

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: Ralph Okerlund

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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

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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 made to a**  
29 **patient or a person associated with the patient by a defendant that expresses the following is not**

30 admissible in a malpractice action against a health care provider or an employee of a health  
31 care provider to prove liability for an injury:

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

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

37 **Section 2. Legislative note.**

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

40 "In 2010 the Utah Legislature amended Rule 409 by a two-thirds vote in both houses  
41 adding paragraph (b) and making related changes. In 2011 the Legislature further amended the  
42 rule by a two-thirds vote in both houses to make it follow more closely Utah Code Ann. Sec.  
43 78B-3-422.

44 The intent and purpose of amending the rule with paragraph (b) is to encourage  
45 expressions of apology, empathy, and condolence and the disclosure of facts and circumstances  
46 related to unanticipated outcomes in the provision of health care in an effort to facilitate the  
47 timely and satisfactory resolution of patient concerns arising from unanticipated outcomes in  
48 the provision of health care. Patient records are not statements made to patients, and therefore  
49 are not inadmissible under this rule."

50 **Section 3. Effective date.**

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