

28           **(b) Evidence of unsworn statements, affirmations, gestures, or conduct ~~H~~→ **made to a****  
 28a **patient or a person associated with the patient by a defendant ~~←H~~** that expresses  
 29 **the following is not admissible in a malpractice action against a health care provider or an**  
 30 **employee of a health care provider to prove liability for an injury:**

31           **(1) apology, sympathy, commiseration, condolence, compassion, or general sense of**  
 32 **benevolence[;]; or [describe]**

33           **(2) a description of the sequence of events relating to the unanticipated outcome of**  
 34 **medical care or the significance of events [or both are not admissible against a health care**  
 35 **provider or an employee of a health care provider to prove liability for an injury].**

36           **Section 2. Legislative note.**

37           **It is the intent of the Legislature that when the Court Rules are compiled and printed the**  
 38 **following language be added as a Legislative Note.**

39           **"In 2010 the Utah Legislature amended Rule 409 by a two-thirds vote in both houses**  
 40 **adding paragraph (b) and making related changes. In 2011 the Legislature further amended the**  
 41 **rule by a two-thirds vote in both houses to make it follow more closely Utah Code Ann. Sec.**  
 42 **78B-3-422.**

43           **The intent and purpose of amending the rule with paragraph (b) is to encourage**  
 44 **expressions of apology, empathy, and condolence and the disclosure of facts and circumstances**  
 45 **related to unanticipated outcomes in the provision of health care in an effort to facilitate the**  
 46 **timely and satisfactory resolution of patient concerns arising from unanticipated outcomes in**  
 47 **the provision of health care. ~~H~~→ **Patient records are not statements made to patients, and****  
 47a **therefore are not inadmissible under this rule. ~~←H~~ "**

48           **Section 3. Effective date.**

49           **This resolution takes effect upon approval by a constitutional two-thirds vote of all**  
 50 **members elected to each house.**

**Legislative Review Note**

**as of 2-15-11 10:25 AM**

**Office of Legislative Research and General Counsel**