

1 **PHYSICIAN ASSISTANTS AND PUBLIC**
2 **HEALTH AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Gregory S. Bell**

6 House Sponsor: Julie Fisher

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Division of Occupational and Professional Licensing Code to
11 include physician assistants in the list of health care professionals who can respond to
12 declared public health emergencies and who are included in the immunity from liability
13 provisions applicable to public health emergencies.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ amends the exemption from licensure provisions related to declared public health
17 emergencies to include physician assistants in the list of health care professionals
18 who can respond to the public health emergency under a modified scope of practice;
19 and
20 ▶ extends the liability protections for charity care to physician assistants.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **58-1-307**, as last amended by Chapters 71 and 153, Laws of Utah 2005



28 **58-13-3**, as last amended by Chapter 299, Laws of Utah 2005
29

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

31 Section 1. Section **58-1-307** is amended to read:

32 **58-1-307. Exemptions from licensure.**

33 (1) Except as otherwise provided by statute or rule, the following persons may engage
34 in the practice of their occupation or profession, subject to the stated circumstances and
35 limitations, without being licensed under this title:

36 (a) a person serving in the armed forces of the United States, the United States Public
37 Health Service, the United States Department of Veterans Affairs, or other federal agencies
38 while engaged in activities regulated under this chapter as a part of employment with that
39 federal agency if the person holds a valid license to practice a regulated occupation or
40 profession issued by any other state or jurisdiction recognized by the division;

41 (b) a student engaged in activities constituting the practice of a regulated occupation or
42 profession while in training in a recognized school approved by the division to the extent the
43 activities are supervised by qualified faculty, staff, or designee and the activities are a defined
44 part of the training program;

45 (c) an individual engaged in an internship, residency, preceptorship, postceptorship,
46 fellowship, apprenticeship, or on-the-job training program approved by the division while
47 under the supervision of qualified persons;

48 (d) an individual residing in another state and licensed to practice a regulated
49 occupation or profession in that state, who is called in for a consultation by an individual
50 licensed in this state, and the services provided are limited to that consultation;

51 (e) an individual who is invited by a recognized school, association, society, or other
52 body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a
53 regulated occupation or profession if the individual does not establish a place of business or
54 regularly engage in the practice of the regulated occupation or profession in this state;

55 (f) an individual licensed under the laws of this state, other than under this title, to
56 practice or engage in an occupation or profession, while engaged in the lawful, professional,
57 and competent practice of that occupation or profession;

58 (g) an individual licensed in a health care profession in another state who performs that

59 profession while attending to the immediate needs of a patient for a reasonable period during
60 which the patient is being transported from outside of this state, into this state, or through this
61 state;

62 (h) an individual licensed in another state or country who is in this state temporarily to
63 attend to the needs of an athletic team or group, except that the practitioner may only attend to
64 the needs of the athletic team or group, including all individuals who travel with the team or
65 group in any capacity except as a spectator;

66 (i) an individual licensed and in good standing in another state, who is in this state:

67 (i) temporarily, under the invitation and control of a sponsoring entity;

68 (ii) for a reason associated with a special purpose event, based upon needs that may
69 exceed the ability of this state to address through its licensees, as determined by the division;
70 and

71 (iii) for a limited period of time not to exceed the duration of that event, together with
72 any necessary preparatory and conclusionary periods;

73 (j) an individual who:

74 (i) is certified as an athletic trainer by the National Athletic Trainers Association Board
75 of Certification or another entity approved by the division;

76 (ii) is employed or officially associated with an educational institution, a professional
77 sports organization, or a bona fide amateur sports organization; and

78 (iii) only provides athletic training services:

79 (A) to athletes of the educational institution or sports organization to which the
80 individual is employed or officially associated;

81 (B) at an official athletic training, practice, or competition site; and

82 (C) that are within the scope of the individual's certification; and

83 (k) a law enforcement officer, as defined under Section 53-13-103, who:

84 (i) is operating a voice stress analyzer in the course of the officer's full-time
85 employment with a federal, state, or local law enforcement agency;

86 (ii) has completed the manufacturer's training course and is certified by the
87 manufacturer to operate that voice stress analyzer; and

88 (iii) is operating the voice stress analyzer in accordance with Section 58-64-601,
89 regarding deception detection instruments.

90 (2) A practitioner temporarily in this state who is exempted from licensure under
91 Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the
92 practitioner derives authority to practice. Violation of any limitation imposed by this section
93 constitutes grounds for removal of exempt status, denial of license, or other disciplinary
94 proceedings.

95 (3) An individual who is licensed under a specific chapter of this title to practice or
96 engage in an occupation or profession may engage in the lawful, professional, and competent
97 practice of that occupation or profession without additional licensure under other chapters of
98 this title, except as otherwise provided by this title.

99 (4) Upon the declaration of a national, state, or local emergency, a public health
100 emergency as defined in Section 26-23b-102, or a declaration by the President of the United
101 States or other federal official requesting public health-related activities, the division in
102 collaboration with the board may:

103 (a) suspend the requirements for permanent or temporary licensure of persons who are
104 licensed in another state. Persons exempt under this Subsection (4)(a) shall be exempt from
105 licensure for the duration of the emergency while engaged in the scope of practice for which
106 they are licensed in the other state;

107 (b) modify, under the circumstances described in this Subsection (4) and Subsection
108 (5), the scope of practice restrictions under this title for persons who are licensed under this
109 title as:

110 (i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah
111 Osteopathic Medical Practice Act;

112 (ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31c, Nurse Licensure
113 Compact;

114 (iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;

115 (iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter 17b,
116 Pharmacy Practice Act;

117 (v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act; ~~and~~

118 (vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist
119 Practice Act; and

120 (vii) a physician assistant under Chapter 70a, Physician Assistant Act;

121 (c) suspend the requirements for licensure under this title and modify the scope of
122 practice in the circumstances described in this Subsection (4) and Subsection (5) for medical
123 services personnel or paramedics required to be certified under Section 26-8a-302;

124 (d) suspend requirements in Subsections 58-17b-620(3) through (6) which require
125 certain prescriptive procedures; and

126 (e) exempt or modify the requirement for licensure of a person who is activated as a
127 member of a medical reserve corps during a time of emergency as provided in Section
128 26A-1-126.

129 (5) Persons exempt under Subsection (4)(c) and persons operating under modified
130 scope of practice provisions under Subsection (4)(b):

131 (a) shall be exempt from licensure or subject to modified scope of practice for the
132 duration of the emergency;

133 (b) must be engaged in the distribution of medicines or medical devices in response to
134 the emergency or declaration; and

135 (c) must be employed by or volunteering for a local or state department of health.

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

137 **58-13-3. Qualified immunity -- Health professionals -- Charity care.**

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

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

145 (b) The Legislature therefore declares that its intention in enacting this section is to
146 encourage the provision of uncompensated volunteer charity health care in exchange for a
147 limitation on liability for the health care facilities and health care professionals who provide
148 those volunteer services.

149 (2) As used in this section:

150 (a) "Health care facility" means any clinic or hospital, church, or organization whose
151 primary purpose is to sponsor, promote, or organize uncompensated health care services for

152 people unable to pay for health care services.

153 (b) "Health care professional" means individuals licensed under Title 58, Occupations
154 and Professions, as physicians and surgeons, osteopaths, physician assistants, podiatrists,
155 optometrists, chiropractors, dentists, dental hygienists, registered nurses, certified nurse
156 midwives, other nurses licensed under Section 58-31b-301, and licensed Direct-entry
157 midwives.

158 (c) "Remuneration or compensation":

159 (i) (A) means direct or indirect receipt of any payment by the physician and surgeon,
160 health care facility, other health care professional, or organization, on behalf of the patient,
161 including payment or reimbursement under medicare or medicaid, or under the state program
162 for the medically indigent on behalf of the patient; and

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

166 (ii) does not mean any grant or donation to the health care facility used to offset direct
167 costs associated with providing the uncompensated health care such as medical supplies or
168 drugs.

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

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

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

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

177 (d) prior to rendering services, the health care professional disclosed in writing to the
178 patient, or if a minor, to the patient's parent or legal guardian, that the health care professional
179 is providing the services without receiving remuneration or compensation and that in exchange
180 for receiving uncompensated health care, the patient consents to waive any right to sue for
181 professional negligence except for acts or omissions which are grossly negligent or are willful
182 and wanton.

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

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

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

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

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

Legislative Review Note

as of 12-9-05 2:22 PM

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