



ADMINISTRATIVE ORDER – APRIL 6, 2020

**DEPARTMENT OF COMMERCE
STATE OF UTAH**

The World Health Organization has declared the COVID-19 outbreak to be a pandemic. Utah Governor Gary Herbert has declared a state of emergency. To protect the public, including participants in prelitigation hearings to be convened pursuant to the Utah Health Care Malpractice Act (Utah Code § 78B-3-401 et seq.), and due to the unavailability of health care providers and the added burden placed on them during the pandemic, it is necessary for the Utah Department of Commerce (the “Department”) to issue this temporary Administrative Order.

The Department and the Division of Occupational and Professional Licensing (the “Division”) find that it is impracticable in all cases to schedule and hold prelitigation hearings pursuant to Utah Code § 78B-3-416(3)(b)(ii)(A) during the pendency of the present emergency. Even an electronic hearing in accordance with the Department of Commerce Administrative Order dated March 23, 2020 would be too great a burden on health care professionals and other participants.

Prelitigation hearings often require significant time commitments from healthcare providers. Taking into consideration the declared emergency and Governor Herbert’s executive orders, it is not reasonable to conduct such hearings. *See, e.g.*, Executive Order 2020-1 finding that “the circumstances of this outbreak may exceed the capacity of the services, personnel, equipment, supplies and facilities of any single city or county” and Executive Order 2020-9, finding that the number of diagnosed COVID-19 cases in Utah continues to rise, and that “it is

imperative that healthcare facilities maximize the number of capable healthcare workers to ensure Utahns impacted by COVID-19 have access to medical treatment.”

The Department and Division find that because of the serious burden placed on health care providers by the declared emergency, requiring health care provider licensees to prepare for, appear, and participate as panel members would be unreasonable. It would create an unreasonable burden or hardship on such licensees. Pursuant to Utah Code § 78B-3-416(5), licensed health care providers listed in Utah Code § 78B-3-403 are obligated to participate as a panel member only at “reasonable times, places, and intervals . . . with advance notice given in a reasonable time frame,” and the Division may excuse a licensee from appearance and participation as a panel member upon finding participation will create an unreasonable burden or hardship upon the licensee.

The Department and Division will not convene any hearings until at least June 1, 2020. Therefore, consistent with Utah Code § 78B-3-416(3)(b)(ii)(B), and in conjunction with Utah Admin. Code R156-78B-9(4)(a)(ii), a party wishing to establish a new date may contact all parties named in the request and determine by agreement of the parties at least two dates acceptable to convene for a prelitigation panel hearing. A post-June 1, 2020 hearing may be conducted electronically by telephone or other audio or video conferencing technology, or as future amendments to the Department of Commerce Administrative Order dated March 23, 2020, may direct. Parties may wish to consider their legal options in the absence of a certificate of compliance from the Division or a panel hearing within the statutorily prescribed time and with the effects of the Utah Supreme Court’s opinion in Vega v. Jordan Valley Medical Center, LP, 2019 UT 35, finding requirements for a certificate of compliance and affidavit provisions unconstitutional. If the parties cannot agree to a mutually acceptable date beyond June 1, the

Division has no statutory authority to compel the acceptance of an extension of time beyond 180 days. Nor is the Division authorized to issue a certificate of compliance for cases in the absence of a stipulation or a pre-litigation hearing.

This Administrative Order does not preclude the parties from stipulating that no useful purpose would be served by convening a prelitigation panel and requesting the Division issue a Certificate of Compliance pursuant to Utah Code §§ 78B-3-416(3)(e) and 78B-3-418.

This Administrative Order does not repeal, negate, or otherwise obviate the Department of Commerce Administrative Order dated March 23, 2020; rather, this Administrative Order applies only to matters presently pending, as well as matters yet to be initiated under Utah Code §§ 78B-3-412 and 416 of the Utah Health Care Malpractice Act.

This Administrative Order may be amended at any time to respond to changed circumstances or conditions.

DATED this 6th day of April 2020.

A handwritten signature in black ink, appearing to read 'CP', is written over a horizontal line.

Chris Parker, Interim Executive Director
Utah Department of Commerce