

1 **JOINT RESOLUTION TO AMEND RULE OF EVIDENCE**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ken Ivory**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This joint resolution amends the Utah Rules of Evidence, Rule 409, regarding
10 expressions of sympathy and compassion by a nonprofit entity.

11 **Highlighted Provisions:**

12 This resolution:

- 13 ▶ defines terms;
- 14 ▶ amends Utah Rules of Evidence, Rule 409, for expressions of apology; and
- 15 ▶ makes technical and conforming changes.

16 **Special Clauses:**

17 This resolution provides a special effective date.

18 **Utah Rules of Evidence Affected:**

19 AMENDS:

20 **Rule 409**, Utah Rules of Evidence

21

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

24 As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend
25 rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of
26 all members of both houses of the Legislature:

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



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

30 (a) Definitions.

31 (a) (1) "Compassionate care" means to give aid or service to meet the needs of an
32 injured individual.

33 (a) (2) "Injured individual" means:

34 (a) (2) (A) an individual injured because of negligence or other cause; or

35 (a) (2) (B) an individual representing an individual described in paragraph (a)(1)(A).

36 (a) (3) "Nonprofit entity" means:

37 (a) (3) (A) an entity that is:

38 (a) (3) (A) (i) a benevolent, educational, voluntary health, philanthropic, humane,
39 patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental
40 or conservation, or civic organization;

41 (a) (3) (A) (ii) for the benefit of a public safety, law enforcement, or firefighter
42 fraternal association;

43 (a) (3) (A) (iii) established for a charitable purpose; or

44 (a) (3) (A) (iv) tax exempt under Internal Revenue Code, Section 501(c)(3); or

45 (a) (3) (B) an individual representing an entity described in paragraph (a)(2)(A).

46 [(a)] (b) **Payments of Medical and Similar Expenses.** Evidence of furnishing,
47 promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an
48 injury is not admissible to prove liability for the injury.

49 [(b)] (c) **Expressions of Apology.** Evidence of unsworn statements, affirmations,
50 gestures, or conduct made to a patient or a person associated with the patient by a defendant
51 that expresses the following is not admissible in a malpractice action against a health care
52 provider or an employee of a health care provider to prove liability for an injury[;]:

53 (c) (1) apology, sympathy, commiseration, condolence, compassion, or general sense
54 of benevolence; or

55 (c) (2) a description of the sequence of events relating to the unanticipated outcome of
56 medical care or the significance of events.

57 (d) **Expressions of Compassion by Nonprofit Entities.** In a civil action or arbitration
58 proceeding relating to an issue of negligence, injury, or the mitigation of damages, any

59 unsworn statement, affirmation, gesture, or conduct made to an injured individual or the
60 injured individual's family by a nonprofit entity is inadmissible as evidence of the issue of
61 negligence, injury, or the mitigation of damages if the unsworn statement, affirmation, gesture,
62 or conduct:

63 (d) (1) expresses:

64 (d) (1) (A) sympathy, commiseration, condolence, or compassion; or

65 (d) (1) (B) a general sense of benevolence;

66 (d) (2) demonstrates an act of compassionate care; or

67 (d) (3) is a description of the following, if made in connection with an unsworn
68 statement, affirmation, gesture, or conduct described in Subsection (d)(1) or (d)(2):

69 (d) (3) (A) the sequence of events relating to the facts regarding the issue of
70 negligence, injury, or the mitigation of damages; or

71 (d) (3) (B) the significance of events.

72 **Section 2. Legislative note.**

73 It is the intent of the Legislature that when the Court Rules are compiled and printed,
74 the Legislative Note is amended as follows:

75 "In 2010, the Utah Legislature amended Rule 409 by a two-thirds vote in both houses,
76 adding paragraph [(b)] (c) and making related changes. In 2011, the Legislature further
77 amended the rule by a two-thirds vote in both houses to make it follow more closely Utah Code
78 Ann. Sec. [78B-3-422](#). In 2019, the Legislature amended Rule 409 by a two-thirds vote in both
79 houses, adding paragraphs (a) and (d).

80 The intent and purpose of amending the rule with paragraph [(b)] (c) is to encourage
81 expressions of apology, empathy, and condolence and the disclosure of facts and circumstances
82 related to unanticipated outcomes in the provision of health care in an effort to facilitate the
83 timely and satisfactory resolution of patient concerns arising from unanticipated outcomes in
84 the provision of health care. Patient records are not statements made to patients, and therefore
85 are not inadmissible under this rule.

86 The intent and purpose of amending the rule with paragraph (d) is to encourage
87 expressions of apology, sympathy, commiseration, condolence, and compassion, a general
88 sense of benevolence, and the disclosure of facts and circumstances by nonprofit entities in an
89 effort to facilitate helping meet the needs of an injured individual.

90 Section 3. **Contingent effective date.**

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