

1 **JOINT RESOLUTION TO AMEND RULE OF EVIDENCE**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This joint resolution amends Utah Rule of Evidence, Rule 409 regarding expressions of
10 apology by health care professionals and employees.

11 **Highlighted Provisions:**

12 This resolution:

13 ▶ amends Utah Rule of Evidence, Rule 409 regarding expressions of apology by
14 health care professionals and employees.

15 **Special Clauses:**

16 This resolution provides an immediate effective date.

17 **Utah Rules of Evidence Affected:**

18 AMENDS:

19 **Rule 409**, Utah Rules of Evidence

20

21 *Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each*
22 *of the two houses voting in favor thereof:*

23 Section 1. **Rule 409**, Utah Rules of Evidence is amended to read:

24 **Rule 409. Payment of medical and similar expenses; expressions of apology.**

25 (a) Evidence of furnishing or offering or promising to pay medical, hospital, or similar
26 expenses occasioned by an injury is not admissible to prove liability for the injury.

27 ~~[(b) Statements, expressions, or conduct that express]~~



28 (b) Evidence of unsworn statements, affirmations, gestures, or conduct that expresses
29 the following is not admissible in a malpractice action against a health care provider or an
30 employee of a health care provider to prove liability for an injury:

31 (1) apology, sympathy, commiseration, condolence, compassion, or general sense of
32 benevolence[;]; or [describe]

33 (2) a description of the sequence of events relating to the unanticipated outcome of
34 medical care or the significance of events [or both are not admissible against a health care
35 provider or an employee of a health care provider to prove liability for an injury].

36 Section 2. **Legislative note.**

37 It is the intent of the Legislature that when the Court Rules are compiled and printed the
38 following language be added as a Legislative Note.

39 "In 2010 the Utah Legislature amended Rule 409 by a two-thirds vote in both houses
40 adding paragraph (b) and making related changes. In 2011 the Legislature further amended the
41 rule by a two-thirds vote in both houses to make it follow more closely Utah Code Ann. Sec.
42 78B-3-422.

43 The intent and purpose of amending the rule with paragraph (b) is to encourage
44 expressions of apology, empathy, and condolence and the disclosure of facts and circumstances
45 related to unanticipated outcomes in the provision of health care in an effort to facilitate the
46 timely and satisfactory resolution of patient concerns arising from unanticipated outcomes in
47 the provision of health care."

48 Section 3. **Effective date.**

49 This resolution takes effect upon approval by a constitutional two-thirds vote of all
50 members elected to each house.

Legislative Review Note
as of 2-15-11 10:25 AM

Office of Legislative Research and General Counsel