

SB0188S01 compared with SB0188

~~deleted text~~ shows text that was in SB0188 but was deleted in SB0188S01.

Inserted text shows text that was not in SB0188 but was inserted into SB0188S01.

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Senator Daniel McCay proposes the following substitute bill:

CONSENT FOR MEDICAL PROCEDURE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

House Sponsor: _____

Cosponsor:

Deidre M. Henderson

LONG TITLE

General Description:

This bill enacts provisions relating to certain patient examinations.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

58-1-509, Utah Code Annotated 1953

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

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

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

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

(a) the individual does not meet the qualifications for licensure under Section 26-8a-302;

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

(i) is unprofessional;

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

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

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

(d) the individual has violated Section 58-1-509;

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

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

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

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- (i) consultation with the peer review board created in Section 26-8a-105; and
- (ii) accordance with Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

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

(1) As used in this section:

(a) "Health care provider" means:

(i) an individual who is:

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

(B) licensed under this title;

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

(iii) an individual described in Subsection 58-1-307(1)(b) or (c).

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

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

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

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

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

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patient.

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

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

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

(ii) contains the following heading printed at the top of the document in not smaller than 18-point bold face type: "CONSENT FOR EXAMINATION OF PELVIC REGION";

(~~iii~~) specifies the nature and purpose of the patient examination;

(~~iii~~) iv) names ~~each~~ the primary health care provider that the patient authorizes to perform the patient examination;

(~~iv~~) v) ~~names each health care provider~~ states whether there may be a student or resident that the patient authorizes to:

(A) perform an additional patient examination; or

(B) observe or ~~to~~ otherwise be present at the patient examination, either in person or ~~via~~ through electronic means; and

(~~v~~) vi) provides the patient with a series of ~~checkboxes~~ check boxes that allow the patient to:

(A) ~~refuse to~~ consent to the patient examination for diagnosis or treatment and an additional patient examination performed by a student or resident for an educational or training purpose;

(B) consent to the patient examination ~~, but limit the list of health care providers identified in the written document~~ only for diagnosis or treatment; or

(C) refuse to consent to the patient ~~examination as described in the written document;~~ and

~~(vi) allows the patient to indicate that the patient would like to meet with the health care provider before the~~ examination;

(b) obtain the ~~patient's~~ signature of the patient or the patient's ~~representative's signature~~ representative on the written document while witnessed by a third party; and

(c) sign the written document ~~; and~~;

~~(d) if the patient requests a meeting with a health care provider before the patient examination, sign the written document affirming that the health care provider met with the~~

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~~patient in accordance with the request.~~

~~(4) If a health care provider performs a patient examination on an anesthetized or unconscious patient, the health care provider:~~

~~(a) may not charge for the patient examination; and~~

~~(b) shall discuss with the patient or the patient's representative the findings and any recommendations resulting from the patient examination.~~

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

78B-3-406. Failure to obtain informed consent -- Proof required of patient --

Defenses -- Consent to health care.

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

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

~~(a)~~ (i) that a provider-patient relationship existed between the patient and health care provider;

~~(b)~~ (ii) the health care provider rendered health care to the patient;

~~(c)~~ (iii) the patient suffered personal injuries arising out of the health care rendered;

~~(d)~~ (iv) the health care rendered carried with it a substantial and significant risk of causing the patient serious harm;

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

~~(f)~~ (vi) a reasonable, prudent person in the patient's position would not have consented to the health care rendered after having been fully informed as to all facts relevant to the decision to give consent; and

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

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

(3) It shall be a defense to any malpractice action against a health care provider based

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upon alleged failure to obtain informed consent if:

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

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

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

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

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

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

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

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

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

(b) any married person, for a spouse;

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

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

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

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

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

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

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

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

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

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

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