

MEDICAL MALPRACTICE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dean Sanpei

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends medical malpractice action or arbitration proceedings.

Highlighted Provisions:

This bill:

► provides that a certificate of compliance must be issued for a health care provider or health care entity to allocate fault in a pre-litigation medical malpractice or arbitration hearing; and

► requires that evidence from a medical review panel remain unreportable to a health care facility or health insurance plan.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-3-418, as last amended by Laws of Utah 2010, Chapter 97

78B-3-419, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section **78B-3-418** is amended to read:



28 **78B-3-418. Decision and recommendations of panel -- No judicial or other review.**

29 (1) (a) The panel shall issue an opinion and the division shall issue a certificate of
30 compliance with the pre-litigation hearing requirements of this part in accordance with this
31 section.

32 (b) A certificate of compliance issued in accordance with this section is proof that the
33 claimant has complied with all conditions precedent under this part prior to the commencement
34 of litigation as required in Subsection 78B-3-412(1).

35 (c) (i) A party in a medical malpractice action or arbitration hearing may not attempt to
36 allocate fault to any health care provider or health care entity unless a certificate of compliance
37 has been issued in accordance with this section for that specific, individual health care
38 provider. A health care provider, or health care provider exempted from the requirement of a
39 pre-litigation hearing by statute or an arbitration agreement, may nevertheless be joined in a
40 pre-litigation hearing to satisfy the requirements of this section. Participation in a pre-litigation
41 hearing may not waive any right to enforce an arbitration agreement.

42 (ii) The party making the claim against, or seeking to allocate fault to, a health care
43 provider or health care entity is required to seek and obtain the certificate of compliance
44 required by this section.

45 (2) (a) The panel shall render its opinion in writing not later than 30 days after the end
46 of the proceedings, and determine on the basis of the evidence whether:

- 47 (i) each claim against each health care provider has merit or has no merit; and
- 48 (ii) if a claim is meritorious, whether the conduct complained of resulted in harm to the
49 claimant.

50 (b) There is no judicial or other review or appeal of the panel's decision or
51 recommendations.

52 (3) The division shall issue a certificate of compliance to the claimant, for each
53 respondent named in the intent to file a claim under this part, if:

54 (a) for a named respondent, the panel issues an opinion of merit under Subsections
55 (2)(a)(i) and (ii);

56 (b) for a named respondent, the claimant files an affidavit of merit in accordance with
57 Section 78B-3-423 if the opinion under Subsection (1)(a) is non-meritorious under either
58 Subsection (2)(a)(i) or (ii);

59 (c) the claimant has complied with the provisions of Subsections 78B-3-416(3)(c) and
60 (d); or

61 (d) the parties submitted a stipulation under Subsection 78B-3-416(3)(d).

62 Section 2. Section **78B-3-419** is amended to read:

63 **78B-3-419. Evidence of proceedings not admissible in subsequent action --**
64 **Panelist may not be compelled to testify -- Immunity of panelist from civil liability --**
65 **Information regarding professional conduct.**

66 (1) Evidence of the proceedings conducted by the medical review panel and its results,
67 opinions, findings, and determinations are not admissible as evidence in [~~an action~~] any civil
68 action or arbitration proceeding subsequently brought by the claimant [~~in a court of competent~~
69 ~~jurisdiction~~] against any respondent and are not reportable to any health care facility or health
70 care insurance plan as a part of any credentialing process.

71 (2) No panelist may be compelled to testify in a civil action subsequently filed with
72 regard to the subject matter of the panel's review. A panelist has immunity from civil liability
73 arising from participation as a panelist and for all communications, findings, opinions, and
74 conclusions made in the course and scope of duties prescribed by this section.

75 (3) Nothing in this chapter may be interpreted to prohibit the division from considering
76 any information contained in a statutory notice of intent to commence action, request for
77 prelitigation panel review, or written findings of a panel with respect to the division's
78 determining whether a licensee engaged in unprofessional or unlawful conduct.

Legislative Review Note
as of 2-11-13 4:43 PM

Office of Legislative Research and General Counsel