

1                   **CONSENT FOR MEDICAL PROCEDURE AMENDMENTS**

2                                   2019 GENERAL SESSION

3                                   STATE OF UTAH

4                           **Chief Sponsor: Daniel McCay**

5                           House Sponsor: \_\_\_\_\_

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7   **LONG TITLE**

8   **General Description:**

9           This bill enacts provisions relating to certain patient examinations.

10 **Highlighted Provisions:**

11       This bill:

- 12           ▶ creates requirements for certain examinations on an unconscious or anesthetized  
13 patient;
- 14           ▶ amends provisions relating to informed consent for health care procedures; and
- 15           ▶ makes technical changes.

16 **Money Appropriated in this Bill:**

17       None

18 **Other Special Clauses:**

19       None

20 **Utah Code Sections Affected:**

21 AMENDS:

22           **26-8a-503**, as last amended by Laws of Utah 2017, Chapter 326

23           **78B-3-406**, as last amended by Laws of Utah 2017, Chapter 113

24 ENACTS:

25           **58-1-509**, Utah Code Annotated 1953

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



28 Section 1. Section **26-8a-503** is amended to read:

29 **26-8a-503. Discipline of emergency medical services personnel.**

30 (1) The department may refuse to issue a license or renewal, or revoke, suspend,  
31 restrict, or place on probation an individual's license if:

32 (a) the individual does not meet the qualifications for licensure under Section  
33 [26-8a-302](#);

34 (b) the individual has engaged in conduct, as defined by committee rule, that:

35 (i) is unprofessional;

36 (ii) is adverse to the public health, safety, morals, or welfare; or

37 (iii) would adversely affect public trust in the emergency medical service system;

38 (c) the individual has violated Section [26-8a-502](#) or other provision of this chapter;

39 (d) the individual has violated Section [58-1-509](#);

40 [~~(d)~~] (e) a court of competent jurisdiction has determined the individual to be mentally  
41 incompetent for any reason; or

42 [~~(e)~~] (f) the individual is unable to provide emergency medical services with reasonable  
43 skill and safety because of illness, drunkenness, use of drugs, narcotics, chemicals, or any other  
44 type of material, or as a result of any other mental or physical condition, when the individual's  
45 condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers,  
46 or the public health, safety, or welfare that cannot be reasonably mitigated.

47 (2) (a) An action to revoke, suspend, restrict, or place a license on probation shall be  
48 done in:

49 (i) consultation with the peer review board created in Section [26-8a-105](#); and

50 (ii) accordance with Title 63G, Chapter 4, Administrative Procedures Act.

51 (b) Notwithstanding Subsection (2)(a), the department may issue a cease and desist  
52 order under Section [26-8a-507](#) to immediately suspend an individual's license pending an  
53 administrative proceeding to be held within 30 days if there is evidence to show that the  
54 individual poses a clear, immediate, and unjustifiable threat or potential threat to the public  
55 health, safety, or welfare.

56 (3) An individual whose license has been suspended, revoked, or restricted may apply  
57 for reinstatement of the license at reasonable intervals and upon compliance with any  
58 conditions imposed upon the license by statute, committee rule, or the terms of the suspension,

59 revocation, or restriction.

60 (4) In addition to taking disciplinary action under Subsection (1), the department may  
61 impose sanctions in accordance with Section [26-23-6](#).

62 Section 2. Section **58-1-509** is enacted to read:

63 **58-1-509. Patient consent for certain medical examinations.**

64 (1) As used in this section:

65 (a) "Health care provider" means:

66 (i) an individual who is:

67 (A) a healthcare provider as defined in Section [78B-3-403](#); and

68 (B) licensed under this title;

69 (ii) emergency medical service personnel as defined in Section [26-8a-102](#); or

70 (iii) an individual described in Subsection [58-1-307\(1\)\(b\)](#) or (c).

71 (b) "Patient examination" means a medical examination that requires contact with the  
72 patient's sexual organs.

73 (2) A health care provider may not perform a patient examination on an anesthetized or  
74 unconscious patient unless:

75 (a) the health care provider obtains consent from the patient in accordance with  
76 Subsection (3);

77 (b) the performance of the patient examination is within the scope of care for a surgical  
78 procedure or diagnostic examination scheduled to be performed on the patient; or

79 (c) the patient examination is immediately necessary for diagnosis or treatment of the  
80 patient.

81 (3) To obtain consent to perform a patient examination on an anesthetized or  
82 unconscious patient, before performing the patient examination, the health care provider shall:

83 (a) provide the patient with a written document that:

84 (i) is provided separately from any other notice or agreement;

85 (ii) specifies the nature and purpose of the patient examination;

86 (iii) names each health care provider that the patient authorizes to perform the patient  
87 examination;

88 (iv) names each health care provider that the patient authorizes to observe or to  
89 otherwise be present at the patient examination, either in person or via electronic means;

- 90 (v) provides the patient with a series of checkboxes that allow the patient to:
- 91 (A) refuse to consent to the patient examination;
- 92 (B) consent to the patient examination, but limit the list of health care providers
- 93 identified in the written document; or
- 94 (C) consent to the patient examination as described in the written document; and
- 95 (vi) allows the patient to indicate that the patient would like to meet with the health
- 96 care provider before the examination;
- 97 (b) obtain the patient's or the patient's representative's signature on the written
- 98 document while witnessed by a third party;
- 99 (c) sign the written document; and
- 100 (d) if the patient requests a meeting with a health care provider before the patient
- 101 examination, sign the written document affirming that the health care provider met with the
- 102 patient in accordance with the request.

- 103 (4) If a health care provider performs a patient examination on an anesthetized or
- 104 unconscious patient, the health care provider:
- 105 (a) may not charge for the patient examination; and
- 106 (b) shall discuss with the patient or the patient's representative the findings and any
- 107 recommendations resulting from the patient examination.

108 Section 3. Section **78B-3-406** is amended to read:

109 **78B-3-406. Failure to obtain informed consent -- Proof required of patient --**  
 110 **Defenses -- Consent to health care.**

111 (1) (a) When a person submits to health care rendered by a health care provider, it is  
 112 presumed that actions taken by the health care provider are either expressly or impliedly  
 113 authorized to be done.

114 (b) For a patient to recover damages from a health care provider in an action based  
 115 upon the provider's failure to obtain informed consent, the patient must prove the following:

- 116 [~~(a)~~] (i) that a provider-patient relationship existed between the patient and health care  
 117 provider;
- 118 [~~(b)~~] (ii) the health care provider rendered health care to the patient;
- 119 [~~(c)~~] (iii) the patient suffered personal injuries arising out of the health care rendered;
- 120 [~~(d)~~] (iv) the health care rendered carried with it a substantial and significant risk of

121 causing the patient serious harm;

122       ~~[(e)]~~ (v) the patient was not informed of the substantial and significant risk;

123       ~~[(f)]~~ (vi) a reasonable, prudent person in the patient's position would not have

124 consented to the health care rendered after having been fully informed as to all facts relevant to  
125 the decision to give consent; and

126       ~~[(g)]~~ (vii) the unauthorized part of the health care rendered was the proximate cause of  
127 personal injuries suffered by the patient.

128       (2) In determining what a reasonable, prudent person in the patient's position would do  
129 under the circumstances, the finder of fact shall use the viewpoint of the patient before health  
130 care was provided and before the occurrence of any personal injuries alleged to have arisen  
131 from said health care.

132       (3) It shall be a defense to any malpractice action against a health care provider based  
133 upon alleged failure to obtain informed consent if:

134       (a) the risk of the serious harm which the patient actually suffered was relatively  
135 minor;

136       (b) the risk of serious harm to the patient from the health care provider was commonly  
137 known to the public;

138       (c) the patient stated, prior to receiving the health care complained of, that he would  
139 accept the health care involved regardless of the risk; or that he did not want to be informed of  
140 the matters to which he would be entitled to be informed;

141       (d) the health care provider, after considering all of the attendant facts and  
142 circumstances, used reasonable discretion as to the manner and extent to which risks were  
143 disclosed, if the health care provider reasonably believed that additional disclosures could be  
144 expected to have a substantial and adverse effect on the patient's condition; or

145       (e) the patient or ~~[his]~~ the patient's representative executed a written consent which sets  
146 forth the nature and purpose of the intended health care and which contains a declaration that  
147 the patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired  
148 beneficial results of health care and which acknowledges that health care providers involved  
149 have explained ~~[his]~~ the patient's condition and the proposed health care in a satisfactory  
150 manner and that all questions asked about the health care and its attendant risks have been  
151 answered in a manner satisfactory to the patient or ~~[his]~~ the patient's representative.

152 (4) The written consent shall be a defense to an action against a health care provider  
153 based upon failure to obtain informed consent unless the patient proves that the person giving  
154 the consent lacked capacity to consent or shows by clear and convincing evidence that the  
155 execution of the written consent was induced by the defendant's affirmative acts of fraudulent  
156 misrepresentation or fraudulent omission to state material facts.

157 (5) This act may not be construed to prevent any person 18 years of age or over from  
158 refusing to consent to health care for ~~his~~ the patient's own person upon personal or religious  
159 grounds.

160 (6) Except as provided in Section [76-7-304.5](#), the following persons are authorized and  
161 empowered to consent to any health care not prohibited by law:

162 (a) any parent, whether an adult or a minor, for the parent's minor child;

163 (b) any married person, for a spouse;

164 (c) any person temporarily standing in loco parentis, whether formally serving or not,  
165 for the minor under that person's care and any guardian for the guardian's ward;

166 (d) any person 18 years of age or over for that person's parent who is unable by reason  
167 of age, physical or mental condition, to provide such consent;

168 (e) any patient 18 years of age or over;

169 (f) any female regardless of age or marital status, when given in connection with her  
170 pregnancy or childbirth;

171 (g) in the absence of a parent, any adult for the adult's minor brother or sister;

172 (h) in the absence of a parent, any grandparent for the grandparent's minor grandchild;

173 (i) an emancipated minor as provided in Section [78A-6-805](#);

174 (j) a minor who has contracted a lawful marriage; and

175 (k) an unaccompanied homeless minor, as that term is defined in the McKinney-Vento  
176 Homeless Assistance Act of 1987, Pub. L. 100-77, as amended, who is 15 years of age or older.

177 (7) A person who in good faith consents or authorizes health care treatment or  
178 procedures for another as provided by this act may not be subject to civil liability.

179 (8) Notwithstanding any other provision of this section, if a health care provider fails to  
180 comply with the requirement in Section [58-67-809](#) or [58-68-809](#), the health care provider is  
181 presumed to have lacked informed consent with respect to the patient examination, as defined  
182 in Section [58-67-809](#) or [58-68-809](#).