

**JOINT RESOLUTION TO AMEND RULE OF EVIDENCE**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: Ralph Okerlund

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**LONG TITLE**

**General Description:**

This joint resolution amends Utah Rule of Evidence, Rule 409 regarding expressions of apology by health care professionals and employees.

**Highlighted Provisions:**

This resolution:

► amends Utah Rule of Evidence, Rule 409 regarding expressions of apology by health care professionals and employees.

**Special Clauses:**

This resolution provides an immediate effective date.

**Utah Rules of Evidence Affected:**

AMENDS:

**Rule 409**, Utah Rules of Evidence

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*Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:*

Section 1. **Rule 409**, Utah Rules of Evidence is amended to read:

**Rule 409. Payment of medical and similar expenses; expressions of apology.**

(a) Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

~~[(b) Statements, expressions, or conduct that express]~~



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**

# FISCAL NOTE

H.J.R. 38

SHORT TITLE: **Joint Resolution to Amend Rule of Evidence**

SPONSOR: **Dunnigan, J.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.