

HEALTH CARE PROVIDERS IMMUNITY FROM LIABILITY ACT

58-13-1. Title.

This chapter is known as the "Health Care Providers Immunity from Liability Act."

58-13-2. Emergency care rendered by licensee.

- (1) A person licensed under Title 58, Occupations and Professions, to practice as any of the following health care professionals, who is under no legal duty to respond, and who in good faith renders emergency care at the scene of an emergency gratuitously and in good faith, is not liable for any civil damages as a result of any acts or omissions by the person in rendering the emergency care:
 - (a) osteopathic physician and surgeon;
 - (b) physician and surgeon;
 - (c) naturopathic physician;
 - (d) dentist or dental hygienist;
 - (e) chiropractic physician;
 - (f) physician assistant;
 - (g) optometrist;
 - (h) nurse licensed under Subsection 58-31b-301 or 58-31c-102;
 - (i) podiatrist;
 - (j) certified nurse midwife;
 - (k) respiratory care practitioner;
 - (l) pharmacist, pharmacy technician, and pharmacy intern;
 - (m) Direct-entry midwife licensed under Section 58-77-301; or
 - (n) veterinarian.
- (2) This Subsection (2) applies to a health care professional:
 - (a) (i) described in Subsection (1); and
 - (ii) who is under no legal duty to respond to the circumstances described in Subsection (3);
 - (b) who is:
 - (i) (A) activated as a member of a medical reserve corps as described in Section 26A-1-126 during the time of an emergency or declaration for public health related activities as provided in Subsection 26A-1-126(2); or
 - (B) participating in training to prepare the medical reserve corps to respond to a declaration of an emergency or request for public health related activities pursuant to Subsection 26A-1-126(2);
 - (ii) acting within the scope of:
 - (A) the health care professional's license;
 - (B) practice as modified under Subsection 58-1-307(4) or Section 26A-1-126; and
 - (iii) acting in good faith without compensation or remuneration as defined in Subsection 58-13-3(2); or
 - (c) who is acting as a volunteer health practitioner under Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.
- (3) A health care professional described in Subsection (2) is not liable for any civil damages as a result of any acts or omissions by the health care professional in rendering care as a result of:
 - (a) implementation of measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;
 - (b) investigating and controlling suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and
 - (c) responding to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.
- (4) The immunity in Subsection (3) is in addition to any immunity or protection in state or federal law that may apply.
- (5) For purposes of Subsection (2)(b)(ii) remuneration does not include:
 - (a) food supplied to the volunteer;
 - (b) clothing supplied to the volunteer to help identify the volunteer during the time of the emergency; or
 - (c) other similar support for the volunteer.

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

- (1) A person who is a health care provider as defined in Section 78B-3-403 who provides emergency care in good faith, but is not immune from suit because of an expectation of payment, a legal duty to respond, or other reason under Section 58-13-2, may only be liable for civil damages if fault, as defined in Section 78B-5-817, is established by clear and convincing evidence.
- (2) For purposes of Subsection (1), "emergency care" means the treatment of an emergency medical condition, as defined in Section 31A-22-627, from the time that the person presents at the emergency department of a hospital and including any subsequent transfer to another hospital, until the condition has been stabilized and the patient is either discharged from the emergency department or admitted to another department of the hospital.
- (3) This section does not apply to emergency care provided by a physician if:
 - (a) the physician has a previously established physician/patient relationship with the patient outside of the emergency room;
 - (b) the patient has been seen in the last three months by the physician for the same condition for which emergency care is sought; and
 - (c) the physician can access and consult the patient's relevant medical care records while the physician is making decisions about and providing the emergency care.
- (4) (a) Nothing in this section may be construed as:
 - (i) altering the applicable standard of care for determining fault; or
 - (ii) applying the standard of proof of clear and convincing evidence to care outside of emergency care and the mandatory legal duty to treat.
 (b) This section applies to emergency care given after June 1, 2009.
- (5) This section sunsets in accordance with Section 63I-1-258.

58-13-2.6. Emergency care rendered by a person or health care facility.

- (1) For purposes of this section:
 - (a) "Emergency" means an unexpected occurrence involving injury, the threat of injury, or illness to a person or the public due to:
 - (i) a natural disaster;
 - (ii) bioterrorism;
 - (iii) an act of terrorism;
 - (iv) a pandemic; or
 - (v) other event of similar nature.
 - (b) "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or attempt to mitigate the effects of an emergency.
 - (c) "Person" is defined in Subsection 26-21-2(18).
- (2) (a) A person, who in good faith, assists government agencies or political subdivisions with the activities described in Subsection (2)(b) is not liable for civil damages or penalties as a result of any act or omission unless the person rendering the assistance:
 - (i) is grossly negligent;
 - (ii) caused the emergency; or
 - (iii) has engaged in criminal conduct.
 (b) The following activities are protected from liability in accordance with Subsection (2)(a):
 - (i) implementing measures to control the causes of epidemic, pandemic, communicable diseases, or other conditions significantly affecting public health, as necessary to protect the public health in accordance with Title 26A, Chapter 1, Local Health Departments;
 - (ii) investigating, controlling, and treating suspected bioterrorism or disease in accordance with Title 26, Chapter 23b, Detection of Public Health Emergencies Act; or
 - (iii) responding to:
 - (A) a national, state, or local emergency;
 - (B) a public health emergency as defined in Section 26-23b-102; or
 - (C) a declaration by the President of the United States or other federal official requesting public health related activities; and
 - (iv) providing a facility for use by a governmental agency or political subdivision to distribute pharmaceuticals or administer vaccines to the public.
 (c) Subsection (2)(a) applies to a person even if that person has:
 - (i) a duty to respond; or
 - (ii) an expectation of payment of remuneration.

- (3) The immunity in Subsection (2) is in addition to any immunity protections that may apply in state or federal law.

58-13-3. Qualified immunity - Health professionals - Charity care.

- (1) (a) (i) The Legislature finds many residents of this state do not receive medical care and preventive health care because they lack health insurance or because of financial difficulties or cost.
- (ii) The Legislature also finds that many physicians, charity health care facilities, and other health care professionals in this state would be willing to volunteer medical and allied services without compensation if they were not subject to the high exposure of liability connected with providing these services.
- (b) The Legislature therefore declares that its intention in enacting this section is to encourage the provision of uncompensated volunteer charity health care in exchange for a limitation on liability for the health care facilities and health care professionals who provide those volunteer services.
- (2) As used in this section:
- (a) "Health care facility" means any clinic or hospital, church, or organization whose primary purpose is to sponsor, promote, or organize uncompensated health care services for people unable to pay for health care services.
- (b) "Health care professional" means a person licensed under:
- (i) Chapter 5a, Podiatric Physician Licensing Act;
 - (ii) Chapter 16a, Utah Optometry Practice Act;
 - (iii) Chapter 17b, Pharmacy Practice Act;
 - (iv) Chapter 24a, Physical Therapist Practice Act;
 - (v) Chapter 31b, Nurse Practice Act;
 - (vi) Chapter 40, Recreational Therapist Practice Act;
 - (vii) Chapter 41, Speech-language Pathology and Audiology Licensing Act;
 - (viii) Chapter 42a, Occupational Therapy Practice Act;
 - (ix) Chapter 44a, Nurse Midwife Practice Act;
 - (x) Chapter 49, Dietitian Certification Act;
 - (xi) Chapter 60, Mental Health Professional Practice Act;
 - (xii) Chapter 67, Utah Medical Practice Act;
 - (xiii) Chapter 68, Utah Osteopathic Medical Practice Act;
 - (xiv) Chapter 69, Dentist and Dental Hygienist Practice Act;
 - (xv) Chapter 70a, Physician Assistant Act; and
 - (xvi) Chapter 73, Chiropractic Physician Practice Act.
- (c) "Remuneration or compensation":
- (i) (A) means direct or indirect receipt of any payment by a health care professional or health care facility on behalf of the patient, including payment or reimbursement under medicare or medicaid, or under the state program for the medically indigent on behalf of the patient; and
 - (B) compensation, salary, or reimbursement to the health care professional from any source for the health care professional's services or time in volunteering to provide uncompensated health care; and
 - (ii) "does not mean":
 - (A) any grant or donation to the health care facility used to offset direct costs associated with providing the uncompensated health care such as:
 - (I) medical supplies or drugs;
 - (II) drugs; or
 - (III) a charitable donation that is restricted for charitable services at the health care facility; or
 - (B) incidental reimbursements to the volunteer such as:
 - (I) food supplied to the volunteer;
 - (II) clothing supplied to the volunteer to help identify the volunteer during the time of volunteer services;
 - (III) mileage reimbursement to the volunteer; or
 - (IV) other similar support to the volunteer.
- (3) A health care professional who provides health care treatment at or on behalf of a health care facility is not liable in a medical malpractice action if:
- (a) the treatment was within the scope of the health care professional's license under this title;

- (b) neither the health care professional nor the health care facility received compensation or remuneration for the treatment;
 - (c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and
 - (d) prior to rendering services, the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation and that in exchange for receiving uncompensated health care, the patient consents to waive any right to sue for professional negligence except for acts or omissions which are grossly negligent or are willful and wanton.
- (4) A health care facility which sponsors, promotes, or organizes the uncompensated care is not liable in a medical malpractice action for acts and omissions if:
- (a) the health care facility meets the requirements in Subsection (3)(b);
 - (b) the acts and omissions of the health care facility were not grossly negligent or willful and wanton; and
 - (c) the health care facility has posted, in a conspicuous place, a notice that in accordance with this section the health care facility is not liable for any civil damages for acts or omissions except for those acts or omissions that are grossly negligent or are willful and wanton.
- (5) Immunity from liability under this section does not extend to the use of general anesthesia or care that requires an overnight stay in a general acute or specialty hospital licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

58-13-4. Liability immunity for health care providers on committees - Evaluating and approving medical care.

- (1) As used in this section, "health care provider" has the same meaning as in Section 78B-3-403.
- (2) Health care providers serving in the following capacities and the organizations or entities sponsoring these activities are immune from liability with respect to deliberations, decisions, or determinations made or information furnished in good faith and without malice:
 - (a) serving on committees:
 - (i) established to determine if hospitals and long-term care facilities are being used properly;
 - (ii) established to evaluate and improve the quality of health care or determine whether provided health care was necessary, appropriate, properly performed, or provided at a reasonable cost;
 - (iii) functioning under Pub. L. No. 89-97 or as professional standards review organizations under Pub. L. No. 92-603;
 - (iv) that are ethical standards review committees; or
 - (v) that are similar to committees listed in this Subsection (2) and that area established by any hospital, professional association, the Utah Medical Association, or one of its component medical societies to evaluate or review the diagnosis or treatment of, or the performance of health or hospital services to, patients within this state;
 - (b) members of licensing boards established under Title 58, Occupations and Professions, to license and regulate health care providers; and
 - (c) health care providers or other persons furnishing information to those committees, as required by law, voluntarily, or upon official request.
- (3) This section does not relieve any health care provider from liability incurred in providing professional care and treatment to any patient.
- (4) Health care providers serving on committees or providing information described in this section are presumed to have acted in good faith and without malice, absent clear and convincing evidence to the contrary.

58-13-5. Information relating to adequacy and quality of medical care - Immunity from liability.

- (1) As used in this section, "health care provider" has the same meaning as defined in Section 78B-3-403.
- (2)
 - (a) The division, and the boards within the division that act regarding the health care providers defined in this section, shall adopt rules to establish procedures to obtain information concerning the quality and adequacy of health care rendered to patients by those health care providers.
 - (b) It is the duty of an individual licensed under Title 58, Occupations and Professions, as a health care provider to furnish information known to him with respect to health care rendered to patients by any health care provider licensed under Title 58, Occupations and Professions, as the division or a board may request during the course of the performance of its duties.
- (3) A health care facility as defined in Section 26-21-2 which employs, grants privileges to, or otherwise permits a licensed health care provider to engage in licensed practice within the health care facility, and any professional society of licensed health care providers, shall report any of the following events in writing to the division within

sixty days after the event occurs regarding the licensed health care provider:

- (a) terminating employment of an employee for cause related to the employee's practice as a licensed health care provider;
 - (b) terminating or restricting privileges for cause to engage in any act or practice related to practice as a licensed health care provider;
 - (c) terminating, suspending, or restricting membership or privileges associated with membership in a professional association for acts of unprofessional, unlawful, incompetent, or negligent conduct related to practice as a licensed health care provider;
 - (d) subjecting a licensed health care provider to disciplinary action for a period of more than 30 days;
 - (e) a finding that a licensed health care provider has violated professional standards or ethics;
 - (f) a finding of incompetence in practice as a licensed health care provider;
 - (g) a finding of acts of moral turpitude by a licensed health care provider; or
 - (h) a finding that a licensed health care provider is engaged in abuse of alcohol or drugs.
- (4) This section does not prohibit any action by a health care facility, or professional society comprised primarily of licensed health care providers to suspend, restrict, or revoke the employment, privileges, or membership of a health care provider.
- (5) The data and information obtained in accordance with this section is classified as a "protected" record under Title 63G, Chapter 2, Government Records Access and Management Act.
- (6) (a) Any person or organization furnishing information in accordance with this section in response to the request of the division or a board, or voluntarily, is immune from liability with respect to information provided in good faith and without malice, which good faith and lack of malice is presumed to exist absent clear and convincing evidence to the contrary.
- (b) The members of the board are immune from liability for any decisions made or actions taken in response to information acquired by the board if those decisions or actions are made in good faith and without malice, which good faith and lack of malice is presumed to exist absent clear and convincing evidence to the contrary.
- (7) An individual who is a member of a hospital administration, board, committee, department, medical staff, or professional organization of health care providers, and any hospital, other health care entity, or professional organization conducting or sponsoring the review, immune from liability arising from participation in a review of a health care provider's professional ethics, medical competence, moral turpitude, or substance abuse.
- (8) This section does not exempt a person licensed under Title 58, Occupations and Professions, from complying with any reporting requirements established under state or federal law.

HEALTH CARE PROVIDERS IMMUNITY
FROM LIABILITY ACT

Title 58, Chapter 13
Utah Code Annotated 1953
As Amended by
Session Laws of Utah 2013
Issued May 14, 2013

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