

Senator David L. Thomas proposes the following substitute bill:

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: Bradley G. Last

7 Cosponsors: D. Chris Buttras Parley G. Hellewell
8 Curtis S. Bramble Allen M. Christensen Michael G. Waddoups

9

10 **LONG TITLE**

11 **General Description:**

12 This bill provides admissibility standards for disclosures by health care providers in
13 malpractice actions.

14 **Highlighted Provisions:**

15 This bill:

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

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:



26 **78-14-3**, as last amended by Chapter 299, Laws of Utah 2005

27 ENACTS:

28 **78-14-18**, Utah Code Annotated 1953

29

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

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

32 **78-14-3. Definitions.**

33 As used in this chapter:

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

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

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

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

42 (5) "Commissioner" means the commissioner of insurance as provided in Section
43 31A-2-102.

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

46 (7) "Dentist" means a person licensed to practice dentistry as defined in Section
47 58-69-102.

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

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

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

56 (11) "Health care facility" means general acute hospitals, specialty hospitals, home

57 health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers,
58 ambulatory surgical facilities, small health care facilities, health care facilities owned or
59 operated by health maintenance organizations, and end stage renal disease facilities.

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

71 (13) "Hospital" means a public or private institution licensed under Title 26, Chapter
72 21, Health Care Facility Licensing and Inspection Act.

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

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

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

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

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

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

87 (20) "Optometrist" means a person licensed to practice optometry under Title 58,

88 Chapter 16a, Utah Optometry Practice Act.

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

91 (22) "Patient" means a person who is under the care of a health care provider, under a
92 contract, express or implied.

93 (23) "Pharmacist" means a person licensed to practice pharmacy as provided in Section
94 58-17b-301.

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

97 (25) "Physician" means a person licensed to practice medicine and surgery under Title
98 58, Chapter 67, Utah Medical Practice Act.

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

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

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

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

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

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

114 [~~31~~] (32) "Social service worker" means a person licensed to practice as a social
115 service worker under Section 58-60-205.

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

119 [~~(33)~~] (34) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act
120 or omission proximately causing injury or damage to another.

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

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

124 **78-14-18. Evidence of disclosures -- Civil proceedings -- Unanticipated outcomes**
125 **-- Medical care.**

126 (1) As used in this section:

127 (a) "Defendant" means the defendant in a malpractice action against a health care
128 provider.

129 (b) "Health care provider" includes an agent of a health care provider.

130 (c) "Patient" includes any person associated with the patient.

131 (2) In any civil action or arbitration proceeding relating to an unanticipated outcome of
132 medical care, any statement, affirmation, gesture, or conduct made to the patient by the
133 defendant shall be inadmissible as evidence of an admission against interest or of liability if it:

134 (a) expresses:

135 (i) apology, sympathy, commiseration, condolence, or compassion; or

136 (ii) a general sense of benevolence; or

137 (b) describes:

138 (i) the sequence of events relating to the unanticipated outcome of medical care;

139 (ii) the significance of events; or

140 (iii) both.

141 (3) Except as provided in Subsection (2), this section does not alter any other law or
142 rule that applies to the admissibility of evidence in a medical malpractice action.