

121 party will call and witnesses the party may call;

122 (a) (5) (A) (ii) the name of witnesses whose testimony is expected to be presented by  
123 transcript of a deposition and a copy of the transcript with the proposed testimony designated;  
124 and

125 (a) (5) (A) (iii) a copy of each exhibit, including charts, summaries and demonstrative  
126 exhibits, unless solely for impeachment, separately identifying those which the party will offer  
127 and those which the party may offer.

128 (a) (5) (B) Disclosure required by paragraph (a)(5) shall be made at least 28 days  
129 before trial. At least 14 days before trial, a party shall serve and file counter designations of  
130 deposition testimony, objections and grounds for the objections to the use of a deposition and  
131 to the admissibility of exhibits. Other than objections under Rules 402 and 403 of the Utah  
132 Rules of Evidence, objections not listed are waived unless excused by the court for good cause.

133 (b) Discovery scope.

134 (b) (1) In general. Parties may discover any matter, not privileged, which is relevant to  
135 the claim or defense of any party if the discovery satisfies the standards of proportionality set  
136 forth below. Privileged matters that are not discoverable or admissible in any proceeding of  
137 any kind or character include all information in any form provided ~~to~~ during ~~and~~  
137a ~~relating to~~ created specifically as part of a request for an investigation ~~the~~  
138 investigation, findings, or conclusions of ~~peer review, care review, or quality assurance~~  
138a processes of ~~any organization of health care providers as defined~~  
139 in the Utah Health Care Malpractice Act for the purpose of evaluating care provided to reduce  
140 morbidity and mortality or to improve the quality of medical care, or for the purpose of peer  
141 review of the ethics, competence, or professional conduct of any health care provider.

142 (b) (2) Proportionality. Discovery and discovery requests are proportional if:

143 (b) (2) (A) the discovery is reasonable, considering the needs of the case, the amount in  
144 controversy, the complexity of the case, the parties' resources, the importance of the issues, and  
145 the importance of the discovery in resolving the issues;

146 (b) (2) (B) the likely benefits of the proposed discovery outweigh the burden or  
147 expense;

148 (b) (2) (C) the discovery is consistent with the overall case management and will  
149 further the just, speedy and inexpensive determination of the case;

150 (b) (2) (D) the discovery is not unreasonably cumulative or duplicative;

151 (b) (2) (E) the information cannot be obtained from another source that is more

288 It is the intent of the Legislature that when the Court Rules are compiled and printed,  
 289 the following language be added as a Legislative Note.

290 **"Legislative Note.**

291 (1) The amended language in paragraph (b)(1) is intended to incorporate long-standing  
 292 protections against discovery and admission into evidence of privileged matters connected to  
 293 medical care review and peer review into the Utah Rules of Civil Procedure. These privileges,  
 294 found in both Utah common law and statute, include Sections 26-25-3, 58-13-4, and 58-13-5,  
 295 UCA, 1953. **§→ The language is intended to ensure the confidentiality of peer review, care**  
 295a **review, and quality assurance processes and to ensure that the privilege is limited only to**  
 295b **documents and information created specifically as part of the processes. It does not extend to**  
 295c **knowledge gained or documents created outside or independent of the processes. The language**  
 295d **is not intended to limit the court's existing ability, if it chooses, to review contested documents**  
 295e **in camera in order to determine whether the documents fall within the privilege. The language**  
 295f **is not intended to alter any existing law, rule, or regulation relating to the confidentiality,**  
 295g **admissibility, or disclosure of proceedings before the Utah Division of Occupational and**  
 295h **Professional Licensing. ←§ The Legislature intends that these privileges apply to all pending and**  
 295i future  
 296 proceedings governed by court rules, including administrative proceedings regarding licensing  
 297 and reimbursement.

298 (2) The Legislature does not intend that the amendments to this rule be construed to  
 299 change or alter a final order concerning discovery matters entered on or before the effective  
 300 date of this amendment.

301 (3) The Legislature intends to give the greatest effect to its amendment, as legally  
 302 permissible, in matters that are pending on or may arise after the effective date of this  
 303 amendment, without regard to when the case was filed."

304 **Section 3. Effective date.**

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

**Legislative Review Note**  
 as of 2-21-12 8:20 AM

**Office of Legislative Research and General Counsel**