in Section 58-71-102.

83 (19) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife
84 under Section 58-44a-301.

85 (20) "Optometrist" means a person licensed to practice optometry under Title 58,
86 Chapter 16a, Utah Optometry Practice Act.

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

89 (22) "Patient" means a person who is under the care of a health care provider, under a

90 contract, express or implied.

91 (23) "Pharmacist" means a person licensed to practice pharmacy as provided in Section
92 58-17b-301.

93 (24) "Physical therapist" means a person licensed to practice physical therapy under
94 Title 58, Chapter 24a, Physical Therapist Practice Act.

95 (25) "Physician" means a person licensed to practice medicine and surgery under Title
96 58, Chapter 67, Utah Medical Practice Act.

97 (26) "Podiatric physician" means a person licensed to practice podiatry under Title 58,
98 Chapter 5a, Podiatric Physician Licensing Act.

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

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

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

106 (30) "Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother,
107 child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes
108 relationships that are created as a result of adoption.

109 [~~30~~] (31) "Representative" means the spouse, parent, guardian, trustee,
110 attorney-in-fact, person designated to make decisions on behalf of a patient under a medical
111 power of attorney, or other legal agent of the patient.

112 [~~31~~] (32) "Social service worker" means a person licensed to practice as a social
113 service worker under Section 58-60-205.

114 [~~32~~] (33) "Speech-language pathologist" means a person licensed to practice
115 speech-language pathology under Title 58, Chapter 41, Speech-language Pathology and
116 Audiology Licensing Act.

117 [~~33~~] (34) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act
118 or omission proximately causing injury or damage to another.

119 (35) "Unanticipated outcome" means the outcome of a medical treatment or procedure
120 that differs from an expected result.

121 Section 2. Section **78-14-18** is enacted to read:

122 **78-14-18. Evidence of disclosures -- Civil proceedings -- Unanticipated outcomes**
123 **-- Medical care.**

124 In any civil action brought by a patient as an alleged victim of an unanticipated outcome
125 of medical care, or in any arbitration proceeding related to such civil action, any and all
126 statements, affirmations, gestures, or conduct expressing apology, fault, sympathy,
127 commiseration, condolence, compassion, or a general sense of benevolence which are made by
128 a health care provider or an employee of a health care provider to the alleged victim, a relative
129 of the alleged victim, or a representative of the alleged victim and which relate to the
130 discomfort, pain, suffering, injury, or death of the alleged victim as the result of the
131 unanticipated outcome of medical care shall be inadmissible as evidence of an admission of
132 liability or as evidence of an admission against interest.

Legislative Review Note

as of 11-22-05 6:56 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0041

Restrictions on Use of Physician Disclosures

14-Jan-06

7:26 PM

State Impact

No Fiscal Impact.

Individual and Business Impact

No anticipated fiscal impacts to individuals or businesses.

Office of the Legislative Fiscal Analyst