

**MEDICAL MALPRACTICE AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

House Sponsor: Nelson T. Abbott

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**LONG TITLE**

**General Description:**

This bill clarifies what health care means in the context of a medical malpractice action.

**Highlighted Provisions:**

This bill:

- ▶ clarifies what health care means in the context of a medical malpractice action.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78B-3-403**, as last amended by Laws of Utah 2022, Chapters 356, 415

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

Section 1. Section **78B-3-403** is amended to read:

**78B-3-403. Definitions.**

As used in this part:

(1) "Audiologist" means a person licensed to practice audiology under Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act.

(2) "Certified social worker" means a person licensed to practice as a certified social worker under Section **58-60-205**.

(3) "Chiropractic physician" means a person licensed to practice chiropractic under

30 Title 58, Chapter 73, Chiropractic Physician Practice Act.

31 (4) "Clinical social worker" means a person licensed to practice as a clinical social  
32 worker under Section 58-60-205.

33 (5) "Commissioner" means the commissioner of insurance as provided in Section  
34 31A-2-102.

35 (6) "Dental hygienist" means a person licensed to engage in the practice of dental  
36 hygiene as defined in Section 58-69-102.

37 (7) "Dental care provider" means any person, partnership, association, corporation, or  
38 other facility or institution who causes to be rendered or who renders dental care or  
39 professional services as a dentist, dental hygienist, or other person rendering similar care and  
40 services relating to or arising out of the practice of dentistry or the practice of dental hygiene,  
41 and the officers, employees, or agents of any of the above acting in the course and scope of  
42 their employment.

43 (8) "Dentist" means a person licensed to engage in the practice of dentistry as defined  
44 in Section 58-69-102.

45 (9) "Division" means the Division of Professional Licensing created in Section  
46 58-1-103.

47 (10) "Future damages" includes a judgment creditor's damages for future medical  
48 treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and  
49 suffering.

50 (11) (a) "Health care" means any act or treatment performed or furnished, or which  
51 should have been performed or furnished, by any health care provider for, to, or on behalf of a  
52 patient during the patient's medical care, treatment, or confinement.

53 (b) "Health care" does not include an act that, based on the totality of the  
54 circumstances, is sexual in nature regardless of whether:

55 (i) the act was committed under the auspice of providing professional diagnosis,  
56 counseling, or treatment; or

57 (ii) at the time the act occurred, the victim believed the act was for medically or

58 professionally appropriate diagnosis, counseling, or treatment.

59 (12) "Health care facility" means general acute hospitals, specialty hospitals, home  
60 health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers,  
61 ambulatory surgical facilities, small health care facilities, health care facilities owned or  
62 operated by health maintenance organizations, and end stage renal disease facilities.

63 (13) "Health care provider" includes any person, partnership, association, corporation,  
64 or other facility or institution who causes to be rendered or who renders health care or  
65 professional services as a hospital, health care facility, physician, physician assistant, registered  
66 nurse, licensed practical nurse, nurse-midwife, licensed direct-entry midwife, dentist, dental  
67 hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical  
68 therapist assistant, podiatric physician, psychologist, chiropractic physician, naturopathic  
69 physician, osteopathic physician, osteopathic physician and surgeon, audiologist,  
70 speech-language pathologist, clinical social worker, certified social worker, social service  
71 worker, marriage and family counselor, practitioner of obstetrics, licensed athletic trainer, or  
72 others rendering similar care and services relating to or arising out of the health needs of  
73 persons or groups of persons and officers, employees, or agents of any of the above acting in  
74 the course and scope of their employment.

75 (14) "Hospital" means a public or private institution licensed under Title 26, Chapter  
76 21, Health Care Facility Licensing and Inspection Act.

77 (15) "Licensed athletic trainer" means a person licensed under Title 58, Chapter 40a,  
78 Athletic Trainer Licensing Act.

79 (16) "Licensed direct-entry midwife" means a person licensed under the Direct-entry  
80 Midwife Act to engage in the practice of direct-entry midwifery as defined in Section  
81 [58-77-102](#).

82 (17) "Licensed practical nurse" means a person licensed to practice as a licensed  
83 practical nurse as provided in Section [58-31b-301](#).

84 (18) "Malpractice action against a health care provider" means any action against a  
85 health care provider, whether in contract, tort, breach of warranty, wrongful death, or

86 otherwise, based upon alleged personal injuries relating to or arising out of health care rendered  
87 or which should have been rendered by the health care provider.

88 (19) "Marriage and family therapist" means a person licensed to practice as a marriage  
89 therapist or family therapist under Sections 58-60-305 and 58-60-405.

90 (20) "Naturopathic physician" means a person licensed to engage in the practice of  
91 naturopathic medicine as defined in Section 58-71-102.

92 (21) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife  
93 under Section 58-44a-301.

94 (22) "Optometrist" means a person licensed to practice optometry under Title 58,  
95 Chapter 16a, Utah Optometry Practice Act.

96 (23) "Osteopathic physician" means a person licensed to practice osteopathy under  
97 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

98 (24) "Patient" means a person who is under the care of a health care provider, under a  
99 contract, express or implied.

100 (25) "Periodic payments" means the payment of money or delivery of other property to  
101 a judgment creditor at intervals ordered by the court.

102 (26) "Pharmacist" means a person licensed to practice pharmacy as provided in Section  
103 58-17b-301.

104 (27) "Physical therapist" means a person licensed to practice physical therapy under  
105 Title 58, Chapter 24b, Physical Therapy Practice Act.

106 (28) "Physical therapist assistant" means a person licensed to practice physical therapy,  
107 within the scope of a physical therapist assistant license, under Title 58, Chapter 24b, Physical  
108 Therapy Practice Act.

109 (29) "Physician" means a person licensed to practice medicine and surgery under Title  
110 58, Chapter 67, Utah Medical Practice Act.

111 (30) "Physician assistant" means a person licensed to practice as a physician assistant  
112 under Title 58, Chapter 70a, Utah Physician Assistant Act.

113 (31) "Podiatric physician" means a person licensed to practice podiatry under Title 58,

114 Chapter 5a, Podiatric Physician Licensing Act.

115 (32) "Practitioner of obstetrics" means a person licensed to practice as a physician in  
116 this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58, Chapter 68,  
117 Utah Osteopathic Medical Practice Act.

118 (33) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist  
119 Licensing Act, to engage in the practice of psychology as defined in Section [58-61-102](#).

120 (34) "Registered nurse" means a person licensed to practice professional nursing as  
121 provided in Section [58-31b-301](#).

122 (35) "Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother,  
123 child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term  
124 includes relationships that are created as a result of adoption.

125 (36) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact,  
126 person designated to make decisions on behalf of a patient under a medical power of attorney,  
127 or other legal agent of the patient.

128 (37) "Social service worker" means a person licensed to practice as a social service  
129 worker under Section [58-60-205](#).

130 (38) "Speech-language pathologist" means a person licensed to practice  
131 speech-language pathology under Title 58, Chapter 41, Speech-Language Pathology and  
132 Audiology Licensing Act.

133 (39) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or  
134 omission proximately causing injury or damage to another.

135 (40) "Unanticipated outcome" means the outcome of a medical treatment or procedure  
136 that differs from an expected result.