

Representative Dean Sanpei proposes the following substitute bill:

MEDICAL MALPRACTICE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dean Sanpei

Senate Sponsor: John L. Valentine

Cosponsors: Mike K. McKell

Michael S. Kennedy

LONG TITLE

General Description:

This bill amends medical malpractice action or arbitration proceedings.

Highlighted Provisions:

This bill:

- ▶ provides that a certificate of compliance must be issued for a health care provider or health care entity to allocate fault in a pre-litigation medical malpractice or arbitration hearing; and

- ▶ requires that evidence from a medical review panel remain unreportable to a health care facility or health insurance plan.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



25 78B-3-418, as last amended by Laws of Utah 2010, Chapter 97

26 78B-3-419, as renumbered and amended by Laws of Utah 2008, Chapter 3

27

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

29 Section 1. Section 78B-3-418 is amended to read:

30 **78B-3-418. Decision and recommendations of panel -- No judicial or other review.**

31 (1) (a) The panel shall issue an opinion and the division shall issue a certificate of
32 compliance with the pre-litigation hearing requirements of this part in accordance with this
33 section.

34 (b) A certificate of compliance issued in accordance with this section is proof that the
35 claimant has complied with all conditions precedent under this part prior to the commencement
36 of litigation as required in Subsection 78B-3-412(1).

37 (c) (i) Notwithstanding any other provision of this part, any party in a medical
38 malpractice action or arbitration hearing may request a prelitigation panel review as to a health
39 care provider and obtain a certificate of compliance for that specific, individual health care
40 provider for the purpose of allocating fault to that health care provider. A party in a medical
41 malpractice action or arbitration hearing may not attempt to allocate fault to any health care
42 provider unless a certificate of compliance has been issued in accordance with this section for
43 that specific, individual health care provider. A health care provider exempted from the
44 requirement of a pre-litigation hearing by statute or an arbitration agreement, may nevertheless
45 be joined in a pre-litigation hearing to satisfy the requirements of this section. Participation in
46 a pre-litigation hearing may not waive any right to enforce an arbitration agreement.

47 (ii) The party making the claim against, or seeking to allocate fault to, a health care
48 provider is required to seek and obtain the certificate of compliance required by this Subsection
49 (1)(c).

50 (2) (a) The panel shall render its opinion in writing not later than 30 days after the end
51 of the proceedings, and determine on the basis of the evidence whether:

52 (i) each claim against each health care provider has merit or has no merit; and

53 (ii) if a claim is meritorious, whether the conduct complained of resulted in harm to the
54 claimant.

55 (b) There is no judicial or other review or appeal of the panel's decision or

56 recommendations.

57 (3) The division shall issue a certificate of compliance to the claimant, for each
58 respondent named in the intent to file a claim under this part, if:

59 (a) for a named respondent, the panel issues an opinion of merit under Subsections
60 (2)(a)(i) and (ii);

61 (b) for a named respondent, the claimant files an affidavit of merit in accordance with
62 Section 78B-3-423 if the opinion under Subsection (1)(a) is non-meritorious under either
63 Subsection (2)(a)(i) or (ii);

64 (c) the claimant has complied with the provisions of Subsections 78B-3-416(3)(c) and
65 (d); or

66 (d) the parties submitted a stipulation under Subsection 78B-3-416(3)(d).

67 Section 2. Section **78B-3-419** is amended to read:

68 **78B-3-419. Evidence of proceedings not admissible in subsequent action --**

69 **Panelist may not be compelled to testify -- Immunity of panelist from civil liability --**

70 **Information regarding professional conduct.**

71 (1) Evidence of the proceedings conducted by the medical review panel and its results,
72 opinions, findings, and determinations are not admissible as evidence in ~~[an action]~~ any civil
73 action or arbitration proceeding subsequently brought by the claimant ~~[in a court of competent~~
74 jurisdiction] against any respondent and are not reportable to any health care facility or health
75 care insurance carrier as a part of any credentialing process.

76 (2) No panelist may be compelled to testify in a civil action subsequently filed with
77 regard to the subject matter of the panel's review. A panelist has immunity from civil liability
78 arising from participation as a panelist and for all communications, findings, opinions, and
79 conclusions made in the course and scope of duties prescribed by this section.

80 (3) Nothing in this chapter may be interpreted to prohibit the division from considering
81 any information contained in a statutory notice of intent to commence action, request for
82 prelitigation panel review, or written findings of a panel with respect to the division's
83 determining whether a licensee engaged in unprofessional or unlawful conduct.