

1 **HEALTH REFORM - MEDICAL MALPRACTICE**

2 **AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Peter C. Knudson**

6 House Sponsor: Roger E. Barrus

7 Cosponsor: John L. Valentine

8

9 **LONG TITLE**

10 **General Description:**

11 This bill amends the standard of proof necessary for a malpractice claim in an
12 emergency room.

13 **Highlighted Provisions:**

14 This bill:
15 ▶ defines terms;
16 ▶ establishes a standard of proof of clear and convincing evidence for malpractice
17 actions based on emergency care received in an emergency room; and
18 ▶ sunsets the clear and convincing standard of proof on July 1, 2013.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **63I-1-258**, as last amended by Laws of Utah 2008, Chapter 148 and renumbered and
26 amended by Laws of Utah 2008, Chapter 382

27 ENACTS:

28 **58-13-2.5**, Utah Code Annotated 1953

29

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

31 Section 1. Section **58-13-2.5** is enacted to read:

32 **58-13-2.5. Standard of proof for emergency care when immunity does not apply.**

33 (1) A person who is a health care provider as defined in Section 78B-3-403 who
34 provides emergency care in good faith, but is not immune from suit because of an expectation
35 of payment, a legal duty to respond, or other reason under Section 58-13-2, may only be liable
36 for civil damages if fault, as defined in Section 78B-5-817, is established by clear and
37 convincing evidence.

38 (2) For purposes of Subsection (1), "emergency care" means the treatment of an
39 emergency medical condition, as defined in Section 31A-22-627, from the time that the person
40 presents at the emergency department of a hospital and including any subsequent transfer to
41 another hospital, until the condition has been stabilized and the patient is either discharged
42 from the emergency department or admitted to another department of the hospital.

43 (3) This section does not apply to emergency care provided by a physician if:

44 (a) the physician has a previously established physician/patient relationship with the
45 patient outside of the emergency room;

46 (b) the patient has been seen in the last three months by the physician for the same
47 condition for which emergency care is sought; and

48 (c) the physician can access and consult the patient's relevant medical care records
49 while the physician is making decisions about and providing the emergency care.

50 (4) (a) Nothing in this section may be construed as:

51 (i) altering the applicable standard of care for determining fault; or

52 (ii) applying the standard of proof of clear and convincing evidence to care outside of
53 emergency care and the mandatory legal duty to treat.

54 (b) This section applies to emergency care given after June 1, 2009.

55 (5) This section sunsets in accordance with Section 63I-1-258.

56 Section 2. Section **63I-1-258** is amended to read:

57 **63I-1-258. Repeal dates, Title 58.**

- 58 (1) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2018.
- 59 (2) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is
60 repealed July 1, 2016.
- 61 (3) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2015.
- 62 (4) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1,
63 2013.
- 64 (5) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2013.
- 65 (6) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is
66 repealed July 1, 2009.
- 67 (7) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2015.
- 68 (8) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed
69 July 1, 2013.
- 70 (9) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2014.
- 71 (10) Title 58, Chapter 49, Dietitian Certification Act, is repealed July 1, 2015.
- 72 (11) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2017.
- 73 (12) Section 58-13-2.5 is repealed July 1, 2013.