Title 58. Occupations and Professions

Chapter 1
Division of Occupational and Professional Licensing Act

Part 1
Division Administration

58-1-101 Short title.

This chapter is known as the "Division of Occupational and Professional Licensing Act."

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-102 Definitions.

For purposes of this title:

(1) "Ablative procedure" is as defined in Section 58-67-102.

(2) "Cosmetic medical procedure":

(a) is as defined in Section 58-67-102; and

(b) except for Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice Act, does not apply to the scope of practice of an individual licensed under this title if the individual's scope of practice includes the authority to operate or perform surgical procedures.

(3) "Department" means the Department of Commerce.

(4) "Director" means the director of the Division of Occupational and Professional Licensing.

(5) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(6) "Executive director" means the executive director of the Department of Commerce.

(7) "Licensee" includes any holder of a license, certificate, registration, permit, student card, or apprentice card authorized under this title.

(8)

(a)

(i) "Nonablative procedure" means a procedure that is expected or intended to alter living tissue, but not intended or expected to excise, vaporize, disintegrate, or remove living tissue.

(ii) Notwithstanding Subsection (8)(a)(i), nonablative procedure includes hair removal.

(b) "Nonablative procedure" does not include:

(i) a superficial procedure;

(ii) the application of permanent make-up; or

(iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are performed by an individual licensed under this title who is acting within their scope of practice.

(9) "Pain clinic" means:

(a) a clinic that advertises its primary purpose is the treatment of chronic pain; or

(b) a clinic in which greater than 50% of the clinic's annual patient population receive treatment primarily for non-terminal chronic pain using Schedule II-III controlled substances.

(10) "Superficial procedure" means a procedure that is expected or intended to temporarily alter living skin tissue and may excise or remove stratum corneum but have no appreciable risk of damage to any tissue below the stratum corneum.

(11) "Unlawful conduct" has the meaning given in Subsection 58-1-501(1).
(12) "Unprofessional conduct" has the meaning given in Subsection 58-1-501(2).

Amended by Chapter 127, 2016 General Session

58-1-103 Division created to administer licensing laws.

There is created within the Department of Commerce the Division of Occupational and Professional Licensing. The division shall administer and enforce all licensing laws of Title 58, Occupations and Professions.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-104 Director of division -- Appointment -- Duties.

(1) The division shall be under the supervision, direction, and control of a director. The director shall be appointed by the executive director with the approval of the governor. The director shall hold office at the pleasure of the governor.
(2) The director shall perform all duties, functions, and responsibilities assigned to the division by law or rule and, where provided, with the collaboration and assistance of the boards established under this title.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-105 Employment of staff.

The director, with the approval of the executive director, may employ necessary staff, including specialists and professionals, to assist him in performing the duties, functions, and responsibilities of the division.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-106 Division -- Duties, functions, and responsibilities.

(1) The duties, functions, and responsibilities of the division include the following:
  (a) prescribing, adopting, and enforcing rules to administer this title;
  (b) investigating the activities of any person whose occupation or profession is regulated or governed by the laws and rules administered and enforced by the division;
  (c) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the production of any books, papers, documents, records, contracts, recordings, tapes, correspondence, or information relevant to an investigation upon a finding of sufficient need by the director or by the director's designee;
  (d) taking administrative and judicial action against persons in violation of the laws and rules administered and enforced by the division, including the issuance of cease and desist orders;
  (e) seeking injunctions and temporary restraining orders to restrain unauthorized activity;
  (f) complying with Title 52, Chapter 4, Open and Public Meetings Act ;
  (g) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew, or otherwise acting upon any license;
  (h) preparing and submitting to the governor and the Legislature an annual report of the division's operations, activities, and goals;
  (i) preparing and submitting to the executive director a budget of the expenses for the division;
  (j) establishing the time and place for the administration of examinations; and

(k) preparing lists of licensees and making these lists available to the public at cost upon request unless otherwise prohibited by state or federal law.

(2) The division may not include home telephone numbers or home addresses of licensees on the lists prepared under Subsection (1)(k), except as otherwise provided by rules of the division made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3)

(a) The division may provide the home address or home telephone number of a licensee on a list prepared under Subsection (1) upon the request of an individual who provides proper identification and the reason for the request, in writing, to the division.

(b) A request under Subsection (3)(a) is limited to providing information on only one licensee per request.

(c) The division shall provide, by rule, what constitutes proper identification under Subsection (3)(a).

Amended by Chapter 238, 2016 General Session

58-1-107 Applicability -- Relationship to specific chapters under title.

The provisions of this chapter uniformly apply to the administration and enforcement of this title. However, unless expressly prohibited in this chapter, any provision of this chapter may be supplemented or altered by specific chapters of this title.

Enacted by Chapter 297, 1993 General Session

58-1-108 Adjudicative proceedings.

(1) The division and all boards created under the authority of this title shall comply with the procedures and requirements of Title 13, Chapter 1, Department of Commerce, and Title 63G, Chapter 4, Administrative Procedures Act, in all of their adjudicative proceedings as defined by Subsection 63G-4-103(1).

(2) Before proceeding under Section 63G-4-502, the division shall review the proposed action with a committee of no less than three licensees appointed by the chairman of the licensing board created under this title for the profession of the person against whom the action is proposed.

(3) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, a warning or final disposition letter which does not constitute disciplinary action against the addressee, issued in response to a complaint of unprofessional or unlawful conduct under this title, does not constitute an adjudicative proceeding.

Amended by Chapter 382, 2008 General Session

58-1-109 Presiding officers -- Content of orders -- Recommended orders -- Final orders -- Appeal of orders.

(1) Unless otherwise specified by statute or rule, the presiding officer for adjudicative proceedings before the division shall be the director. However, pursuant to Title 63G, Chapter 4, Administrative Procedures Act, the director may designate in writing an individual or body of individuals to act as presiding officer to conduct or to assist the director in conducting any part or all of an adjudicative proceeding.

(2) Unless otherwise specified by the director, an administrative law judge shall be designated as the presiding officer to conduct formal adjudicative proceedings in accordance with Subsection 63G-4-102(4), Sections 63G-4-204 through 63G-4-207, and 63G-4-209.

(3) Unless otherwise specified by the director, the licensing board of the occupation or profession that is the subject of the proceedings shall be designated as the presiding officer to serve as fact finder at the evidentiary hearing in a formal adjudicative proceeding.
(4) At the close of an evidentiary hearing in an adjudicative proceeding, unless otherwise specified by the director, the presiding officer who served as the fact finder at the hearing shall issue a recommended order based upon the record developed at the hearing determining all issues pending before the division.
(5)
(a) The director shall issue a final order affirming the recommended order or modifying or rejecting all or any part of the recommended order and entering new findings of fact, conclusions of law, statement of reasons, and order based upon the director's personal attendance at the hearing or a review of the record developed at the hearing. Before modifying or rejecting a recommended order, the director shall consult with the presiding officer who issued the recommended order.
(b) If the director issues a final order modifying or rejecting a recommended order, the licensing board of the occupation or profession that is the subject of the proceeding may, by a two-thirds majority vote of all board members, petition the executive director or designee within the department to review the director's final order. The executive director's decision shall become the final order of the division. This subsection does not limit the right of the parties to appeal the director's final order by filing a request for agency review under Subsection (8).
(6) If the director is unable for any reason to rule upon a recommended order of a presiding officer, the director may designate another person within the division to issue a final order.
(7) If the director or the director's designee does not initiate additional fact finding or issue a final order within 20 calendar days after the date of the recommended order of the presiding officer, the recommended order becomes the final order of the director or the director's designee.
(8) The final order of the director may be appealed by filing a request for agency review with the executive director or the executive director's designee within the department.
(9) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

Amended by Chapter 238, 2016 General Session

58-1-110 Legislative review in Title 58, Occupations and Professions.

Legislation proposing the licensing or regulation of an occupation or profession under Title 58, Occupations and Professions, that is not currently subject to licensing or regulation under Title 58, Occupations and Professions:
(1) may not be enacted by the Legislature unless:
(a) a proposal to license or regulate the occupation or profession has been reviewed by the Occupational and Professional Licensure Review Committee as described in Title 36, Chapter 23, Occupational and Professional Licensure Review Committee Act; or
(b) the proposed legislation contains a provision that expressly exempts the legislation from the review requirement of Subsection (1)(a);
(2) is subject to a reauthorization schedule as described in Title 63I, Chapter 1, Legislative Oversight and Sunset Act; and
(3) shall include a repeal date in Section 63I-1-258 that is no later than 10 years after the effective date of the legislation.

Enacted by Chapter 323, 2013 General Session

Effective 1/1/2017

58-1-111 Tax credit certificate -- Psychiatrists and psychiatric mental health nurse practitioners -- Underserved populations.

(1) As used in this section:

(a) "Average of 30 hours or more per week" means that the quotient calculated when dividing the claimant's total hours providing licensed services in the state during the taxable year by the number of weeks in which the claimant is licensed in the state during the taxable year is greater than or equal to 30.

(b) "Licensed services" means the provision of behavioral health treatment in the state and within the scope of practice of a psychiatrist, a psychiatric mental health nurse practitioner, or a volunteer health practitioner.

(c) "Psychiatric mental health nurse practitioner" means an individual who:

(i) is licensed under Chapter 31b, Nurse Practice Act, for the practice of advanced practice registered nursing as that term is defined in Section 58-31b-102; and

(ii) holds a certification recognized by the American Nurses Credentialing Center of the American Association of Colleges of Nursing as a psychiatric mental health nurse practitioner.

(d) "Psychiatrist" means an individual who:

(i) is licensed as a physician under:

(A)Chapter 67, Utah Medical Practice Act;

(B)Chapter 67b, Interstate Medical Licensure Compact; or

(C)Chapter 68, Utah Osteopathic Medical Practice Act; and

(ii) is board eligible for a psychiatry specialization recognized by the American Board of Medical Specialists or the American Osteopathic Association's Bureau of Osteopathic Specialists.

(e) "Underserved population" means:

(i) an individual located in a county of the third, fourth, fifth, or sixth class, as designated in Section 17-50-501; or

(ii) a Native American Indian.

(f) "Volunteer retired psychiatrist" means an individual:

(i) described in Subsection (1)(d) who, during the calendar year, did not receive payment for providing licensed services; or

(ii)

(A) licensed under Chapter 81, Retired Volunteer Health Practitioner Act; and

(B) previously or currently board certified in psychiatry.

(2)

(a) An individual who seeks to obtain a state income tax credit under Subsections 59-10-1111(2) through (4) shall file an application with the division with respect to each taxable year in which the individual seeks a state income tax credit.

(b) An individual may qualify for a tax credit certificate under this section for no more than 10 taxable years for each tax credit.

(3) The application for a tax credit certificate under Subsection 59-10-1111(2) shall require the individual to provide the following to the division:

(a) the date on which the individual obtained a license and the specialization described in Subsection (1)(c)(ii) or (d)(ii);

(b)

(i) an attestation that the individual was licensed on or after January 1, 2017, to provide licensed services; or

(ii) if the individual was licensed to provide licensed services prior to January 1, 2017, an attestation:
(A) that the individual did not provide licensed services for the two calendar years before the date the individual initially applied for the income tax credit under this subsection; and
(B) the date on which the individual resumed providing licensed services in the state; and
(c) other information as required by the division by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(4) An application for a tax credit certificate under Subsection 59-10-1111(3) shall require the individual to attest to the division:
(a) that the individual averaged 30 or more hours per week during the taxable year providing licensed services;
(b) that the individual devoted 25% or more of the individual's total hours of licensed services in the taxable year to an underserved population;
(c) the type of underserved population for which the individual provided services during the taxable year; and
(d) other information as required by the division by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(5) An application for a tax credit certificate under Subsection 59-10-1111(4) shall require the individual to attest to the division:
(a) whether the individual is licensed under Subsection (1)(f)(i) or (ii);
(b) that the individual did not receive payment during the calendar year for providing licensed services;
(c) that during the calendar year, the individual provided at least 300 hours of licensed services to an underserved population, the homeless population, or veterans without receiving payment for providing the licensed services;
(d) a description of the type of population described in Subsection (5)(c) for which the individual provided licensed services; and
(e) other information as required by the division by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(6)
(a) The division shall issue a tax credit certificate in accordance with this subsection.
(b) The tax credit certificate may state that an individual is entitled to:
(i) a tax credit under Subsection 59-10-1111(2) if the individual meets the requirements of Subsection (3);
(ii) a tax credit under Subsection 59-10-1111(3) if the individual meets the requirements of Subsection (4);
(iii) a tax credit under Subsection 59-10-1111(4) if the individual meets the requirements of Subsection (5); or
(iv) a tax credit under Subsections 59-10-1111(2) and (3) if the individual meets the requirements of Subsections (3) and (4).
(7)
(a) The division may issue a tax credit certificate to an individual under Subsection 59-10-1111(2) for no more than 10 taxable years after the date on which the individual resumed services under Subsection (3)(b)(ii).
(b) The division may issue a tax credit certificate to an individual under Subsections 59-10-1111(3) and (4) for no more than 10 taxable years.
(8) The division shall provide a copy of a tax credit certificate issued under this section to the individual and the State Tax Commission.

Enacted by Chapter 407, 2016 General Session

Part 2
Boards

58-1-201 Boards -- Appointment -- Membership -- Terms -- Vacancies -- Quorum -- Per diem and expenses -- Chair -- Financial interest or faculty position in professional school that teaches continuing education prohibited.

(1)
(a)
(i) The executive director shall appoint the members of the boards established under this title.
(ii) In appointing these members the executive director shall give consideration to recommendations by members of the respective occupations and professions and by their organizations.
(b) Each board shall be composed of five members, four of whom shall be licensed or certified practitioners in good standing of the occupation or profession the board represents, and one of whom shall be a member of the general public, unless otherwise provided under the specific licensing chapter.
(c)
(i) The name of each person appointed to a board shall be submitted to the governor for confirmation or rejection.
(ii) If an appointee is rejected by the governor, the executive director shall appoint another person in the same manner as set forth in Subsection (1)(a).
(2)
(a)
(i) Except as required by Subsection (2)(b), as terms of current board members expire, the executive director shall appoint each new member or reappointed member to a four-year term.
(ii) Upon the expiration of the term of a board member, the board member shall continue to serve until a successor is appointed, but for a period not to exceed six months from the expiration date of the member's term.
(b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
(c) A board member may not serve more than two consecutive terms, and a board member who ceases to serve on a board may not serve again on that board until after the expiration of a two-year period beginning from that cessation of service.
(d)
(i) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(ii) After filling that term, the replacement member may be appointed for only one additional full term.
(e) The director, with the approval of the executive director, may remove a board member and replace the member in accordance with this section for the following reasons:

(i) the member fails or refuses to fulfill the responsibilities and duties of a board member, including attendance at board meetings;
(ii) the member engages in unlawful or unprofessional conduct; or
(iii) if appointed to the board position as a licensed member of the board, the member fails to maintain a license that is active and in good standing.
(3) A majority of the board members constitutes a quorum. A quorum is sufficient authority for the board to act.
(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(5) Each board shall annually designate one of its members to serve as chair for a one-year period.
(6) A board member may not be a member of the faculty of, or have a financial interest in, a vocational or professional college or school that provides continuing education to any licensee if that continuing education is required by statute or rule.

Amended by Chapter 262, 2013 General Session

58-1-202 Boards -- Duties, functions, and responsibilities.
(1) The duties, functions, and responsibilities of each board include the following:
(a) recommending to the director appropriate rules;
(b) recommending to the director policy and budgetary matters;
(c) approving and establishing a passing score for applicant examinations;
(d) screening applicants and recommending licensing, renewal, reinstatement, and relicensure actions to the director in writing;
(e) assisting the director in establishing standards of supervision for students or persons in training to become qualified to obtain a license in the occupation or profession it represents; and
(f) acting as presiding officer in conducting hearings associated with adjudicative proceedings and in issuing recommended orders when so designated by the director.
(2) Subsection (1) does not apply to boards created in Title 58, Chapter 55, Utah Construction Trades Licensing Act.
(3)
(a) The following boards may recommend to the appropriate legislative committee whether the board supports a change to a licensing act:
(i)Chapter 5a, Podiatric Physician Licensing Act;
(ii)Chapter 16a, Utah Optometry Practice Act;
(iii)Chapter 17b, Pharmacy Practice Act;
(iv)Chapter 24b, Physical Therapy Practice Act;
(v)Chapter 28, Veterinary Practice Act;
(vi)Chapter 31b, Nurse Practice Act;
(vii)Chapter 40a, Athletic Trainer Licensing Act;
(viii)Chapter 44a, Nurse Midwife Practice Act;
(ix)Chapter 67, Utah Medical Practice Act;
(x)Chapter 68, Utah Osteopathic Medical Practice Act;
(xi)Chapter 69, Dentist and Dental Hygienist Practice Act;
(xii)Chapter 70a, Physician Assistant Act;

(xiii)Chapter 71, Naturopathic Physician Practice Act;
(xiv)Chapter 72, Acupuncture Licensing Act; and
(xv)Chapter 73, Chiropractic Physician Practice Act.
(b) This Subsection (3) does not:
(i) require a board's approval to amend a practice act; and
(ii) apply to technical or clarifying amendments to a practice act.

Amended by Chapter 198, 2016 General Session

58-1-203 Duties, functions, and responsibilities of division in collaboration with board -- Construction Services Commission.

(1) The following duties, functions, and responsibilities of the division shall be performed by the division with the collaboration and assistance of the appropriate board:
(a) defining which schools, colleges, universities, departments of universities, military educational and training programs, or other institutions of learning are reputable and in good standing with the division;
(b) prescribing license qualifications;
(c) prescribing rules governing applications for licenses;
(d) providing for a fair and impartial method of examination of applicants;
(e) defining unprofessional conduct, by rule, to supplement the definitions under this chapter or other licensing chapters;
(f) establishing advisory peer committees to the board and prescribing their scope of authority; and
(g) establishing conditions for reinstatement and renewal of licenses.
(2) Notwithstanding Subsection (1), the duties, functions, and responsibilities of the division outlined in Subsection (1) shall, instead, be performed by the Construction Services Commission for all purposes of Title 58, Chapter 55, Utah Construction Trades Licensing Act.

Amended by Chapter 181, 2011 General Session

Part 3
Licensing

58-1-301 License application -- Licensing procedure.

(1)
(a) Each license applicant shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of the particular qualifications required of the applicant, shall include the applicant's Social Security number, shall be verified by the applicant, and shall be accompanied by the appropriate fees.
(b) An applicant's Social Security number is a private record under Subsection 63G-2-302(1)(i).
(2)
(a) A license shall be issued to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.
(b) A written notice of additional proceedings shall be provided to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon the applicant's qualifications for licensure, if the

outcome of additional proceedings is required to determine the division's response to the application.

(c) A written notice of denial of licensure shall be provided to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.

(d) A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all qualifications for licensure.

(3) Before any person is issued a license under this title, all requirements for that license as established under this title and by rule shall be met.

(4) If all requirements are met for the specific license, the division shall issue the license.

Amended by Chapter 426, 2013 General Session

58-1-301.5 Division access to Bureau of Criminal Identification records.

(1) The division shall have direct access to criminal background information maintained by the Bureau of Criminal Identification under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, for background screening of persons who are applying for licensure, licensure renewal, licensure reinstatement, or relicensure, as required in:

(a) Section 58-17b-307 of Title 58, Chapter 17b, Pharmacy Practice Act;

(b) Section 58-31b-302 of Title 58, Chapter 31b, Nurse Practice Act;

(c) Section 58-47b-302 of Title 58, Chapter 47b, Massage Therapy Practice Act;

(d) Section 58-55-302 of Title 58, Chapter 55, Utah Construction Trades Licensing Act, as it applies to alarm companies and alarm company agents;

(e) Section 58-63-302 of Title 58, Chapter 63, Security Personnel Licensing Act; and

(f) Section 58-64-302 of Title 58, Chapter 64, Deception Detection Examiners Licensing Act.

(2) The division's access to criminal background information under this section:

(a) shall meet the requirements of Section 53-10-108; and

(b) includes convictions, pleas of nolo contendere, pleas of guilty or nolo contendere held in abeyance, dismissed charges, and charges without a known disposition.

Amended by Chapter 262, 2013 General Session

58-1-301.7 Change of information.

(1)

(a) An applicant, licensee, or certificate holder shall send the division a signed statement, in a form required by the division, notifying the division within 10 business days of a change in mailing address.

(b) When providing a mailing address, the individual may provide a post office box or other mail drop location.

(c) In addition to providing a mailing address, an applicant, licensee, or certificate holder may provide to the division, in a form required by the division, an email address and may designate email as the preferred method of receiving notifications from the division.

(2) An applicant, licensee, or certificate holder is considered to have received a notification that has been sent to the most recent:

(a) mailing address provided to the division by the applicant, licensee, or certificate holder; or

(b) email address furnished to the division by the applicant, licensee, or certificate holder, if email has been designated by the applicant, licensee, or certificate holder as the preferred method of receiving notifications from the division.

Amended by Chapter 262, 2013 General Session

58-1-302 License by endorsement.

(1)

(a) The division may issue a license without examination to a person who has been licensed in a state, district, or territory of the United States, or in a foreign country, where the education, experience, and examination requirements are, or were at the time the license was issued, substantially equal to the requirements of this state.

(b) The division, in consultation with the applicable licensing board, may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, prescribing the requirements of this Subsection (1).

(2) Before a person may be issued a license under this section, the person shall produce satisfactory evidence of the person's identity, qualifications, and good standing in the occupation or profession for which licensure is sought.

Amended by Chapter 238, 2016 General Session

58-1-303 Temporary license.

(1)

(a) The division may issue a temporary license to a person who has met all license requirements except the passing of an examination. In this case:

(i) the licensee shall take the next available examination; and

(ii) the temporary license automatically expires upon release of official examination results if the applicant fails the examination.

(b) The division may issue a temporary license to a person licensed in another state or country who is in Utah temporarily to teach or assist a Utah resident licensed to practice an occupation or profession under this title.

(c) The division may issue a temporary license to a person licensed in another state who met the requirements for licensure in that state, which were equal to or greater than the requirements for licensure of this state at the time the license was obtained in the other state, upon a finding by the division, in collaboration with the appropriate board, that the issuance of a temporary license is necessary to or justified by:

(i) a local or national emergency or any governmental action causing an unusual circumstance that might be reasonably considered to materially jeopardize the public health, safety, or welfare if a temporary license is not issued;

(ii) a lack of necessary available services in any community or area of the state from an occupation or profession licensed under this title, if the lack of services might be reasonably considered to materially jeopardize the public health, safety, or welfare if a temporary license is not issued; or

(iii) a need to first observe an applicant for licensure in this state in a monitored or supervised practice of the applicant's occupation or profession before a decision is made by the division either to grant or deny the applicant a regular license.

(2) The division may not issue a temporary license to a person who qualifies for one under Subsection (1)(a) more than three consecutive times within the three-year period immediately following the issuance of the first temporary license.
(3) The division may not issue a temporary license to a person solely because there is a competitive advantage enjoyed or a competitive disadvantage suffered by any party caused by the absence of a licensed person, unless in addition there is or will be a material risk presented to the public health, safety, or welfare.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-304 Restricted license.
(1) The division may issue a restricted or probationary license to an applicant for licensure, renewal, or reinstatement of licensure if:
  (a) the applicant appears to meet the qualifications for licensure, but has engaged in unlawful, unprofessional, or other conduct bearing upon the applicant's qualifications; and
  (b) the division determines the need to observe the applicant in a monitored or supervised practice of the applicant's occupation or profession or to attach other reasonable restrictions or conditions upon the applicant in order to accommodate licensure, while protecting the public health, safety, and welfare.
(2) Issuance of a restricted or probationary license is considered a partial denial of licensure that is subject to agency review.

Amended by Chapter 262, 2013 General Session

58-1-305 Inactive license.
(1) The division may adopt rules permitting inactive licensure. The rules shall specify the requirements and procedures for placing a license on inactive status, the length of time a license may remain on inactive status, and the requirements and procedures to activate an inactive license.
(2) Except as otherwise specified by rule, an inactive licensee has no right or privilege to engage in the practice of the licensed occupation or profession.

Enacted by Chapter 297, 1993 General Session

58-1-306 Surrender of license.
(1) The division may, by written agreement, accept the voluntary surrender of a license.
(2) Unless otherwise stated in the written agreement, tender and acceptance of a voluntary surrender of a license does not foreclose the division from pursuing additional disciplinary or other action authorized under this title or in rules adopted under this title.
(3) Unless otherwise stated in the written agreement, tender and acceptance of a voluntary surrender of a license terminates all rights and privileges associated with the license.
(4) Unless otherwise stated in the written agreement, the surrendered rights and privileges of licensure may be reacquired only by reapplying for licensure and meeting the requirements for a new or reinstated license set forth under this title or in rules adopted under this title.
(5) Unless otherwise stated in the written agreement, documentation of tender and acceptance of a voluntary surrender of a license is a public record.
(6) Unless otherwise stated in the written agreement, when a tender and acceptance of a voluntary surrender of a license occurs while adjudicative proceedings are pending against the

licensee for unprofessional or unlawful conduct, the division may report the surrender of license to appropriate state and federal agencies and licensing data banks.

Enacted by Chapter 297, 1993 General Session

58-1-307 Exemptions from licensure.

(1) Except as otherwise provided by statute or rule, the following individuals may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:

(a) an individual serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the individual holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;

(b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;

(c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified individuals;

(d) an individual residing in another state and licensed to practice a regulated occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;

(e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;

(f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;

(g) an individual licensed in a health care profession in another state who performs that profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state;

(h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator;

(i) an individual licensed and in good standing in another state, who is in this state:

(i) temporarily, under the invitation and control of a sponsoring entity;

(ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division; and

(iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods; and

(j) the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, provided:

(i) the spouse holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division; and
(ii) the license is current and the spouse is in good standing in the state of licensure.

(2)
(a) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice.
(b) Violation of a limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.

(3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.

(4) Upon the declaration of a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the president of the United States or other federal official requesting public health-related activities, the division in collaboration with the board may:
(a) suspend the requirements for permanent or temporary licensure of individuals who are licensed in another state for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state;
(b) modify, under the circumstances described in this Subsection (4) and Subsection (5), the scope of practice restrictions under this title for individuals who are licensed under this title as:
(i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;
(ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31c, Nurse Licensure Compact;
(iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;
(iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter 17b, Pharmacy Practice Act;
(v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act;
(vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist Practice Act; and
(vii) a physician assistant under Chapter 70a, Physician Assistant Act;
(c) suspend the requirements for licensure under this title and modify the scope of practice in the circumstances described in this Subsection (4) and Subsection (5) for medical services personnel or paramedics required to be certified under Section 26-8a-302;
(d) suspend requirements in Subsections 58-17b-620(3) through (6) which require certain prescriptive procedures;
(e) exempt or modify the requirement for licensure of an individual who is activated as a member of a medical reserve corps during a time of emergency as provided in Section 26A-1-126; and
(f) exempt or modify the requirement for licensure of an individual who is registered as a volunteer health practitioner as provided in Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

(5) Individuals exempt under Subsection (4)(c) and individuals operating under modified scope of practice provisions under Subsection (4)(b):
(a) are exempt from licensure or subject to modified scope of practice for the duration of the emergency;
(b) must be engaged in the distribution of medicines or medical devices in response to the emergency or declaration; and

(c) must be employed by or volunteering for:
(i) a local or state department of health; or
(ii) a host entity as defined in Section 26-49-102.
(6) In accordance with the protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health or a local health department shall coordinate with public safety authorities as defined in Subsection 26-23b-110(1) and may:
(a) use a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance to prevent or treat a disease or condition that gave rise to, or was a consequence of, the emergency; or
(b) distribute a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance:
(i) if necessary, to replenish a commercial pharmacy in the event that the commercial pharmacy's normal source of the vaccine, antiviral, antibiotic, or other prescription medication is exhausted; or
(ii) for dispensing or direct administration to treat the disease or condition that gave rise to, or was a consequence of, the emergency by:
(A) a pharmacy;
(B) a prescribing practitioner;
(C) a licensed health care facility;
(D) a federally qualified community health clinic; or
(E) a governmental entity for use by a community more than 50 miles from a person described in Subsections (6)(b)(ii)(A) through (D).
(7) In accordance with protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health shall coordinate the distribution of medications:
(a) received from the strategic national stockpile to local health departments; and
(b) from local health departments to emergency personnel within the local health departments' geographic region.
(8) The Department of Health shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, protocols for administering, dispensing, and distributing a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance in the event of a declaration of a national, state, or local emergency. The protocol shall establish procedures for the Department of Health or a local health department to:
(a) coordinate the distribution of:
(i) a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance received by the Department of Health from the strategic national stockpile to local health departments; and
(ii) a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication received by a local health department to emergency personnel within the local health department's geographic region;
(b) authorize the dispensing, administration, or distribution of a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance to the contact of a patient without a patient-practitioner relationship, if the contact's condition is the same as that of the physician's patient; and
(c) authorize the administration, distribution, or dispensing of a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication to an individual who:
(i) is working in a triage situation;
(ii) is receiving preventative or medical treatment in a triage situation;

(iii) does not have coverage for the prescription in the individual's health insurance plan;
(iv) is involved in the delivery of medical or other emergency services in response to the declared national, state, or local emergency; or
(v) otherwise has a direct impact on public health.
(9) The Department of Health shall give notice to the division upon implementation of the protocol established under Subsection (8).

Amended by Chapter 201, 2016 General Session
Amended by Chapter 238, 2016 General Session

58-1-308 Term of license -- Expiration of license -- Renewal of license -- Reinstatement of license -- Application procedures.

(1)
(a) Each license issued under this title shall be issued in accordance with a two-year renewal cycle established by rule.
(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
(2)
(a) The expiration date of a license shall be shown on the license.
(b) A license that is not renewed prior to the expiration date shown on the license automatically expires.
(c) A license automatically expires prior to the expiration date shown on the license upon the death of a licensee who is a natural person, or upon the dissolution of a licensee that is a partnership, corporation, or other business entity.
(d) If the existence of a dissolved partnership, corporation, or other business entity is reinstated prior to the expiration date shown upon the entity's expired license issued by the division, the division shall, upon written application, reinstate the applicant's license, unless it finds that the applicant no longer meets the qualifications for licensure.
(e) Expiration of licensure is not an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.
(3)
(a) The division shall notify each licensee in accordance with procedures established by rule that the licensee's license is due for renewal and that unless an application for renewal is received by the division by the expiration date shown on the license, together with the appropriate renewal fee and documentation showing completion of or compliance with renewal qualifications, the license will not be renewed.
(b) Examples of renewal qualifications which by statute or rule the division may require the licensee to document completion of or compliance with include:
(i) continuing education;
(ii) continuing competency;
(iii) quality assurance;
(iv) utilization plan and protocol;
(v) financial responsibility;
(vi) certification renewal; and
(vii) calibration of equipment.
(4)
(a)
(i) An application for renewal that complies with Subsection (3) is complete.

(ii) A renewed license shall be issued to applicants who submit a complete application, unless it is apparent to the division that the applicant no longer meets the qualifications for continued licensure.

(b)

(i) The division may evaluate or verify documentation showing completion of or compliance with renewal requirements on an entire population or a random sample basis, and may be assisted by advisory peer committees.

(ii) If necessary, the division may complete its evaluation or verification subsequent to renewal and, if appropriate, pursue action to suspend or revoke the license of a licensee who no longer meets the qualifications for continued licensure.

(c) The application procedures specified in Subsection 58-1-301(2), apply to renewal applications to the extent they are not in conflict with this section.

(5)

(a) Any license that is not renewed may be reinstated:

(i) upon submission of an application for reinstatement, payment of the renewal fee together with a reinstatement fee determined by the department under Section 63J-1-504, and upon submission of documentation showing completion of or compliance with renewal qualifications; and

(ii)

(A) at any time within two years after nonrenewal; or

(B) between two years and five years after nonrenewal, if established by rule made by the division in consultation with the applicable licensing board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The application procedures specified in Subsection 58-1-301(2) apply to the reinstatement applications to the extent they are not in conflict with this section.

(c) Except as otherwise provided by rule, a license that is reinstated no later than 120 days after it expires shall be retroactively reinstated to the date it expired.

(6)

(a) Except as provided in Subsection (5)(a), if not reinstated within two years, the holder may obtain a license only if the holder meets requirements provided by the division by rule or by statute for a new license.

(b) Each licensee under this title who has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States may reinstate the licensee's license without taking an examination by submitting an application for reinstatement, paying the current annual renewal fee and the reinstatement fee, and submitting documentation showing completion of or compliance with any renewal qualifications at any time within six months after reestablishing domicile within Utah or terminating full-time government service.

Amended by Chapter 238, 2016 General Session

58-1-309 Laws and rules examination.

In addition to qualifications for licensure or renewal of licensure enumerated in specific practice acts under this title, the division may by rule require an applicant to pass an examination of the laws and rules relevant to the occupation or profession to ensure familiarity with these laws and rules.

Enacted by Chapter 297, 1993 General Session

Part 4
License Denial

58-1-401 Grounds for denial of license -- Disciplinary proceedings -- Time limitations -- Sanctions.

(1) The division shall refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the qualifications for licensure under this title.

(2) The division may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the license of a licensee for the following reasons:

(a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title;

(b) the applicant or licensee has engaged in unlawful conduct as defined by statute under this title;

(c) the applicant or licensee has been determined to be mentally incompetent by a court of competent jurisdiction; or

(d) the applicant or licensee is unable to practice the occupation or profession with reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material, or as a result of a mental or physical condition, when the condition demonstrates a threat or potential threat to the public health, safety, or welfare.

(3) A licensee whose license to practice an occupation or profession regulated by this title has been suspended, revoked, placed on probation, or restricted may apply for reinstatement of the license at reasonable intervals and upon compliance with conditions imposed upon the licensee by statute, rule, or terms of the license suspension, revocation, probation, or restriction.

(4) The division may issue cease and desist orders to:

(a) a licensee or applicant who may be disciplined under Subsection (1) or (2);

(b) a person who engages in or represents that the person is engaged in an occupation or profession regulated under this title; and

(c) a person who otherwise violates this title or a rule adopted under this title.

(5) The division may impose an administrative penalty in accordance with Section 58-1-502.

(6)

(a) The division may not take disciplinary action against a person for unprofessional or unlawful conduct under this title, unless the division enters into a stipulated agreement or initiates an adjudicative proceeding regarding the conduct within four years after the conduct is reported to the division, except under Subsection (6)(b).

(b)

(i) The division may not take disciplinary action against a person for unprofessional or unlawful conduct more than 10 years after the occurrence of the conduct, unless the proceeding is in response to a civil or criminal judgment or settlement and the proceeding is initiated within one year following the judgment or settlement.

(ii) Notwithstanding Subsection (6)(b)(i), the division may refuse to issue a license due to unprofessional or unlawful conduct that occurred more than 10 years before a request or application for licensure is made.

Amended by Chapter 238, 2016 General Session

58-1-402 Administrative review -- Special appeals boards.

(1)
(a) Any applicant who has been denied a license to practice on the basis of credentials, character, or failure to pass a required examination, or who has been refused renewal or reinstatement of a license to practice on the basis that the applicant does not meet qualifications for continued licensure in any occupation or profession under the jurisdiction of the division may submit a request for agency review to the executive director within 30 days following notification of the denial of a license or refusal to renew or reinstate a license.
(b) The executive director shall determine whether the circumstances for denying an application for an initial license or for renewal or reinstatement of a license would justify calling a special appeals board under Subsection (2). The executive director's decision is not subject to agency review.

(2) A special appeals board shall consist of three members appointed by the executive director as follows:
(a) one member from the occupation or profession in question who is not on the board of that occupation or profession;
(b) one member from the general public who is neither an attorney nor a practitioner in an occupation or profession regulated by the division; and
(c) one member who is a resident lawyer currently licensed to practice law in this state who shall serve as chair of the special appeals board.

(3) The special appeals board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its proceedings.

(4)
(a) Within a reasonable amount of time following the conclusion of a hearing before a special appeals board, the board shall enter an order based upon the record developed at the hearing. The order shall state whether a legal basis exists for denying the application for an initial license or for renewal or reinstatement of a license that is the subject of the appeal. The order is not subject to further agency review.
(b) The division or the applicant may obtain judicial review of the decision of the special appeals board in accordance with Sections 63G-4-401 and 63G-4-403.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) If an applicant under Subsection (1) is not given a special appeals board, the applicant shall be given agency review under the ordinary agency review procedures specified by rule.

Amended by Chapter 286, 2010 General Session

58-1-403 Minimum 90-day suspension.

A license may not be reinstated subsequent to action taken under Section 58-1-401 within 90 days after the action has been taken, unless the division in collaboration with the appropriate board imposes other conditions.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-404 Diversion -- Procedure.

(1) As used in this section, "diversion" means suspending action to discipline a licensee who is or could be charged in a Notice of Agency Action with certain offenses within the category of unprofessional or unlawful conduct on the condition that the licensee agrees to participate in an educational or rehabilitation program or fulfill some other condition.

(2)

(a)

(i) The director may establish a diversion advisory committee for each occupation or profession or similar groups of occupations or professions licensed by the division.

(ii) The committees shall assist the director in the administration of this section.

(b)

(i) Each committee shall consist of at least three licensees from the same or similar occupation or profession as the person whose conduct is the subject of the committee's consideration.

(ii) The director shall appoint the members of a diversion advisory committee from nominations submitted by the corresponding board established for the same or similar occupation or profession under Section 58-1-201 or from other qualified nominees developed by or submitted to the division.

(iii) Committee members may not serve concurrently as members of the corresponding board.

(iv) Committee members shall serve voluntarily without remuneration.

(v) The director may:

(A) dissolve a diversion advisory committee;

(B) remove or request the replacement of a member of a committee; and

(C) establish procedures that are necessary and proper for a committee's administration.

(3) The director may, after consultation with the appropriate diversion advisory committee and by written agreement with the licensee, divert the licensee to a diversion program:

(a) at any time after receipt by the division of a complaint against the licensee when no adjudicative proceeding has been commenced;

(b) at any time prior to the conclusion of a hearing under Section 63G-4-206 when an adjudicative proceeding has been commenced against the licensee; or

(c) after a self-referral by a licensee who is not the subject of a current investigation, complaint, or adjudicative proceeding.

(4)

(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall define by rule the particular offenses within the category of unprofessional or unlawful conduct that may be subject to diversion.

(b) A licensee may be eligible for a diversion program only once for the same or similar offense, whether the diversion program was in this state or another jurisdiction, and is not eligible if previously disciplined by the division, by a licensing agency of another state, or by a federal government agency for the same or a similar offense.

(c) The term of a diversion agreement shall be five years or less, but may be extended for an additional period of time as agreed to by the parties in writing.

(d) A decision by the director not to divert a licensee is not subject to appeal or judicial review.

(5) A licensee may be represented by counsel:

(a) during the negotiations for diversion;

(b) at the time of the execution of the diversion agreement; and

(c) at each hearing before the director relating to a diversion program.

(6)
(a) As used in this section, "diversion agreement" means a written agreement between the division, through its director, and the licensee, which specifies formal terms and conditions the licensee must fulfill in order to comply with the diversion program.
(b)
(i) A diversion agreement shall contain a full detailed statement of the requirements agreed to by the licensee and a full detailed stipulation of the facts upon which the diversion agreement is premised.
(ii) The facts stipulated in the diversion agreement shall constitute binding admissions of the licensee:
(A) in a proceeding under Subsection (6)(c) or (6)(d) to terminate the diversion agreement and impose disciplinary sanctions against the licensee; and
(B) in a disciplinary proceeding based on unprofessional or unlawful conduct that is not the basis of the diversion agreement.
(c) The diversion agreement shall provide that if the licensee makes an intentional material misrepresentation of fact in the stipulation of facts contained in the diversion agreement, the director shall initiate the procedures set forth in Subsection (13) to terminate the diversion agreement and issue an order of license revocation.
(d)
(i) The diversion agreement shall provide that if the licensee fails to comply with its terms, the director shall initiate the procedures set forth in Subsection (14) to terminate the diversion agreement and issue an order of license suspension, which shall be stayed in favor of an order of probation having the same terms as those that comprised the diversion agreement.
(ii) The division may waive and not include as probationary requirements each term of the diversion agreement it does not consider necessary to protect the public.
(iii) The term of the order of probation shall be as provided in Subsection (14)(c)(ii).
(e) The division director may not approve a diversion agreement unless the licensee, as part of the diversion agreement:
(i) knowingly and intelligently waives the right to a hearing under Title 63G, Chapter 4, Administrative Procedures Act, for the conduct upon which the diversion agreement was premised;
(ii) agrees to be subject to the procedures and remedies set forth in this section;
(iii) acknowledges an understanding of the consequences of making an intentional misrepresentation of fact in the stipulation of facts contained in the diversion agreement; and
(iv) acknowledges an understanding of the consequences of failing to comply with the terms of the diversion agreement.
(7)
(a) If the division and the licensee enter into a diversion agreement after the division has commenced an adjudicative proceeding against the licensee, the director shall stay that proceeding pending completion of the diversion agreement.
(b) The order staying the adjudicative proceeding shall be filed in that proceeding and may reference the diversion agreement.
(8)
(a) Upon successful completion of a diversion agreement, the director shall dismiss each charge under the director's jurisdiction of unprofessional or unlawful conduct that was filed against the licensee.

(b) Whether or not an adjudicative proceeding had been commenced against the licensee, the division may not thereafter subject the licensee to disciplinary action for the conduct that formed the basis of the completed diversion agreement.
(c) Neither the execution of a diversion agreement nor the dismissal of filed charges constitute disciplinary action, and no report of either may be made to disciplinary databases.
(d) The division may consider the completion of a diversion program and the contents of the diversion agreement in determining the appropriate disciplinary action if the licensee is charged in the future with the same or similar conduct.
(e) The order of dismissal shall be filed in the adjudicative proceeding in which the misconduct was charged and may reference the diversion agreement.

(9)
(a) Acceptance of the licensee into diversion does not preclude the division from investigating or continuing to investigate the licensee for unlawful or unprofessional conduct committed before, during, or after participation in the diversion program.
(b) Acceptance of the licensee into diversion does not preclude the division from taking disciplinary action or continuing to take disciplinary action against the licensee for unlawful or unprofessional conduct committed before, during, or after participation in the diversion program, except for that conduct that formed the basis for the diversion agreement.
(c) A licensee terminated from the diversion program for failure to comply with the diversion agreement is subject to disciplinary action by the division for acts committed before, during, and after participation in the diversion program, including violations identified in the diversion agreement.

(10) The classification, retention, and disclosure of records relating to a licensee's participation in the diversion program is governed by Title 63G, Chapter 2, Government Records Access and Management Act, except that a provision in the diversion agreement that addresses access to or release of diversion records regarding the licensee shall govern the access to and release of those records.

(11) Notwithstanding any other provision of this section, the fact that the licensee completed a diversion program and the contents of the diversion agreement itself may be considered by the division in determining the appropriate disciplinary action if the licensee is charged in the future with the same or similar conduct.

(12) Meetings regarding the diversion program are not subject to Title 52, Chapter 4, Open and Public Meetings Act.

(13)
(a) If, during the course of the diversion agreement, information is brought to the attention of the director that the licensee made an intentional material misrepresentation of fact in the stipulation of facts contained in the diversion agreement, the director shall cause to be served upon the licensee an order to show cause specifying the information relied upon by the director and setting a time and place for a hearing to determine whether or not the licensee made the intentional material misrepresentation of fact and whether the agreement should be terminated on that ground.
(b) Proceedings to terminate a diversion agreement on the grounds that the licensee made an intentional material misrepresentation of fact in the stipulation of facts contained in the diversion agreement and to issue an order of license revocation shall comply with Title 63G, Chapter 4, Administrative Procedures Act, except as follows:
(i) the notice of agency action shall be in the form of an order to show cause, which shall contain all of the information specified in Subsection 63G-4-201(2), except a statement that a written response to the order to show cause is required;

(ii) no written response to the order to show cause is required;
(iii) discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence on behalf of either party and all parties shall have access to information contained in the division's diversion file to the extent permitted by law;
(iv) the hearing shall be held only after timely notice to all parties; and
(v) an agency review or reconsideration of an order terminating a diversion agreement or of an order of license revocation pursuant to this Subsection (13) shall be limited to the division director's findings of fact, conclusions of law, and order that arose out of the order to show cause proceeding.
(c) Upon finding the licensee made an intentional material misrepresentation of fact in the stipulation of facts contained in the diversion agreement and that terminating the agreement is in the best interest of the public, and issuing an order to that effect, the director shall issue an order of license revocation, revoking the licensee's professional license.
(d) The order terminating the diversion agreement and the order of license revocation shall include findings of fact and conclusions of law as determined by the director following the hearing or as otherwise stipulated and agreed to by the parties.
(e) If the diversion agreement being terminated was entered into after the division had commenced an adjudicative proceeding against the licensee, that adjudicative proceeding shall be considered to be merged into the order of license revocation and it may not constitute a basis for a separate disciplinary action against the licensee.
(f) The order terminating the diversion agreement and the order of license revocation shall notify the licensee of the right to request agency review or reconsideration.
(14)
(a) If, during the course of the diversion agreement, information is brought to the attention of the director that the licensee has violated the diversion agreement and if it appears in the best interest of the public to proceed with charges, the director, after consultation with the diversion advisory committee, shall cause to be served upon the licensee an order to show cause specifying the facts relied upon by the director and setting a time and place for a hearing to determine whether or not the licensee has violated the diversion agreement and whether the agreement should be terminated.
(b) Proceedings to terminate a diversion agreement as described in Subsection (14)(c) shall comply with Title 63G, Chapter 4, Administrative Procedures Act, except as follows:
(i) the notice of agency action shall be in the form of an order to show cause, which shall contain all of the information specified in Subsection 63G-4-201(2), except a statement that a written response to the order to show cause is required;
(ii) no written response to the order to show cause shall be required;
(iii) discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence on behalf of either party and all parties shall have access to information contained in the division's diversion file to the extent permitted by law;
(iv) the hearing shall be held only after timely notice to all parties; and
(v) an agency review or reconsideration of an order terminating a diversion agreement or of an order of license suspension and probation pursuant to this Subsection (14) shall be limited to the division director's findings of fact, conclusions of law, and order that arose out of the order to show cause proceeding.
(c)
(i) Upon finding the licensee has violated the diversion agreement by conduct that is entirely the same or similar to the conduct upon which the diversion agreement is premised, or by violating a compliance provision contained in the diversion agreement, and further finding

that terminating the agreement is in the best interest of the public, and after issuing an order to that effect, the director shall issue an order of probation, consisting of the same terms as those which comprised the diversion agreement.

(ii) Upon finding that the licensee has violated the diversion agreement by conduct that includes conduct that is not the same or similar to the conduct upon which the diversion agreement is premised, and further finding that terminating the agreement is in the best interest of the public, and after issuing an order to that effect, the director shall, after notice of opportunity to be heard is provided to the licensee, issue an order imposing each disciplinary sanction the division deems appropriate, including suspension, public reprimand, a fine, probation, or revocation of licensure.

(iii) The period of probation shall be the time period which remained under the diversion agreement, or five years from the date of the order of license suspension and probation, whichever is longer, unless otherwise agreed by the parties.

(iv) The period of probation is tolled during the time the licensee does not have an active license in the state.

(d)

(i) The order terminating the diversion agreement and the order of license suspension and probation shall include findings of fact and conclusions of law as determined by the director following the hearing or as otherwise stipulated and agreed to by the parties.

(ii) The findings of fact may include those facts to which the licensee stipulated in the diversion agreement and additional facts as the director may determine in the course of the hearing.

(e) If the diversion agreement being terminated was entered into after the division had commenced an adjudicative proceeding against the licensee, that adjudicative proceeding shall be considered to be merged into the order of license suspension and probation and it may not constitute a basis for separate disciplinary action against the licensee.

(f) The order terminating the diversion agreement and the order of license suspension and probation shall notify the licensee of the right to request agency review or reconsideration.

(g)

(i) The terms and conditions of the order of license suspension and probation may be amended by order of the director, pursuant to motion or stipulation of the parties.

(ii) The order of the director on the motion shall not be subject to agency review, but is subject to agency reconsideration under Section 63G-4-302.

(h)

(i) If, during the course of probation, the director has reason to believe the licensee has violated the order of probation, the director shall cause to be served upon the licensee an order to show cause why the probation should not be terminated and why each additional disciplinary sanction the division deems appropriate should not be imposed, including suspension, public reprimand, a fine, or revocation of licensure.

(ii) The order to show cause shall specify the facts relied upon by the director and shall set a time and place for hearing before the director to determine whether or not the licensee has violated the order of probation, whether that order should be terminated, and why each additional disciplinary sanction the division deems appropriate should not be imposed, including suspension, public reprimand, a fine, or revocation of licensure.

(15)

(a) Nothing in this section precludes the division from issuing an emergency order pursuant to Section 63G-4-502.

(b) If the division issues an emergency order against a licensee who is subject to a diversion agreement with the division, that diversion agreement shall be immediately and automatically

terminated upon the issuance of the emergency order, without requiring compliance with the provisions of Title 63G, Chapter 4, Administrative Procedures Act.

(c)

(i) A licensee whose diversion agreement has been terminated pursuant to Subsection (15)(b) is entitled, upon request, to a posttermination hearing to challenge the termination of the diversion agreement.

(ii) The request shall be considered a request for agency action and shall comply with the requirements of Subsection 63G-4-201(3).

(iii) The division shall uphold the termination of the diversion agreement if it finds that:

(A) the licensee violated the diversion agreement; and

(B) it is in the best interest of the public to terminate the diversion agreement.

(16) The administrative statute of limitations for taking disciplinary action described in Subsection 58-1-401(6) shall be tolled during a diversion program.

Amended by Chapter 262, 2013 General Session

58-1-405 Provisions of volunteer health or veterinary services -- Division authority.

In accordance with Section 26-49-205, the division may pursue actions against a volunteer health practitioner operating under Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

Enacted by Chapter 242, 2008 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-1-501 Unlawful and unprofessional conduct.

(1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful under this title and includes:

(a) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title if the person is:

(i) not licensed to do so or not exempted from licensure under this title; or

(ii) restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license;

(b)

(i) impersonating another licensee or practicing an occupation or profession under a false or assumed name, except as permitted by law; or

(ii) for a licensee who has had a license under this title reinstated following disciplinary action, practicing the same occupation or profession using a different name than the name used before the disciplinary action, except as permitted by law and after notice to, and approval by, the division;

(c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this title if the employee is not licensed to do so under this title;

(d) knowingly permitting the person's authority to practice or engage in any occupation or profession licensed under this title to be used by another, except as permitted by law;
(e) obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the division or a licensing board through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission; or
(f)
(i) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state:
(A) without prescriptive authority conferred by a license issued under this title, or by an exemption to licensure under this title; or
(B) with prescriptive authority conferred by an exception issued under this title or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment; and
(ii) Subsection (1)(f)(i) does not apply to treatment rendered in an emergency, on-call or cross coverage situation, provided that the person who issues the prescription has prescriptive authority conferred by a license under this title, or is exempt from licensure under this title.
(2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined as unprofessional conduct under this title or under any rule adopted under this title and includes:
(a) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title;
(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title;
(c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession;
(d) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401;
(e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession;
(f) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so;
(g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;
(h) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent;
(i) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education;

(j) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license;
(k) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license;
(l) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule;
(m) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device:
(i) without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or
(ii) with prescriptive authority conferred by an exception issued under this title, or a multi-state practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment;
(n) violating a provision of Section 58-1-501.5; or
(o) violating the terms of an order governing a license.

Amended by Chapter 408, 2014 General Session

58-1-501.3 Health professional prescribing exceptions for expedited partner therapy for sexually transmitted diseases.
(1) For purposes of this section:
(a) "Drug to treat a sexually transmitted disease" means a drug:
(i) as defined in Section 58-17b-102; and
(ii) that is:
(A) an antibiotic; and
(B) prescribed in accordance with guidelines from the Centers for Disease Control and Prevention for patient delivered expedited partner therapy in the management of sexually transmitted disease.
(b) "Partner" means a person:
(i) with whom a practitioner does not have a bonafide practitioner-patient relationship; and
(ii) who is identified as, or claims to be a sexual partner of a patient.
(c) "Patient" means a person who:
(i) has a sexually transmitted disease; and
(ii) has a bonafide practitioner-patient relationship with a practitioner.
(d) "Sexually transmitted disease" means:
(i) gonorrhea; or
(ii) chlamydia.
(2) This section does not require a practitioner or a licensee under this chapter to prescribe or dispense a drug to treat a sexually transmitted disease for patient delivered expedited partner therapy. A practitioner's or licensee's decision to use expedited partner therapy as allowed by this section is voluntary.
(3) Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502, it is not unlawful conduct or unprofessional conduct, and it does not violate the provisions of this chapter if:
(a) a practitioner, in accordance with this Subsection (3):

(i) issues a prescription for a drug to treat a sexually transmitted disease to a partner by:
(A) writing "partner of (patient name)" on the prescription order; and
(B) giving the partner's prescription to the patient for subsequent use by the partner; or
(ii) notwithstanding Section 58-17b-610, dispenses a drug sample to treat a sexually transmitted disease to the patient for the subsequent use of the partner; or
(b) a pharmacist, in accordance with this Subsection (3), dispenses a prescription drug for the treatment of a sexually transmitted disease to:
(i) a person who:
(A) claims to be a partner; and
(B) presents a prescription for the drug to the pharmacist which is written for the unnamed partner of a named patient;
(ii) the patient for the subsequent use by the unnamed partner; or
(iii) an agent of the patient or partner.
(4)
(a) For purposes of Subsection (3), and notwithstanding Section 58-17b-602:
(i) the partner does not have to be identified on the prescription order by information that would disclose the identity of the partner; and
(ii) when dispensing a drug to treat a sexually transmitted disease directly to the partner, the patient's identifying information may, but does not need to, be included on the partner's drug label.
(b) Information provided by a pharmacist to a patient or the patient's agent for subsequent use by a partner satisfies the requirements of patient counseling for both the patient and the partner under Section 58-17b-613.
(5)
(a) The Legislature finds that the prevention and treatment of sexually transmitted diseases in the state is a compelling public health issue.
(b) A practitioner or licensee under this chapter is not liable for a medical malpractice action if the use of expedited partner therapy is in compliance with this section, except for those acts which are grossly negligent or willful and wanton.

Enacted by Chapter 151, 2009 General Session

58-1-501.5 Anatomic pathology services -- Billing violations.
(1) As used in this section, the following definitions apply:
(a)
(i) "Anatomic pathology services" including "technical or professional component of anatomic pathology services" means:
(A) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or under the supervision of a physician;
(B) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician or under the supervision of a physician;
(C) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral human blood smears when the attending or treating physician or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;
(D) subcellular pathology and molecular pathology; and

(E) blood bank services performed by a pathologist.
(ii) "Anatomic pathology services" including "technical or professional component of anatomic pathology services" does not include the initial collection or packaging of a sample for transport.
(b) "Clinical laboratory" or "laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.
(c) "Health care facility" has the meaning provided in Section 26-21-2.
(d) "Health care provider" includes:
(i) an advanced practice registered nurse licensed under Chapter 31b, Nurse Practice Act;
(ii) a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act;
(iii) a dentist licensed under Chapter 69, Dentist and Dental Hygienist Practice Act;
(iv) a nurse midwife licensed under Chapter 44a, Nurse Midwife Practice Act;
(v) an optometrist licensed under Chapter 16a, Utah Optometry Practice Act;
(vi) an osteopathic physician and surgeon licensed under Chapter 68, Utah Osteopathic Medical Practice Act;
(vii) a podiatric physician licensed under Chapter 5a, Podiatric Physician Licensing Act;
(viii) a physician and surgeon licensed under Chapter 67, Utah Medical Practice Act; and
(ix) a physician assistant licensed under Chapter 70a, Physician Assistant Act.
(e) "Insurer" includes:
(i) any entity offering accident and health insurance as defined in Section 31A-1-301;
(ii) workers' compensation benefits;
(iii) a health maintenance organization; or
(iv) any self-insurance, as defined in Section 31A-1-301, that offers health care insurance or benefits.

(2)
(a) A health care provider who orders anatomic pathology services for a patient from an independent physician or laboratory may not directly or indirectly mark up, charge a commission, or make a profit on the anatomic pathology service provided by the independent physician or laboratory.
(b) Nothing in Subsection (2)(a):
(i) restricts the ability of a health care provider, who has not performed or supervised either the technical or professional component of the anatomic pathology service, to obtain payment for services related solely to the collection and packaging of a sample and administrative billing costs; or
(ii) restricts the ability of the lab function in the Department of Health to bill for services.

(3) A health care provider when billing a patient directly for anatomic pathology services provided by an independent physician or laboratory shall furnish an itemized bill which conforms with the billing practices of the American Medical Association that conspicuously discloses the charge for each anatomic pathology service, physician or laboratory name, and address for each anatomic pathology service rendered to the patient by the physician or laboratory that performed the anatomic pathology service.

(4) The disclosure to be made under Subsection (3) shall not be required when the anatomic pathology service is being ordered by a hospital, a laboratory performing either the professional or technical component of the service, or a physician performing either the professional or technical component of the service, a public health clinic, or a state or federal agency.

(5) Failure to comply with the requirements of this section shall be considered to be unprofessional conduct.

Amended by Chapter 250, 2008 General Session

58-1-501.6 Health care provider advertisements and disclosure -- Unprofessional conduct.

For purposes of this section:

(1)
(a) "Advertisement" includes:
(i) billboards;
(ii) written documents such as:
(A) brochures;
(B) pamphlets;
(C) direct mail solicitations;
(D) radio, television, and telephone solicitation scripts; and
(E) telephone directories;
(iii) media, including television, radio, and Internet websites; and
(iv) any other means of promotion intended to directly or indirectly induce a person to enter into an agreement for services with a health care provider.
(b) "Advertisement" does not include materials that provide information about health care provider networks established by health insurance carriers.

(2) "Health care provider" means a natural person who is:
(a) defined as a health care provider in Section 78B-3-403; and
(b) licensed under this title.

(3)
(a) This section does not provide authority for a health care provider to advertise the services offered by the health care provider.
(b) If a health care provider's licensing authority and professional ethics permit the health care provider to advertise, the provisions of this section apply to any advertisement for the health care provider's services, on or after July 1, 2011.

(4) An advertisement for a health care provider's services that includes the health care provider's name shall identify the license type, as used by the division, under which the health care provider is practicing.

(5)
(a) A physician licensed under Chapter 67, Utah Medical Practice Act, may comply with the requirements of this section by using any one of the designations in the definitions of "practice of medicine" in Section 58-67-102.
(b) A physician licensed under Chapter 68, Utah Osteopathic Medical Practice Act, may comply with this section by using any of the designations in the definition of "practice of osteopathic medicine" in Section 58-68-102.

(6) It is unprofessional conduct if a health care provider violates this section.

Enacted by Chapter 139, 2011 General Session

58-1-501.7 Standards of conduct for prescription drug education -- Academic and commercial detailing.

(1) For purposes of this section:
(a) "Academic detailing":

(i) means a health care provider who is licensed under this title to prescribe or dispense a prescription drug and employed by someone other than a pharmaceutical manufacturer:
(A) for the purpose of countering information provided in commercial detailing; and
(B) to disseminate educational information about prescription drugs to other health care providers in an effort to better align clinical practice with scientific research; and
(ii) does not include a health care provider who:
(A) is disseminating educational information about a prescription drug as part of teaching or supervising students or graduate medical education students at an institution of higher education or through a medical residency program;
(B) is disseminating educational information about a prescription drug to a patient or a patient's representative; or
(C) is acting within the scope of practice for the health care provider regarding the prescribing or dispensing of a prescription drug.
(b) "Commercial detailing" means an educational practice employed by a pharmaceutical manufacturer in which clinical information and evidence about a prescription drug is shared with health care professionals.
(c) "Manufacture" is as defined in Section 58-37-2.
(d) "Pharmaceutical manufacturer" is a person who manufactures a prescription drug.
(2)
(a) Except as provided in Subsection (3), the provisions of this section apply to an academic detailer beginning July 1, 2013.
(b) An academic detailer and a commercial detailer who educate another health care provider about prescription drugs through written or oral educational material is subject to federal regulations regarding:
(i) false and misleading advertising in 21 C.F.R., Part 201 (2007);
(ii) prescription drug advertising in 21 C.F.R., Part 202 (2007); and
(iii) the federal Office of the Inspector General's Compliance Program Guidance for Pharmaceutical Manufacturers issued in April 2003, as amended.
(c) A person who is injured by a violation of this section has a private right of action against a person engaged in academic detailing, if:
(i) the actions of the person engaged in academic detailing, that are a violation of this section, are:
(A) the result of gross negligence by the person; or
(B) willful and wanton behavior by the person; and
(ii) the damages to the person are reasonable, foreseeable, and proximately caused by the violations of this section.
(3)
(a) For purposes of this Subsection, "accident and health insurer":
(i) is as defined in Section 31A-1-301; and
(ii) includes a self-funded health benefit plan and an administrator for a self-funded health benefit plan.
(b) This section does not apply to a person who engages in academic detailing if that person is engaged in academic detailing on behalf of:
(i) an accident and health insurer, including when an accident and health insurer contracts with or offers:
(A) the state Medicaid program, including the Primary Care Network within the state's Medicaid program;
(B) the Children's Health Insurance Program created in Section 26-40-103;

(C) the state's high risk insurance program created in Section 31A-29-104;
(D) a Medicare plan; and
(E) a Medicare supplement plan;
(ii) a hospital as defined in Section 26-21-2;
(iii) any class of pharmacy as defined in Section 58-17b-102, including any affiliated pharmacies;
(iv) an integrated health system as defined in Section 13-5b-102; or
(v) a medical clinic.
(c) This section does not apply to communicating or disseminating information about a prescription drug for the purpose of conducting research using prescription drugs at a health care facility as defined in Section 26-21-2, or a medical clinic.

Enacted by Chapter 100, 2013 General Session

58-1-501.8 Occupational and professional identification of health care providers -- Unlawful and unprofessional conduct -- Penalties.

(1) For purposes of this section:
(a) "Badge" means a tag or badge in plain view:
(i) attached to a health care provider's clothing; or
(ii) hanging from a lanyard around a health care provider's neck.
(b) "Clothing" means a health care provider's outermost article of clothing that is visible to others.
(c) "Deceptive or misleading conduct" means any affirmative communication or representation that falsely states, describes, holds out, or details an individual's licensure, training, education, or profession.
(d) "Health care provider" means a natural person who is:
(i) defined as a health care provider in Section 78B-3-403; and
(ii) licensed under this title.
(e) "Identification" means a badge or stitching, or permanent writing in plain view on clothing that:
(i) includes the health care provider's name;
(ii) includes the license type held by the health care provider;
(iii) is worn in a manner that is visible and apparent to others; and
(iv) contains the information required by Subsections (1)(e)(i) and (ii):
(A) in a manner and of sufficient size that can be easily read; and
(B) on both sides of the badge, unless the badge or tag is attached to clothing in a way that prevents the badge from rotating.
(f) "License type" means a designation of the license type that satisfies the requirements of Section 58-1-501.6.
(g) "Patient encounter" means an interaction in a health care facility, health care clinic, or office in which a patient can see a health care provider delivering services directly to a patient.
(2) Beginning January 1, 2015, except as provided in Subsections (3) and (4), a health care provider shall wear identification during any patient encounter.
(3) A health care provider's identification may be covered if required under sterilization or isolation protocols.
(4) A health care provider is not required to wear identification:
(a) if wearing identification would jeopardize the health care provider's safety; or
(b)
(i) in an office in which:

(A) the license type and names of all health care providers working in the office are displayed on the office door; or
(B) each health care provider working in the office has the health care provider's license posted prominently in the office and readily visible to a patient; and
(ii) if the office is an office:
(A) of a solo health care provider; or
(B) of a single type of health care provider.
(5) An individual who is a student or is in training to obtain a license as a health care provider shall:
(a) wear identification during patient encounters that identifies the person as in training, or a student, for the particular license type; and
(b) otherwise comply with the provisions of this section.
(6) It is unprofessional conduct if a health care provider violates this section.
(7) It is unlawful conduct if an individual:
(a) wears identification in a patient encounter that suggests that the individual is practicing or engaging in an occupation or profession that the individual may not lawfully practice or engage in under this title; or
(b) engages in deceptive or misleading conduct.
(8) An individual who violates this section is subject to Section 58-1-502.

Enacted by Chapter 99, 2014 General Session

58-1-502 Unlawful and unprofessional conduct -- Penalties.
(1) Unless otherwise specified in this title, a person who violates the unlawful conduct provisions defined in this title is guilty of a class A misdemeanor.
(2)
(a) In addition to any other statutory penalty for a violation related to a specific occupation or profession regulated by this title, if upon inspection or investigation, the division concludes that a person has violated Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly:
(i) issue a citation to the person according to this section and any pertinent rules;
(ii) attempt to negotiate a stipulated settlement; or
(iii) notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
(b)
(i) The division may assess a fine under this Subsection (2) against a person who violates Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections, as evidenced by:
(A) an uncontested citation;
(B) a stipulated settlement; or
(C) a finding of a violation in an adjudicative proceeding.
(ii) The division may, in addition to or in lieu of a fine under Subsection (2)(b)(i), order the person to cease and desist from violating Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections.
(c) Except for a cease and desist order, the division may not assess the licensure sanctions cited in Section 58-1-401 through a citation.
(d) A citation shall:
(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;
(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of a fine assessed by the citation within the time specified in the citation.
(e) The division may issue a notice in lieu of a citation.
(f)
(i) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.
(ii) The period to contest a citation may be extended by the division for cause.
(g) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.
(h) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
(i) The division may not issue a citation under this section after the expiration of one year following the occurrence of a violation.
(j) The director or the director's designee shall assess fines according to the following:
(i) for the first offense handled pursuant to Subsection (2)(a), a fine of up to $1,000;
(ii) for a second offense handled pursuant to Subsection (2)(a), a fine of up to $2,000; and
(iii) for each subsequent offense handled pursuant to Subsection (2)(a), a fine of up to $2,000 for each day of continued offense.
(3)
(a) An action for a first or second offense that has not yet resulted in a final order of the division may not preclude initiation of a subsequent action for a second or subsequent offense during the pendency of a preceding action.
(b) The final order on a subsequent action is considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.
(4)
(a) The director may collect a penalty that is not paid by:
(i) either referring the matter to a collection agency; or
(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.
(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect the penalty.
(c) A court may award reasonable attorney fees and costs to the division in an action brought by the division to enforce the provisions of this section.

Amended by Chapter 238, 2016 General Session

58-1-503 Maximum civil penalty for violation of court order.
(1) If any written order issued under this title or if an injunction or temporary restraining order issued by a court of competent jurisdiction relating to this title is violated, the court may impose a civil penalty of not more than $2,000 for each day the written order, injunction, or temporary restraining order is violated, if the person in violation has received notice of the written order, injunction, or temporary restraining order.

(2) All penalties ordered under this section shall be deposited into the General Fund.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-504 Court-ordered discipline.

The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this title if so ordered by a court.

Enacted by Chapter 232, 1997 General Session

58-1-505 Cosmetic medical procedure supervisor.

(1) For purposes of this section and Section 58-1-506:
- (a) "Cosmetic medical facility" means a physician's office or a facility that has a supervisor who performs the supervision required in Section 58-1-506.
- (b) "Supervisor" means:
  - (i) a physician with an unrestricted license under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act, who is acting within the scope of the practice of medicine, as defined in Section 58-67-102; and
  - (ii) an advanced practice registered nurse with an unrestricted license under Chapter 31b, Nurse Practice Act, who is acting within the scope of practice of advanced practice registered nursing, as defined in Section 58-31b-102.

(2)
- (a) An individual authorized by this title to perform a cosmetic medical procedure shall be supervised by a supervisor when performing a medical procedure.
- (b) Cosmetic medical procedures may only be performed in a cosmetic medical facility.
- (c) A supervisor may delegate the supervisory role only to another individual who is qualified as a supervisor.

Enacted by Chapter 362, 2012 General Session

58-1-506 Supervision of cosmetic medical procedures.

(1) For purposes of this section:
- (a) "Delegation group A" means the following who are licensed under this title, acting within their respective scopes of practice, and qualified under Subsections (2)(f)(i) and (iii):
  - (i) a physician assistant, if acting under the supervision of a physician and the procedure is included in the delegation of services agreement as defined in Section 58-70a-102;
  - (ii) a registered nurse;
  - (iii) a master esthetician; and
  - (iv) an electrologist, if evaluating for or performing laser hair removal.
- (b) "Delegation group B" means:
  - (i) a practical nurse or an esthetician who is licensed under this title, acting within their respective scopes of practice, and qualified under Subsections (2)(f)(i) and (iii); and
  - (ii) a medical assistant who is qualified under Subsections (2)(f)(i) and (iii).
- (c) "Direct cosmetic medical procedure supervision" means the supervisor:
  - (i) has authorized the procedure to be done on the patient by the supervisee; and
  - (ii) is present and available for a face-to-face communication with the supervisee when and where a cosmetic medical procedure is performed.
- (d) "General cosmetic medical procedure supervision" means the supervisor:

(i) has authorized the procedure to be done on the patient by the supervisee;
(ii) is available in a timely and appropriate manner in person to evaluate and initiate care for a patient with a suspected adverse reaction or complication; and
(iii) is located within 60 minutes or 60 miles of the cosmetic medical facility.
(e) "Hair removal review" means:
(i) conducting an in-person, face-to-face interview of a patient based on the responses provided by the patient to a detailed medical history assessment that was prepared by the supervisor;
(ii) evaluating for contraindications and conditions that are part of the treatment plan; and
(iii) if the patient history or patient presentation deviates in any way from the treatment plan, referring the patient to the supervisor and receiving clearance from the supervisor before starting the treatment.
(f) "Indirect cosmetic medical procedure supervision" means the supervisor:
(i) has authorized the procedure to be done on the patient by the supervisee;
(ii) has given written instructions to the person being supervised;
(iii) is present within the cosmetic medical facility in which the person being supervised is providing services; and
(iv) is available to:
(A) provide immediate face-to-face communication with the person being supervised; and
(B) evaluate the patient, as necessary.
(2) A supervisor supervising a nonablative cosmetic medical procedure for hair removal shall:
(a) have an unrestricted license to practice medicine or advanced practice registered nursing in the state;
(b) develop the medical treatment plan for the procedure;
(c) conduct a hair removal review, or delegate the hair removal review to a member of delegation group A, of the patient prior to initiating treatment or a series of treatments;
(d) personally perform the nonablative cosmetic medical procedure for hair removal, or authorize and delegate the procedure to a member of delegation group A or B;
(e) during the nonablative cosmetic medical procedure for hair removal provide general cosmetic medical procedure supervision to individuals in delegation group A performing the procedure, except physician assistants, who shall be supervised as provided in Chapter 70a, Physician Assistant Act, and indirect cosmetic medical procedure supervision to individuals in delegation group B performing the procedure; and
(f) verify that a person to whom the supervisor delegates an evaluation under Subsection (2)(c) or delegates a procedure under Subsection (2)(d) or (3)(c)(ii):
(i) has received appropriate training regarding the medical procedures developed under Subsection (2)(b);
(ii) has an unrestricted license under this title or is performing under the license of the supervising physician and surgeon; and
(iii) has maintained competence to perform the nonablative cosmetic medical procedure through documented education and experience of at least 80 hours, as further defined by rule, regarding:
(A) the appropriate standard of care for performing nonablative cosmetic medical procedures;
(B) physiology of the skin;
(C) skin typing and analysis;
(D) skin conditions, disorders, and diseases;
(E) pre- and post-procedure care;
(F) infection control;
(G) laser and light physics training;

(H) laser technologies and applications;
(I) safety and maintenance of lasers;
(J) cosmetic medical procedures an individual is permitted to perform under this title;
(K) recognition and appropriate management of complications from a procedure; and
(L) cardiopulmonary resuscitation (CPR).

(3) For a nonablative cosmetic medical procedure other than hair removal under Subsection (2):

(a) a physician who has an unrestricted license to practice medicine, a nurse practitioner who has an unrestricted license for advanced practice registered nursing, or a physician assistant acting under the supervision of a physician, with the procedure included in the delegation of service agreement as defined in Section 58-70a-102, shall:

(i) develop a treatment plan for the nonablative cosmetic medical procedure; and

(ii) conduct an in-person face-to-face evaluation of the patient prior to the initiation of a treatment protocol or series of treatments; and

(b) a nurse practitioner or physician assistant conducting an in-person face-to-face evaluation of a patient under Subsection (3)(a)(ii) prior to removing a tattoo shall:

(i) inspect the patient's skin for any discoloration unrelated to the tattoo and any other indication of cancer or other condition that should be treated or further evaluated before the tattoo is removed;

(ii) refer a patient with any such condition to a physician for treatment or further evaluation; and

(iii) shall not supervise a nonablative cosmetic medical procedure to remove a tattoo on the patient until the patient has been approved for the tattoo removal by a physician who has evaluated the patient; and

(c) the supervisor supervising the procedure shall:

(i) have an unrestricted license to practice medicine or advanced practice registered nursing;

(ii) personally perform the nonablative cosmetic medical procedure or:

(A) authorize and provide general cosmetic medical procedure supervision for the nonablative cosmetic medical procedure that is performed by a registered nurse or a master esthetician;

(B) authorize and provide supervision as provided in Chapter 70a, Physician Assistant Act, for the nonablative cosmetic medical procedure that is performed by a physician assistant, if the procedure is included in the delegation of services agreement; or

(C) authorize and provide direct cosmetic medical procedure supervision for the nonablative cosmetic medical procedure that is performed by an esthetician; and

(iii) verify that a person to whom the supervisor delegates a procedure under Subsection (3)(c):

(A) has received appropriate training regarding the medical procedures to be performed;

(B) has an unrestricted license and is acting within the person's scope of practice under this title; and

(C) is qualified under Subsection (2)(f)(iii).

(4) A supervisor performing or supervising a cosmetic medical procedure under Subsection (2) or (3) shall ensure that:

(a) the supervisor's name is prominently posted at the cosmetic medical facility identifying the supervisor;

(b) a copy of the supervisor's license is displayed on the wall of the cosmetic medical facility;

(c) the patient receives written information with the name and licensing information of the supervisor who is supervising the nonablative cosmetic medical procedure and the person who is performing the nonablative cosmetic medical procedure;

(d) the patient is provided with a telephone number that is answered within 24 hours for follow-up communication; and

(e) the cosmetic medical facility's contract with a master esthetician who performs a nonablative cosmetic medical procedure at the facility is kept on the premises of the facility.
(5) Failure to comply with the provisions of this section is unprofessional conduct.
(6) A chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act, is not subject to the supervision requirements in this section for a nonablative cosmetic medical procedure for hair removal if the chiropractic physician is acting within the scope of practice of a chiropractic physician and with training specific to nonablative hair removal.

Amended by Chapter 75, 2016 General Session

58-1-507 Cosmetic medical procedure -- Truth in advertising.
Beginning July 1, 2013, a facility that performs a cosmetic medical procedure as defined in Section 58-67-102 may not advertise or hold itself out to the public as a "medical spa," "medical facility," or "medical clinic" unless the facility has an individual on the premises while a cosmetic medical procedure is performed who is licensed under:
(1)Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse, practicing as a nurse practitioner;
(2)Chapter 67, Utah Medical Practice Act; or
(3)Chapter 68, Utah Osteopathic Medical Practice Act.

Enacted by Chapter 362, 2012 General Session

Chapter 3a
Architects Licensing Act

Part 1
General Provisions

58-3a-101 Title.
This chapter is known as the "Architects Licensing Act."

Enacted by Chapter 260, 1996 General Session

58-3a-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Architect" means a person licensed under this chapter as an architect.
(2) "Board" means the Architects Licensing Board created in Section 58-3a-201.
(3) "Building" means a structure which has human occupancy or habitation as its principal purpose, and includes the structural, mechanical, and electrical systems, utility services, and other facilities required for the building, and is otherwise governed by the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.
(4) "Complete construction plans" means a final set of plans and specifications for a building that normally includes:
(a) floor plans;
(b) elevations;

(c) site plans;
(d) foundation, structural, and framing detail;
(e) electrical, mechanical, and plumbing design;
(f) information required by the energy code;
(g) specifications and related calculations as appropriate; and
(h) all other documents required to obtain a building permit.
(5) "Fund" means the Architects Education and Enforcement Fund created in Section 58-3a-103.
(6)
(a) "Practice of architecture" means rendering or offering to render the following services in connection with the design, construction, enlargement, or alteration of a building or group of buildings, and the space within and surrounding such buildings:
(i) planning;
(ii) facility programming;
(iii) preliminary studies;
(iv) preparation of designs, drawings, and specifications;
(v) preparation of technical submissions and coordination of any element of technical submissions prepared by others including, as appropriate and without limitation, professional engineers, and landscape architects; and
(vi) administration of construction contracts.
(b) "Practice of architecture" does not include the practice of professional engineering as defined in Section 58-22-102, but a licensed architect may perform such professional engineering work as is incidental to the practice of architecture.
(7) "Principal" means a licensed architect having responsible charge of an organization's architectural practice.
(8) "Supervision of an employee, subordinate, associate, or drafter of an architect" means that a licensed architect is responsible for and personally reviews, corrects when necessary, and approves work performed by any employee, subordinate, associate, or drafter under the direction of the architect, and may be further defined by rule by the division in collaboration with the board.
(9) "Unlawful conduct" as defined in Section 58-1-501 is further defined in Section 58-3a-501.
(10) "Unprofessional conduct" as defined in Section 58-1-501 may be further defined by rule by the division in collaboration with the board.

Amended by Chapter 14, 2011 General Session

58-3a-103 Education and enforcement fund.
(1) There is created an expendable special revenue fund known as the "Architects Education and Enforcement Fund."
(2) The fund consists of money from:
(a) a surcharge fee placed on initial, renewal, and reinstatement licensure fees under this chapter in accordance with the following:
(i) the surcharge fee shall be determined by the department in accordance with Section 63J-1-504; and
(ii) the surcharge fee shall not exceed 50% of the respective initial, renewal, or reinstatement licensure fee; and
(b) administrative penalties collected pursuant to this chapter.
(3) The fund shall earn interest and all interest earned on fund money shall be deposited into the fund.

(4) The director may, with concurrence of the board, make distributions from the fund for the following purposes:
  (a) education and training of licensees under this chapter;
  (b) education and training of the public or other interested persons in matters concerning architectural laws and practices; and
  (c) enforcement of this chapter by:
    (i) investigating unprofessional or unlawful conduct; and
    (ii) providing legal representation to the division when the division takes legal action against a person engaging in unprofessional or unlawful conduct.
(5) If the balance in the fund exceeds $100,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.
(6) The division shall report annually to the appropriate appropriations subcommittee of the Legislature concerning the fund.

Amended by Chapter 400, 2013 General Session

Part 2
Board

58-3a-201 Board.
(1) There is created the Architects Licensing Board consisting of four architects and one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
  (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
  (b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Enacted by Chapter 260, 1996 General Session

Part 3
Licensing

58-3a-301 Licensure required -- License classifications.
(1) A license is required to engage in the practice of architecture, except as specifically provided in Section 58-3a-304 or 58-1-307.
(2) The division shall issue a license in the classification of architect to a person who qualifies under this chapter.

Enacted by Chapter 260, 1996 General Session

58-3a-302 Qualifications for licensure.

(1) Except as provided in Subsection (2), each applicant for licensure as an architect shall:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) provide satisfactory evidence of good moral character;
  (d) have graduated and received an earned bachelors or masters degree from an architecture program meeting criteria established by rule by the division in collaboration with the board;
  (e) have successfully completed a program of diversified practical experience established by rule by the division in collaboration with the board;
  (f) have successfully passed examinations established by rule by the division in collaboration with the board; and
  (g) meet with the board or representative of the division upon request for the purpose of evaluating the applicant's qualifications for license.

(2) Each applicant for licensure as an architect by endorsement shall:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) provide satisfactory evidence of good moral character;
  (d) submit satisfactory evidence of:
    (i) current licensure in good standing in a jurisdiction recognized by rule by the division in collaboration with the board; and
    (ii) current certification from the National Council of Architectural Registration Boards; or
    (iii) current license in good standing in a jurisdiction recognized by rule by the division in collaboration with the board; and
    (iv) full-time employment as a licensed architect as a principal for at least five of the last seven years immediately preceding the date of the application;
  (e) have successfully passed any examination established by rule by the division in collaboration with the board; and
  (f) meet with the board or representative of the division upon request for the purpose of evaluating the applicant's qualifications for license.

Amended by Chapter 183, 2009 General Session

58-3a-303 Term of license -- Expiration -- Renewal.

(1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Enacted by Chapter 260, 1996 General Session

58-3a-303.5 Continuing education.

(1) As a condition for renewal of a license under this chapter, each licensee shall, during each two-year licensure cycle or other cycle defined by rule, complete continuing professional education in accordance with standards defined by rule.

(2) If a renewal period is extended or shortened under Section 58-3a-303, the division shall proportionately increase or decrease the continuing education hours required for licensure renewal under this section.

Amended by Chapter 111, 2012 General Session

58-3a-304 Exemptions from licensure.

(1) In addition to the exemptions from licensure in Section 58-1-307, the following may engage in the stated limited acts or practices without being licensed under this chapter:
- (a) a person offering to render architectural services in this state when not licensed under this chapter if the person:
  - (i) holds a current and valid architect license issued by a licensing authority recognized by rule by the division in collaboration with the board;
  - (ii) discloses in writing to the potential client the fact that the architect:
    - (A) is not licensed in the state;
    - (B) may not provide architectural services in the state until the architect is licensed in the state; and
    - (C) that such condition may cause a delay in the ability of the architect to provide architectural services in the state;
  - (iii) notifies the division in writing of his intent to offer to render architectural services in the state; and
  - (iv) does not provide architectural services or engage in the practice of architecture in this state until licensed to do so;
- (b) a person preparing a plan and specification for one or two-family dwellings, including townhouses;
- (c) a person licensed to practice professional engineering under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, performing engineering or incidental architectural acts or practices that do not exceed the scope of the education and training of the person performing architecture;
- (d) unlicensed employees, subordinates, associates, or drafters of a person licensed under this chapter while preparing plans and specifications under the supervision of an architect;
- (e) a person preparing a plan or specification for, or supervising the alteration of or repair to, an existing building affecting an area not exceeding 3,000 square feet when structural elements of a building are not changed, such as foundations, beams, columns, and structural slabs, joists, bearing walls, and trusses; and
- (f) an organization engaged in the practice of architecture, provided that:
  - (i) the organization employs a principal; and
  - (ii) all individuals employed by the organization, who are engaged in the practice of architecture, are licensed or exempt from licensure under this chapter.

(2) Nothing in this section shall be construed to restrict a draftsman from preparing plans for a client under the exemption provided in Subsection (1)(b) or taking those plans to a licensed architect for his review, approval, and subsequent fixing of the architect's seal to that set of plans if they meet the building code standards.

Amended by Chapter 268, 2016 General Session

Part 4
License Denial and Discipline

58-3a-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, assessing an administrative penalty, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 260, 1996 General Session

Part 5
Unlawful Conduct - Penalties

58-3a-501 Unlawful conduct.

"Unlawful conduct" includes:

(1) using the title "architect" or any other words, letters, or abbreviations indicating that the person using them is an architect if the person has not been licensed under this chapter, except as provided in Subsection 58-3a-304(1); or

(2) engaging in or representing itself as engaging in the practice of architecture as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure under Section 58-1-307 or 58-3a-304.

Enacted by Chapter 260, 1996 General Session

58-3a-502 Penalty for unlawful conduct.

(1)

(a) If upon inspection or investigation, the division concludes that a person has violated Subsections 58-1-501(1)(a) through (d) or Section 58-3a-501 or any rule or order issued with respect to Section 58-3a-501, and that disciplinary action is appropriate, the director or the director's designee from within the division for each alternative respectively, shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-3a-501 or any rule or order issued with respect to Section 58-3a-501, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section 58-3a-501 or any rule or order issued with respect to this section.

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-3a-401 may not be assessed through a citation.

(b) A citation shall:

(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon a person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the person's agent by a division investigator or by any person specially designated by the director or by mail.

(e) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

(f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(i) The director or the director's designee shall assess fines according to the following:

(i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to $2,000 for each day of continued offense.

(2) An action initiated for a first or second offense which has not yet resulted in a final order of the division shall not preclude initiation of any subsequent action for a second or subsequent offense during the pendency of any preceding action. The final order on a subsequent action shall be considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

(3) Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state shall provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded to the division.

Amended by Chapter 278, 2013 General Session

Part 6
Practice Standards

58-3a-601 Seal -- Design and implementation.

Every architect shall have a seal, the design and implementation of which shall be established by rule by the division in collaboration with the board.

Enacted by Chapter 260, 1996 General Session

58-3a-602 Plans and specifications to be sealed.

(1) Any final plan and specification of a building erected in this state shall bear the seal of an architect licensed under this chapter, except as provided in Section 58-3a-304, in Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, and by the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(2) Any final plan and specification of a building prepared by or under the supervision of the licensed architect shall bear the seal of the architect when submitted to a client, or when submitted to a building official for the purpose of obtaining a building permit, even if the practice is exempt from licensure under Section 58-3a-304.

Amended by Chapter 14, 2011 General Session

58-3a-603 Seal -- Authorized use.

(1) An architect may only affix the architect's seal to a plan and a specification when the plan and the specification:

(a) was personally prepared by the architect;

(b) was prepared by an employee, subordinate, associate, or drafter under the supervision of a licensee, provided the licensee or a principal affixing his seal assumes responsibility;

(c) was prepared by a licensed architect, professional engineer, or professional structural engineer in this state or any other state provided:

(i) the licensee in this state affixing the seal performs a thorough review of all work for compliance with all applicable laws and rules and the standards of the profession; and

(ii) makes any necessary corrections before submitting the final plan and specification:

(A) to a building official for the purpose of obtaining a building permit; or

(B) to a client who has contracted with an architect for the design of a building, when the architect represents, or could reasonably expect the client to consider, the plans and a specification to be complete and final;

(d) was prepared in part by a licensed architect, professional engineer, or professional structural engineer in this state or any other state provided:

(i) the licensee in this state clearly identifies that portion of the plans and specification for which the licensee is responsible;

(ii) the licensee in this state affixing the seal performs a thorough review of that portion of the plan and specification for which the licensee is responsible for compliance with the standards of the profession; and

(iii) makes any necessary corrections before submitting the final plan and specification for which the licensee is responsible:

(A) to a building official for the purpose of obtaining a building permit; or

(B) to a client who has contracted with an architect for the design of a building, when the architect represents, or could reasonably expect the client to consider, the plans and specifications to be complete and final;

(e) was prepared by a person exempt from licensure as an architect, professional engineer, or professional structural engineer provided that:

(i) the licensee in this state affixing the seal performs a thorough review for compliance with all applicable laws and rules and the standards of the profession; and

(ii) makes any necessary corrections before submitting the final plan and specification:
(A) to a building official for the purpose of obtaining a building permit; or
(B) to a client who has contracted with an architect for the design of a building, when the architect represents, or could reasonably expect the client to consider, the plan and specification to be complete and final; or
(f) meet any additional requirements established by rule by the division in collaboration with the board.

Enacted by Chapter 260, 1996 General Session

Chapter 5a
Podiatric Physician Licensing Act

Part 1
Definitions

58-5a-101 Title.
This chapter is known as the "Podiatric Physician Licensing Act."

Amended by Chapter 232, 1996 General Session

58-5a-102 Definitions.
In addition to the definitions under Section 58-1-102, as used in this chapter:
(1) "Board" means the Podiatric Physician Board created in Section 58-5a-201.
(2) "Indirect supervision" means the same as that term is defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(3) "Medical assistant" means an unlicensed individual working under the indirect supervision of a licensed podiatric physician and engaging in specific tasks assigned by the licensed podiatric physician in accordance with the standards and ethics of the podiatry profession.
(4) "Practice of podiatry" means the diagnosis and treatment of conditions affecting the human foot and ankle and their manifestations of systemic conditions by all appropriate and lawful means, subject to Section 58-5a-103.
(5) "Unlawful conduct" includes:
(a) the conduct that constitutes unlawful conduct under Section 58-1-501; and
(b) for an individual who is not licensed under this chapter:
(i) using the title or name podiatric physician, podiatrist, podiatric surgeon, foot doctor, foot specialist, or D.P.M.; or
(ii) implying or representing that the individual is qualified to practice podiatry.
(6) "Unprofessional conduct" includes, for an individual licensed under this chapter:
(a) the conduct that constitutes unprofessional conduct under Section 58-1-501;
(b) communicating to a third party, without the consent of the patient, information the individual acquires in treating the patient, except as necessary for professional consultation regarding treatment of the patient;
(c) allowing the individual's name or license to be used by an individual who is not licensed to practice podiatry under this chapter;

(d) except as described in Section 58-5a-306, employing, directly or indirectly, any unlicensed individual to practice podiatry;
(e) using alcohol or drugs, to the extent the individual's use of alcohol or drugs impairs the individual's ability to practice podiatry;
(f) unlawfully prescribing, selling, or giving away any prescription drug, including controlled substances, as defined in Section 58-37-2;
(g) gross incompetency in the practice of podiatry;
(h) willfully and intentionally making a false statement or entry in hospital records, medical records, or reports;
(i) willfully making a false statement in reports or claim forms to governmental agencies or insurance companies with the intent to secure payment not rightfully due;
(j) willfully using false or fraudulent advertising; and
(k) conduct the division defines as unprofessional conduct by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 230, 2015 General Session

58-5a-103 Scope of practice.

(1) Subject to Subsections (4) and (5), an individual licensed as a podiatric physician under this chapter may perform a surgical procedure on a bone of the foot or ankle, except that the individual may not perform:
(a) ankle fusion;
(b) massive ankle reconstruction; or
(c) reduction of a trimalleolar ankle fracture.
(2) Notwithstanding Subsections (1)(a), (b), and (c), and subject to Subsections (4) and (5), an individual licensed as a podiatric physician under this chapter that meets the additional training requirements described in Subsection (3) may perform a surgical procedure that is related to the treatment of a foot or ankle condition, including the treatment of a foot or ankle condition that involves the soft tissues, including tendons, ligaments, and nerves, of the foot or ankle, except that the individual may only:
(a) treat a fracture of the tibia if at least one portion of the fracture line enters the ankle joint;
(b) treat a foot or ankle condition using hardware, including screws, plates, staples, pins, and wires, if at least one portion of the hardware system is attached to a bony structure at or below the ankle mortise; and
(c) place hardware for the treatment of soft tissues in the foot or ankle no more proximal than the distal 10 centimeters of the tibia.
(3) An individual licensed as a podiatric physician under this chapter may not perform the procedures described in Subsection (2) unless the individual:
(a)
(i) graduated on or after June 1, 2006, from a three-year residency program in podiatric medicine and surgery that was accredited, at the time of graduation, by the Council on Podiatric Medical Education; and
(ii) is board certified in reconstructive rearfoot and ankle surgery by the American Board of Foot and Ankle Surgery;
(b)
(i) graduated on or after June 1, 2006, from a three-year residency program in podiatric medicine and surgery that was accredited, at the time of graduation, by the Council on Podiatric Medical Education;

(ii) is board qualified in reconstructive rearfoot ankle surgery by the American Board of Foot and Ankle Surgery; and
(iii) provides the division documentation that the podiatric physician has completed training or experience, which the division determines is acceptable, in standard or advanced midfoot, rearfoot, and ankle procedures; or
(c)
(i) graduated before June 1, 2006, from a residency program in podiatric medicine and surgery that was at least two years in length and that was accredited, at the time of graduation, by the Council on Podiatric Medical Education;
(ii)
(A) is board certified in reconstructive rearfoot ankle surgery by the American Board of Foot and Ankle Surgery;
(B) if the residency described in Subsection (3)(c)(i) is a PSR-24 24-month podiatric surgical residency, provides proof that the individual completed the residency, to a hospital that is accredited by the Joint Commission, and meets the hospital's credentialing criteria for foot and ankle surgery; or
(C) in addition to the residency described in Subsection (3)(c)(i), has completed a fellowship in foot and ankle surgery that was accredited by the Council on Podiatric Medical Education at the time of completion; and
(iii) provides the division documentation that the podiatric physician has completed training and experience, which the division determines is acceptable, in standard or advanced midfoot, rearfoot, and ankle procedures.
(4) An individual licensed as a podiatric physician under this chapter may not perform an amputation proximal to Chopart's joint.
(5) An individual licensed as a podiatric physician under this chapter may not perform a surgical treatment on an ankle, on a governing structure of the foot or ankle above the ankle, or on a structure related to the foot or ankle above the ankle, unless the individual performs the surgical treatment:
(a) in an ambulatory surgical facility, a general acute hospital, or a specialty hospital, as defined in Section 26-21-2; and
(b) subject to review by a quality care review body that includes qualified, licensed physicians and surgeons.

Enacted by Chapter 230, 2015 General Session

Part 2
Podiatric Physician Board

58-5a-201 Podiatric Physician Board.
(1) There is created the Podiatric Physician Board consisting of four podiatric physicians and one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203.
(4) In addition, the board shall designate one of its members on a permanent or rotating basis to:

(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
(b) advise the division in its investigation of these complaints.
(5) A board member who has, under Subsection (4), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Amended by Chapter 10, 1997 General Session

Part 3
Licensing

58-5a-301 License required -- License classifications.
(1) The division shall issue to persons qualified under this chapter a license in the classification of podiatric physician.
(2) A person may not practice podiatry unless licensed or exempted from licensure under this chapter.

Amended by Chapter 232, 1996 General Session

58-5a-302 Qualifications to practice podiatry.
An applicant for licensure to practice podiatry shall:
(1) submit an application in a form as prescribed by the division;
(2) pay a fee as determined by the department under Section 63J-1-504;
(3) be of good moral character;
(4) be a graduate of a college of podiatric medicine accredited by the Council of Podiatric Education;
(5) if licensed on or after July 1, 2015, have completed two years of postgraduate training in a residency program recognized by the board; and
(6) pass examinations required by rule.

Amended by Chapter 230, 2015 General Session

58-5a-303 Terms of license -- Expiration -- Renewal.
(1) The division shall issue all licenses under this chapter in accordance with the two-year renewal cycle established by rule. A renewal period for a license may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
(2) At the time of renewal the licensee shall show satisfactory evidence of renewal requirements established by rule, including completion of continuing education as required under this chapter.
(3) A license issued under this chapter expires on the expiration date shown on the license unless renewed prior to that date by the licensee in accordance with Section 58-1-308.

Amended by Chapter 12, 1994 General Session

58-5a-304 Continuing education.

(1) The division may require each person holding a license under this chapter to complete in each two-year period not more than 40 hours of qualified continuing professional education in accordance with standards defined by rule as a requirement prior to license renewal under this chapter.
(2) In establishing continuing education requirements under this section the division shall in collaboration with the board recognize the existing educational methods, procedures, devices, and programs in use among the various podiatry specialty organizations.
(3) The division shall give licensees credit toward continuing education requirements for participation in and completion of continuing education programs of:
  (a) the American Podiatric Medical Association;
  (b) the Utah Podiatric Medical Association;
  (c) all colleges of podiatric medicine accredited by the Council on Education of the American Podiatric Medical Association; and
  (d) similar programs of other organizations that are approved by the division in collaboration with the board.
(4) If a renewal period is shortened or extended to effect a change of the renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly, as a pro rata amount of the requirements of a two-year period.

Amended by Chapter 232, 1996 General Session

58-5a-305 License by endorsement.

The division may issue a license by endorsement to a person who holds a license to practice podiatry from another state, jurisdiction, or territory of the United States, if that person:
(1) meets the requirements of Section 58-1-302; and
(2) demonstrates to the board that he has been a licensed podiatric physician in the jurisdiction issuing his license for at least two years immediately prior to applying for a license under this section.

Amended by Chapter 232, 1996 General Session

58-5a-306 Exemptions from licensure.

The following persons may practice podiatry, subject to stated circumstances and limitations, without being licensed under this chapter:
(1) a podiatric physician serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of his employment with that federal agency if the individual holds a valid license to practice podiatry issued by any other state or jurisdiction recognized by the division;
(2) a student engaged in activities that constitute the practice of podiatry while in training in a recognized school approved by the division to the extent the activities are under the supervision of qualified faculty or staff and the activities are a defined part of the training program;
(3) a person engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified persons;
(4) a person residing in another state and licensed to practice podiatry there, who is called in for a consultation by a person licensed in this state and services provided are limited to that

consultation or who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of podiatry so long as that individual does not establish a place of business or regularly engage in the practice of podiatry in the state;

(5) a person licensed under the laws of this state to practice or engage in any other occupation or profession while engaged in the lawful, professional, and competent practice of that occupation or profession;

(6) persons who fit or sell corrective shoes, arch supports, or similar devices, to the extent their acts and practices involve only the fitting and selling of these items; or

(7) a medical assistant working under the indirect supervision of a licensed podiatric physician, if the medical assistant:

(a) engages only in tasks appropriately delegated by the licensed podiatric physician in accordance with the standards and ethics of the practice of podiatry, and consistent with this chapter;

(b) does not perform surgical procedures;

(c) does not prescribe prescription medications;

(d) does not administer anesthesia, except for a local anesthetic; and

(e) does not engage in other practices or procedures defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in collaboration with the board.

Amended by Chapter 230, 2015 General Session

58-5a-307 Consumer access to provider charges.

Beginning January 1, 2011, a podiatric physician licensed under this chapter shall, when requested by a consumer:

(1) make a list of professional charges available for the consumer which includes the podiatric physician's 25 most frequently performed:

(a) clinical procedures or clinical services;

(b) out-patient procedures; and

(c) in-patient procedures; and

(2) provide the consumer with information regarding any discount available for:

(a) services not covered by insurance; or

(b) prompt payment of billed charges.

Enacted by Chapter 68, 2010 General Session

Part 4
Denial of Licensure

58-5a-401 Grounds for denial of license -- Disciplinary proceedings.

(1) The division shall refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, or place on probation the license of a licensee who:

(a) does not meet the qualifications for licensure or renewal of licensure under this chapter; or

(b) is guilty of a crime which, when considered with the functions and duties of a licensee under this chapter, demonstrates a threat or potential threat to the public health, safety, or welfare.

(2) The division may refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, or place on probation the license of a licensee who:
(a) is guilty of unlawful conduct related to practice under this chapter or unprofessional conduct as defined in this chapter, Section 58-1-501, or rules made under either;
(b) has obtained or attempted to obtain a license under this title by fraud or willful misrepresentation; or
(c) has had a license or certification to practice in any profession or occupation subjected to disciplinary action which demonstrates a threat or potential threat to the public health, safety, or welfare, when considered with the activities regulated under this chapter.

Amended by Chapter 12, 1994 General Session

Part 5
Unlawful Conduct - Penalties

58-5a-501 Unlawful conduct -- Penalties.
Any person who engages in unlawful conduct as defined in this chapter is guilty of a third degree felony, except that a violation of Subsection 58-5a-102(5) is a class A misdemeanor.

Amended by Chapter 230, 2015 General Session

Chapter 9
Funeral Services Licensing Act

Part 1
General Provisions

58-9-101 Title.
This chapter is known as the "Funeral Services Licensing Act."

Enacted by Chapter 49, 2003 General Session

58-9-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Authorizing agent" means a person legally entitled to authorize the cremation of human remains.
(2) "Beneficiary" means the individual who, at the time of the individual's death, is to receive the benefit of the property and services purchased under a preneed funeral arrangement.
(3) "Board" means the Board of Funeral Service created in Section 58-9-201.
(4) "Body part" means:
(a) a limb or other portion of the anatomy that is removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or
(b) a human body or any portion of a body that has been donated to science for medical research purposes.

(5) "Buyer" means a person who purchases a preneed funeral arrangement.
(6) "Calcination" means a process in which a dead human body is reduced by intense heat to a residue that is not as substantive as the residue that follows cremation.
(7) "Cremated remains" means all the remains of a cremated body recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions and may possibly include the residue of foreign matter including casket material, bridgework, or eyeglasses that were cremated with the human remains.
(8) "Cremation" means the technical process, using direct flame and heat, that reduces human remains to bone fragments through heat and evaporation and includes the processing and usually the pulverization of the bone fragments.
(9) "Cremation chamber" means the enclosed space within which the cremation process takes place and which is used exclusively for the cremation of human remains.
(10) "Cremation container" means the container:
(a) in which the human remains are transported to the crematory and placed in the cremation chamber for cremation; and
(b) that meets substantially all of the following standards:
(i) composed of readily combustible materials suitable for cremation;
(ii) able to be closed in order to provide a complete covering for the human remains;
(iii) resistant to leakage or spillage;
(iv) rigid enough for handling with ease; and
(v) able to provide protection for the health, safety, and personal integrity of crematory personnel.
(11) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.
(12) "Direct disposition" means the disposition of a dead human body:
(a) as quickly as law allows;
(b) without preparation of the body by embalming; and
(c) without an attendant funeral service or graveside service.
(13) "Disposition" means the final disposal of a dead human body by:
(a) earth interment;
(b) above ground burial;
(c) cremation;
(d) calcination;
(e) burial at sea;
(f) delivery to a medical institution; or
(g) other lawful means.
(14) "Embalming" means replacing body fluids in a dead human body with preserving and disinfecting chemicals.
(15)
(a) "Funeral merchandise" means any of the following into which a dead human body is placed in connection with the transportation or disposition of the body:
(i) a vault;
(ii) a casket; or
(iii) other personal property.
(b) "Funeral merchandise" does not include:
(i) a mausoleum crypt;
(ii) an interment receptacle preset in a cemetery; or
(iii) a columbarium niche.

(16) "Funeral service" means a service, rite, or ceremony performed:
(a) with respect to the death of a human; and
(b) with the body of the deceased present.
(17) "Funeral service director" means an individual licensed under this chapter who may engage in all lawful professional activities regulated and defined under the practice of funeral service.
(18)
(a) "Funeral service establishment" means a place of business at a specific street address or location licensed under this chapter that is devoted to:
(i) the embalming, care, custody, shelter, preparation for burial, and final disposition of dead human bodies; and
(ii) the furnishing of services, merchandise, and products purchased from the establishment as a preneed provider under a preneed funeral arrangement.
(b) "Funeral service establishment" includes:
(i) all portions of the business premises and all tools, instruments, and supplies used in the preparation and embalming of dead human bodies for burial, cremation, and final disposition as defined by division rule; and
(ii) a facility used by the business in which funeral services may be conducted.
(19) "Funeral service intern" means an individual licensed under this chapter who is permitted to:
(a) assist a funeral service director in the embalming or other preparation of a dead human body for disposition;
(b) assist a funeral service director in the cremation, calcination, or pulverization of a dead human body or its remains; and
(c) perform other funeral service activities under the supervision of a funeral service director.
(20) "Graveside service" means a funeral service held at the location of disposition.
(21) "Memorial service" means a service, rite, or ceremony performed:
(a) with respect to the death of a human; and
(b) without the body of the deceased present.
(22) "Practice of funeral service" means:
(a) supervising the receipt of custody and transportation of a dead human body to prepare the body for:
(i) disposition; or
(ii) shipment to another location;
(b) entering into a contract with a person to provide professional services regulated under this chapter;
(c) embalming or otherwise preparing a dead human body for disposition;
(d) supervising the arrangement or conduct of:
(i) a funeral service;
(ii) a graveside service; or
(iii) a memorial service;
(e) cremation, calcination, or pulverization of a dead human body or the body's remains;
(f) supervising the arrangement of:
(i) a disposition; or
(ii) a direct disposition;
(g) facilitating:
(i) a disposition; or
(ii) a direct disposition;
(h) supervising the sale of funeral merchandise by a funeral establishment;

(i) managing or otherwise being responsible for the practice of funeral service in a licensed funeral service establishment;
(j) supervising the sale of a preneed funeral arrangement; and
(k) contracting with or employing individuals to sell a preneed funeral arrangement.
(23)
(a) "Preneed funeral arrangement" means a written or oral agreement sold in advance of the death of the beneficiary under which a person agrees with a buyer to provide at the death of the beneficiary any of the following as are typically provided in connection with a disposition:
(i) goods;
(ii) services, including:
(A) embalming services; and
(B) funeral directing services;
(iii) real property; or
(iv) personal property, including:
(A) a casket;
(B) another primary container;
(C) a cremation or transportation container;
(D) an outer burial container;
(E) a vault;
(F) a grave liner;
(G) funeral clothing and accessories;
(H) a monument;
(I) a grave marker; and
(J) a cremation urn.
(b) "Preneed funeral arrangement" does not include a policy or product of life insurance providing a death benefit cash payment upon the death of the beneficiary which is not limited to providing the products or services described in Subsection (23)(a).
(24) "Processing" means the reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments by manual means.
(25) "Pulverization" means the reduction of identifiable bone fragments after the completion of the cremation and processing to granulated particles by manual or mechanical means.
(26) "Sales agent" means an individual licensed under this chapter as a preneed funeral arrangement sales agent.
(27) "Temporary container" means a receptacle for cremated remains usually made of cardboard, plastic, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.
(28) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-9-501.
(29) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-9-502.
(30) "Urn" means a receptacle designed to permanently encase the cremated remains.

Amended by Chapter 278, 2013 General Session

Part 2
Board

58-9-201 Board.

(1) There is created the Board of Funeral Service consisting of:
  (a) four funeral service directors who own, have an ownership interest in, or have management responsibilities for a funeral service establishment;
  (b) one preneed funeral arrangement sales agent, who does not have an ownership interest in a funeral service establishment; and
  (c) two members from the general public who have no association with the funeral service profession.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3)
  (a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
  (b) The board shall designate one of its members on a permanent or rotating basis to:
    (i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
    (ii) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised the division in its investigation may be disqualified from participating with the board when the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Amended by Chapter 144, 2007 General Session

Part 3
Licensing

58-9-301 Licensure required -- License classifications.
(1) A license is required to engage in the practice of funeral service, except as specifically provided in Sections 58-1-307 and 58-9-305.
(2) The division shall issue to a person who qualifies under this chapter a license in the classification of:
  (a) funeral service director;
  (b) funeral service intern;
  (c) funeral service establishment; or
  (d) preneed funeral arrangement sales agent.

Amended by Chapter 144, 2007 General Session

58-9-302 Qualifications for licensure.
(1) Each applicant for licensure as a funeral service director shall:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee as determined by the department under Section 63J-1-504;
  (c) be of good moral character in that the applicant has not been convicted of:
    (i) a first or second degree felony;
    (ii) a misdemeanor involving moral turpitude; or
    (iii) any other crime that when considered with the duties and responsibilities of a funeral service director is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;

(d) have obtained a high school diploma or its equivalent or a higher education degree;
(e) have obtained an associate degree, or its equivalent, in mortuary science from a school of funeral service accredited by the American Board of Funeral Service Education or other accrediting body recognized by the U.S. Department of Education;
(f) have completed not less than 2,000 hours and 50 embalmings, over a period of not less than one year, of satisfactory performance in training as a licensed funeral service intern under the supervision of a licensed funeral service director; and
(g) obtain a passing score on examinations approved by the division in collaboration with the board.
(2) Each applicant for licensure as a funeral service intern shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee as determined by the department under Section 63J-1-504;
(c) be of good moral character in that the applicant has not been convicted of:
(i) a first or second degree felony;
(ii) a misdemeanor involving moral turpitude; or
(iii) any other crime that when considered with the duties and responsibilities of a funeral service intern is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;
(d) have obtained a high school diploma or its equivalent or a higher education degree; and
(e) obtain a passing score on an examination approved by the division in collaboration with the board.
(3) Each applicant for licensure as a funeral service establishment and each funeral service establishment licensee shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee as determined by the department under Section 63J-1-504;
(c) have in place:
(i) an embalming room for preparing dead human bodies for burial or final disposition, which may serve one or more facilities operated by the applicant;
(ii) a refrigeration room that maintains a temperature of not more than 40 degrees fahrenheit for preserving dead human bodies prior to burial or final disposition, which may serve one or more facilities operated by the applicant; and
(iii) maintain at all times a licensed funeral service director who is responsible for the day-to-day operation of the funeral service establishment and who is personally available to perform the services for which the license is required;
(d) affiliate with a licensed preneed funeral arrangement sales agent or funeral service director if the funeral service establishment sells preneed funeral arrangements;
(e) file with the completed application a copy of each form of contract or agreement the applicant will use in the sale of preneed funeral arrangements; and
(f) provide evidence of appropriate licensure with the Insurance Department if the applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or in part by an insurance policy or product to be sold by the provider or the provider's sales agent.
(4) Each applicant for licensure as a preneed funeral arrangement sales agent shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee as determined by the department under Section 63J-1-504;
(c) be of good moral character in that the applicant has not been convicted of:
(i) a first or second degree felony;
(ii) a misdemeanor involving moral turpitude; or

(iii) any other crime that when considered with the duties and responsibilities of a preneed funeral sales agent is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;
(d) have obtained a high school diploma or its equivalent or a higher education degree;
(e) have obtained a passing score on an examination approved by the division in collaboration with the board;
(f) affiliate with a licensed funeral service establishment; and
(g) provide evidence of appropriate licensure with the Insurance Department if the applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or in part by an insurance policy or product.

Amended by Chapter 183, 2009 General Session

58-9-303 Term of license -- Expiration -- Renewal.
(1)
(a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule.
(b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
(2) Notwithstanding Subsection (1), a person who has once held a license as a funeral service intern and has not qualified for licensure as a funeral service director may be issued a subsequent funeral service intern license for only one additional two-year term upon the specific approval of the division in collaboration with the board.
(3) At the time of renewal, the funeral service director licensee shall show satisfactory evidence of completion of continuing education as required under Section 58-9-304.
(4) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.
(5)
(a) Except as otherwise provided in Subsections (5)(b) and (c), the division may take action against the license of a funeral service establishment that does not have a licensed funeral service director.
(b) If a licensed funeral service director dies and leaves the funeral service establishment as part of the assets of the funeral service director's estate:
(i) the personal representative of the funeral service director's estate may operate the funeral service establishment under the license, or renewals of the license, for not more than two years from the date of the funeral service director's death without meeting the qualifications of an applicant and without having a licensed funeral service director; but
(ii) Subsection (5)(b)(i) does not allow an unlicensed person to perform a function that requires performance by a funeral service director licensed under this chapter.
(c) If the funeral service director of a licensed funeral service establishment terminates employment with the establishment, the establishment has 90 days to hire a new licensed funeral service director before action may be taken against the license under Subsection (5)(a).

Amended by Chapter 144, 2007 General Session

58-9-304 Continuing education.

(1) As a condition precedent for license renewal, each funeral service director shall, during each two-year licensure cycle or other cycle defined by rule, complete 20 hours of qualified continuing professional education in accordance with standards defined by rule.
(2) If a renewal cycle is extended or shortened under Section 58-9-303, the continuing education hours required for license renewal under this section shall be increased or decreased proportionally.

Enacted by Chapter 49, 2003 General Session

58-9-305 Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, a person may engage in the following acts included within the definition of the practice of funeral service, subject to the stated circumstances and limitations, without being licensed under this chapter:
(1) transportation of a dead human body in accordance with other applicable state and federal laws;
(2) ambulance or other emergency transportation of a dead human body;
(3) the sale of any of the following that is delivered to the buyer or the buyer's designee within 90 days after the day of the sale:
  (a) funeral merchandise;
  (b) headstones; or
  (c) other memorial merchandise;
(4) the performance of funeral, graveside, or memorial services by:
  (a) a member of the clergy;
  (b) a member of the decedent's family; or
  (c) any other recognized individual;
(5) assisting a Utah licensed funeral service director regarding disasters or special emergencies by individuals licensed in other states as funeral service directors or embalmers;
(6) activities of an unlicensed individual employed by a funeral service establishment involving arrangement for a funeral service or the sale of funeral merchandise if the binding contract is reviewed, approved, and signed in behalf of the funeral service establishment by a licensed funeral service director; and
(7) nonprofessional tasks or activities which:
  (a) do not require independent professional judgment; and
  (b) are required of persons employed by a funeral service establishment under the supervision of a funeral service director.

Amended by Chapter 144, 2007 General Session

58-9-306 License by endorsement.

The division may issue a license by endorsement under this chapter to a person who:
(1) provides documentation that the funeral service director's current licensure is active, in good standing, and free from any disciplinary action;
(2) submits an application on a form provided by the division;
(3) pays a fee determined by the department;
(4) is of good moral character in that the person has not been convicted of:
  (a) a first or second degree felony;
  (b) a misdemeanor involving moral turpitude; or

(c) any other crime that when considered with the duties and responsibilities of the license for which the person is applying is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;
(5) has completed five years of lawful and active practice as a licensed funeral service director and embalmer within the 10 years immediately preceding the application for licensure by endorsement;
(6) has passed a national examination determined by the division; and
(7) has demonstrated competency of the laws and the rules of the state as determined by the division.

Amended by Chapter 144, 2007 General Session

58-9-307 Supervision of funeral service intern.
(1) A person seeking licensure as a funeral service intern shall submit as a part of the application for a license:
(a) the name of the licensed funeral service director who has agreed to supervise all duties performed by the applicant as an intern; and
(b) the name of the licensed funeral service establishment at which the training and supervision shall take place.
(2) A licensed funeral service director may supervise only one licensed funeral service intern at one time.
(3)
(a) Within 30 days after the day on which the supervisor-supervisee relationship between a licensed funeral service director and a licensed funeral service intern terminates, the funeral service director shall furnish to the division a report of the performance of the funeral service intern.
(b) The report shall be in form and content as prescribed by the division.
(4)
(a) A licensed funeral service intern shall notify the division of any change in the intern's supervising funeral service director.
(b) The supervising funeral service director shall submit to the division, in accordance with Subsection (3), a report of the funeral service intern's performance.
(5) The licensed funeral service director is responsible for supervision of all of the duties and functions performed by the funeral service intern throughout the entire internship period.

Amended by Chapter 144, 2007 General Session

Part 4
License Denial and Discipline

58-9-401 Grounds for denial of license -- Disciplinary proceedings.
Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 49, 2003 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-9-501 Unlawful conduct.

"Unlawful conduct" includes:

(1) doing any of the following to prepare a dead human body for disposition unless licensed as a funeral service director or a funeral service intern:
  (a) embalming;
  (b) calcinating;
  (c) pulverizing;
  (d) cremating; or
  (e) using any method that invades a dead human body;
(2) using the title "funeral service director," "funeral service intern," "preneed funeral service sales agent," or "funeral service establishment" unless licensed under this chapter;
(3) engaging in, providing, or agreeing to provide funeral arrangements to be provided under a preneed funeral arrangement without first obtaining a license as a funeral service establishment under this chapter;
(4) engaging in selling, representing for sale, or in any other way offering to sell any contract under which preneed funeral arrangements are to be provided without first obtaining a license under this chapter as:
  (a) a preneed funeral arrangement sales agent; or
  (b) a funeral service director; and
(5) failing to comply with Section 58-9-702.

Amended by Chapter 144, 2007 General Session

58-9-502 Unprofessional conduct.

(1) "Unprofessional conduct" includes:
  (a) the failure of a funeral service director to accurately document, report, and supervise the activities of a funeral service intern;
  (b) knowingly soliciting the sale of any funeral service or funeral merchandise for a person whose death occurred or was imminent prior to the solicitation;
  (c) paying or offering to pay a commission or anything of value to secure deceased human remains for a funeral service or disposition to:
    (i) medical personnel;
    (ii) a nursing home;
    (iii) a nursing home employee;
    (iv) a hospice;
    (v) a hospice employee;
    (vi) clergy;
    (vii) a government official; or
    (viii) any other third party; and
  (d) failure to provide the following current information to the division:
    (i) a licensee's business address;

(ii) a licensee's primary residence;
(iii) a funeral service establishment's funeral service director; or
(iv) a supervising funeral service director's funeral service intern's name.
(2) "Unprofessional conduct" does not include:
(a) general advertising directed to the public at large; or
(b) responding to a notification of death from:
(i) medical personnel;
(ii) a nursing home;
(iii) a nursing home employee;
(iv) a hospice;
(v) a hospice employee;
(vi) clergy;
(vii) a government official; or
(viii) any authorized representative of the family of the deceased person.

Amended by Chapter 144, 2007 General Session

58-9-503 Penalty for unlawful conduct.
(1) A person who violates the unlawful conduct provisions defined in Subsections 58-9-501(1) through (4) is guilty of a class A misdemeanor.
(2) A person who violates the unlawful conduct provision defined in Subsection 58-9-501(5) may be prosecuted under Title 76, Chapter 6, Part 4, Theft.

Amended by Chapter 144, 2007 General Session

58-9-504 Authority to promulgate rules.
In addition to the authority granted under Section 58-1-106, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division in collaboration with the board shall establish by rule:
(1) the minimum requirements for a licensed funeral establishment for the following:
(a) physical facilities;
(b) equipment;
(c) instruments; and
(d) supplies;
(2) license cycles under Section 58-9-303;
(3) standards to protect the interests of buyers and potential buyers of preneed funeral arrangements under Section 58-9-701; and
(4) standards for preneed funeral arrangement trusts.

Amended by Chapter 382, 2008 General Session

58-9-505 Disclosure requirements.
A licensee under this chapter shall disclose information in accordance with regulations of the Federal Trade Commission and rules adopted by the division pursuant to this chapter.

Enacted by Chapter 49, 2003 General Session

58-9-506 Inspection -- Right to access.

A licensed funeral service establishment is subject to inspection during normal business hours to determine compliance with the laws of Utah by:
(1) any authorized representative of the division; or
(2) any authorized representative of a local or state health department.

Enacted by Chapter 49, 2003 General Session

Part 6
Control of Disposition

58-9-601 Advance directions.
(1) A person may provide written directions, acknowledged before a Notary Public or executed with the same formalities required of a will under Section 75-2-502, to direct the preparation, type, and place of the person's disposition, including:
  (a) designating a funeral service establishment;
  (b) providing directions for burial arrangements; or
  (c) providing directions for cremation arrangements.
(2) A funeral service director shall carry out the written directions of the decedent prepared under this section to the extent that:
  (a) the directions are lawful; and
  (b) the decedent has provided resources to carry out the directions.
(3) Directions for disposition contained in a will shall be carried out pursuant to Subsection (2) regardless of:
  (a) the validity of other aspects of the will; or
  (b) the fact that the will may not be offered or admitted to probate until a later date.
(4) A person may change or cancel written directions prepared under this section at any time prior to the person's death by providing written notice to all applicable persons, including:
  (a) if the written directions designate a funeral service establishment or funeral service director, the funeral service establishment or funeral service director designated in the written directions; and
  (b) if the written directions are contained in a will, the personal representative as defined in Section 75-1-201.

Amended by Chapter 364, 2013 General Session

58-9-602 Determination of control of disposition.
The right and duty to control the disposition of a deceased person, which may include cremation as well as the location, manner and conditions of the disposition, and arrangements for funeral goods and services to be provided, vests in the following degrees of relationship in the order named, provided the person is at least 18 and is mentally competent:
(1) the person designated:
  (a) in a written instrument, excluding a power of attorney that terminates at death under Section 75-9-110, if the written instrument is acknowledged before a Notary Public or executed with the same formalities required of a will under Section 75-2-502; or

(b) by a service member while serving in a branch of the United States Armed Forces as defined in 10 U.S.C. Sec. 1481 in a federal Record of Emergency Data, DD Form 93 or subsequent form;

(2) the surviving, legally recognized spouse of the decedent, unless a personal representative was nominated by the decedent subsequent to the marriage, in which case the personal representative shall take priority over the spouse;

(3) the person nominated to serve as the personal representative of the decedent's estate in a will executed with the formalities required in Section 75-2-502;

(4)

(a) the sole surviving child of the decedent, or if there is more than one child of the decedent, the majority of the surviving children;

(b) less than one-half of the surviving children are vested with the rights of this section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving children;

(5) the surviving parent or parents of the decedent, however:

(a) if one of the surviving parents is absent, the remaining parent is vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving parent; or

(b) if the parents are divorced or separated and the decedent was an incapacitated adult, the parent who was designated as the guardian of the decedent is vested with the rights and duties of this section;

(6)

(a) the surviving brother or sister of the decedent, or if there is more than one sibling of the decedent, the majority of the surviving siblings;

(b) less than the majority of surviving siblings, if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving siblings;

(7) the person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent, and if there is more than one person of the same degree, any person of that degree may exercise the right of disposition;

(8) in the absence of any person under Subsections (1) through (7), the person who was the decedent's guardian at the time of death;

(9) any public official charged with arranging the disposition of deceased persons; and

(10) in the absence of any person under Subsections (1) through (9), any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the personal representative of the decedent's estate or the funeral service director with custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals referred to in Subsections (1) through (9).

Amended by Chapter 256, 2016 General Session

58-9-603 Loss of right of disposition.

(1) As used in this section, "estranged" means a physical and emotional separation from the decedent at the time of death which has existed for a period of time that clearly demonstrates an absence of affection, trust, and regard for the decedent.

(2) A person who has a right of disposition under this chapter forfeits that right and the right is passed on to the next qualifying person as listed in Section 58-9-602 under the following circumstances:
  (a) the person is charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death, and the charges are known by the funeral service director, except that if the charges against the person are dropped or if the person is acquitted of the charges, the right of disposition is returned to the person;
  (b) the person does not exercise the person's right of disposition within three days of notification of the decedent's death or within five days of the decedent's death, whichever is earlier; or
  (c) if a probate court under Section 58-9-605 determines that the person entitled to the right of disposition and the decedent were estranged at the time of death.

Repealed and Re-enacted by Chapter 144, 2007 General Session

58-9-604 Control by funeral service director.

A funeral service director may control the disposition of the decedent and recover reasonable charges if:
(1)
  (a) the funeral service director has actual knowledge that none of the persons described in Section 58-9-602 exist; or
  (b) after reasonable efforts the funeral service director is not able to contact any of the persons described in Section 58-9-602; and
(2) the appropriate public official charged with arranging the disposition of deceased persons fails to assume responsibility for disposition of the decedent within 36 hours after receiving written notice from the funeral service director.

Enacted by Chapter 49, 2003 General Session

58-9-605 Disputes.

(1) Notwithstanding Sections 58-9-601 through 58-9-604, the probate court for the county in which the decedent resided may:
  (a) award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition; and
  (b) make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree.
(2) The following provisions apply to the probate court's determinations under this section:
  (a) if the persons holding the right of disposition are two or more persons with the same relationship to the decedent, and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of those persons or a funeral service director with custody of the remains may petition the probate court to make the decision;
  (b) in making a determination the probate court shall consider:
    (i) the reasonableness and practicality of the proposed funeral arrangements and disposition;
    (ii) the degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;
    (iii) the desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;
    (iv) the convenience and needs of other families and friends wishing to pay their respects;
    (v) the desires of the decedent; and

(vi) the degree to which the funeral arrangements would allow maximum participation by all who wish to pay their respects.

(3)

(a) In a dispute regarding the right of disposition, until the funeral service director receives a court order or other written agreement signed by the parties to the dispute that decides the final disposition of the remains, the funeral service director is not liable for refusing to:

(i) accept the decedent's remains;

(ii) inter or otherwise dispose of the decedent's remains; or

(iii) complete the arrangements for the final disposition of the decedent's remains.

(b) If, during a dispute, a funeral service director retains a decedent's remains for final disposition, the director may:

(i) embalm or refrigerate and shelter the body, or both, to preserve it while awaiting the final decision of the probate court; and

(ii) add the costs incurred under Subsection (3)(b)(i) to the final disposition costs.

(4) The legal fees and court costs incurred by a funeral service director for petitioning the probate court under Subsection (2)(a) may be added to the final disposition costs.

(5)

(a) This section does not require or impose a duty upon a funeral service director to bring an action under Subsection (2)(a).

(b) A funeral service director may not be held criminally or civilly liable for failing to bring an action under Subsection (2)(a).

(6) Except to the degree that it may be considered by the probate court under Subsection (2)(b)(iii), the fact that a person has paid for or agreed to pay for all or part of the decedent's funeral arrangements and final disposition does not give that person a higher priority to the right of disposition that the person would otherwise have.

(7) The personal representative of the decedent's estate does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the personal representative would otherwise have.

Enacted by Chapter 144, 2007 General Session

58-9-606 Right to rely -- Immunity.

(1) A person signing a funeral service agreement, cremation authorization form, or other authorization for a decedent's disposition warrants the truthfulness of the facts set forth in the document, including the identity of the decedent and the person's authority to order the disposition.

(2) A funeral service establishment has the right to rely on a contract or authorization executed under Subsection (1) and may carry out the instructions of the person whom its funeral service director reasonably believes holds the right of disposition.

(3) A funeral service director incurs no civil or criminal liability for failure to contact or independently investigate the existence of any next-of-kin or relative of the decedent.

(4) If there are at least two persons in the nearest class of the next-of-kin who are equal in priority and a funeral service director has no knowledge of an objection by other members of the class, the funeral service director may rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements.

(5) A funeral service establishment or funeral service director who relies in good faith on the instructions of a person claiming the right of disposition under this part is immune from civil and

criminal liability and disciplinary action in carrying out the disposition of a decedent's remains in accordance with that person's instructions.

Enacted by Chapter 144, 2007 General Session

58-9-607 Authorization to cremate -- Penalties for removal of items from human remains.

(1) Except as otherwise provided in this section, a funeral service establishment may not cremate human remains until it has received:
  (a) a cremation authorization form signed by an authorizing agent;
  (b) a completed and executed burial transit permit or similar document, as provided by state law, indicating that human remains are to be cremated; and
  (c) any other documentation required by the state, county, or municipality.
(2)
  (a) The cremation authorization form shall contain, at a minimum, the following information:
    (i) the identity of the human remains and the time and date of death, including a signed declaration of visual identification of the deceased or refusal to visually identify the deceased;
    (ii) the name of the funeral director and funeral service establishment that obtained the cremation authorization;
    (iii) notification as to whether the death occurred from a disease declared by the department of health to be infectious, contagious, communicable, or dangerous to the public health;
    (iv) the name of the authorizing agent and the relationship between the authorizing agent and the decedent;
    (v) a representation that the authorizing agent has the right to authorize the cremation of the decedent and that the authorizing agent is not aware of any living person with a superior or equal priority right to that of the authorizing agent, except that if there is another living person with a superior or equal priority right, the form shall contain a representation that the authorizing agent has:
      (A) made reasonable efforts to contact that person;
      (B) been unable to do so; and
      (C) no reason to believe that the person would object to the cremation of the decedent;
    (vi) authorization for the funeral service establishment to cremate the human remains;
    (vii) a representation that the human remains do not contain a pacemaker or other material or implant that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation;
    (viii) the name of the person authorized to receive the cremated remains from the funeral service establishment;
    (ix) the manner in which the final disposition of the cremated remains is to take place, if known;
    (x) a listing of each item of value to be delivered to the funeral service establishment along with the human remains, and instructions as to how each item should be handled;
    (xi) the signature of the authorizing agent, attesting to the accuracy of all representations contained on the authorization form;
    (xii) if the cremation authorization form is being executed on a preneed basis, the form shall contain the disclosure required for preneed programs under this chapter; and
    (xiii) except for a preneed cremation authorization, the signature of the funeral director of the funeral service establishment that obtained the cremation authorization.
  (b)

(i) The individual referred to in Subsection (2)(a)(xiii) shall execute the funeral authorization form as a witness and is not responsible for any of the representations made by the authorizing agent.
(ii) The funeral director or the funeral service establishment shall warrant to the crematory that the human remains delivered to the funeral service establishment have been positively identified as the decedent listed on the cremation authorization form by the authorizing agent or a designated representative of the authorizing agent.
(iii) The authorizing agent or the agent's designee may make the identification referred to in Subsection (2)(b)(ii) in person or by photograph.

(3)
(a) A funeral service establishment may not accept unidentified human remains for cremation.
(b) If a funeral service establishment takes custody of a cremation container subsequent to the human remains being placed within the container, it can rely on the identification made before the remains were placed in the container.
(c) The funeral service establishment shall place appropriate identification on the exterior of the cremation container based on the prior identification.

(4)
(a) A person who removes or possesses dental gold or silver, jewelry, or mementos from human remains:
(i) with purpose to deprive another over control of the property is guilty of an offense and subject to the punishments provided in Section 76-6-412;
(ii) with purpose to exercise unauthorized control and with intent to temporarily deprive another of control over the property is guilty of an offense and subject to the punishments provided in Section 76-6-404.5; and
(iii) under circumstances not amounting to Subsection (4)(a)(i) or (ii) and without specific written permission of the individual who has the right to control those remains is guilty of a class B misdemeanor.
(b) The fact that residue or any unavoidable dental gold or dental silver or other precious metals remain in a cremation chamber or other equipment or a container used in a prior cremation is not a violation of Subsection (4)(a).

Enacted by Chapter 353, 2008 General Session

58-9-608 Recordkeeping.

(1)
(a) A funeral service establishment shall furnish to the person who delivers human remains to the establishment for cremation a receipt signed by a representative of the establishment and the person making the delivery, showing:
(i) the date and time of the delivery;
(ii) the type of casket or alternative container delivered;
(iii) the name of the person from whom the human remains were received;
(iv) the name of the funeral establishment or other entity with whom the person making the delivery is affiliated;
(v) the name of the person who received the human remains on behalf of the funeral service establishment; and
(vi) the name of the decedent.
(b) The funeral service establishment shall keep a copy of the receipt in its permanent records for a period of seven years.

(2)
(a) Upon release of cremated remains, a funeral service establishment shall furnish to the person who receives the cremated remains a receipt signed by a representative of the funeral service establishment and the person who receives the remains, showing:
(i) the date and time of the release;
(ii) the name of the person to whom the cremated remains were released; and
(iii) if applicable:
(A) the name of the funeral establishment, cemetery, or other entity with whom the person receiving the cremated remains is affiliated;
(B) the name of the person who released the cremated remains on behalf of the funeral service establishment; and
(C) the name of the decedent.
(b)
(i) The receipt shall contain a representation from the person receiving the cremated remains confirming that the remains will not be used for any improper purpose.
(ii) Upon release of the cremated remains, the person to whom the remains were released may transport them in any manner in the state, without a permit, and dispose of them in accordance with this chapter.
(c) The funeral service establishment shall retain a copy of the receipt in its permanent records for a period of seven years.
(3)
(a) The funeral service establishment shall maintain at its place of business a permanent record of each cremation that took place at its crematory.
(b) The permanent record shall contain:
(i) the name of the decedent;
(ii) the date of cremation;
(iii) the final disposition of the cremated remains; and
(iv) any other document required by this chapter.

Enacted by Chapter 353, 2008 General Session

58-9-609 Cremation containers.
(1)
(a) Except as provided in Subsection (2), a funeral service establishment may not make or enforce a rule requiring that human remains be:
(i) placed in a casket before cremation; or
(ii) cremated in a casket.
(b) A funeral service establishment may not refuse to accept human remains for cremation because they are not in a casket.
(2)
(a) Human remains must be delivered to a crematory in a casket or cremation container.
(b) Human remains may not be removed from a casket or cremation container once delivered to the crematory, and the casket or cremation container shall be cremated with the human remains, unless:
(i) the funeral service establishment has been provided with written instructions to the contrary by the authorizing agent; or
(ii) the funeral service establishment does not accept metal caskets for cremation.

Enacted by Chapter 353, 2008 General Session

58-9-610 Cremation procedures.

(1) A funeral service establishment may not cremate human remains until the funeral service establishment:
  (a) completes and files a death certificate with the office of vital statistics and the county health department as indicated on the regular medical certificate of death or the coroner's certificate; and
  (b) complies with the provisions of Section 26-4-29.
(2)
  (a) A funeral service establishment may not cremate human remains with a pacemaker or other battery-powered, potentially hazardous implant in place.
  (b)
    (i) An authorizing agent for the cremation of human remains is responsible for informing the funeral service establishment in writing on the cremation authorization form about the presence of a pacemaker or other battery-powered, potentially hazardous implant in the human remains to be cremated.
    (ii)
      (A) Except as provided in Subsection (2)(b)(ii)(B), the authorizing agent is responsible to ensure that a pacemaker or other battery-powered, potentially hazardous implant is removed prior to cremation.
      (B) If the authorizing agent informs the funeral service establishment of the presence of a pacemaker or other battery-powered, potentially hazardous implant under Subsection (2)(b)(i), and the funeral service establishment fails to have the pacemaker or other battery-powered, potentially hazardous implant removed prior to cremation, then the funeral service establishment is liable for all resulting damages.
(3) Only authorized persons are permitted in the crematory while human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber.
(4)
  (a) Simultaneous cremation of the human remains of more than one person within the same cremation chamber or processor is not allowed, unless the funeral service establishment has received specific written authorization to do so from the authorizing agent of each person to be cremated.
  (b) The written authorization, described in Subsection (4)(a), exempts the funeral license establishment from liability for co-mingling of the cremated remains during the cremation process.
(5) A funeral service establishment shall:
  (a) verify the identification of human remains as indicated on a cremation container immediately before placing the human remains in the cremation chamber;
  (b) attach a metal identification tag to the cremation container;
  (c) remove the identification tag from the cremation container; and
  (d) place the identification tag near the cremation chamber control where the identification tag shall remain until the cremation process is complete.
(6) Upon completion of a cremation, the funeral service establishment shall:
  (a) in so far as is possible, remove all of the recoverable residue of the cremation process from the cremation chamber;

(b) separate all other residue from the cremation process from remaining bone fragments, in so far as possible, and process the bone fragments so as to reduce them to unidentifiable particles; and
(c) remove anything other than the unidentifiable bone particles from the cremated residuals, as far as is possible, and dispose of that material.
(7)
(a) A funeral service establishment shall pack cremated remains, including the identification tag described in Subsection (5), in a temporary container or urn ordered by the authorizing agent.
(b) The container or urn shall be packed in clean packing materials and not be contaminated with any other object, unless otherwise directed by the authorizing agent.
(c) If the cremated remains cannot fit within the designated temporary container or urn, the funeral service establishment shall:
(i) return the excess to the authorizing agent or the agent's representative in a separate container; and
(ii) mark both containers or urns on the outside with the name of the deceased person and an indication that the cremated remains of the named decedent are in both containers or urns.
(8)
(a) If the cremated remains are to be shipped, then the funeral services establishment shall pack the designated temporary container or urn in a suitable, sturdy container.
(b) The funeral service establishment shall have the remains shipped only by a method that:
(i) has an available internal tracing system; and
(ii) provides a receipt signed by the person accepting delivery.

Amended by Chapter 68, 2009 General Session
Amended by Chapter 223, 2009 General Session

58-9-611 Disposition of cremated remains.
(1)
(a) An authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the final disposition of the cremated remains, if known.
(b) The funeral services establishment shall retain a copy of the statement.
(2)
(a) The authorizing agent is responsible for the disposition of the cremated remains.
(b) If the authorizing agent or the agent's representative has not specified the ultimate disposition of or claimed the cremated remains within 60 days from the date of the cremation, the funeral service establishment may dispose of the remains in any manner permitted by law, except scattering.
(c) The authorizing agent shall reimburse the funeral services establishment for all reasonable costs incurred in disposing of the cremated remains under Subsection (2)(b).
(d) The person or entity disposing of cremated remains under this section:
(i) shall make and keep a record of the disposition of the remains; and
(ii) is discharged from any legal obligation or liability concerning the remains once the disposition has been made.
(e) Subsection (2)(d)(ii) applies to cremated remains in the possession of a funeral services establishment or other responsible party as of May 5, 2008, or any time after that date.
(3)
(a) An authorizing agent may direct a funeral service establishment to dispose of or arrange for the disposition of cremated remains:

(i) in a crypt, niche, grave, or scattering garden located in a dedicated cemetery;
(ii) by scattering them over inhabited public land, the sea, or other public waterways subject to health and environmental laws and regulations; or
(iii) in any manner on the private property of a consenting owner.
(b) If cremated remains are to be disposed of on private property, other than dedicated cemetery property, the authorizing agent shall provide the funeral service establishment with the written consent of the property owner prior to disposal of the remains.
(c) In order to scatter cremated remains under Subsection (3)(a)(ii) or (iii), the remains must be reduced to a particle size of one-eighth inch or less and removed from their closed container.
(4) A funeral service establishment may not release cremated remains for scattering under this section to the authorizing agent or the agent's designated representative until the funeral service establishment is given a receipt that shows the proper filing has been made with the local registrar of births and deaths.

Enacted by Chapter 353, 2008 General Session

58-9-612 Limitation of liability.
(1) An authorizing agent who signs a cremation authorization form warrants the truthfulness of the facts set forth on the form, including:
(a) the identity of the deceased whose remains are to be cremated; and
(b) the authorizing agent's authority to order the cremation.
(2) A funeral service establishment may rely upon the representations made by an authorizing agent under Subsection (1).
(3) The authorizing agent is personally and individually liable for all damage resulting from a misstatement or misrepresentation made under Subsection (1).
(4)
(a) A funeral service establishment may arrange for the cremation of and cremate human remains upon receipt of a cremation authorization form signed by an authorizing agent.
(b) A funeral service establishment that arranges a cremation, cremates human remains, or releases or disposes of cremated human remains pursuant to a cremation authorization form is not liable for an action it takes pursuant to that authorization.
(5) A funeral service establishment is not responsible or liable for any valuables delivered to the establishment with human remains to be cremated.
(6) A funeral service establishment may refuse to arrange for a cremation, to accept human remains for cremation, or to perform a cremation:
(a) if the establishment is aware of a dispute concerning the cremation of the human remains and it has not received a court order or other suitable confirmation that the dispute has been resolved;
(b) if the establishment has a reasonable basis for questioning any of the representations made by an authorizing agent; or
(c) for any other lawful reason.
(7)
(a) If a funeral service establishment is aware of a dispute concerning the release or disposition of cremated remains in its possession, the establishment may refuse to release the remains until:
(i) the dispute has been resolved; or
(ii) it has received a court order authorizing the release or disposition of the remains.

(b) A funeral service establishment is not liable for its refusal to release or dispose of cremated remains in accordance with this Subsection (7).

Enacted by Chapter 353, 2008 General Session

Part 7
Preneed Funeral Arrangement Requirements

58-9-701 Preneed contract requirements.

(1)
(a) A preneed funeral arrangement sold in Utah shall be evidenced by a written contract.
(b) The funeral service establishment shall maintain a copy of the contract until five years after all of the establishment's obligations under the contract have been executed.

(2) The form for a written contract of a preneed funeral arrangement under Subsection (1) shall:
(a) be written in clear and understandable language printed in an easy-to-read type size and font;
(b) bear the preprinted name, address, telephone number, and license number of the funeral service establishment obligated to provide the services under the contract terms;
(c) clearly identify that the contract is a guaranteed product contract;
(d) provide that a trust is established in accordance with the provisions of Section 58-9-702;
(e) if the contract is funded by an insurance policy or product, provide that the insurance policy or product is filed with the Insurance Department and meets the requirements of Title 31A, Insurance Code; and
(f) conform to other standards created by rules made by division under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to protect the interests of buyers and potential buyers.

(3) A preneed funeral arrangement contract shall provide for payment by the buyer in a form which may be liquidated by the funeral service establishment within 30 days after the day the funeral service establishment or sales agent receives the payment.

(4) A preneed funeral arrangement contract may not be revocable by the funeral service establishment except:
(a) in the event of nonpayment; and
(b) under terms and conditions clearly set forth in the contract.

(5)
(a) A preneed funeral arrangement contract may not be revocable by the buyer or beneficiary except:
(i) in the event of:
(A) a substantial contract breach by the funeral service establishment; or
(B) substantial evidence that the funeral service establishment is or will be unable to provide the personal property or services to the beneficiary as provided under the contract; or
(ii) under terms and conditions clearly set forth in the contract.
(b) The preneed funeral arrangement contract shall contain a clear statement of the manner in which payments made on the contract shall be refunded to the buyer or beneficiary upon revocation by the beneficiary.

(6)
(a) A preneed funeral arrangement contract shall provide the buyer the option to require the funeral service establishment to furnish a written disclosure to a person who does not live at the same residence as the buyer.

(b) The preneed funeral arrangement buyer may choose:
(i) a full disclosure containing a copy of the entire preneed funeral arrangement contract;
(ii) a partial disclosure informing the recipient of:
(A) the existence of a preneed funeral arrangement contract; and
(B) the name, address, telephone number, and license number of the funeral service establishment obligated to provide the services under the preneed funeral arrangement contract; or
(iii) not to require the funeral service establishment to furnish a written disclosure to another person.

Amended by Chapter 30, 2012 General Session

58-9-702 Payments to be held in trust -- Trustee qualifications.
(1) All money representing payments for the purchase of a preneed funeral arrangement shall be deposited by the provider or sales agent receiving the payment:
(a) within 10 business days after the day on which the provider or sales agent receives the payment in the form of cash or cash equivalent; or
(b) within 35 calendar days after the day on which the provider or sales agent receives the payment in the form of a negotiable instrument.
(2) All money received under Subsection (1) shall be placed in a trust account naming as trustee a Utah financial institution authorized to engage in the trust business under Title 7, Chapter 5, Trust Business.

Enacted by Chapter 49, 2003 General Session

58-9-703 Trust agreement.
(1) Each trust established by a funeral service establishment shall be administered in accordance with a trust agreement conforming with:
(a) the requirements of this chapter;
(b) rules adopted with respect to this chapter;
(c) the provisions of Title 75, Chapter 7, Utah Uniform Trust Code; and
(d) all other state and federal laws applicable to trusts and trust agreements.
(2) Each trust agreement shall require that the funeral service establishment maintain a copy of the trust agreement until five years after all of its obligations under the trust agreement have been executed or transferred.
(3) Each trust agreement shall require that the trustee:
(a) separately account for each contract; and
(b) separately record payments with respect to each contract made into the corpus of the trust.
(4) Each trust agreement shall provide for distributions from the trust in accordance with the provisions of this chapter upon:
(a) the death of the beneficiary;
(b) revocation of the contract by the funeral service establishment upon nonpayment by the buyer; or
(c) revocation of the contract by the beneficiary or buyer.

Amended by Chapter 144, 2007 General Session

58-9-704 Interest earned on trust funds.

Interest earned on trust funds shall be available for expenditure according to the following priority:

(1) to pay the reasonable trustee expenses of administering the trust within a maximum amount established by rule;

(2) to pay within a maximum amount established by rule under Section 58-9-504 the reasonable provider expenses associated with:

(a) the sale of the plan;

(b) administering the collection, remittance, and accounting of the amount of payments made into the corpus of the trust; and

(c) reporting required with respect to those contracts:

(i) that have been sold; and

(ii) under which the provider is obligated;

(3) to pay the costs of providing any of the following for which the provider is obligated under a specific outstanding preneed funeral arrangement contract:

(a) personal property; and

(b) services at need; and

(4) to pay the provider available funds left in the individual trust account after:

(a) all costs of providing personal property and services for which the provider is obligated under the contract underlying the trust; or

(b)

(i) the contract is canceled as provided under this chapter; and

(ii) all amounts payable to the buyer, beneficiary, or any other person have been paid in full.

Enacted by Chapter 49, 2003 General Session

58-9-705 Distribution of funds.

(1) Interest earned on trust funds shall be available to the provider according to the priority set forth in Section 58-9-704.

(2) The amount of payments made into the corpus of the trust and any other amount which has been paid into the corpus of the trust shall be paid to the provider in the amount credited to a specific account upon the event of one of the following:

(a) the death of the beneficiary which shall be demonstrated to the trustee by the provider by furnishing to the trustee:

(i) a request for payment from the trust; and

(ii) a certified copy of the death certificate of the beneficiary; or

(b) revocation of the preneed funeral arrangement contract by either the provider or the buyer according to the terms and conditions of the contract, which shall be demonstrated to the trustee by the provider by furnishing to the trustee satisfactory evidence that:

(i) the contract has been revoked; and

(ii) the provider has paid all funds due to the buyer or beneficiary.

(3) Upon an order of a court having jurisdiction, all amounts that have been paid into the corpus of the trust shall be paid to the buyer or beneficiary in the event of:

(a) a judgment to the benefit of a buyer or beneficiary upon a finding that:

(i) the provider is in substantial breach of the contract; or

(ii) there is substantial evidence that the provider is or will be unable to provide the personal property or services to the beneficiary under the contract;

(b) a judgment of bankruptcy against the provider; or

(c) a finding by the court that determines the funds should be rightfully returned to the buyer or beneficiary.

Amended by Chapter 353, 2008 General Session

58-9-706 Trust funds and insurance reports.

(1)
(a) Each funeral service establishment shall maintain an annual report of preneed trust funds and insurance.
(b) The report shall contain:
(i) the name of the trustees with which the funeral service establishment has trust funds on deposit; and
(ii) the amount remaining on deposit in the trust fund on:
(A) December 31 of the preceding year; or
(B) another annual reporting period as the division may establish.
(2) Each funeral service establishment may be audited by the division at any time.

Amended by Chapter 144, 2007 General Session

58-9-707 Records of trustee -- Contents.

(1) The trustee shall keep an orderly record of all agreements.
(2) The record shall contain:
(a) the name and address of the person making a payment;
(b) the date and the amount of each payment made;
(c) the date and amount of each withdrawal and to whom paid; and
(d) the name of the bank or trust company depository.

Amended by Chapter 144, 2007 General Session

58-9-708 Audits.

(1)
(a) The division may at any time:
(i) audit records of the provider; and
(ii) inspect records of the provider.
(b) The provider or trustee shall make available to the division for examination, inspection, or auditing all records pertaining to the accounts relating to:
(i) any contract sold under this chapter; and
(ii) any trust established under this chapter.
(2)
(a) The director may employ experts from outside the division if special need exists to perform examinations, inspections, and audits under this section.
(b) The provider shall be responsible for payment to the division of all reasonable and necessary costs related to the employment of experts under this section.

Enacted by Chapter 49, 2003 General Session

Chapter 11a
Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act

Part 1
General Provisions

58-11a-101 Title.

This chapter is known as the "Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act."

Amended by Chapter 209, 2007 General Session

58-11a-102 Definitions.

As used in this chapter:

(1) "Approved barber or cosmetologist/barber apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(1) for barbers or Subsection 58-11a-306(2) for cosmetologist/barbers and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) "Approved esthetician apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(3) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) "Approved master esthetician apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(4) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) "Approved nail technician apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(5) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) "Barber" means a person who is licensed under this chapter to engage in the practice of barbering.

(6) "Barber instructor" means a barber who is licensed under this chapter to engage in the practice of barbering instruction.

(7) "Board" means the Barber, Cosmetology/Barbering, Esthetics, Electrology, and Nail Technology Licensing Board created in Section 58-11a-201.

(8) "Cosmetic laser procedure" includes a nonablative procedure as defined in Section 58-67-102.

(9) "Cosmetic supervisor" means a supervisor as defined in Section 58-1-505.

(10) "Cosmetologist/barber" means a person who is licensed under this chapter to engage in the practice of cosmetology/barbering.

(11) "Cosmetologist/barber instructor" means a cosmetologist/barber who is licensed under this chapter to engage in the practice of cosmetology/barbering instruction.

(12) "Direct supervision" means that the supervisor of an apprentice or the instructor of a student is immediately available for consultation, advice, instruction, and evaluation.

(13) "Electrologist" means a person who is licensed under this chapter to engage in the practice of electrology.

(14) "Electrologist instructor" means an electrologist who is licensed under this chapter to engage in the practice of electrology instruction.
(15) "Esthetician" means a person who is licensed under this chapter to engage in the practice of esthetics.
(16) "Esthetician instructor" means a master esthetician who is licensed under this chapter to engage in the practice of esthetics instruction.
(17) "Fund" means the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund created in Section 58-11a-103.
(18)
(a) "Hair braiding" means the twisting, weaving, or interweaving of a person's natural human hair.
(b) "Hair braiding" includes the following methods or styles:
(i) African-style braiding;
(ii) box braids;
(iii) cornrows;
(iv) dreadlocks;
(v) french braids;
(vi) invisible braids;
(vii) micro braids;
(viii) single braids;
(ix) single plaits;
(x) twists;
(xi) visible braids;
(xii) the use of lock braids; and
(xiii) the use of decorative beads, accessories, and nonhair extensions.
(c) "Hair braiding" does not include:
(i) the use of:
(A) wefts;
(B) synthetic tape;
(C) synthetic glue;
(D) keratin bonds;
(E) fusion bonds; or
(F) heat tools;
(ii) the cutting of human hair; or
(iii) the application of heat, dye, a reactive chemical, or other preparation to:
(A) alter the color of the hair; or
(B) straighten, curl, or alter the structure of the hair.
(19) "Licensed barber or cosmetology/barber school" means a barber or cosmetology/barber school licensed under this chapter.
(20) "Licensed electrology school" means an electrology school licensed under this chapter.
(21) "Licensed esthetics school" means an esthetics school licensed under this chapter.
(22) "Licensed nail technology school" means a nail technology school licensed under this chapter.
(23) "Master esthetician" means an individual who is licensed under this chapter to engage in the practice of master-level esthetics.
(24) "Nail technician" means an individual who is licensed under this chapter to engage in the practice of nail technology.
(25) "Nail technician instructor" means a nail technician licensed under this chapter to engage in the practice of nail technology instruction.
(26) "Practice of barbering" means:

(a) cutting, clipping, or trimming the hair of the head of any person by the use of scissors, shears, clippers, or other appliances;
(b) draping, shampooing, scalp treatments, basic wet styling, and blow drying; and
(c) removing hair from the face or neck of a person by the use of shaving equipment.

(27) "Practice of barbering instruction" means teaching the practice of barbering at a licensed barber school, at a licensed cosmetology/barber school, or for an approved barber apprenticeship.

(28) "Practice of basic esthetics" means any one of the following skin care procedures done on the body for cosmetic purposes and not for the treatment of medical, physical, or mental ailments:
(a) cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or masks, manual extraction, including a comodone extractor, depilatories, waxes, tweezing, the application of eyelash or eyebrow extensions, natural nail manicures or pedicures, or callous removal by buffing or filing;
(b) limited chemical exfoliation as defined by rule;
(c) removing superfluous hair by means other than electrolysis, except that an individual is not required to be licensed as an esthetician to engage in the practice of threading;
(d) other esthetic preparations or procedures with the use of the hands, a high-frequency or galvanic electrical apparatus, or a heat lamp for cosmetic purposes and not for the treatment of medical, physical, or mental ailments;
(e) arching eyebrows, tinting eyebrows or eyelashes, perming eyelashes, or applying eyelash or eyebrow extensions; or
(f) except as provided in Subsection (28)(f)(i), cosmetic laser procedures under the direct cosmetic medical procedure supervision of a cosmetic supervisor limited to the following:
(i) superfluous hair removal which shall be under indirect supervision;
(ii) anti-aging resurfacing enhancements;
(iii) photo rejuvenation; or
(iv) tattoo removal.

(29)
(a) "Practice of cosmetology/barbering" means:
(i) styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a person;
(ii) cutting, clipping, or trimming the hair by the use of scissors, shears, clippers, or other appliances;
(iii) arching eyebrows, tinting eyebrows or eyelashes, perming eyelashes, applying eyelash or eyebrow extensions;
(iv) removing hair from the body of a person by the use of depilatories, waxing, or shaving equipment;
(v) cutting, curling, styling, fitting, measuring, or forming caps for wigs or hairpieces or both on the human head; or
(vi) practicing hair weaving or hair fusing or servicing previously medically implanted hair.
(b) The term "practice of cosmetology/barbering" includes:
(i) the practice of basic esthetics; and
(ii) the practice of nail technology.
(c) An individual is not required to be licensed as a cosmetologist/barber to engage in the practice of threading.

(30) "Practice of cosmetology/barbering instruction" means teaching the practice of cosmetology/barbering:

(a) at a licensed cosmetology/barber school, a licensed barber school, or a licensed nail technology school; or
(b) for an approved cosmetologist/barber apprenticeship.
(31) "Practice of electrology" means:
(a) the removal of superfluous hair from the body of a person by the use of electricity, waxing, shaving, or tweezing; or
(b) cosmetic laser procedures under the supervision of a cosmetic supervisor limited to superfluous hair removal.
(32) "Practice of electrology instruction" means teaching the practice of electrology at a licensed electrology school.
(33) "Practice of esthetics instruction" means teaching the practice of basic esthetics or the practice of master-level esthetics:
(a) at a licensed esthetics school or a licensed cosmetology/barber school; or
(b) for an approved esthetician apprenticeship or an approved master esthetician apprenticeship.
(34)
(a) "Practice of master-level esthetics" means:
(i) any of the following when done for cosmetic purposes on the body and not for the treatment of medical, physical, or mental ailments:
(A) body wraps as defined by rule;
(B) hydrotherapy as defined by rule;
(C) chemical exfoliation as defined by rule;
(D) advanced pedicures as defined by rule;
(E) sanding, including microdermabrasion;
(F) advanced extraction;
(G) other esthetic preparations or procedures with the use of:
(I) the hands; or
(II) a mechanical or electrical apparatus which is approved for use by division rule for beautifying or similar work performed on the body for cosmetic purposes and not for the treatment of a medical, physical, or mental ailment; or
(H) cosmetic laser procedures under the supervision of a cosmetic supervisor with a physician's evaluation before the procedure, as needed, unless specifically required under Section 58-1-506, and limited to the following:
(I) superfluous hair removal;
(II) anti-aging resurfacing enhancements;
(III) photo rejuvenation; or
(IV) tattoo removal with a physician's, advanced practice nurse's, or physician assistant's evaluation before the tattoo removal procedure, as required by Subsection 58-1-506(3)(a); and
(ii) lymphatic massage by manual or other means as defined by rule.
(b) Notwithstanding the provisions of Subsection (34)(a), a master-level esthetician may perform procedures listed in Subsection (34)(a)(i)(H) if done under the supervision of a cosmetic supervisor acting within the scope of the cosmetic supervisor license.
(c) The term "practice of master-level esthetics" includes the practice of esthetics, but an individual is not required to be licensed as an esthetician or master-level esthetician to engage in the practice of threading.
(35) "Practice of nail technology" means to trim, cut, clean, manicure, shape, massage, or enhance the appearance of the hands, feet, and nails of an individual by the use of hands, mechanical,

or electrical preparation, antiseptic, lotions, or creams, including the application and removal of sculptured or artificial nails.
(36) "Practice of nail technology instruction" means teaching the practice of nail technology at a licensed nail technician school, at a licensed cosmetology/barber school, or for an approved nail technician apprenticeship.
(37) "Recognized barber school" means a barber school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.
(38) "Recognized cosmetology/barber school" means a cosmetology/barber school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.
(39) "Recognized electrology school" means an electrology school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.
(40) "Recognized esthetics school" means an esthetics school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.
(41) "Recognized nail technology school" means a nail technology school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.
(42) "Salon" means a place, shop, or establishment in which cosmetology/barbering, esthetics, electrology, or nail technology is practiced.
(43) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-11a-502.
(44) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-11a-501 and as may be further defined by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 75, 2016 General Session
Amended by Chapter 274, 2016 General Session

58-11a-103 Education and enforcement fund.
(1) There is created an expendable special revenue fund known as the "Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund."
(2) The fund consists of money from administrative penalties collected pursuant to this chapter.
(3) The fund shall earn interest and all interest earned on fund money shall be deposited into the fund.
(4) The director may, with concurrence of the board, make distributions from the fund for the following purposes:
  (a) education and training of licensees under this chapter;
  (b) education and training of the public or other interested persons in matters concerning the laws governing the practices licensed under this chapter; and
  (c) enforcement of this chapter by:
    (i) investigating unprofessional or unlawful conduct; and
    (ii) providing legal representation to the division when the division takes legal action against a person engaging in unprofessional or unlawful conduct.
(5) The division shall report annually to the appropriate appropriations subcommittee of the Legislature concerning the fund.

Amended by Chapter 400, 2013 General Session

Part 2
Board

58-11a-201 Board.

(1) There is created the Barbering, Cosmetology/Barbering, Esthetics, Electrology, and Nail Technology Licensing Board consisting of nine members as follows:
  (a) one barber or cosmetologist/barber;
  (b)
    (i) one barber or cosmetologist/barber instructor; or
    (ii) one representative of a licensed barber or cosmetology/barber school;
  (c) one master esthetician;
  (d)
    (i) one esthetician instructor; or
    (ii) one representative of a licensed esthetics school;
  (e) one nail technician;
  (f)
    (i) one nail technician instructor; or
    (ii) one representative of a licensed nail technician school;
  (g) one electrologist; and
  (h) two members from the general public.
(2)
  (a) The board shall be appointed and serve in accordance with Section 58-1-201.
  (b)
    (i) At least one of the members of the board appointed under Subsections (1)(b), (d), and (f) shall be an instructor at or a representative of a public school.
    (ii) At least one of the members of the board appointed under Subsections (1)(b), (d), and (f) shall be an instructor at or a representative of a private school.
(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
  (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
  (b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Amended by Chapter 209, 2007 General Session

Part 3
Licensing

58-11a-301 Licensure required -- License classifications.

(1) Except as specifically provided in Section 58-1-307 or 58-11a-304, a license is required to:
(a) engage in the practice of:
(i) barbering;
(ii) barbering instruction;
(iii) cosmetology/barbering;
(iv) cosmetology/barbering instruction;
(v) electrology;
(vi) electrology instruction;
(vii) esthetics;
(viii) master-level esthetics;
(ix) esthetics instruction;
(x) nail technology; or
(xi) nail technology instruction; or
(b) operate:
(i) a barbering school;
(ii) a cosmetology/barbering school;
(iii) an electrology school;
(iv) an esthetics school; or
(v) a nail technology school.
(2) The division shall issue to a person who qualifies under this chapter a license in the following classifications:
(a) barber;
(b) barber instructor;
(c) barber school;
(d) cosmetologist/barber;
(e) cosmetologist/barber instructor;
(f) cosmetology/barber school;
(g) electrologist;
(h) electrologist instructor;
(i) electrology school;
(j) esthetician;
(k) master esthetician;
(l) esthetician instructor;
(m) esthetics school;
(n) nail technology;
(o) nail technology instructor; and
(p) nail technology school.
(3) A person who participates as an apprentice in an approved apprenticeship under this chapter shall register with the division as described in Section 58-11a-306.

Amended by Chapter 274, 2016 General Session

58-11a-302 Qualifications for licensure.
(1) Each applicant for licensure as a barber shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) provide satisfactory documentation of:

(i) graduation from a licensed or recognized barber school, or a licensed or recognized cosmetology/barber school, whose curriculum consists of a minimum of 1,000 hours of instruction, or the equivalent number of credit hours, over a period of not less than 25 weeks;

(ii)

(A) graduation from a recognized barber school located in a state other than Utah whose curriculum consists of less than 1,000 hours of instruction or the equivalent number of credit hours; and

(B) practice as a licensed barber in a state other than Utah for not less than the number of hours required to equal 1,000 total hours when added to the hours of instruction described in Subsection (1)(d)(ii)(A); or

(iii) completion of an approved barber apprenticeship; and

(e) meet the examination requirement established by rule.

(2) Each applicant for licensure as a barber instructor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a barber;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 250 hours or the equivalent number of credit hours;

(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 250 hours or the equivalent number of credit hours; or

(iii) a minimum of 2,000 hours of experience as a barber; and

(f) meet the examination requirement established by rule.

(3) Each applicant for licensure as a barber school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for barber schools, including staff and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (19).

(4) Each applicant for licensure as a cosmetologist/barber shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of:

(i) graduation from a licensed or recognized cosmetology/barber school whose curriculum consists of a minimum of 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours;

(ii)

(A) graduation from a recognized cosmetology/barber school located in a state other than Utah whose curriculum consists of less than 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; and
(B) practice as a licensed cosmetologist/barber in a state other than Utah for not less than the number of hours required to equal 1,600 total hours when added to the hours of instruction described in Subsection (4)(d)(ii)(A); or
(iii) completion of an approved cosmetology/barber apprenticeship; and
(e) meet the examination requirement established by rule.
(5) Each applicant for licensure as a cosmetologist/barber instructor shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) provide satisfactory documentation that the applicant is currently licensed as a cosmetologist/barber;
(d) be of good moral character;
(e) provide satisfactory documentation of completion of:
(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 400 hours or the equivalent number of credit hours;
(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 400 hours or the equivalent number of credit hours; or
(iii) a minimum of 3,000 hours of experience as a cosmetologist/barber; and
(f) meet the examination requirement established by rule.
(6) Each applicant for licensure as a cosmetologist/barber school shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504; and
(c) provide satisfactory documentation:
(i) of appropriate registration with the Division of Corporations and Commercial Code;
(ii) of business licensure from the city, town, or county in which the school is located;
(iii) that the applicant's physical facilities comply with the requirements established by rule; and
(iv) that the applicant meets:
(A) the standards for cosmetology schools, including staff and accreditation requirements, established by rule; and
(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (19).
(7) Each applicant for licensure as an electrologist shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) provide satisfactory documentation of having graduated from a licensed or recognized electrology school after completing a curriculum of 600 hours of instruction or the equivalent number of credit hours; and
(e) meet the examination requirement established by rule.
(8) Each applicant for licensure as an electrologist instructor shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) provide satisfactory documentation that the applicant is currently licensed as an electrologist;
(d) be of good moral character;
(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 150 hours or the equivalent number of credit hours;
(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 150 hours or the equivalent number of credit hours; or
(iii) a minimum of 1,000 hours of experience as an electrologist; and
(f) meet the examination requirement established by rule.
(9) Each applicant for licensure as an electrologist school shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504; and
(c) provide satisfactory documentation:
(i) of appropriate registration with the Division of Corporations and Commercial Code;
(ii) of business licensure from the city, town, or county in which the school is located;
(iii) that the applicant's facilities comply with the requirements established by rule; and
(iv) that the applicant meets:
(A) the standards for electrologist schools, including staff, curriculum, and accreditation requirements, established by rule; and
(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (19).
(10) Each applicant for licensure as an esthetician shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) provide satisfactory documentation of one of the following:
(i) graduation from a licensed or recognized esthetic school or a licensed or recognized cosmetology/barber school whose curriculum consists of not less than 15 weeks of esthetic instruction with a minimum of 600 hours or the equivalent number of credit hours;
(ii) completion of an approved esthetician apprenticeship; or
(iii)
(A) graduation from a recognized cosmetology/barber school located in a state other than Utah whose curriculum consists of less than 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; and
(B) practice as a licensed cosmetologist/barber for not less than the number of hours required to equal 1,600 total hours when added to the hours of instruction described in Subsection (10)(d)(iii)(A); and
(e) meet the examination requirement established by division rule.
(11) Each applicant for licensure as a master esthetician shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) provide satisfactory documentation of:
(i) completion of at least 1,200 hours of training, or the equivalent number of credit hours, at a licensed or recognized esthetics school, except that up to 600 hours toward the 1,200 hours may have been completed:
(A) at a licensed or recognized cosmetology/barbering school, if the applicant graduated from the school and its curriculum consisted of at least 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; or

(B) at a licensed or recognized cosmetology/barber school located in a state other than Utah, if the applicant graduated from the school and its curriculum contained full flexibility within its hours of instruction; or

(ii) completion of an approved master esthetician apprenticeship;

(e) if the applicant will practice lymphatic massage, provide satisfactory documentation to show completion of 200 hours of training, or the equivalent number of credit hours, in lymphatic massage as defined by division rule; and

(f) meet the examination requirement established by division rule.

(12) Each applicant for licensure as an esthetician instructor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a master esthetician;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 300 hours or the equivalent number of credit hours;

(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 300 hours or the equivalent number of credit hours; or

(iii) a minimum of 1,000 hours of experience in esthetics; and

(f) meet the examination requirement established by rule.

(13) Each applicant for licensure as an esthetics school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for esthetics schools, including staff, curriculum, and accreditation requirements, established by division rule made in collaboration with the board; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (19).

(14) Each applicant for licensure as a nail technician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of:

(i) graduation from a licensed or recognized nail technology school, or a licensed or recognized cosmetology/barber school, whose curriculum consists of not less than 300 hours of instruction, or the equivalent number of credit hours;

(ii)

(A) graduation from a recognized nail technology school located in a state other than Utah whose curriculum consists of less than 300 hours of instruction or the equivalent number of credit hours; and

(B) practice as a licensed nail technician in a state other than Utah for not less than the number of hours required to equal 300 total hours when added to the hours of instruction described in Subsection (14)(d)(ii)(A); or

(iii) completion of an approved nail technician apprenticeship; and

(e) meet the examination requirement established by division rule.

(15) Each applicant for licensure as a nail technician instructor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a nail technician;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 75 hours or the equivalent number of credit hours;

(ii) an on-the-job instructor training program conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 75 hours or the equivalent number of credit hours; or

(iii) a minimum of 600 hours of experience in nail technology; and

(f) meet the examination requirement established by rule.

(16) Each applicant for licensure as a nail technology school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for nail technology schools, including staff, curriculum, and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (19).

(17) Each applicant for licensure under this chapter whose education in the field for which a license is sought was completed at a foreign school may satisfy the educational requirement for licensure by demonstrating, to the satisfaction of the division, the educational equivalency of the foreign school education with a licensed school under this chapter.

(18)

(a) A licensed or recognized school under this section may accept credit hours towards graduation for any profession listed in this section.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section, the division may make rules governing the acceptance of credit hours under Subsection (18)(a).

(19) A school licensed or applying for licensure under this chapter shall maintain recognition as an institution of postsecondary study by meeting the following conditions:

(a) the school shall admit as a regular student only an individual who has earned a recognized high school diploma or the equivalent of a recognized high school diploma, or who is beyond the age of compulsory high school attendance as prescribed by Title 53A, Chapter 11, Students in Public Schools; and

(b) the school shall be licensed by name, or in the case of an applicant, shall apply for licensure by name, under this chapter to offer one or more training programs beyond the secondary level.
(20) A person seeking to qualify for licensure under this chapter by apprenticing in an approved apprenticeship shall register with the division as described in Section 58-11a-306.

Amended by Chapter 274, 2016 General Session

58-11a-302.5 Qualification for licensure as an esthetics school -- Online curriculum.
(1) An applicant for licensure as an esthetics school under Subsection 58-11a-302(13) and an esthetics school licensed under this chapter may offer up to 30% of its total curriculum online:
(a) for instruction in theory; and
(b) in accordance with standards adopted by nationally recognized accrediting organizations.
(2) The provisions of this section do not:
(a) require the board to allow other schools licensed under this chapter to offer curriculum online; or
(b) limit the authority of the board to allow other schools licensed under this chapter to offer curriculum online.

Enacted by Chapter 238, 2016 General Session

58-11a-303 Terms of license -- Expiration -- Renewal.
(1)
(a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule, except that an instructor license is a one-time certificate and does not expire unless the licensee fails to keep current the license that qualified the licensee to be an instructor under Section 58-11a-302.
(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) At the time of renewal, a licensed school shall show satisfactory evidence that the school meets the standards for that type of school, including staff, curriculum, and accreditation requirements, established by rule.
(3) Each license expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Amended by Chapter 204, 2001 General Session

58-11a-304 Exemptions from licensure.
In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of barbering, cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology without being licensed under this chapter:
(1) a person licensed under the laws of this state to engage in the practice of medicine, surgery, osteopathy, or chiropractic when engaged in the practice of the profession for which they are licensed;
(2) a commissioned physician or surgeon serving in the armed forces of the United States or another federal agency;
(3) a registered nurse, undertaker, or mortician licensed under the laws of this state when engaged in the practice of the profession for which the person is licensed;

(4) a person who visits the state to engage in instructional seminars, advanced classes, trade shows, or competitions of a limited duration;
(5) a person who engages in the practice of barbering, cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology without compensation;
(6) a person instructing an adult education class or other educational program directed toward persons who are not licensed under this chapter and that is not intended to train persons to become licensed under this chapter, provided:
  (a) an attendee receives no credit toward educational requirements for licensure under this chapter;
  (b) the instructor informs each attendee in writing that taking such a class or program will not certify or qualify the attendee to perform a service for compensation that requires licensure under this chapter; and
  (c)
    (i) the instructor is properly licensed; or
    (ii) the instructor receives no compensation;
(7) a person providing instruction in workshops, seminars, training meetings, or other educational programs whose purpose is to provide continuing professional development to licensed barbers, cosmetologists/barbers, estheticians, master estheticians, electrologists, or nail technicians;
(8) a person enrolled in a licensed barber or cosmetology/barber school when participating in an on the job training internship under the direct supervision of a licensed barber or cosmetologist/barber upon completion of a basic program under the standards established by rule by the division in collaboration with the board;
(9) a person enrolled in an approved apprenticeship pursuant to Section 58-11a-306;
(10) an employee of a company that is primarily engaged in the business of selling products used in the practice of barbering, cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology when demonstrating the company's products to a potential customer, provided the employee makes no representation to a potential customer that attending such a demonstration will certify or qualify the attendee to perform a service for compensation that requires licensure under this chapter;
(11) a person who:
  (a) is qualified to engage in the practice of barbering, cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology in another jurisdiction as evidenced by licensure, certification, or lawful practice in the other jurisdiction;
  (b) is employed by, or under contract with, a motion picture company; and
  (c) engages in the practice of barbering, cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology in the state:
    (i) solely to assist in the production of a motion picture; and
    (ii) for no more than 120 days per calendar year; and
(12) a person who:
  (a) engages in hair braiding; and
  (b) unless it is expressly exempted under this section or Section 58-1-307, does not engage in other activity requiring licensure under this chapter.

Amended by Chapter 13, 2013 General Session

58-11a-305 Requirement to display license.

Each licensee under this chapter shall prominently display the licensee's license at the location where the licensee engages in the practice for which that license is issued under this chapter.

Amended by Chapter 204, 2001 General Session

58-11a-306 Apprenticeship.

(1) An approved barber apprenticeship shall:
  (a) consist of not less than 1,250 hours of training in not less than eight months; and
  (b) be conducted by a supervisor who:
    (i) is licensed under this chapter as a barber instructor or a cosmetology/barber instructor; and
    (ii) provides one-on-one direct supervision of the barber apprentice during the apprenticeship program.
(2) An approved cosmetologist/barber apprenticeship shall:
  (a) consist of not less than 2,500 hours of training in not less than 15 months; and
  (b) be conducted by a supervisor who:
    (i) is licensed under this chapter as a cosmetologist/barber instructor; and
    (ii) provides one-on-one direct supervision of the cosmetologist/barber apprentice during the apprenticeship program.
(3) An approved esthetician apprenticeship shall:
  (a) consist of not less than 800 hours of training in not less than five months; and
  (b) be conducted by a supervisor who:
    (i) is licensed under this chapter as an esthetician instructor; and
    (ii) provides one-on-one direct supervision of the esthetician apprentice during the apprenticeship program.
(4) An approved master esthetician apprenticeship shall:
  (a) consist of not less than 1,500 hours of training in not less than 10 months; and
  (b) be conducted by a supervisor who:
    (i) is licensed under this chapter as a master-level esthetician instructor; and
    (ii) provides one-on-one direct supervision of the master esthetician apprentice during the apprenticeship program.
(5) An approved nail technician apprenticeship shall:
  (a) consist of not less than 375 hours of training in not less than three months; and
  (b) be conducted by a supervisor who:
    (i) is licensed under this chapter as a nail technician instructor or a cosmetology/barber instructor; and
    (ii) provides one-on-one direct supervision of the nail technician apprentice during the apprenticeship program.
(6) A person seeking to qualify for licensure by apprenticing in an approved apprenticeship under this chapter shall:
  (a) register with the division before beginning the training requirements by:
    (i) submitting a form prescribed by the division, which includes the name of the licensed supervisor; and
    (ii) paying a fee determined by the department under Section 63J-1-504;
  (b) complete the apprenticeship within five years of the date on which the division approves the registration; and
  (c) notify the division within 30 days if the licensed supervisor changes after the registration is approved by the division.

(7) Notwithstanding Subsection (6), if a person seeking to qualify for licensure by apprenticing in an approved apprenticeship under this chapter registers with the division before January 1, 2017, any training requirements completed by the person as an apprentice in an approved apprenticeship before registration may be applied to successful completion of the approved apprenticeship.

Amended by Chapter 274, 2016 General Session

Part 4
License Denial and Discipline

58-11a-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 96, 1996 General Session

Part 5
Unprofessional and Unlawful Conduct - Penalties

58-11a-501 Unprofessional conduct.

Unprofessional conduct includes:

(1) failing as a licensed school to obtain or maintain accreditation as required by rule;
(2) failing as a licensed school to comply with the standards of accreditation applicable to such schools;
(3) failing as a licensed school to provide adequate instruction to enrolled students;
(4) failing as an apprentice supervisor to provide direct supervision to the apprentice;
(5) failing as an instructor to provide direct supervision to students who are providing services to an individual under the instructor's supervision;
(6) failing as an apprentice supervisor to comply with division rules relating to apprenticeship programs under this chapter;
(7) keeping a salon or school, its furnishing, tools, utensils, linen, or appliances in an unsanitary condition;
(8) failing to comply with Title 26, Utah Health Code;
(9) failing to display licenses or certificates as required under Section 58-11a-305;
(10) failing to comply with physical facility requirements established by rule;
(11) failing to maintain mechanical or electrical equipment in safe operating condition;
(12) failing to adequately monitor patrons using steam rooms, dry heat rooms, baths, showers, or saunas;
(13) prescribing or administering prescription drugs;
(14) failing to comply with all applicable state and local health or sanitation laws;
(15) engaging in any act or practice in a professional capacity that is outside the applicable scope of practice;

(16) engaging in any act or practice in a professional capacity which the licensee is not competent to perform through education or training;
(17) in connection with the use of a chemical exfoliant, unless under the supervision of a licensed health care practitioner acting within the scope of his or her license:
(a) using any acid, concentration of an acid, or combination of treatments which violates the standards established by rule;
(b) removing any layer of skin deeper than the stratum corneum of the epidermis; or
(c) using an exfoliant that contains phenol, TCA acid of over 15%, or BCA acid;
(18) in connection with the sanding of the skin, unless under the supervision of a licensed health care practitioner acting within the scope of his or her license, removing any layer of skin deeper than the stratum corneum of the epidermis;
(19) using as a barber, cosmetologist/barber, or nail technician any laser procedure or intense, pulsed light source, except that nothing in this chapter precludes an individual licensed under this chapter from using a nonprescriptive laser device; or
(20) failing to comply with a judgment order from a court of competent jurisdiction resulting from the failure to pay outstanding tuition or education costs incurred to comply with this chapter.

Amended by Chapter 238, 2016 General Session
Amended by Chapter 274, 2016 General Session

58-11a-502 Unlawful conduct.

Unlawful conduct includes:
(1) practicing or engaging in, or attempting to practice or engage in activity for which a license is required under this chapter unless:
(a) the person holds the appropriate license under this chapter; or
(b) an exemption in Section 58-1-307 or 58-11a-304 applies;
(2) aiding or abetting a person engaging in the practice of, or attempting to engage in the practice of, any occupation or profession licensed under this chapter if the employee is not licensed to do so under this chapter or exempt from licensure;
(3) touching, or applying an instrument or device to the following areas of a client's body:
(a) the genitals or the anus, except in cases where the patron states to a licensee that the patron requests a hair removal procedure and signs a written consent form, which must also include the witnessed signature of a legal guardian if the patron is a minor, authorizing the licensee to perform a hair removal procedure; or
(b) the breast of a female patron, except in cases in which the female patron states to a licensee that the patron requests breast skin procedures and signs a written consent form, which must also include the witnessed signature of a parent or legal guardian if the patron is a minor, authorizing the licensee to perform breast skin procedures;
(4) using or possessing a solution composed of at least 10% methyl methacrylete on a client;
(5) performing an ablative procedure as defined in Section 58-67-102;
(6) when acting as an instructor regarding a service requiring licensure under this chapter, for a class or education program where attendees are not licensed under this chapter, failing to inform each attendee in writing that:
(a) taking the class or program without completing the requirements for licensure under this chapter is insufficient to certify or qualify the attendee to perform a service for compensation that requires licensure under this chapter; and
(b) the attendee is required to obtain licensure under this chapter before performing the service for compensation; or

(7) failing as a salon or school where nail technology is practiced or taught to maintain a source capture system required under Title 15A, State Construction and Fire Codes Act, including failing to maintain and clean a source capture system's air filter according to the manufacturer's instructions.

Amended by Chapter 249, 2016 General Session
Amended by Chapter 274, 2016 General Session

58-11a-503 Penalties.

(1) Unless Subsection (2) applies, an individual who commits an act of unlawful conduct under Section 58-11a-502 or who fails to comply with a citation issued under this section after it is final is guilty of a class A misdemeanor.
(2) Sexual conduct that violates Section 58-11a-502 and Title 76, Utah Criminal Code, shall be subject to the applicable penalties in Title 76, Utah Criminal Code.
(3) Grounds for immediate suspension of a licensee's license by the division include the issuance of a citation for violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7).
(4)
(a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7), or a rule or order issued with respect to Subsection 58-11a-502(1), (2), (4), (5), (6), or (7), and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
(i) A person who is in violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-11a-502(1), (2), (4), (5), (6), or (7).
(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-11a-401 may not be assessed through a citation.
(b)
(i) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated.
(ii) The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.
(iii) The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of a fine assessed by the citation within the time specified in the citation.
(c) Each citation issued under this section, or a copy of each citation, may be served upon a person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the person's agent by a division investigator or by a person specially designated by the director or by mail.
(d)
(i) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

(ii) The period to contest a citation may be extended by the division for cause.
(e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.
(f) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
(g) No citation may be issued under this section after the expiration of six months following the occurrence of a violation.
(h) Fines shall be assessed by the director or the director's designee according to the following:
(i) for a first offense under Subsection (4)(a), a fine of up to $1,000;
(ii) for a second offense under Subsection (4)(a), a fine of up to $2,000; and
(iii) for any subsequent offense under Subsection (4)(a), a fine of up to $2,000 for each day of continued offense.
(i)
(i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:
(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7); or
(B)
(I) the division initiated an action for a first or second offense;
(II) no final order has been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);
(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7); and
(IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).
(ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.
(5)
(a) A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund.
(b) A penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.
(c) A county attorney or the attorney general of the state is to provide legal assistance and advice to the director in an action to collect the penalty.
(d) A court shall award reasonable attorney fees and costs in an action brought to enforce the provisions of this section.

Amended by Chapter 100, 2014 General Session

Chapter 13

Health Care Providers Immunity from Liability Act

58-13-1 Title.

This chapter is known as the "Health Care Providers Immunity from Liability Act."

Enacted by Chapter 253, 1996 General Session

58-13-2 Emergency care rendered by licensee.

(1) A person licensed under Title 58, Occupations and Professions, to practice as any of the following health care professionals, who is under no legal duty to respond, and who in good faith renders emergency care at the scene of an emergency gratuitously and in good faith, is not liable for any civil damages as a result of any acts or omissions by the person in rendering the emergency care:
  (a) osteopathic physician;
  (b) physician and surgeon;
  (c) naturopathic physician;
  (d) dentist or dental hygienist;
  (e) chiropractic physician;
  (f) physician assistant;
  (g) optometrist;
  (h) nurse licensed under Section 58-31b-301 or 58-31c-102;
  (i) podiatrist;
  (j) certified nurse midwife;
  (k) respiratory care practitioner;
  (l) pharmacist, pharmacy technician, and pharmacy intern;
  (m) direct-entry midwife licensed under Section 58-77-301; or
  (n) veterinarian.
(2) This Subsection (2) applies to a health care professional:
  (a)
    (i) described in Subsection (1); and
    (ii) who is under no legal duty to respond to the circumstances described in Subsection (3);
  (b) who is:
    (i)
      (A) activated as a member of a medical reserve corps as described in Section 26A-1-126 during the time of an emergency or declaration for public health related activities as provided in Subsection 26A-1-126(2); or
      (B) participating in training to prepare the medical reserve corps to respond to a declaration of an emergency or request for public health related activities pursuant to Subsection 26A-1-126(2);
    (ii) acting within the scope of:
      (A) the health care professional's license; or
      (B) practice as modified under Subsection 58-1-307(4) or Section 26A-1-126; and
    (iii) acting in good faith without compensation or remuneration as defined in Subsection 58-13-3(2); or
  (c) who is acting as a volunteer health practitioner under Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

(3) A health care professional described in Subsection (2) is not liable for any civil damages as a result of any acts or omissions by the health care professional in rendering care as a result of:
  (a) implementation of measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;
  (b) investigating and controlling suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and
  (c) responding to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.
(4) The immunity in Subsection (3) is in addition to any immunity or protection in state or federal law that may apply.
(5) For purposes of Subsection (2)(b)(iii) remuneration does not include:
  (a) food supplied to the volunteer;
  (b) clothing supplied to the volunteer to help identify the volunteer during the time of the emergency; or
  (c) other similar support for the volunteer.

Amended by Chapter 44, 2013 General Session

58-13-2.5 Standard of proof for emergency care when immunity does not apply.
(1) A person who is a health care provider as defined in Section 78B-3-403 who provides emergency care in good faith, but is not immune from suit because of an expectation of payment, a legal duty to respond, or other reason under Section 58-13-2, may only be liable for civil damages if fault, as defined in Section 78B-5-817, is established by clear and convincing evidence.
(2) For purposes of Subsection (1), "emergency care" means the treatment of an emergency medical condition, as defined in Section 31A-22-627, from the time that the person presents at the emergency department of a hospital and including any subsequent transfer to another hospital, until the condition has been stabilized and the patient is either discharged from the emergency department or admitted to another department of the hospital.
(3) This section does not apply to emergency care provided by a physician if:
  (a) the physician has a previously established physician/patient relationship with the patient outside of the emergency room;
  (b) the patient has been seen in the last three months by the physician for the same condition for which emergency care is sought; and
  (c) the physician can access and consult the patient's relevant medical care records while the physician is making decisions about and providing the emergency care.
(4)
  (a) Nothing in this section may be construed as:
    (i) altering the applicable standard of care for determining fault; or
    (ii) applying the standard of proof of clear and convincing evidence to care outside of emergency care and the mandatory legal duty to treat.
  (b) This section applies to emergency care given after June 1, 2009.
(5) This section sunsets in accordance with Section 63I-1-258.

Enacted by Chapter 14, 2009 General Session

58-13-2.6 Emergency care rendered by a person or health care facility.

(1) For purposes of this section:
  (a) "Emergency" means an unexpected occurrence involving injury, the threat of injury, or illness to a person or the public due to:
    (i) a natural disaster;
    (ii) bioterrorism;
    (iii) an act of terrorism;
    (iv) a pandemic; or
    (v) other event of similar nature.
  (b) "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or attempt to mitigate the effects of an emergency.
  (c) "Person" is defined in Subsection 26-21-2(18).
(2)
  (a) A person who, in good faith, assists governmental agencies or political subdivisions with the activities described in Subsection (2)(b) is not liable for civil damages or penalties as a result of any act or omission unless the person rendering the assistance:
    (i) is grossly negligent;
    (ii) caused the emergency; or
    (iii) has engaged in criminal conduct.
  (b) The following activities are protected from liability in accordance with Subsection (2)(a):
    (i) implementing measures to control the causes of epidemic, pandemic, communicable diseases, or other conditions significantly affecting public health, as necessary to protect the public health in accordance with Title 26A, Chapter 1, Local Health Departments;
    (ii) investigating, controlling, and treating suspected bioterrorism or disease in accordance with Title 26, Chapter 23b, Detection of Public Health Emergencies Act;
    (iii) responding to:
      (A) a national, state, or local emergency;
      (B) a public health emergency as defined in Section 26-23b-102; or
      (C) a declaration by the President of the United States or other federal official requesting public health related activities; and
    (iv) providing a facility for use by a governmental agency or political subdivision to distribute pharmaceuticals or administer vaccines to the public.
  (c) Subsection (2)(a) applies to a person even if that person has:
    (i) a duty to respond; or
    (ii) an expectation of payment or remuneration.
(3) The immunity in Subsection (2) is in addition to any immunity protections that may apply in state or federal law.

Amended by Chapter 76, 2008 General Session

58-13-3 Qualified immunity -- Health professionals -- Charity care.

(1)
  (a)
    (i) The Legislature finds many residents of this state do not receive medical care and preventive health care because they lack health insurance or because of financial difficulties or cost.
    (ii) The Legislature also finds that many physicians, charity health care facilities, and other health care professionals in this state would be willing to volunteer medical and allied

services without compensation if they were not subject to the high exposure of liability connected with providing these services.

(b) The Legislature therefore declares that its intention in enacting this section is to encourage the provision of uncompensated volunteer charity health care in exchange for a limitation on liability for the health care facilities and health care professionals who provide those volunteer services.

(2) As used in this section:

(a) "Continuing education requirement" means the requirement for hours of continuing education, established by the division, with which a health care professional must comply to renew the health care professional's license under the applicable chapter described in Subsection (2)(c).

(b) "Health care facility" means any clinic or hospital, church, or organization whose primary purpose is to sponsor, promote, or organize uncompensated health care services for people unable to pay for health care services.

(c) "Health care professional" means a person licensed under:

(i)Chapter 5a, Podiatric Physician Licensing Act;

(ii)Chapter 16a, Utah Optometry Practice Act;

(iii)Chapter 17b, Pharmacy Practice Act;

(iv)Chapter 24b, Physical Therapy Practice Act;

(v)Chapter 31b, Nurse Practice Act;

(vi)Chapter 40, Recreational Therapy Practice Act;

(vii)Chapter 41, Speech-Language Pathology and Audiology Licensing Act;

(viii)Chapter 42a, Occupational Therapy Practice Act;

(ix)Chapter 44a, Nurse Midwife Practice Act;

(x)Chapter 49, Dietitian Certification Act;

(xi)Chapter 60, Mental Health Professional Practice Act;

(xii)Chapter 67, Utah Medical Practice Act;

(xiii)Chapter 68, Utah Osteopathic Medical Practice Act;

(xiv)Chapter 69, Dentist and Dental Hygienist Practice Act;

(xv)Chapter 70a, Physician Assistant Act;

(xvi)Chapter 71, Naturopathic Physician Practice Act; and

(xvii)Chapter 73, Chiropractic Physician Practice Act.

(d) "Remuneration or compensation":

(i)

(A) means direct or indirect receipt of any payment by a health care professional or health care facility on behalf of the patient, including payment or reimbursement under Medicare or Medicaid, or under the state program for the medically indigent on behalf of the patient; and

(B) compensation, salary, or reimbursement to the health care professional from any source for the health care professional's services or time in volunteering to provide uncompensated health care; and

(ii) does not mean:

(A) any grant or donation to the health care facility used to offset direct costs associated with providing the uncompensated health care such as:

(I) medical supplies;

(II) drugs; or

(III) a charitable donation that is restricted for charitable services at the health care facility; or

(B) incidental reimbursements to the volunteer such as:

(I) food supplied to the volunteer;
(II) clothing supplied to the volunteer to help identify the volunteer during the time of volunteer services;
(III) mileage reimbursement to the volunteer; or
(IV) other similar support to the volunteer.

(3) A health care professional who provides health care treatment at or on behalf of a health care facility is not liable in a medical malpractice action if:
(a) the treatment was within the scope of the health care professional's license under this title;
(b) neither the health care professional nor the health care facility received compensation or remuneration for the treatment;
(c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and
(d) prior to rendering services:
(i) the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation; and
(ii) the patient consented in writing to waive any right to sue for professional negligence except for acts or omissions which are grossly negligent or are willful and wanton.

(4) A health care facility which sponsors, promotes, or organizes the uncompensated care is not liable in a medical malpractice action for acts and omissions if:
(a) the health care facility meets the requirements in Subsection (3)(b);
(b) the acts and omissions of the health care facility were not grossly negligent or willful and wanton; and
(c) the health care facility has posted, in a conspicuous place, a notice that in accordance with this section the health care facility is not liable for any civil damages for acts or omissions except for those acts or omissions that are grossly negligent or are willful and wanton.

(5) A health care professional who provides health care treatment at a federally qualified health center, as defined in Subsection 1905(1)(2)(b) of the Social Security Act, or an Indian health clinic or Urban Indian Health Center, as defined in Title V of the Indian Health Care Improvement Act, is not liable in a medical malpractice action if:
(a) the treatment was within the scope of the health care professional's license under this title;
(b) the health care professional:
(i) does not receive compensation or remuneration for treatment provided to any patient that the provider treats at the federally qualified health center, the Indian health clinic, or the Urban Indian Health Center; and
(ii) is not eligible to be included in coverage under the Federal Tort Claims Act for the treatment provided at the federally qualified health center, the Indian health clinic, or the Urban Indian Health Center;
(c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and
(d) prior to rendering services:
(i) the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation; and
(ii) the patient consented in writing to waive any right to sue for professional negligence except for acts or omissions that are grossly negligent or are willful and wanton.

(6) Immunity from liability under this section does not extend to the use of general anesthesia or care that requires an overnight stay in a general acute or specialty hospital licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.
(7) The provisions of Subsection (5) apply to treatment provided by a healthcare professional on or after May 13, 2014.
(8) A health care professional:
  (a) may, in accordance with Subsection (8)(b), fulfill up to 15% of the health care professional's continuing education requirement with hours the health care professional spends providing health care treatment described in Subsection (3) or (5); and
  (b) subject to Subsection (8)(a), earns one hour of the health care professional's continuing education requirement for every four documented hours of volunteer health care treatment.

Amended by Chapter 108, 2016 General Session
Amended by Chapter 238, 2016 General Session

58-13-4 Liability immunity for health care providers on committees -- Evaluating and approving medical care.
(1) As used in this section, "health care provider" has the same meaning as in Section 78B-3-403.
(2) Health care providers serving in the following capacities and the organizations or entities sponsoring these activities are immune from liability with respect to deliberations, decisions, or determinations made or information furnished in good faith and without malice:
  (a) serving on committees:
    (i) established to determine if hospitals and long-term care facilities are being used properly;
    (ii) established to evaluate and improve the quality of health care or determine whether provided health care was necessary, appropriate, properly performed, or provided at a reasonable cost;
    (iii) functioning under Pub. L. No. 89-97 or as professional standards review organizations under Pub. L. No. 92-603;
    (iv) that are ethical standards review committees; or
    (v) that are similar to committees listed in this Subsection (2) and that are established by any hospital, professional association, the Utah Medical Association, or one of its component medical societies to evaluate or review the diagnosis or treatment of, or the performance of health or hospital services to, patients within this state;
  (b) members of licensing boards established under Title 58, Occupations and Professions, to license and regulate health care providers; and
  (c) health care providers or other persons furnishing information to those committees, as required by law, voluntarily, or upon official request.
(3) This section does not relieve any health care provider from liability incurred in providing professional care and treatment to any patient.
(4) Health care providers serving on committees or providing information described in this section are presumed to have acted in good faith and without malice, absent clear and convincing evidence to the contrary.

Amended by Chapter 3, 2008 General Session

58-13-5 Information relating to adequacy and quality of medical care -- Immunity from liability.

(1) As used in this section, "health care provider" has the same meaning as defined in Section 78B-3-403.

(2)

(a) The division, and the boards within the division that act regarding the health care providers defined in this section, shall adopt rules to establish procedures to obtain information concerning the quality and adequacy of health care rendered to patients by those health care providers.

(b) It is the duty of an individual licensed under Title 58, Occupations and Professions, as a health care provider to furnish information known to him with respect to health care rendered to patients by any health care provider licensed under Title 58, Occupations and Professions, as the division or a board may request during the course of the performance of its duties.

(3) A health care facility as defined in Section 26-21-2 which employs, grants privileges to, or otherwise permits a licensed health care provider to engage in licensed practice within the health care facility, and any professional society of licensed health care providers, shall report any of the following events in writing to the division within 60 days after the event occurs regarding the licensed health care provider:

(a) terminating employment of an employee for cause related to the employee's practice as a licensed health care provider;

(b) terminating or restricting privileges for cause to engage in any act or practice related to practice as a licensed health care provider;

(c) terminating, suspending, or restricting membership or privileges associated with membership in a professional association for acts of unprofessional, unlawful, incompetent, or negligent conduct related to practice as a licensed health care provider;

(d) subjecting a licensed health care provider to disciplinary action for a period of more than 30 days;

(e) a finding that a licensed health care provider has violated professional standards or ethics;

(f) a finding of incompetence in practice as a licensed health care provider;

(g) a finding of acts of moral turpitude by a licensed health care provider; or

(h) a finding that a licensed health care provider is engaged in abuse of alcohol or drugs.

(4) This section does not prohibit any action by a health care facility, or professional society comprised primarily of licensed health care providers to suspend, restrict, or revoke the employment, privileges, or membership of a health care provider.

(5) The data and information obtained in accordance with this section is classified as a "protected" record under Title 63G, Chapter 2, Government Records Access and Management Act.

(6)

(a) Any person or organization furnishing information in accordance with this section in response to the request of the division or a board, or voluntarily, is immune from liability with respect to information provided in good faith and without malice, which good faith and lack of malice is presumed to exist absent clear and convincing evidence to the contrary.

(b) The members of the board are immune from liability for any decisions made or actions taken in response to information acquired by the board if those decisions or actions are made in good faith and without malice, which good faith and lack of malice is presumed to exist absent clear and convincing evidence to the contrary.

(7) An individual who is a member of a hospital administration, board, committee, department, medical staff, or professional organization of health care providers, and any hospital, other health care entity, or professional organization conducting or sponsoring the review, is immune from liability arising from participation in a review of a health care provider's professional ethics, medical competence, moral turpitude, or substance abuse.

(8) This section does not exempt a person licensed under Title 58, Occupations and Professions, from complying with any reporting requirements established under state or federal law.

Amended by Chapter 278, 2013 General Session

Chapter 15
Health Facility Administrator Act

58-15-1 Title.

This chapter is known as the "Health Facility Administrator Act."

Enacted by Chapter 49, 1985 General Session

58-15-2 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Administrator" means a person who is charged with the general administration of a health facility, regardless of whether that person has an ownership interest in the facility and whether his functions and duties are shared with one or more persons.

(2) "Board" means the Health Facility Administrators Licensing Board created in Section 58-15-3.

(3) "Health facility" means a skilled nursing facility, an intermediate care facility, or an intermediate care facility for individuals with an intellectual disability.

(4) "Intermediate care facility" means an institution that provides, on a regular basis, health care and services to individuals who do not require the degree of care and treatment a hospital or skilled nursing facility provides, but who require health care and services in addition to room and board.

(5) "Intermediate care facility for people with an intellectual disability" means an institution that provides, on a regular basis, health-related care and service to individuals with intellectual disabilities as defined in Section 68-3-12.5 or individuals with related conditions, who do not require the degree of care and treatment a hospital or skilled nursing facility provides, but who require health-related care and services above the need for room and board.

(6) "Skilled nursing facility" means an institution primarily providing inpatients with skilled nursing care and related services on a continuing basis for patients who require mental, medical, or nursing care, or service for the rehabilitation of an injured individual, a sick individual, or an individual with a disability.

(7) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) intentionally filing a false report or record, intentionally failing to file a report or record required by state or federal law, or wilfully impeding or obstructing the filing of a required report. These reports or records only include those which are signed in the capacity of a licensed health facility administrator; and

(b) acting in a manner inconsistent with the health and safety of the patients of the health facility in which he is the administrator.

Amended by Chapter 238, 2016 General Session

58-15-3 Health Facility Administrators Licensing Board.

(1) There is created a Health Facility Administrators Licensing Board consisting of one administrator from a skilled nursing facility, two administrators from intermediate care facilities, one administrator from an intermediate care facility for people with an intellectual disability, and one member from the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. The board, in collaboration with the division, may establish continuing education requirements by rule. Board members may not receive compensation for their involvement in continuing education programs.

Amended by Chapter 366, 2011 General Session

58-15-4 Licensure requirements.
(1) An applicant for a license under this chapter shall submit a written application to the division, verified under oath, that the applicant is of good moral character as it relates to the functions and responsibilities of the practice of administration of a health facility.
(2) After July 1, 1985, all new applicants are required to have, in addition to Subsection (1), the education or experience requirements as established by rule and as approved by the division.
(3) The applicant shall pay a fee to the Department of Commerce determined by it pursuant to Section 63J-1-504 for admission to the examination, for an initial license, and for a renewal license.
(4) The applicant shall pass a written examination in subjects determined by the board. Upon passing the examination and payment of the license fee, the board shall recommend issuance to the applicant of a license to practice as a health facility administrator.
(5) A temporary license may be issued without examination to a person who meets the requirements established by statute and by rule for an administrator. The temporary license may be issued only to fill a position of administrator that unexpectedly becomes vacant and may be issued for only a single period not to exceed six months.
(6) A license may be granted to an applicant who is a licensed nursing home administrator in another state if the standards for licensure in the other state are equivalent to those criteria set forth in Subsections (1) and (2), and if the applicant is otherwise qualified.

Amended by Chapter 183, 2009 General Session

58-15-4.5 Term of license -- Expiration -- Renewal.
(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Enacted by Chapter 297, 1993 General Session

58-15-10 Penalty for unlawful conduct.
Any person who violates the unlawful conduct provisions defined in Subsection 58-1-501(1) is guilty of a class B misdemeanor.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-15-11 Exceptions to chapter.

In addition to the exemptions in Section 58-1-307, this chapter does not apply to facilities of any recognized church or denomination that cares for the sick and suffering by mental or spiritual means if no drug or material remedy is used in the care provided. Any facilities exempted under this section shall comply with each statute and rule on sanitation and life safety.

Amended by Chapter 297, 1993 General Session

58-15-12 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Enacted by Chapter 297, 1993 General Session

Chapter 16a
Utah Optometry Practice Act

Part 1
General Provisions

58-16a-101 Short title.

This chapter is known as the "Utah Optometry Practice Act."

Enacted by Chapter 287, 1991 General Session

58-16a-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Optometrist Licensing Board created in Section 58-16a-201.

(2) "Contact lens" means any lens that:

(a) has a spherical, cylindrical, or prismatic power or curvature;

(b) is made pursuant to a current prescription; and

(c) is intended to be worn on the surface of the eye.

(3)

(a) "Contact lens prescription" means a written or verbal order for contact lenses that includes:

(i) the commencement date of the prescription;

(ii) the base curve, power, diameter, material or brand name, and expiration date;

(iii) for a written order, the signature of the prescribing optometrist or physician; and

(iv) for a verbal order, a record maintained by the recipient of:

(A) the name of the prescribing optometrist or physician; and

(B) the date when the prescription was issued or ordered.

(b) A prescription may include:

(i) a limit on the quantity of lenses that may be ordered under the prescription if required for medical reasons documented in the patient's files; and

(ii) the expiration date of the prescription, which shall be two years from the commencement date, unless documented medical reasons require otherwise.

(c) When a provider prescribes a private label contact lens for a patient the prescription shall include:

(i) the name of the manufacturer;

(ii) the trade name of the private label brand; and

(iii) if applicable, the trade name of the equivalent national brand.

(4) "Contact lens prescription verification" means a written request from a person who sells or provides contact lenses that:

(a) is sent to the prescribing optometrist or physician; and

(b) seeks the confirmation of the accuracy of a patient's prescription.

(5) "Eye and its adnexa" means the human eye and all structures situated within the orbit, including the conjunctiva, lids, lashes, and lacrimal system.

(6) "Fitting of a contact lens" means:

(a) the using of a keratometer to measure the human eye;

(b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and

(c) trial fitting of contact lenses, which includes a period of time for evaluation for fit and performance, to determine a tentative contact lens prescription for a patient if the patient:

(i) has not worn contact lenses before; or

(ii) has changed to a different type or base curve.

(7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized by means of laser or ionizing radiation.

(8) "Ophthalmic lens" means any lens used to treat the eye and that:

(a) has a spherical, cylindrical, or prismatic power;

(b) is made pursuant to an unexpired prescription; and

(c) is intended to be used in eyeglasses or spectacles.

(9) "Optometric assistant" means an unlicensed individual:

(a) working under the direct and immediate supervision of a licensed optometrist; and

(b) engaged in specific tasks assigned by the licensed optometrist in accordance with the standards and ethics of the profession.

(10) "Optometrist" or "optometric physician" means an individual licensed under this chapter.

(11) "Optometry" and "practice of optometry" mean any one or any combination of the following practices:

(a) examination of the human eye and its adnexa to detect and diagnose defects or abnormal conditions;

(b) determination or modification of the accommodative or refractive state of the human eye or its range or power of vision by administration and prescription of pharmaceutical agents or the use of diagnostic instruments;

(c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its adnexa;

(d) display of any advertisement, circular, sign, or device offering to:

(i) examine the eyes;

(ii) fit glasses or contact lenses; or

(iii) adjust frames;

(e) removal of a foreign body from the eye or its adnexa, that is not deeper than the anterior 1/2 of the cornea;

(f) consultation regarding the eye and its adnexa with other appropriate health care providers, including referral to other appropriate health care providers; and
(g) a person, not licensed as an optometrist, directing a licensee under this chapter to withhold or alter the eye care services the licensee has ordered.
(12) "Pharmaceutical agent" means any diagnostic or therapeutic drug or combination of drugs that has the property of assisting in the diagnosis, prevention, treatment, or mitigation of abnormal conditions or symptoms of the eye and its adnexa.
(13) "Physician" has the same meaning as defined in Sections 58-67-102 and 58-68-102.
(14) "Prescription drug" has the same definition as in Section 58-17b-102.
(15) "Unexpired" means a prescription that was issued:
(a) for ophthalmic lenses which does not expire unless the optometrist or physician includes an expiration date on the prescription based on medical reasons that are documented in the patient's file; and
(b) in accordance with Subsection (3) for a contact lens.

Amended by Chapter 256, 2012 General Session
Amended by Chapter 362, 2012 General Session

Part 2
Board

58-16a-201 Creation of board -- Board duties and functions.
(1) There is created an Optometrist Licensing Board consisting of five optometrists and two members from the general public who do not provide eye care services.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The board's duties and responsibilities shall be in accordance with Sections 58-1-202 and 58-1-203, and as provided under this Subsection (3).
(4) The board shall designate one of its members on a permanent or rotating basis to:
(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
(b) advise the division in its investigation of these complaints.
(5) A board member who has, under Subsection (4), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint. The board member may be disqualified:
(a) on his own motion, due to actual or perceived bias or lack of objectivity; or
(b) upon challenge for cause raised on the record by any party to the adjudicative proceeding.

Renumbered and Amended by Chapter 13, 1997 General Session

Part 3
Licensing

58-16a-301 Licensure required -- License classifications.

(1) A license is required to engage in the practice of optometry, except as specifically provided in Section 58-1-307 or 58-16a-305.
(2) The division shall issue to a person who qualifies under this chapter a license in the classification of optometrist.

Enacted by Chapter 13, 1997 General Session

58-16a-302 Qualifications for licensure.
(1) An applicant for licensure as an optometrist shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee as determined by the division under Section 63J-1-504;
(c) be of good moral character;
(d)
(i) be a doctoral graduate of a recognized school of optometry accredited by the American Optometric Association's Accreditation Council on Optometric Education; or
(ii) be a graduate of a school of optometry located outside the United States that meets the criteria that would qualify the school for accreditation under Subsection (1)(d)(i), as demonstrated by the applicant for licensure;
(e) if the applicant graduated from a recognized school of optometry prior to July 1, 1996, have successfully completed a course of study satisfactory to the division, in consultation with the board, in general and ocular pharmacology and emergency medical care;
(f) have passed examinations approved by the division in consultation with the board that include:
(i) a standardized national optometry examination;
(ii) a standardized clinical examination; and
(iii) a standardized national therapeutics examination; and
(g) meet with the board and representatives of the division, if requested by either party, for the purpose of evaluating the applicant's qualifications for licensure.
(2) Notwithstanding Subsection (1) and Section 58-1-302, the division shall issue a license under this chapter by endorsement to an individual who:
(a) submits an application for licensure by endorsement on a form approved by the division;
(b) pays a fee established by the division in accordance with Section 63J-1-504;
(c) provides satisfactory evidence to the division that the individual is of good moral character;
(d) verifies that the individual is licensed as an optometrist in good standing in each state of the United States, or province of Canada, in which the individual is currently licensed as an optometrist; and
(e) has been actively engaged in the legal practice of optometry for at least 3,200 hours during the immediately preceding two years in a manner consistent with the legal practice of optometry in this state.

Amended by Chapter 238, 2016 General Session

58-16a-303 Term of license -- Expiration -- Renewal.
(1)
(a) Each license issued under this part shall be issued in accordance with a two-year renewal cycle established by rule.
(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal the licensee shall show satisfactory evidence of completion of continuing education as required under Section 58-16a-304.
(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Amended by Chapter 268, 2001 General Session

58-16a-304 Continuing education.
(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by rule, complete 30 hours of qualified continuing professional education in accordance with standards defined by rule.
(2) If a renewal period is extended or shortened under Section 58-16a-303, the continuing education hours required for license renewal under this section shall be increased or decreased proportionally.

Enacted by Chapter 13, 1997 General Session

58-16a-305 License -- Exemptions.
In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts included in the definition of the practice of optometry subject to the stated circumstances and limitations without being licensed under this chapter:
(1) a person who sells contact lenses on prescription provided by a person authorized under state law to practice either optometry or medicine and surgery if the person complies with Section 58-16a-801;
(2) a person who sells eyeglasses or spectacles as articles of merchandise or who fabricates them from a prescription if the person complies with Subsection 58-16a-801(2), and if the person:
  (a) does so in the ordinary course of trade from a permanently located and established place of business;
  (b) does not traffic or attempt to traffic upon assumed skill in testing the eye and adapting lenses according to the test;
  (c) does not duplicate, replace, or accept for replacement any ophthalmic lens, except in the case of an emergency;
  (d) does not use in the testing of the eyes any lenses or instruments other than the lenses actually sold; and
  (e) does not give or offer eyeglasses or spectacles as premiums as defined in Section 13-26-2; and
(3) a person who fits contact lenses under the following conditions:
  (a) he has a current certification from both the American Board of Opticianry and the National Contact Lens Examiners;
  (b) he does not give or offer contact lenses as premiums;
  (c) he does not perform a refraction, over-refraction, or attempt to traffic upon assumed skill in testing the eye;
  (d) he operates in the ordinary course of trade from a permanently located and established place of business;
  (e) he performs the work involved in fitting contact lenses himself and does not delegate the contact lens fitting to any other individual who is not qualified under this Subsection (3);
  (f) he does not use in the testing of the eye any lenses or instruments other than the lenses he actually will sell;

(g) he provides services only to a patient who:
(i) presents an unexpired contact lens prescription; or
(ii) has had an eye examination within the prior six months by an optometrist or ophthalmologist meeting the requirements under Section 58-16a-306;
(h) he maintains a copy of the patient's contact lens prescription for not less than seven years;
(i) he enters into a written agreement with an optometrist or an ophthalmologist before July 1, 2000, to fit contact lenses prescribed by that optometrist or ophthalmologist;
(j) he fits contact lenses for at least two years under the direct supervision of the optometrist or ophthalmologist identified in Subsection (3)(i) before July 1, 2000, as documented in the written agreement; and
(k) the optometrist or ophthalmologist described in Subsection (3)(i):
(i) ensures that the final contact lens is accurate;
(ii) presents a written copy of the prescription to the person fitting the contact lens; and
(iii) ensures that a copy of the prescription is provided to the patient, except as provided in Section 58-16a-306.

Amended by Chapter 256, 2012 General Session

58-16a-306 Contact lens prescription -- Qualifications.
(1) An optometrist or physician issuing a contact lens prescription shall:
(a) be licensed under this title to practice in Utah;
(b) ensure the final contact lens prescription is accurate;
(c) present a written copy of the prescription to the patient after fitting; and
(d) provide a copy of the patient's contact lens prescription to a person who sells contact lenses upon the request of the patient or the person selling the contact lenses.
(2) An optometrist or physician may not be held liable as a result of providing a prescription to a patient as required by Subsection (1).
(3) Application of the provisions of this section shall be consistent with 45 C.F.R. Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.

Amended by Chapter 270, 2003 General Session

58-16a-307 Licenses held on effective date.
An individual holding a current license as an optometrist that was issued under any prior state law is considered to hold a current license in the same scope of practice under this chapter.

Enacted by Chapter 13, 1997 General Session

Part 4
License Denial and Discipline

58-16a-401 Grounds for denial of license -- Disciplinary proceedings.
Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Renumbered and Amended by Chapter 13, 1997 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-16a-501 Unlawful conduct.

"Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

(1) buying, selling, or fraudulently obtaining, any optometry diploma, license, certificate, or registration;
(2) aiding or abetting the buying, selling, or fraudulently obtaining, of any optometry diploma, license, certificate, or registration;
(3) selling or providing contact lenses or ophthalmic lenses in a manner inconsistent with Section 58-16a-801 or intentionally altering a prescription unless the person selling or providing the lenses is a licensed optometrist or ophthalmologist; or
(4) representing oneself as or using the title of "optometrist," "optometric physician," "doctor of optometry," or "O.D.," unless currently licensed under this chapter.

Amended by Chapter 256, 2012 General Session

58-16a-502 Unprofessional conduct.

"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:

(1) using or employing the services of an optometric assistant to assist a licensee in any manner not in accordance with:
  (a) the generally recognized practices and standards of ethics of the profession; or
  (b) applicable state law or division rule;
(2) failure to refer a patient to an appropriate licensed practitioner when:
  (a) the patient's condition does not respond to treatment; or
  (b) the treatment is not within the scope of competence or licensure of the licensee;
(3) providing confidential information regarding a patient to any third party who does not have a legal and professional ground for obtaining the information;
(4) knowingly prescribing, selling, giving away, or administering any prescription drug unless:
  (a) for a legitimate medical purpose;
  (b) upon a proper diagnosis indicating the use of the drug in the amount prescribed or provided; and
  (c) in compliance with Section 58-17b-309;
(5) giving or receiving directly or indirectly any fee, commission, rebate, or other compensation for professional services not actually and personally rendered, except as part of a legal relationship within a lawful professional partnership, corporation, or association;
(6) failure to transfer pertinent and necessary information from a patient's medical records to another optometrist or physician when so requested by the patient or his representative, as designated in writing; or
(7) failure to provide a contact lens prescription to a person who sells contact lenses in accordance with Section 58-16a-306.

Amended by Chapter 234, 2012 General Session

58-16a-503 Penalty for unlawful conduct.

(1) Except as provided in Subsection (2), any person who violates the unlawful conduct provision defined in Section 58-16a-501 or Subsection 58-1-501(1)(a) or (1)(c) is guilty of a third degree felony.

(2) A person who violates Subsection 58-16a-501(3) is guilty of a class C misdemeanor.

Amended by Chapter 160, 2000 General Session

Part 6
Scope of Practice

58-16a-601 Scope of practice.

(1) An optometrist may:
  (a) provide optometric services not specifically prohibited under this chapter or division rules if the services are within the optometrist's training, skills, and scope of competence; and
  (b) prescribe or administer pharmaceutical agents for the eye and its adnexa, including oral agents, subject to the following conditions:
    (i) an optometrist may prescribe oral antibiotics for only eyelid related ocular conditions or diseases, and other ocular conditions or diseases specified by division rule; and
    (ii) an optometrist may administer or prescribe a hydrocodone combination drug, or a Schedule III controlled substance, as defined in Section 58-37-4, only if:
      (A) the substance is administered or prescribed for pain of the eye or adnexa;
      (B) the substance is administered orally or topically or is prescribed for oral or topical use;
      (C) the amount of the substance administered or prescribed does not exceed a 72-hour quantity; and
      (D) if the substance is prescribed, the prescription does not include refills.

(2) An optometrist may not:
  (a) perform surgery, including laser surgery; or
  (b) prescribe or administer a Schedule II controlled substance, as defined in Section 58-37-4, except for a hydrocodone combination drug, if so scheduled and prescribed or administered in accordance with Subsection (1)(b).

(3) For purposes of Sections 31A-22-617 and 31A-22-618, an optometrist is a health care provider.

Amended by Chapter 305, 2014 General Session

Part 7
Practice Standards

58-16a-701 Form of practice.

(1) An optometrist licensed under this chapter may engage in practice as an optometrist or in the practice of optometry only as an individual licensee. However, as an individual licensee he may be:
  (a) an individual operating as a business proprietor;
  (b) an employee of another person or corporation;

(c) a partner in a lawfully organized partnership;
(d) a lawfully formed professional corporation;
(e) a lawfully organized limited liability company;
(f) a lawfully organized business corporation; or
(g) any other form of organization recognized by the state and which is not prohibited by division rule made in collaboration with the board.
(2) Regardless of the form in which a licensee engages in the practice of optometry, the licensee may only permit the practice of optometry in that form of practice to be conducted by an individual:
(a) licensed in Utah as an optometrist under Section 58-16a-301; and
(b) who is able to lawfully and competently engage in the practice of optometry.

Enacted by Chapter 13, 1997 General Session

58-16a-702 Medical records -- Electronic records.
(1) Medical records maintained by a licensee shall meet the standards and ethics of the profession.
(2) Medical records under this section may be maintained by any electronic means if the records comply with Subsection (1).

Amended by Chapter 268, 2001 General Session

Part 8
Contact Lenses and Ophthalmic Lenses

58-16a-801 Contact lens and ophthalmic lens seller or provider.
(1) A person may sell or provide contact lenses if the person:
(a) does so in the ordinary course of trade from a permanently located and established place of business;
(b) does not perform refractions, over-refractions, or attempts to traffic upon assumed skill in testing the eye;
(c) provides all contact lenses consistent with and in accordance with a valid contact lens prescription;
(d) does not fit contact lenses;
(e) provides a contact lens to a patient after:
(i) receiving an unexpired verbal or written prescription; or
(ii) sending a contact lens prescription verification to the prescribing optometrist or physician, regardless of whether the prescribing optometrist or physician responds to or confirms the verification, provided that:
(A) the person has all of the information necessary to fill the prescription;
(B) the prescribing optometrist or physician has not informed the person that the prescription has expired or is otherwise inaccurate prior to the person shipping or hand-delivering the contact lens to the patient;
(C) the person confirms a valid, unexpired contact lens prescription for the patient if the person is aware that the patient provided inaccurate prescription information in his last order; and

(D) the person informs the patient that the prescription has expired or that there is a medical problem associated with the prescription if the information is communicated by the prescribing optometrist or physician to the person within 72 hours of the contact lens prescription verification being sent; and

(f) maintains patient information, including the method and date of any prescription verification, for no less than seven years.

(2)

(a) A person may engage in the activities described in Subsection (2)(b), without a license under this title, if the person:

(i) provides the ophthalmic lenses consistent with and in accordance with a prescription from a licensed physician or optometrist that is unexpired as provided in Subsection 58-16a-102(8)(b);

(ii) dispenses the ophthalmic lenses within or from the state;

(iii) does so in the ordinary course of trade from a permanently located and established place of business;

(iv) does not perform refractions, over-refractions, or attempt to traffic upon assumed skill in licensed physician or optometrist testing of the eye; and

(v) complies with impact tolerance standards based on ANSI Z80.1-2010, American National Standard for Ophthalmics - Prescription Lenses.

(b) In accordance with Subsection (2)(a), a person may:

(i) sell, reproduce, or dispense ophthalmic lenses;

(ii) fit or adjust ophthalmic lenses or frames;

(iii) assist with the selection of frames for ophthalmic lenses;

(iv) measure pupillary distance and interpret pupillary distance measurements; or

(v) measure or interpret the reading segment height in bifocal, tri-focal, progressive, or multi-focal lenses.

(3) Nothing in this section may be construed as requiring a person to be licensed or certified in any way under this or any another chapter of this title to sell contact lenses in accordance with Subsection (1), or to sell ophthalmic lenses in accordance with Subsection (2).

Amended by Chapter 256, 2012 General Session

Part 9
Contact Lens Consumer Protection Act

58-16a-901 Title.

This part is known as the "Contact Lens Consumer Protection Act."

Enacted by Chapter 245, 2006 General Session

58-16a-902 Policy.

It is the policy of the state that citizens who wear contact lenses pursuant to valid prescriptions should not be unreasonably denied the opportunity to purchase their contact lenses from their retailer of choice.

Enacted by Chapter 245, 2006 General Session

58-16a-903 Definitions.

As used in this part:

(1) "Alternative channels of distribution" means any mail order company, Internet retailer, pharmacy, buying club, department store, or mass merchandise outlet, without regard to whether it is associated with a prescriber, unless the account meets the definition of a competitor as provided for in this section.

(2) "Competitor" means an entity that manufactures contact lenses and sells those lenses within the state in direct competition with any other manufacturer.

(3) "Manufacturer" means a manufacturer, its parents, subsidiaries, affiliates, successors, and assigns.

(4) "Prescriber" means an individual licensed or authorized to prescribe contact lenses under this title.

Enacted by Chapter 245, 2006 General Session

58-16a-904 Certification of availability of contact lenses -- Exceptions.

(1) Beginning July 1, 2006, a manufacturer of contact lenses doing business in the state shall certify by affidavit to the Attorney General those brands of contact lenses produced, marketed, distributed, or sold by the manufacturer in the state that are made available in a commercially reasonable and nondiscriminatory manner to:

(a) prescribers;

(b) entities associated with prescribers; and

(c) alternative channels of distribution.

(2) Notwithstanding any other provision of law, a manufacturer shall only sell, market, or distribute lenses in Utah that have been certified under Subsection (1).

(3) Subsections (1) and (2) do not apply to:

(a) rigid gas permeable lenses;

(b) bitoric gas permeable lenses;

(c) bifocal gas permeable lenses;

(d) keratoconus lenses;

(e) custom soft toric lenses that are manufactured for an individual patient and are not mass marketed or mass produced; and

(f) custom designed lenses that are manufactured for an individual patient and are not mass marketed or mass produced.

(4) Any time a brand ceases to be made available after July 1, 2006, the manufacturer shall immediately certify that fact by affidavit to the Attorney General.

Enacted by Chapter 245, 2006 General Session

58-16a-905 Manufacturers' conduct.

Nothing in Section 58-16a-904 is intended to require a manufacturer to:

(1) sell to a competitor;

(2) sell contact lenses to different contact lens distributors or customers at the same price;

(3) open or maintain any account for a contact lens seller who is not in substantial compliance with Utah and federal law regarding the sale of contact lenses;

(4) decide whether a low volume account with a contact lens seller is a direct account or handled through a distributor; or

(5) sell to customers in all geographic areas lenses that are being test marketed on a limited basis in one geographic area.

Enacted by Chapter 245, 2006 General Session

58-16a-905.1 Contact lens manufacturer or distributor -- Prohibited conduct.

A contact lens manufacturer or a contact lens distributor may not:

(1) take any action, by agreement, unilaterally, or otherwise, that has the effect of fixing or otherwise controlling the price that a contact lens retailer charges or advertises for contact lenses; or

(2) discriminate against a contact lens retailer based on whether the contact lens retailer:

(a) sells or advertises contact lenses for a particular price;

(b) operates in a particular channel of trade;

(c) is a person authorized by law to prescribe contact lenses; or

(d) is associated with a person authorized by law to prescribe contact lenses.

Enacted by Chapter 293, 2015 General Session

58-16a-906 Penalties for violations.

(1) A person who knowingly and intentionally violates a provision of Section 58-16a-904 is guilty of a class A misdemeanor.

(2) The attorney general may bring a civil action or seek an injunction and a civil penalty against any person who violates a provision of Section 58-16a-904 or 58-16a-905.1.

Amended by Chapter 293, 2015 General Session

Chapter 17b
Pharmacy Practice Act

Part 1
General Provisions

58-17b-101 Title.

This chapter is known as the "Pharmacy Practice Act."

Enacted by Chapter 280, 2004 General Session

58-17b-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Administering" means:

(a) the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person; or

(b) the placement by a veterinarian with the owner or caretaker of an animal or group of animals of a prescription drug for the purpose of injection, inhalation, ingestion, or any other means

directed to the body of the animal by the owner or caretaker in accordance with written or verbal directions of the veterinarian.

(2) "Adulterated drug or device" means a drug or device considered adulterated under 21 U.S.C. Sec. 351 (2003).

(3)

(a) "Analytical laboratory" means a facility in possession of prescription drugs for the purpose of analysis.

(b) "Analytical laboratory" does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are prediluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in vitro diagnostic use.

(4) "Animal euthanasia agency" means an agency performing euthanasia on animals by the use of prescription drugs.

(5) "Automated pharmacy systems" includes mechanical systems which perform operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing, or distribution of medications, and which collect, control, and maintain all transaction information.

(6) "Beyond use date" means the date determined by a pharmacist and placed on a prescription label at the time of dispensing that indicates to the patient or caregiver a time beyond which the contents of the prescription are not recommended to be used.

(7) "Board of pharmacy" or "board" means the Utah State Board of Pharmacy created in Section 58-17b-201.

(8) "Branch pharmacy" means a pharmacy or other facility in a rural or medically underserved area, used for the storage and dispensing of prescription drugs, which is dependent upon, stocked by, and supervised by a pharmacist in another licensed pharmacy designated and approved by the division as the parent pharmacy.

(9) "Centralized prescription processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, drug utilization review, claims adjudication, refill authorizations, and therapeutic interventions.

(10) "Class A pharmacy" means a pharmacy located in Utah that is authorized as a retail pharmacy to compound or dispense a drug or dispense a device to the public under a prescription order.

(11) "Class B pharmacy":

(a) means a pharmacy located in Utah:

(i) that is authorized to provide pharmaceutical care for patients in an institutional setting; and

(ii) whose primary purpose is to provide a physical environment for patients to obtain health care services; and

(b)

(i) includes closed-door, hospital, clinic, nuclear, and branch pharmacies; and

(ii) pharmaceutical administration and sterile product preparation facilities.

(12) "Class C pharmacy" means a pharmacy that engages in the manufacture, production, wholesale, or distribution of drugs or devices in Utah.

(13) "Class D pharmacy" means a nonresident pharmacy.

(14) "Class E pharmacy" means all other pharmacies.

(15) "Closed-door pharmacy" means a pharmacy that provides pharmaceutical care to a defined and exclusive group of patients who have access to the services of the pharmacy because

they are treated by or have an affiliation with a specific entity, including a health maintenance organization or an infusion company, but not including a hospital pharmacy, a retailer of goods to the general public, or the office of a practitioner.

(16) "Collaborative pharmacy practice" means a practice of pharmacy whereby one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more practitioners under protocol whereby the pharmacist may perform certain pharmaceutical care functions authorized by the practitioner or practitioners under certain specified conditions or limitations.

(17) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more practitioners that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients and prevention of disease of human subjects.

(18)

(a) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a limited quantity drug, sterile product, or device:

(i) as the result of a practitioner's prescription order or initiative based on the practitioner, patient, or pharmacist relationship in the course of professional practice;

(ii) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing; or

(iii) in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

(b) "Compounding" does not include:

(i) the preparation of prescription drugs by a pharmacist or pharmacy intern for sale to another pharmacist or pharmaceutical facility;

(ii) the preparation by a pharmacist or pharmacy intern of any prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner; or

(iii) the preparation of a prescription drug, sterile product, or device which has been withdrawn from the market for safety reasons.

(19) "Confidential information" has the same meaning as "protected health information" under the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

(20) "Controlled substance" means the same as that term is defined in Section 58-37-2.

(21) "Dietary supplement" has the same meaning as Public Law Title 103, Chapter 417, Sec. 3a(ff) which is incorporated by reference.

(22) "Dispense" means the interpretation, evaluation, and implementation of a prescription drug order or device or nonprescription drug or device under a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient, research subject, or an animal.

(23) "Dispensing medical practitioner" means an individual who is:

(a) currently licensed as:

(i) a physician and surgeon under Chapter 67, Utah Medical Practice Act;

(ii) an osteopathic physician and surgeon under Chapter 68, Utah Osteopathic Medical Practice Act;

(iii) a physician assistant under Chapter 70a, Physician Assistant Act;

(iv) a nurse practitioner under Chapter 31b, Nurse Practice Act; or

(v) an optometrist under Chapter 16a, Utah Optometry Practice Act, if the optometrist is acting within the scope of practice for an optometrist; and

(b) licensed by the division under the Pharmacy Practice Act to engage in the practice of a dispensing medical practitioner.

(24) "Dispensing medical practitioner clinic pharmacy" means a closed-door pharmacy located within a licensed dispensing medical practitioner's place of practice.

(25) "Distribute" means to deliver a drug or device other than by administering or dispensing.

(26)

(a) "Drug" means:

(i) a substance recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(ii) a substance that is required by any applicable federal or state law or rule to be dispensed by prescription only or is restricted to administration by practitioners only;

(iii) a substance other than food intended to affect the structure or any function of the body of humans or other animals; and

(iv) substances intended for use as a component of any substance specified in Subsections (26)(a)(i), (ii), (iii), and (iv).

(b) "Drug" does not include dietary supplements.

(27) "Drug regimen review" includes the following activities:

(a) evaluation of the prescription drug order and patient record for:

(i) known allergies;

(ii) rational therapy-contraindications;

(iii) reasonable dose and route of administration; and

(iv) reasonable directions for use;

(b) evaluation of the prescription drug order and patient record for duplication of therapy;

(c) evaluation of the prescription drug order and patient record for the following interactions:

(i) drug-drug;

(ii) drug-food;

(iii) drug-disease; and

(iv) adverse drug reactions; and

(d) evaluation of the prescription drug order and patient record for proper utilization, including over- or under-utilization, and optimum therapeutic outcomes.

(28) "Drug sample" means a prescription drug packaged in small quantities consistent with limited dosage therapy of the particular drug, which is marked "sample", is not intended to be sold, and is intended to be provided to practitioners for the immediate needs of patients for trial purposes or to provide the drug to the patient until a prescription can be filled by the patient.

(29) "Electronic signature" means a trusted, verifiable, and secure electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(30) "Electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

(31) "Hospital pharmacy" means a pharmacy providing pharmaceutical care to inpatients of a general acute hospital or specialty hospital licensed by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(32) "Legend drug" has the same meaning as prescription drug.

(33) "Licensed pharmacy technician" means an individual licensed with the division, that may, under the supervision of a pharmacist, perform the activities involved in the technician practice of pharmacy.

(34) "Manufacturer" means a person or business physically located in Utah licensed to be engaged in the manufacturing of drugs or devices.

(35)

(a) "Manufacturing" means:

(i) the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container; and

(ii) the promotion and marketing of such drugs or devices.

(b) "Manufacturing" includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

(c) "Manufacturing" does not include the preparation or compounding of a drug by a pharmacist, pharmacy intern, or practitioner for that individual's own use or the preparation, compounding, packaging, labeling of a drug, or incident to research, teaching, or chemical analysis.

(36) "Medical order" means a lawful order of a practitioner which may include a prescription drug order.

(37) "Medication profile" or "profile" means a record system maintained as to drugs or devices prescribed for a pharmacy patient to enable a pharmacist or pharmacy intern to analyze the profile to provide pharmaceutical care.

(38) "Misbranded drug or device" means a drug or device considered misbranded under 21 U.S.C. Sec. 352 (2003).

(39)

(a) "Nonprescription drug" means a drug which:

(i) may be sold without a prescription; and

(ii) is labeled for use by the consumer in accordance with federal law.

(b) "Nonprescription drug" includes homeopathic remedies.

(40) "Nonresident pharmacy" means a pharmacy located outside of Utah that sells to a person in Utah.

(41) "Nuclear pharmacy" means a pharmacy providing radio-pharmaceutical service.

(42) "Out-of-state mail service pharmacy" means a pharmaceutical facility located outside the state that is licensed and in good standing in another state, that:

(a) ships, mails, or delivers by any lawful means a dispensed legend drug to a patient in this state pursuant to a lawfully issued prescription;

(b) provides information to a patient in this state on drugs or devices which may include, but is not limited to, advice relating to therapeutic values, potential hazards, and uses; or

(c) counsels pharmacy patients residing in this state concerning adverse and therapeutic effects of drugs.

(43) "Patient counseling" means the written and oral communication by the pharmacist or pharmacy intern of information, to the patient or caregiver, in order to ensure proper use of drugs, devices, and dietary supplements.

(44) "Pharmaceutical administration facility" means a facility, agency, or institution in which:

(a) prescription drugs or devices are held, stored, or are otherwise under the control of the facility or agency for administration to patients of that facility or agency;

(b) prescription drugs are dispensed to the facility or agency by a licensed pharmacist or pharmacy intern with whom the facility has established a prescription drug supervising relationship under which the pharmacist or pharmacy intern provides counseling to the facility or agency staff as required, and oversees drug control, accounting, and destruction; and

(c) prescription drugs are professionally administered in accordance with the order of a practitioner by an employee or agent of the facility or agency.

(45)

(a) "Pharmaceutical care" means carrying out the following in collaboration with a prescribing practitioner, and in accordance with division rule:

(i) designing, implementing, and monitoring a therapeutic drug plan intended to achieve favorable outcomes related to a specific patient for the purpose of curing or preventing the patient's disease;

(ii) eliminating or reducing a patient's symptoms; or

(iii) arresting or slowing a disease process.

(b) "Pharmaceutical care" does not include prescribing of drugs without consent of a prescribing practitioner.

(46) "Pharmaceutical facility" means a business engaged in the dispensing, delivering, distributing, manufacturing, or wholesaling of prescription drugs or devices within or into this state.

(47)

(a) "Pharmaceutical wholesaler or distributor" means a pharmaceutical facility engaged in the business of wholesale vending or selling of a prescription drug or device to other than a consumer or user of the prescription drug or device that the pharmaceutical facility has not produced, manufactured, compounded, or dispensed.

(b) "Pharmaceutical wholesaler or distributor" does not include a pharmaceutical facility carrying out the following business activities:

(i) intracompany sales;

(ii) the sale, purchase, or trade of a prescription drug or device, or an offer to sell, purchase, or trade a prescription drug or device, if the activity is carried out between one or more of the following entities under common ownership or common administrative control, as defined by division rule:

(A) hospitals;

(B) pharmacies;

(C) chain pharmacy warehouses, as defined by division rule; or

(D) other health care entities, as defined by division rule;

(iii) the sale, purchase, or trade of a prescription drug or device, or an offer to sell, purchase, or trade a prescription drug or device, for emergency medical reasons, including supplying another pharmaceutical facility with a limited quantity of a drug, if:

(A) the facility is unable to obtain the drug through a normal distribution channel in sufficient time to eliminate the risk of harm to a patient that would result from a delay in obtaining the drug; and

(B) the quantity of the drug does not exceed an amount reasonably required for immediate dispensing to eliminate the risk of harm;

(iv) the distribution of a prescription drug or device as a sample by representatives of a manufacturer; and

(v) the distribution of prescription drugs, if:

(A) the facility's total distribution-related sales of prescription drugs does not exceed 5% of the facility's total prescription drug sales; and

(B) the distribution otherwise complies with 21 C.F.R. Sec. 1307.11.

(48) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy.

(49) "Pharmacist-in-charge" means a pharmacist currently licensed in good standing who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent

to the practice of pharmacy and the distribution of drugs, and who is personally in full and actual charge of the pharmacy and all personnel.

(50) "Pharmacist preceptor" means a licensed pharmacist in good standing with one or more years of licensed experience. The preceptor serves as a teacher, example of professional conduct, and supervisor of interns in the professional practice of pharmacy.

(51) "Pharmacy" means any place where:

(a) drugs are dispensed;

(b) pharmaceutical care is provided;

(c) drugs are processed or handled for eventual use by a patient; or

(d) drugs are used for the purpose of analysis or research.

(52) "Pharmacy benefits manager or coordinator" means a person or entity that provides pharmacy benefit management services as defined in Section 49-20-502 on behalf of a self-insured employer, insurance company, health maintenance organization, or other plan sponsor, as defined by rule.

(53) "Pharmacy intern" means an individual licensed by this state to engage in practice as a pharmacy intern.

(54) "Pharmacy technician training program" means an approved technician training program providing education for pharmacy technicians.

(55)

(a) "Practice as a dispensing medical practitioner" means the practice of pharmacy, specifically relating to the dispensing of a prescription drug in accordance with Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, and division rule adopted after consultation with the Board of pharmacy and the governing boards of the practitioners described in Subsection (23)(a).

(b) "Practice as a dispensing medical practitioner" does not include:

(i) using a vending type of dispenser as defined by the division by administrative rule; or

(ii) except as permitted by Section 58-17b-805, dispensing of a controlled substance as defined in Section 58-37-2.

(56)

(a) "Practice as a licensed pharmacy technician" means engaging in practice as a pharmacy technician under the general supervision of a licensed pharmacist and in accordance with a scope of practice defined by division rule made in collaboration with the board.

(b) "Practice as a licensed pharmacy technician" does not include:

(i) performing a drug utilization review, prescription drug order clarification from a prescriber, final review of the prescription, dispensing of the drug, or counseling a patient with respect to a prescription drug;

(ii) except as permitted by rules made by the division in consultation with the board, final review of a prescribed drug prepared for dispensing;

(iii) counseling regarding nonprescription drugs and dietary supplements unless delegated by the supervising pharmacist; or

(iv) receiving new prescription drug orders when communicating telephonically or electronically unless the original information is recorded so the pharmacist may review the prescription drug order as transmitted.

(57) "Practice of pharmacy" includes the following:

(a) providing pharmaceutical care;

(b) collaborative pharmacy practice in accordance with a collaborative pharmacy practice agreement;

(c) compounding, packaging, labeling, dispensing, administering, and the coincident distribution of prescription drugs or devices, provided that the administration of a prescription drug or device is:
(i) pursuant to a lawful order of a practitioner when one is required by law; and
(ii) in accordance with written guidelines or protocols:
(A) established by the licensed facility in which the prescription drug or device is to be administered on an inpatient basis; or
(B) approved by the division, in collaboration with the board and the Physicians Licensing Board, created in Section 58-67-201, if the prescription drug or device is to be administered on an outpatient basis solely by a licensed pharmacist;
(d) participating in drug utilization review;
(e) ensuring proper and safe storage of drugs and devices;
(f) maintaining records of drugs and devices in accordance with state and federal law and the standards and ethics of the profession;
(g) providing information on drugs or devices, which may include advice relating to therapeutic values, potential hazards, and uses;
(h) providing drug product equivalents;
(i) supervising pharmacist's supportive personnel, pharmacy interns, and pharmacy technicians;
(j) providing patient counseling, including adverse and therapeutic effects of drugs;
(k) providing emergency refills as defined by rule;
(l) telepharmacy; and
(m) formulary management intervention.
(58) "Practice of telepharmacy" means the practice of pharmacy through the use of telecommunications and information technologies.
(59) "Practice of telepharmacy across state lines" means the practice of pharmacy through the use of telecommunications and information technologies that occurs when the patient is physically located within one jurisdiction and the pharmacist is located in another jurisdiction.
(60) "Practitioner" means an individual currently licensed, registered, or otherwise authorized by the appropriate jurisdiction to prescribe and administer drugs in the course of professional practice.
(61) "Prescribe" means to issue a prescription:
(a) orally or in writing; or
(b) by telephone, facsimile transmission, computer, or other electronic means of communication as defined by division rule.
(62) "Prescription" means an order issued:
(a) by a licensed practitioner in the course of that practitioner's professional practice or by collaborative pharmacy practice agreement; and
(b) for a controlled substance or other prescription drug or device for use by a patient or an animal.
(63) "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.
(64) "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.
(65) "Repackage":

(a) means changing the container, wrapper, or labeling to further the distribution of a prescription drug; and
(b) does not include:
(i) Subsection (65)(a) when completed by the pharmacist responsible for dispensing the product to a patient; or
(ii) changing or altering a label as necessary for a dispensing practitioner under Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, for dispensing a product to a patient.
(66) "Research using pharmaceuticals" means research:
(a) conducted in a research facility, as defined by division rule, that is associated with a university or college in the state accredited by the Northwest Commission on Colleges and Universities;
(b) requiring the use of a controlled substance, prescription drug, or prescription device;
(c) that uses the controlled substance, prescription drug, or prescription device in accordance with standard research protocols and techniques, including, if required, those approved by an institutional review committee; and
(d) that includes any documentation required for the conduct of the research and the handling of the controlled substance, prescription drug, or prescription device.
(67) "Retail pharmacy" means a pharmaceutical facility dispensing prescription drugs and devices to the general public.
(68) "Self-audit" means an internal evaluation of a pharmacy to determine compliance with this chapter.
(69) "Supervising pharmacist" means a pharmacist who is overseeing the operation of the pharmacy during a given day or shift.
(70) "Supportive personnel" means unlicensed individuals who:
(a) may assist a pharmacist, pharmacist preceptor, pharmacy intern, or licensed pharmacy technician in nonjudgmental duties not included in the definition of the practice of pharmacy, practice of a pharmacy intern, or practice of a licensed pharmacy technician, and as those duties may be further defined by division rule adopted in collaboration with the board; and
(b) are supervised by a pharmacist in accordance with rules adopted by the division in collaboration with the board.
(71) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-17b-501.
(72) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-17b-502 and may be further defined by rule.
(73) "Veterinary pharmaceutical facility" means a pharmaceutical facility that dispenses drugs intended for use by animals or for sale to veterinarians for the administration for animals.

Amended by Chapter 336, 2015 General Session

58-17b-103 Administrative inspections.
(1) The division may for the purpose of ascertaining compliance with the provisions of this chapter, require a self-audit or enter and inspect the business premises of a person:
(a) licensed under Part 3, Licensing; or
(b) who is engaged in activities that require a license under Part 3, Licensing.
(2) Before conducting an inspection under Subsection (1), the division shall, after identifying the person in charge:
(a) give proper identification;
(b) request to see the applicable license or licenses;

(c) describe the nature and purpose of the inspection; and
(d) provide upon request, the authority of the division to conduct the inspection and the penalty for refusing to permit the inspection as provided in Section 58-17b-504.
(3) In conducting an inspection under Subsection (1), the division may, after meeting the requirements of Subsection (2):
(a) examine any record, prescription, order, drug, device, equipment, machine, electronic device or media, or area related to activities for which a license has been issued or is required by Part 3, Licensing, for the purpose of ascertaining compliance with the applicable provisions of this chapter;
(b) reproduce any record or media at the division's own cost;
(c) take a drug or device for further analysis if considered necessary;
(d) temporarily seize a drug or device that is suspected to be adulterated, misbranded, outdated, or otherwise in violation of this chapter, pending an adjudicative proceeding on the matter;
(e) box and seal drugs suspected to be adulterated, outdated, misbranded, or otherwise in violation of this chapter; and
(f) dispose of or return a drug or device obtained under this Subsection (3) in accordance with procedures established by division rule.
(4) An inspection described in Subsection (1) shall be conducted during regular business hours.
(5) If, upon inspection, the division concludes that a person has violated the provisions of this chapter or Chapter 37, Utah Controlled Substances Act, or a rule or order issued with respect to those chapters, and that disciplinary action is appropriate, the director or the director's designee shall promptly issue a fine or citation to the licensee in accordance with Section 58-17b-504.

Amended by Chapter 262, 2013 General Session
Amended by Chapter 278, 2013 General Session

Part 2
Board

58-17b-201 Board -- Membership -- Qualifications -- Terms.
(1) There is created the Utah State Board of Pharmacy consisting of five pharmacists, one pharmacy technician, and one member of the general public.
(a) The public member of the board shall be a Utah resident who:
(i) is 21 years of age or older;
(ii) has never been licensed to engage in the practice of pharmacy;
(iii) has never been the spouse of a person licensed to engage in the practice of pharmacy;
(iv) has never held any material financial interest in pharmacy practice; and
(v) has never engaged in any activity directly related to the practice of pharmacy.
(b) The licensed pharmacist and licensed pharmacy technician members of the board shall:
(i) have been Utah residents continuously for at least three years;
(ii) have at least five years experience in the practice of pharmacy in good standing with the division in Utah after licensure; and
(iii) maintain licensure in good standing to engage in the practice of pharmacy or practice as a pharmacy technician in Utah for the duration of the appointment.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203, and as required under Section 58-37f-202 regarding the controlled substance database. In addition, the board shall designate an appropriate member on a permanent or rotating basis to:
  (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
  (b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.
(5) A board member may be removed in accordance with Subsection 58-1-201(2)(e) or upon one of the following grounds:
  (a) refusal or inability for any reason of a board member to perform his duties as a member of the Board in an efficient, responsible, and professional manner;
  (b) misuse of appointment to obtain personal, pecuniary, or material gain or advantage for himself or another through such appointment; or
  (c) violation of the laws governing the practice of pharmacy or Chapter 37, Utah Controlled Substances Act.

Amended by Chapter 287, 2010 General Session

Part 3
Licensing

58-17b-301 License required -- License classifications for individuals.
(1) A license is required to engage in the practice of pharmacy, telepharmacy, pharmacy technician, or dispensing medical practitioner except as specifically provided in Section 58-1-307 or 58-17b-309.
(2) The division shall issue to an individual who qualifies under this chapter a license in the classification of:
  (a) pharmacist;
  (b) pharmacy intern;
  (c) pharmacy technician;
  (d) dispensing medical practitioner; or
  (e) pharmacy technician trainee.

Amended by Chapter 72, 2014 General Session
Amended by Chapter 385, 2014 General Session
Amended by Chapter 385, 2014 General Session

58-17b-302 License required -- License classifications for pharmacy facilities.
(1) A license is required to act as a pharmacy, except as specifically exempted from licensure under Section 58-1-307.
(2) The division shall issue a pharmacy license to a facility that qualifies under this chapter in the classification of a:
  (a) class A pharmacy;

(b) class B pharmacy;
(c) class C pharmacy;
(d) class D pharmacy;
(e) class E pharmacy; or
(f) dispensing medical practitioner clinic pharmacy.
(3) Each place of business shall require a separate license. If multiple pharmacies exist at the same address, a separate license shall be required for each pharmacy.
(4) The division may further define or supplement the classifications of pharmacies. The division may impose restrictions upon classifications to protect the public health, safety, and welfare.
(5) Each pharmacy shall have a pharmacist-in-charge, except as otherwise provided by rule.
(6) Whenever an applicable statute or rule requires or prohibits action by a pharmacy, the pharmacist-in-charge and the owner of the pharmacy shall be responsible for all activities of the pharmacy, regardless of the form of the business organization.

Amended by Chapter 72, 2014 General Session

58-17b-303 Qualifications for licensure as a pharmacist.
(1) An applicant for licensure as a pharmacist shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee as determined by the department under Section 63J-1-504;
(c) produce satisfactory evidence of good moral character as it relates to the applicant's ability to practice pharmacy;
(d) complete a criminal background check and be free from criminal convictions as described in Section 58-1-501;
(e) have no physical or mental condition of a nature which prevents the applicant from engaging in the practice of pharmacy with reasonable skill, competency, and safety to the public;
(f) have graduated and received a professional entry degree from a school or college of pharmacy which is accredited by the Accreditation Council on Pharmacy Education;
(g) have completed an internship meeting standards established by division rule made in collaboration with the board; and
(h) have successfully passed examinations required by division rule made in collaboration with the board.
(2) An applicant for licensure as a pharmacist whose pharmacy education was completed at a foreign pharmacy school shall, in addition to the requirements under Subsections (1)(a) through (e), (g), and (h), obtain a certification of equivalency from a credentialing agency required by division rule made in collaboration with the board.
(3) An applicant for a license by endorsement as a pharmacist under this section shall:
(a) submit a written application in the form prescribed by the division;
(b) pay the fee determined by the department under Section 63J-1-504;
(c) be of good moral character as required of applicants for licensure as pharmacists under Subsection (1);
(d) complete a criminal background check and be free from criminal convictions as described in Section 58-1-501;
(e) have no physical or mental condition of a nature which prevents the applicant from engaging in the practice of pharmacy with reasonable skill, competency, and safety to the public;
(f) have lawfully practiced as a licensed pharmacist a minimum of 2,000 hours in the four years immediately preceding the date of application;

(g) produce satisfactory evidence of completing the professional education required under Subsection (1);
(h) be currently licensed in good standing as a pharmacist in another state, territory, or possession of the United States;
(i) produce satisfactory evidence that the examination requirements are or were at the time the license was issued, equal to those of this state; and
(j) pass the jurisprudence examination prescribed by division rule made in collaboration with the board.

Amended by Chapter 93, 2012 General Session

58-17b-304 Qualifications for licensure of pharmacy intern.

An applicant for licensure as a pharmacy intern shall:
(1) submit an application in a form prescribed by the division;
(2) pay a fee determined by the department under Section 63J-1-504;
(3) produce satisfactory evidence of good moral character as it relates to the applicant's ability to practice pharmacy;
(4) complete a criminal background check and be free from criminal convictions as described in Section 58-1-501;
(5) have no physical or mental condition of a nature which prevents the applicant from engaging in the practice of pharmacy with reasonable skill, competency, and safety to the public;
(6) meet the preliminary educational qualifications required by division rule made in collaboration with the board; and
(7) meet one of the following educational criteria:
(a) be a current pharmacy student, a resident, or fellow in a program approved by division rule made in collaboration with the board; or
(b) have graduated from a foreign pharmacy school and received certification of equivalency from a credentialing agency approved by division rule made in collaboration with the board.

Amended by Chapter 166, 2013 General Session

58-17b-305 Qualifications for licensure of pharmacy technician.

(1) An applicant for licensure as a pharmacy technician shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) produce satisfactory evidence of good moral character as it relates to the applicant's ability to practice pharmacy;
(d) complete a criminal background check and be free from criminal convictions as described in Section 58-1-501;
(e) have no physical or mental condition of a nature which prevents the applicant from engaging in practice as a pharmacy technician with reasonable skill, competency, and safety to the public;
(f) have completed a program and curriculum of education and training, meeting standards established by division rule made in collaboration with the board; and
(g) successfully complete the examinations requirement within the time periods established by division rule made in collaboration with the board.

(2) A pharmacist whose license has been denied, revoked, suspended, or restricted for disciplinary purposes is not eligible to be a licensed pharmacy technician while on probation with the division.

Amended by Chapter 166, 2013 General Session

58-17b-305.1 Qualifications for licensure of pharmacy technician trainee.

(1) An applicant for licensure as a pharmacy technician trainee shall:
  (a) submit an application to the division on a form created by the division;
  (b) pay a fee established by the division in accordance with Section 63J-1-504;
  (c) submit satisfactory evidence, as determined by the division, of good moral character as it relates to the applicant's ability to practice pharmacy;
  (d) unless exempted by the division, submit a completed criminal background check;
  (e) demonstrate, as determined by the division, that the applicant does not have a physical or mental condition that would prevent the applicant from engaging in practice as a pharmacy technician with reasonable skill, competency, and safety to the public; and
  (f) submit evidence that the applicant is enrolled in a training program approved by the division.
(2) A pharmacist whose license has been denied, revoked, suspended, or restricted for disciplinary purposes is not eligible to be licensed as a pharmacy technician trainee during division probation.

Enacted by Chapter 385, 2014 General Session

58-17b-306 Qualifications for licensure as a pharmacy.

(1) Each applicant for licensure under this section, except for those applying for a class D license, shall:
  (a) submit a written application in the form prescribed by the division;
  (b) pay a fee as determined by the department under Section 63J-1-504;
  (c) satisfy the division that the applicant, and each owner, officer, or manager of the applicant have not engaged in any act, practice, or omission, which when considered with the duties and responsibilities of a licensee under this section indicates there is cause to believe that issuing a license to the applicant is inconsistent with the interest of the public's health, safety, or welfare;
  (d) demonstrate the licensee's operations will be in accordance with all federal, state, and local laws relating to the type of activity engaged in by the licensee, including regulations of the Federal Drug Enforcement Administration and Food and Drug Administration;
  (e) maintain operating standards established by division rule made in collaboration with the board; and
  (f) acknowledge the division's authority to inspect the licensee's business premises pursuant to Section 58-17b-103.
(2) Each applicant applying for a class D license shall:
  (a) submit a written application in the form prescribed by the division;
  (b) pay a fee as determined by the department under Section 63J-1-504;
  (c) present to the division verification of licensure in the state where physically located and verification that such license is in good standing;
  (d) provide a statement of the scope of pharmacy services that will be provided and a detailed description of the protocol as described by rule by which pharmacy care will be provided, including any collaborative practice arrangements with other health care practitioners;

(e) sign an affidavit attesting that any healthcare practitioners employed by the applicant and physically located in Utah have the appropriate license issued by the division and in good standing; and
(f) sign an affidavit attesting that the applicant will abide by the pharmacy laws and regulations of the jurisdiction in which the pharmacy is located.
(3) Each license issued under this section shall be issued for a single, specific address, and is not transferable or assignable.

Amended by Chapter 183, 2009 General Session

58-17b-307 Qualification for licensure -- Criminal background checks.
(1) An applicant for licensure under this chapter shall:
(a) submit fingerprint cards in a form acceptable to the division at the time the license application is filed; and
(b) consent to a fingerprint background check regarding the application by the:
(i) Utah Bureau of Criminal Identification; and
(ii) Federal Bureau of Investigation.
(2) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant through the National Criminal History System (NCIC) or any successor system.
(3) For purposes of conducting the criminal background check required in Subsection (1), the division shall have direct access to criminal background information maintained under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.
(4)
(a) A new pharmacist, pharmacy intern, or pharmacy technician license issued under this section is conditional, pending completion of the criminal background check.
(b) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, if the criminal background check required in Subsection (1), discloses the applicant has failed to accurately disclose a criminal history, the license is immediately and automatically revoked upon notice to the licensee by the division.
(5) A person whose conditional license has been revoked under Subsection (4) is entitled to a postrevocation hearing to challenge the revocation. The division shall conduct the hearing in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 93, 2012 General Session

58-17b-308 Term of license -- Expiration -- Renewal.
(1) Except as provided in Subsection (2), each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle. Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.
(2) The duration of a pharmacy intern license may be no longer than:
(a) one year for a license issued under Subsection 58-17b-304(7)(b); or
(b) five years for a license issued under Subsection 58-17b-304(7)(a).
(3) A pharmacy intern license issued under this chapter may not be renewed, but may be extended by the division in collaboration with the board.

Amended by Chapter 258, 2015 General Session

58-17b-309 Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the acts or practices described in this section without being licensed under this chapter:

(1) a person selling or providing contact lenses in accordance with Section 58-16a-801;

(2) an animal shelter that:

(a) under the indirect supervision of a veterinarian, stores, handles, or administers a drug used for euthanising an animal; and

(b) under the indirect supervision of a veterinarian who is under contract with the animal shelter, stores, handles, or administers a rabies vaccine; and

(3) an overdose outreach provider, as defined in Section 26-55-102, that obtains, stores, or furnishes an opiate antagonist in accordance with Title 26, Chapter 55, Opiate Overdose Response Act.

Amended by Chapter 207, 2016 General Session

58-17b-309.6 Exemptions from licensure for research using pharmaceuticals.

Research using pharmaceuticals, as defined in Subsection 58-17b-102(65), is exempt from licensure under Sections 58-17b-301 and 58-17b-302.

Amended by Chapter 72, 2014 General Session

58-17b-310 Continuing education.

The division in collaboration with the board may establish by rule continuing education requirements for each classification of licensure under this chapter.

Enacted by Chapter 280, 2004 General Session

Part 4
License Denial and Discipline

58-17b-401 Grounds for denial of licensure -- Disciplinary proceedings.

Grounds for the following action regarding a license issued under this chapter shall be in accordance with Section 58-1-401:

(1) refusal to issue a license to an applicant;

(2) refusal to renew the license of a licensee;

(3) to revoke, suspend, restrict, or place on probation the license of a licensee;

(4) to issue a public or private reprimand to a licensee;

(5) to issue cease and desist orders; and

(6) to issue an administrative fine or citation.

Enacted by Chapter 280, 2004 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties - Enforcement

58-17b-501 Unlawful conduct.

"Unlawful conduct" includes:

(1) knowingly preventing or refusing to permit an authorized agent of the division to conduct an inspection pursuant to Section 58-17b-103;

(2) failing to deliver the license, permit, or certificate to the division upon demand, if it has been revoked, suspended, or refused;

(3)

(a) using the title "pharmacist," "druggist," "pharmacy intern," "pharmacy technician," or a term having similar meaning, except by a person licensed as a pharmacist, pharmacy intern, or pharmacy technician; or

(b) conducting or transacting business under a name that contains, as part of that name, the words "drugstore," "pharmacy," "drugs," "medicine store," "medicines," "drug shop," "apothecary," "prescriptions," or a term having a similar meaning, or in any manner advertising, otherwise describing, or referring to the place of the conducted business or profession, unless the place is a pharmacy issued a license by the division, except an establishment selling nonprescription drugs and supplies may display signs bearing the words "packaged drugs," "drug sundries," or "nonprescription drugs," and is not considered to be a pharmacy or drugstore by reason of the display;

(4) buying, selling, causing to be sold, or offering for sale, a drug or device that bears, or the package bears or originally did bear, the inscription "sample," "not for resale," "for investigational or experimental use only," or other similar words, except when a cost is incurred in the bona fide acquisition of an investigational or experimental drug;

(5) using to a person's own advantages or revealing to anyone other than the division, board, and its authorized representatives, or to the courts, when relevant to a judicial or administrative proceeding under this chapter, information acquired under authority of this chapter or concerning a method of process that is a trade secret;

(6) procuring or attempting to procure a drug or to have someone else procure or attempt to procure a drug:

(a) by fraud, deceit, misrepresentation, or subterfuge;

(b) by forgery or alteration of a prescription or a written order;

(c) by concealment of a material fact;

(d) by use of a false statement in a prescription, chart, order, or report; or

(e) by theft;

(7) filling, refilling, or advertising the filling or refilling of prescriptions for a consumer or patient residing in this state if the person is not licensed:

(a) under this chapter; or

(b) in the state from which he is dispensing;

(8) requiring an employed pharmacist, pharmacy intern, pharmacy technician, or authorized supportive personnel to engage in conduct in violation of this chapter;

(9) being in possession of a prescription drug for an unlawful purpose;

(10) dispensing a prescription drug to a person who does not have a prescription from a practitioner or to a person who the person dispensing the drug knows or should know is attempting to obtain drugs by fraud or misrepresentation;

(11) selling, dispensing, distributing, or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure; and
(12) a person using a prescription drug or controlled substance that was not lawfully prescribed for the person by a practitioner.

Amended by Chapter 262, 2013 General Session

58-17b-502 Unprofessional conduct.

"Unprofessional conduct" includes:
(1) willfully deceiving or attempting to deceive the division, the board, or their agents as to any relevant matter regarding compliance under this chapter;
(2)
(a) except as provided in Subsection (2)(b):
(i) paying or offering rebates to practitioners or any other health care providers, or receiving or soliciting rebates from practitioners or any other health care provider; or
(ii) paying, offering, receiving, or soliciting compensation in the form of a commission, bonus, rebate, kickback, or split fee arrangement with practitioners or any other health care provider, for the purpose of obtaining referrals.
(b) Subsection (2)(a) does not apply to:
(i) giving or receiving price discounts based on purchase volume;
(ii) passing along pharmaceutical manufacturer's rebates; or
(iii) providing compensation for services to a veterinarian.
(3) misbranding or adulteration of any drug or device or the sale, distribution, or dispensing of any outdated, misbranded, or adulterated drug or device;
(4) engaging in the sale or purchase of drugs or devices that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases;
(5) except as provided in Section 58-17b-503 or Part 9, Charitable Prescription Drug Recycling Act, accepting back and redistributing any unused drug, or a part of it, after it has left the premises of any pharmacy, unless the drug is in a unit pack, as defined in Section 58-17b-503, or the manufacturer's sealed container, as defined in rule;
(6) an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, or pharmacy technician;
(7) violating Federal Title II, P.L. 91, Controlled Substances Act, Title 58, Chapter 37, Utah Controlled Substances Act, or rules or regulations adopted under either act;
(8) requiring or permitting pharmacy interns or technicians to engage in activities outside the scope of practice for their respective license classifications, as defined in this chapter and division rules made in collaboration with the board, or beyond their scope of training and ability;
(9) administering:
(a) without appropriate training, as defined by rule;
(b) without a physician's order, when one is required by law; and
(c) in conflict with a practitioner's written guidelines or written protocol for administering;
(10) disclosing confidential patient information in violation of the provisions of the Health Insurance Portability and Accountability Act of 1996 or other applicable law;
(11) engaging in the practice of pharmacy without a licensed pharmacist designated as the pharmacist-in-charge;

(12) failing to report to the division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency, or court for conduct that in substance would be considered unprofessional conduct under this section; and
(13) as a pharmacist or pharmacy intern, compounding a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner.

Amended by Chapter 405, 2016 General Session

58-17b-503 Exception to unprofessional conduct.
(1) For purposes of this section:
(a) "Licensed intermediate care facility for people with an intellectual disability" means an intermediate care facility for people with an intellectual disability that is licensed as a nursing care facility or a small health care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.
(b) "Nursing care facility" means the same as that term is defined in Section 26-21-2.
(c) "Unit pack" means a tamper-resistant nonreusable single-dose single-drug package with identification that indicates the lot number and expiration date for the drug.
(2) A pharmacist may:
(a) accept and redistribute an unused drug under Part 9, Charitable Prescription Drug Recycling Act; or
(b) accept back and redistribute any unused drug, or a part of it, after it has left the premises of the pharmacy if:
(i) the drug was prescribed to a patient in a nursing care facility, licensed intermediate care facility for people with an intellectual disability, or state prison facility, county jail, or state hospital;
(ii) the drug was stored under the supervision of a licensed health care provider according to manufacturer recommendations;
(iii) the drug is in a unit pack or in the manufacturer's sealed container;
(iv) the drug was returned to the original dispensing pharmacy;
(v) the drug was initially dispensed by a licensed pharmacist or licensed pharmacy intern; and
(vi) accepting back and redistributing of the drug complies with federal Food and Drug Administration and Drug Enforcement Administration regulations.

Amended by Chapter 405, 2016 General Session

58-17b-504 Penalty for unlawful or unprofessional conduct -- Fines -- Citations.
(1) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(i) and Subsections 58-17b-501(7) and (11) is guilty of a third degree felony.
(2) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(ii), Subsections 58-1-501(1)(b) through (e), and Section 58-17b-501, except Subsections 58-17b-501(7) and (11), is guilty of a class A misdemeanor.
(3)
(a) Subject to Subsection (5) and in accordance with Section 58-17b-401, for acts of unprofessional or unlawful conduct, the division may:
(i) assess administrative penalties; and
(ii) take any other appropriate administrative action.

(b) An administrative penalty imposed pursuant to this section shall be deposited in the General Fund as a dedicated credit to be used by the division for pharmacy licensee education and enforcement as provided in Section 58-17b-505.

(4) If a licensee has been convicted of violating Section 58-17b-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative fine under this chapter for the same offense for which the conviction was obtained.

(5)

(a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance Database Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued with respect to these provisions, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(b) Any person who is in violation of the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance Database Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued with respect to these provisions, as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (5) of up to $10,000 per single violation or up to $2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule, and may, in addition to or in lieu of, be ordered to cease and desist from violating the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued with respect to these provisions.

(c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-17b-401 may not be assessed through a citation.

(d) Each citation shall be in writing and specifically describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated. The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation in order to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(e) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served:

(i) in accordance with the Utah Rules of Civil Procedure;

(ii) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or

(iii) by mail.

(f) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.

(g) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with the citation after it becomes final.

(h) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
(i) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

Amended by Chapter 23, 2011 General Session

58-17b-505 Educational and enforcement fund.
(1) The director may use the money collected pursuant to Section 58-17b-504 for the following purposes:
(a) education and training of licensees under this chapter;
(b) enforcement of this chapter by:
(i) investigating unprofessional or unlawful conduct;
(ii) providing legal representation to the division when legal action is taken against a person engaging in unprofessional or unlawful conduct;
(iii) monitoring compliance of renewal requirement; and
(iv) education and training of division staff and board members.
(2) All funding for the purposes listed in Subsection (1) is nonlapsing.
(3) Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.
(4) Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.

Enacted by Chapter 280, 2004 General Session

58-17b-506 Petitioning for reinstatement of licensure.
Any person whose license to practice pharmacy in this state has been revoked, suspended, or surrendered voluntarily or by action of the division, shall have the right at reasonable intervals, to petition the division for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the division. Upon investigation and hearing, the division may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances that have changed sufficiently to warrant such modifications. The division, also at its discretion, may require such person to pass an examination or examinations for re-entry into the practice of pharmacy.

Enacted by Chapter 280, 2004 General Session

58-17b-507 Opiate antagonist -- Immunity from liability -- Exclusion from unlawful or unprofessional conduct.
(1) As used in this section:
(a) "Opiate antagonist" means the same as that term is defined in Section 26-55-102.
(b) "Opiate-related drug overdose event" means the same as that term is defined in Section 26-55-102.

(2) A person licensed under this chapter that dispenses an opiate antagonist to an individual with a prescription for an opiate antagonist, to an overdose outreach provider with a prescription for an opiate antagonist, or pursuant to a standing prescription drug order issued in accordance with Subsection 26-55-105(2) is not liable for any civil damages resulting from the outcomes of the eventual administration of the opiate antagonist to an individual who another individual believes is experiencing an opiate-related drug overdose event.
(3) The provisions of this section and Title 26, Chapter 55, Opiate Overdose Response Act, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.
(4) It is not unprofessional conduct or unlawful conduct for a licensee under this chapter to dispense an opiate antagonist to a person, including a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F), on behalf of an individual if the person obtaining the opiate antagonist has a prescription for the opiate antagonist from a licensed prescriber or the opiate antagonist is dispensed pursuant to a standing prescription drug order issued in accordance with Subsection 26-55-105(2).
(5) It is not unprofessional conduct or unlawful conduct for a licensee under this chapter to dispense an opiate antagonist to an overdose outreach provider if the overdose outreach provider has a prescription for the opiate antagonist from a licensed prescriber issued pursuant to Subsection 26-55-104(2)(a)(iii).

Amended by Chapter 202, 2016 General Session, (Coordination Clause)
Amended by Chapter 202, 2016 General Session
Amended by Chapter 207, 2016 General Session
Amended by Chapter 208, 2016 General Session

Part 6
Regulation of the Practice of Pharmacy Operating Standards

58-17b-601 General operating standards.
(1)
(a) The division shall make rules relating to the operations and conduct of facilities, individuals, and entities which are regulated under this chapter, to protect the public health, safety, and welfare.
(b) The rules shall be consistent with the regulations of the Federal Food and Drug Administration and Drug Enforcement Administration, this chapter, and all other laws relating to activities and persons regulated under this chapter.
(2)
(a) This chapter does not prevent, restrict, or in any other manner interfere with the sale of nonprescription drugs.
(b) The division may not make any rules under this chapter that require nonprescription drugs to be sold by a licensed pharmacist or only in a pharmaceutical facility.
(c) The sale or distribution of nonprescription drugs does not constitute the practice of pharmacy.

Enacted by Chapter 280, 2004 General Session

58-17b-602 Prescription orders -- Information required -- Alteration -- Labels -- Signatures -- Dispensing in pharmacies.

(1) Except as provided in Section 58-1-501.3, the minimum information that shall be included in a prescription order, and that may be defined by rule, is:
  (a) the prescriber's name, address, and telephone number, and, if the order is for a controlled substance, the patient's age and the prescriber's DEA number;
  (b) the patient's name and address or, in the case of an animal, the name of the owner and species of the animal;
  (c) the date of issuance;
  (d) the name of the medication or device prescribed and dispensing instructions, if necessary;
  (e) the directions, if appropriate, for the use of the prescription by the patient or animal and any refill, special labeling, or other instructions;
  (f) the prescriber's signature if the prescription order is written;
  (g) if the order is an electronically transmitted prescription order, the prescribing practitioner's electronic signature; and
  (h) if the order is a hard copy prescription order generated from electronic media, the prescribing practitioner's electronic or manual signature.
(2) The requirement of Subsection (1)(a) does not apply to prescription orders dispensed for inpatients by hospital pharmacies if the prescriber is a current member of the hospital staff and the prescription order is on file in the patient's medical record.
(3) Unless it is for a Schedule II controlled substance, a prescription order may be dispensed by a pharmacist or pharmacy intern upon an oral prescription of a practitioner only if the oral prescription is promptly reduced to writing.
(4)
  (a) Except as provided under Subsection (4)(b), a pharmacist or pharmacy intern may not dispense or compound any prescription of a practitioner if the prescription shows evidence of alteration, erasure, or addition by any person other than the person writing the prescription.
  (b) A pharmacist or pharmacy intern dispensing or compounding a prescription may alter or make additions to the prescription after receiving permission of the prescriber and may make entries or additions on the prescription required by law or necessitated in the compounding and dispensing procedures.
(5) Each drug dispensed shall have a label securely affixed to the container indicating the following minimum information:
  (a) the name, address, and telephone number of the pharmacy;
  (b) the serial number of the prescription as assigned by the dispensing pharmacy;
  (c) the filling date of the prescription or its last dispensing date;
  (d) the name of the patient, or in the case of an animal, the name of the owner and species of the animal;
  (e) the name of the prescriber;
  (f) the directions for use and cautionary statements, if any, which are contained in the prescription order or are needed;
  (g) except as provided in Subsection (7), the trade, generic, or chemical name, amount dispensed and the strength of dosage form, but if multiple ingredient products with established proprietary or nonproprietary names are prescribed, those products' names may be used; and
  (h) the beyond use date.

(6) A hospital pharmacy that dispenses a prescription drug that is packaged in a multidose container to a hospital patient may provide the drug in the multidose container to the patient when the patient is discharged from the hospital if:
  (a) the pharmacy receives a discharge order for the patient; and
  (b) the pharmacy labels the drug with the:
    (i) patient's name;
    (ii) drug's name and strength;
    (iii) directions for use of the drug, if applicable; and
    (iv) pharmacy's name and phone number.
(7) If the prescriber specifically indicates the name of the prescription product should not appear on the label, then any of the trade, generic, chemical, established proprietary, and established nonproprietary names and the strength of dosage form may not be included.
(8) Prescribers are encouraged to include on prescription labels the information described in Section 58-17b-602.5 in accordance with the provisions of that section.
(9) A pharmacy may only deliver a prescription drug to a patient or a patient's agent:
  (a) in person at the pharmacy; or
  (b) via the United States Postal Service, a licensed common carrier, or supportive personnel, if the pharmacy takes reasonable precautions to ensure the prescription drug is:
    (i) delivered to the patient or patient's agent; or
    (ii) returned to the pharmacy.

Amended by Chapter 72, 2014 General Session

58-17b-602.5 Information on prescription labels -- Education outreach.

The division, in order to assist emergency responders in quickly determining the physical condition of a patient at the scene of an emergency, as well as for the benefit of physicians and consumers, shall:
(1) provide information on the pharmacy licensing website recommending that prescribers, pharmacists, and pharmacy interns include information on the label of a drug dispensed under Section 58-17b-602 describing the condition the prescription is meant to treat; and
(2) as part of the website information, specify that information described in Subsection (1) should not be included on the label if the prescriber or patient indicates that the information may not be included on the label.

Enacted by Chapter 79, 2013 General Session

58-17b-603 Identification of pharmacy personnel.
(1) All individuals employed in a pharmacy facility having any contact with the public or patients receiving services from that pharmacy facility shall wear on their person a clearly visible and readable identification showing the individual's name and position.
(2) When communicating by any means, written, verbal, or electronic, pharmacy personnel must identify themselves as to licensure classification.

Enacted by Chapter 280, 2004 General Session

58-17b-604 Medication profiles.

(1) Each pharmacy shall establish a medication profile system for pharmacy patients according to the standards established by division rules made in collaboration with the board. The rules shall indicate the method for recording all prescription information.
(2) The pharmacy shall maintain the medication profile for any pharmacy patient who expresses a desire for that professional service.
(3) The pharmacy may charge an appropriate professional fee for this service and for copying or providing information in the medication profile to another authorized person.
(4) A pharmacist, pharmacy intern, or pharmacy technician may not release or discuss the information contained in a prescription or patient's medication profile to anyone except:
(a) the pharmacy patient in person or the pharmacy patient's legal guardian or designee;
(b) a lawfully authorized federal, state, or local drug enforcement officer;
(c) a third party payment program administered under terms authorized by the pharmacy patient;
(d) a pharmacist, pharmacy intern, or pharmacy technician providing pharmacy services to the patient or a prescribing practitioner providing professional services to the patient;
(e) another pharmacist, pharmacy intern, pharmacy technician, or prescribing practitioner to whom the patient has requested a prescription transfer; or
(f) the pharmacy patient's attorney, after the presentation of a written authorization signed by the:
(i) patient, before a notary public;
(ii) parent or lawful guardian, if the patient is a minor;
(iii) lawful guardian, if the patient is incompetent; or
(iv) personal representative, if the patient is deceased.

Enacted by Chapter 280, 2004 General Session

58-17b-605 Drug product equivalents.
(1) For the purposes of this section:
(a)
(i) "Drug" is as defined in Section 58-17b-102.
(ii) "Drug" does not mean a "biological product" as defined in Section 58-17b-605.5.
(b) "Drug product equivalent" means a drug product that is designated as the therapeutic equivalent of another drug product in the Approved Drug Products with Therapeutic Equivalence Evaluations prepared by the Center for Drug Evaluation and Research of the United States Food and Drug Administration.
(2) A pharmacist or pharmacy intern dispensing a prescription order for a specific drug by brand or proprietary name may substitute a drug product equivalent for the prescribed drug only if:
(a) the purchaser specifically requests or consents to the substitution of a drug product equivalent;
(b) the drug product equivalent is of the same generic type and is designated the therapeutic equivalent in the approved drug products with therapeutic equivalence evaluations prepared by the Center for Drug Evaluation and Research of the Federal Food and Drug Administration;
(c) the drug product equivalent is permitted to move in interstate commerce;
(d) the pharmacist or pharmacy intern counsels the patient on the use and the expected response to the prescribed drug, whether a substitute or not, and the substitution is not otherwise prohibited by this chapter;
(e) the prescribing practitioner has not indicated that a drug product equivalent may not be substituted for the drug, as provided in Subsection (6); and
(f) the substitution is not otherwise prohibited by law.

(3)
(a) Each out-of-state mail service pharmacy dispensing a drug product equivalent as a substitute for another drug into this state shall notify the patient of the substitution either by telephone or in writing.
(b) Each out-of-state mail service pharmacy shall comply with the requirements of this chapter with respect to a drug product equivalent substituted for another drug, including labeling and record keeping.
(4) Pharmacists or pharmacy interns may not substitute without the prescriber's authorization on trade name drug product prescriptions unless the product is currently categorized in the approved drug products with therapeutic equivalence evaluations prepared by the Center for Drug Evaluation and Research of the Federal Food and Drug Administration as a drug product considered to be therapeutically equivalent to another drug product.
(5) A pharmacist or pharmacy intern who dispenses a prescription with a drug product equivalent under this section assumes no greater liability than would be incurred had the pharmacist or pharmacy intern dispensed the prescription with the drug product prescribed.
(6)
(a) If, in the opinion of the prescribing practitioner, it is in the best interest of the patient that a drug product equivalent not be substituted for a prescribed drug, the practitioner may indicate a prohibition on substitution either by writing "dispense as written" or signing in the appropriate space where two lines have been preprinted on a prescription order and captioned "dispense as written" or "substitution permitted".
(b) If the prescription is communicated orally by the prescribing practitioner to the pharmacist or pharmacy intern, the practitioner shall indicate the prohibition on substitution and that indication shall be noted in writing by the pharmacist or pharmacy intern with the name of the practitioner and the words "orally by" and the initials of the pharmacist or pharmacy intern written after it.
(7) A pharmacist or pharmacy intern who substitutes a drug product equivalent for a prescribed drug shall communicate the substitution to the purchaser. The drug product equivalent container shall be labeled with the name of the drug dispensed, and the pharmacist, pharmacy intern, or pharmacy technician shall indicate on the file copy of the prescription both the name of the prescribed drug and the name of the drug product equivalent dispensed in its place.
(8)
(a) For purposes of this Subsection (8), "substitutes" means to substitute:
(i) a generic drug for another generic drug;
(ii) a generic drug for a nongeneric drug;
(iii) a nongeneric drug for another nongeneric drug; or
(iv) a nongeneric drug for a generic drug.
(b) A prescribing practitioner who makes a finding under Subsection (6)(a) for a patient with a seizure disorder shall indicate a prohibition on substitution of a drug product equivalent in the manner provided in Subsection (6)(a) or (b).
(c) Except as provided in Subsection (8)(d), a pharmacist or pharmacy intern who cannot dispense the prescribed drug as written, and who needs to substitute a drug product equivalent for the drug prescribed to the patient to treat or prevent seizures shall notify the prescribing practitioner prior to the substitution.
(d) Notification under Subsection (8)(c) is not required if the drug product equivalent is paid for in whole or in part by Medicaid.
(9) Failure of a licensed medical practitioner to specify that no substitution is authorized does not constitute evidence of negligence.

Amended by Chapter 423, 2013 General Session

58-17b-605.5 Interchangeable biological products.

(1) For the purposes of this section:
  (a) "Biological product" means the same as that term is defined in 42 U.S.C. Sec. 262.
  (b) "Interchangeable biological product" means a biological product that the federal Food and Drug Administration:
    (i) has:
      (A) licensed; and
      (B) determined meets the standards for interchangeability pursuant to 42 U.S.C. Sec. 262(k)(4); or
    (ii) has determined is therapeutically equivalent as set forth in the latest edition of or supplement to the federal Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations.
(2) A pharmacist or pharmacy intern dispensing a prescription order for a specific biological product by brand or proprietary name may substitute an interchangeable biological product for the prescribed biological product only if:
  (a) the purchaser specifically requests or consents to the substitute of an interchangeable biological product;
  (b) the interchangeable biological product is permitted to move in interstate commerce;
  (c) the pharmacist or pharmacy intern counsels the patient on the use and the expected response to the prescribed biological product, whether a substitute or not, and the substitution is not otherwise prohibited by this chapter;
  (d) the prescribing practitioner has not prohibited the substitution of an interchangeable biological product for the prescribed biological product, as provided in Subsection (6); and
  (e) the substitution is not otherwise prohibited by law.
(3) Each out-of-state mail service pharmacy dispensing an interchangeable biological product as a substitute for another biological product into this state shall:
  (a) notify the patient of the substitution either by telephone or in writing; and
  (b) comply with the requirements of this chapter with respect to an interchangeable biological product substituted for another biological product, including labeling and record keeping.
(4) Pharmacists or pharmacy interns may not substitute without the prescriber's authorization biological product prescriptions unless the product has been determined by the United States Food and Drug Administration to be interchangeable with the prescribed biological product.
(5) A pharmacist or pharmacy intern who dispenses a prescription with an interchangeable biological product under this section assumes no greater liability than would be incurred had the pharmacist or pharmacy intern dispensed the prescription with the biological product prescribed.
(6)
  (a) If, in the opinion of the prescribing practitioner, it is in the best interest of the patient that an interchangeable biological product not be substituted for a prescribed biological product, the practitioner may prohibit a substitution either by writing "dispense as written" or by signing in the appropriate space where two lines have been preprinted on a prescription order and captioned "dispense as written" or "substitution permitted."
  (b)
    (i) If the prescription is communicated orally by the prescribing practitioner to the pharmacist or pharmacy intern, the practitioner shall direct the prohibition or substitution.

(ii) The pharmacist or pharmacy intern shall make a written note of the practioner's direction by writing the name of the practitioner and the words "orally by" and the initials of the pharmacist or pharmacy intern written after it.

(7) A pharmacist or pharmacy intern who substitutes an interchangeable biological product for a prescribed biological product shall communicate the substitution to the purchaser. The interchangeable biological product container shall be labeled with the name of the interchangeable biological product dispensed, and the pharmacist, pharmacy intern, or pharmacy technician shall indicate on the file copy of the prescription both the name of the prescribed biological product and the name of the interchangeable biological product dispensed in its place.

(8) Within five business days following the dispensing of a biological product, the dispensing pharmacist or the pharmacist's designee shall make an entry of the specific product provided to the patient, including the name of the product and the manufacturer. The communication shall be conveyed by making an entry into an interoperable electronic medical records system, through an electronic prescribing technology, a pharmacy benefit management system, or a pharmacy record that is electronically accessible by the prescriber. Entry into an electronic records system as described in this Subsection (8) is presumed to provide notice to the prescriber. Otherwise, the pharmacist shall communicate the biological product dispensed to the prescriber using facsimile, telephone, electronic transmission, or other prevailing means, provided that communication shall not be required where:

(a) there is no FDA-approved interchangeable biological product for the product prescribed;

(b) a refill prescription is not changed from the product dispensed on the prior filling of the prescription; or

(c) the product is paid for using cash or cash equivalent.

Amended by Chapter 266, 2015 General Session

58-17b-606 Restrictive drug formulary prohibited.

(1) As used in this section:

(a) "Generic form" means a prescription drug that is available in generic form and has an A rating in the United States Pharmacopeia and Drug Index.

(b) "Legend drug" has the same meaning as prescription drug.

(c) "Restrictive drug formulary" means a list of legend drugs, other than drugs for cosmetic purposes, that are prohibited by the Department of Health from dispensation, but are approved by the Federal Food and Drug Administration.

(2) A practitioner may prescribe legend drugs in accordance with this chapter that, in his professional judgment and within the lawful scope of his practice, he considers appropriate for the diagnosis and treatment of his patient.

(3) Except as provided in Subsection (4), the Department of Health may not maintain a restrictive drug formulary that restricts a physician's ability to treat a patient with a legend drug that has been approved and designated as safe and effective by the Federal Food and Drug Administration, except for drugs for cosmetic purposes.

(4) When a multisource legend drug is available in the generic form, the Department of Health may only reimburse for the generic form of the drug unless the treating physician demonstrates to the Department of Health a medical necessity for dispensing the nongeneric, brand-name legend drug.

(5) The Department of Health pharmacists may override the generic mandate provisions of Subsection (4) if a financial benefit will accrue to the state.

(6) This section does not affect the state's ability to exercise the exclusion options available under the Federal Omnibus Budget Reconciliation Act of 1990.

Amended by Chapter 101, 2010 General Session

58-17b-607 Drug substitution is not the practice of medicine -- Other causes of action not denied.

(1) The substitution of any drug by a licensed pharmacist or pharmacy intern under this chapter does not constitute the practice of medicine.
(2) This chapter may not be construed to deny any individual a cause of action against a pharmacist, pharmacy intern, or his employer for violations of this chapter, including failure to observe accepted standards of care of the pharmaceutical profession.

Enacted by Chapter 280, 2004 General Session

58-17b-608 Emergency refills.

(1) In the interest of the patient's health, a pharmacist or pharmacy intern may, in an emergency, refill a prescription for a patient, but only if the prescribing practitioner is not available promptly to authorize the refill and only if in the professional judgment of the pharmacist or pharmacy intern the prescription should be refilled.
(2) Only sufficient medication as necessary in the emergency may be furnished by the pharmacist or pharmacy intern, not to exceed a three-day supply.
(3) The practitioner shall be contacted as soon as possible for further instructions concerning the emergency.

Enacted by Chapter 280, 2004 General Session

58-17b-608.1 Refills of legend drug prescriptions.

(1) If a prescription for a legend drug includes authorization for one or more refills, a pharmacist or pharmacy intern may dispense one or more of the refills at the time the drug is dispensed, if:
  (a) the drug is not a controlled substance;
  (b) the prescription does not include "Dispense quantity written," or some other notation having similar meaning;
  (c) the total dosage units dispensed, including the units for both the prescription and any refills, do not exceed a 100-day supply; and
  (d) in the professional judgment of the pharmacist or pharmacy intern, the refill or refills should be dispensed at the time the prescription is dispensed.
(2) A pharmacist or pharmacy intern may dispense a refill of a prescription for a liquid legend drug administered to the eye once an amount of time has passed after which a patient should have used 70% of the dosage units of the drug according to a practitioner's instructions.

Amended by Chapter 386, 2014 General Session

58-17b-609 Limitation on prescriptions and refills -- Controlled Substances Act not affected -- Legend drugs.

(1) Except as provided in Section 58-16a-102, a prescription for any prescription drug or device may not be dispensed after one year from the date it was initiated except as otherwise provided in Chapter 37, Utah Controlled Substances Act.

(2) A prescription authorized to be refilled may not be refilled after one year from the original issue date.
(3) A practitioner may not be prohibited from issuing a new prescription for the same drug orally, in writing, or by electronic transmission.
(4) Nothing in this chapter affects Chapter 37, Utah Controlled Substances Act.
(5) A prescription for a legend drug written by a licensed prescribing practitioner in another state may be filled or refilled by a pharmacist or pharmacy intern in this state if the pharmacist or pharmacy intern verifies that the prescription is valid.

Amended by Chapter 160, 2005 General Session

58-17b-610 Patients' immediate needs -- Dispensing drug samples.
(1) This chapter may not be construed to prevent the personal administration of drugs or medicines by practitioners licensed to prescribe in order to supply the immediate needs of the practitioner's patients.
(2) Immediate need for a patient includes giving out drug samples that:
  (a) are not Schedule II drugs, opiods, or Benzodiazepines;
  (b) are prepackaged by the original manufacturer;
  (c) are provided to the prescribing practitioner free of charge and provided to the patient free of any direct or indirect charge;
  (d) do not exceed a 30-day supply for:
    (i) controlled substances; or
    (ii) non-controlled substances, unless a prescribing practitioner documents that providing more than a 30-day supply is medically necessary; and
  (e)
    (i) are marked on the immediate container to indicate that the drug is a sample; or
    (ii) are recorded in the patient's chart with the name and number of samples provided.
(3) A prescribing practitioner who provides samples for a patient shall comply with Subsection (2).

Amended by Chapter 320, 2012 General Session

58-17b-610.5 Dispensing in emergency department -- Patient's immediate need.
(1) The division shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in consultation with hospital pharmacies and the boards of practitioners authorized to prescribe prescription drugs to establish guidelines under which a practitioner may dispense prescription drugs to a patient in a hospital emergency department if:
  (a) the hospital pharmacy is closed;
  (b) in the professional judgment of the practitioner, dispensing the drug is necessary for the patient's immediate needs; and
  (c) dispensing the prescription drug meets protocols established by the hospital pharmacy.
(2) A practitioner in an emergency department may dispense a prescription drug in accordance with Subsection (1).

Amended by Chapter 238, 2016 General Session

58-17b-611 Pharmacy records.
(1) Each pharmacy shall maintain its prescription files and other records in accordance with this chapter, division rules made in collaboration with the board, and federal regulations.

(2) Each out-of-state mail service pharmacy shall maintain its prescription files in accordance with applicable rules or regulations of the state in which its facilities are located and federal regulations.

Enacted by Chapter 280, 2004 General Session

58-17b-612 Supervision -- Pharmacist-in-charge.

(1)
(a) Any pharmacy, except a wholesaler, distributor, out-of-state mail service pharmacy, or class E pharmacy, shall be under the general supervision of at least one pharmacist licensed to practice in Utah. One pharmacist licensed in Utah shall be designated as the pharmacist-in-charge, whose responsibility it is to oversee the operation of the pharmacy.
(b) Notwithstanding Subsection 58-17b-102(68), a supervising pharmacist does not have to be in the pharmacy or care facility but shall be available via a telepharmacy system for immediate contact with the supervised pharmacy technician or pharmacy intern if:
(i) the pharmacy is located in:
(A) a remote rural hospital, as defined in Section 26-21-13.6; or
(B) a clinic located in a remote rural county with less than 20 people per square mile;
(ii) the supervising pharmacist described in Subsection (1)(a) is not available; and
(iii) the telepharmacy system maintains records and files quarterly reports as required by division rule to assure that patient safety is not compromised.
(2) Each out-of-state mail service pharmacy shall designate and identify to the division a pharmacist holding a current license in good standing issued by the state in which the pharmacy is located and who serves as the pharmacist-in-charge for all purposes under this chapter.

Amended by Chapter 72, 2014 General Session

58-17b-613 Patient counseling.

(1) A pharmacy shall verbally offer to counsel a patient or a patient's agent in a personal face-to-face discussion regarding each prescription drug dispensed, if the patient or patient's agent:
(a) delivers the prescription in person to the pharmacist or pharmacy intern; or
(b) receives the drug in person at the time it is dispensed at the pharmacy facility.
(2) A pharmacist or pharmacy intern at a pharmacy that receives a prescription from a patient by means other than personal delivery, and that dispenses prescription drugs to the patient by means other than personal delivery, shall:
(a) provide patient counseling to a patient regarding each prescription drug the pharmacy dispenses; and
(b) provide each patient with a toll-free telephone number by which the patient can contact a pharmacist or pharmacy intern at the pharmacy for counseling.
(3) Notwithstanding the provisions of Subsections (1) and (2), a pharmacist or a pharmacy intern may provide patient counseling to an individual under the jurisdiction of the Utah Department of Corrections or a county detention facility via a written, telephone, or electronic communication.

Amended by Chapter 336, 2015 General Session

58-17b-614 Notification.

(1) A pharmacy shall report in writing to the division not later than 10 business days before the date of:
  (a) a permanent closure of the pharmacy facility;
  (b) a change of name or ownership of the pharmacy facility;
  (c) a change of location of the pharmacy facility;
  (d) a sale or transfer of any controlled substance as a result of the permanent closing or change of ownership of the pharmacy facility;
  (e) any matter or occurrence that the board requires by rule to be reported;
  (f) a final administrative disciplinary order against the pharmacy license holder by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is a class D pharmacy; or
  (g) a final order against a pharmacist who is designated as the pharmacist-in-charge of the pharmacy by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is a class D pharmacy.
(2) A pharmacy shall report in writing to the division a disaster, accident, or emergency that may affect the purity or labeling of a drug, medication, device, or other material used in the diagnosis or treatment of injury, illness, or disease immediately upon the occurrence of the disaster, accident, or emergency as defined by rule.
(3) A reporting pharmacy shall maintain a copy of any notification required by this section for two years and make a copy available for inspection.

Amended by Chapter 279, 2007 General Session

58-17b-615 Sale of prescription drugs not in normal course of business.
(1) As used in this section, "seller" means a person selling prescription drugs or devices owned or lawfully controlled by him, or a party arranging for the sale of prescription drugs or devices owned by or lawfully controlled by another person, including salvage companies that acquire prescription drugs and devices from, or act as an agent or representative for freight haulers and forwarders.
(2) Any sale of prescription drugs in bankruptcy, at public auction, at freight liquidation sales, or any other sale of prescription drugs other than in the normal course of business or practice shall comply with the following:
  (a) a seller of prescription drugs shall be licensed by the division as a prescription drug distributor or wholesaler with a regular license, or a temporary license for that sale only, before engaging in the sale of any prescription drugs; and
  (b) a person licensed as a pharmacy under this chapter may not acquire by purchase or other means prescription drugs or devices outside the normal course of business within the meaning of this section unless:
    (i) the prescription drugs or devices are accompanied by a certificate signed by a licensed pharmacist employed or retained by the seller, as required in Subsection (3), attesting that the prescription drugs or devices have not been adversely affected by circumstances relating to their transportation, storage, or distribution; and
    (ii) the licensee acquiring the prescription drugs or devices employs a qualified pharmacist who is responsible for determining that all prescription drugs being acquired do not pose any threat to the public welfare if introduced into commerce than would be presented by the acquisition of those prescription drugs and devices in the normal course of business through established channels of prescription drug distribution.

(3) A seller of prescription drugs outside the normal course of business shall retain the services of a qualified pharmacist licensed to practice in the state to serve as either an employee or independent consultant to determine if the:
  (a) prescription drugs and devices to be offered for sale have been transported, stored, and distributed in accordance with applicable federal, state, and local laws; and
  (b) condition of the prescription drugs and devices to be offered for sale has been adversely affected by the circumstances of transportation, storage, or distribution.
(4) The written notice provided to the division prior to the sale of any prescription drugs or devices under this section shall contain written verification of the pharmacist retained by the seller, stating the drugs or devices offered for sale have not been adversely affected by the circumstances of transportation, storage, or distribution.
(5) A pharmacist employed by a seller under Subsection (3) or a pharmacy, distributor, or wholesaler for whom that pharmacist may be employed or in which he may have an interest, may not purchase any prescription drugs or devices from the seller for which that pharmacist has provided verification regarding the drugs or devices.

Enacted by Chapter 280, 2004 General Session

58-17b-616 Drug stock sales -- Labeling.
(1) A manufacturer, wholesaler, or distributor of prescription drugs may not sell or give any prescription drug to any person, unless the prescription drug stock container bears a label containing information as defined by rule, the name and place of business of the manufacturer of the finished dosage form of the drug, and if different from the manufacturer, the name and place of business of the packer or distributor.
(2) Each tablet or capsule shall be marked with an identification code or monogram, unless waived by the division.
(3) Each stock package shall bear an expiration date and lot number.

Enacted by Chapter 280, 2004 General Session

58-17b-617 Limitations on distribution of prescription drugs by pharmaceutical manufacturers or wholesalers.
(1) A pharmaceutical manufacturer or pharmaceutical wholesaler may not provide a prescription drug to any person, except as defined by rule.
(2)
  (a) Prescription drugs that are not controlled substances may be:
    (i) distributed or provided as drug samples to a person licensed within the state to sell, prescribe, administer, or conduct research with legend drugs; and
    (ii) supplied in connection with a manufacturer's patient assistance program to be distributed to qualifying patients enrolled in the program.
  (b) Controlled substance prescription drugs may be sold or provided only:
    (i) upon the issuance of an order or request by a person appropriately licensed under state and federal law to sell, prescribe, administer, or conduct research with prescription drugs; and
    (ii) upon the establishment of documents in the possession of the manufacturer or distributor recording the purchaser, type of drug, quantity of drug, date of shipment, and date of delivery.
(3) Purchasers or those in receipt of drugs under this section shall maintain records in accordance with federal and state laws regarding controlled substances.

Enacted by Chapter 280, 2004 General Session

58-17b-618 Compliance with state and federal laws.

The entities licensed under Sections 58-17b-301 and 58-17b-302 shall comply with all state and federal laws and regulations relating to the practice of pharmacy.

Enacted by Chapter 280, 2004 General Session

58-17b-619 Third party payors -- Health maintenance organizations.

(1) Any third party payor for pharmaceutical services within the state, or its agent or contractor may not require any pharmacy patient to obtain prescription drug benefits from a specific out-of-state pharmacy as a condition of obtaining third party payment prescription drug benefit coverage as defined in rule.

(2)

(a) This section does not prohibit any third party payor of pharmaceutical services, who provides for reimbursement to the pharmacy patient or payment on his behalf, from exercising the right to limit the amount reimbursed for the cost of prescription drugs based upon the cost of identical prescription drugs available through a designated out-of-state pharmacy.

(b) Notwithstanding Subsection (2)(a), any third party payor of pharmaceutical services may restrict the type of outlet where a patient may obtain certain prescriptive drugs and devices, such as injectable medications, that are not readily available in all pharmacies. The payor may also restrict access to no more than one mail-order pharmacy.

(3) Each third party payor of pharmaceutical services shall identify as a part of the third party agreement or contract the designated out-of-state pharmacy which shall be used as the base line comparison.

(4)

(a) A violation of this section is a class A misdemeanor.

(b) Each violation of this section is a separate offense.

Enacted by Chapter 280, 2004 General Session

58-17b-620 Prescriptions issued within the public health system.

(1) As used in this section:

(a) "Department of Health" means the state Department of Health created in Section 26-1-4.

(b) "Health department" means either the Department of Health or a local health department.

(c) "Local health departments" mean the local health departments created in Title 26A, Chapter 1, Local Health Departments.

(2) When it is necessary to treat a reportable disease or non-emergency condition that has a direct impact on public health, a health department may implement the prescription procedure described in Subsection (3) for a prescription drug that is not a controlled substance for use in:

(a) a clinic; or

(b) a remote or temporary off-site location, including a triage facility established in the community, that provides:

(i) treatment for sexually transmitted infections;

(ii) fluoride treatment;

(iii) travel immunization;

(iv) preventative treatment for an individual with latent tuberculosis infection;

(v) preventative treatment for an individual at risk for an infectious disease that has a direct impact on public health when the treatment is indicated to prevent the spread of disease or to mitigate the seriousness of infection in the exposed individual; or
(vi) other treatment as defined by the Department of Health rule.
(3) In a circumstance described in Subsection (2), an individual with prescriptive authority may write a prescription for each contact, as defined in Section 26-6-2, of a patient of the individual with prescriptive authority without a face-to-face exam, if:
(a) the individual with prescriptive authority is treating the patient for a reportable disease or non-emergency condition having a direct impact on public health; and
(b) the contact's condition is the same as the patient of the individual with prescriptive authority.
(4) The following prescription procedure shall be carried out in accordance with the requirements of Subsection (5) and may be used only in the circumstances described under Subsections (2) and (3):
(a) a physician writes and signs a prescription for a prescription drug, other than a controlled substance, without the name and address of the patient and without the date the prescription is provided to the patient; and
(b) the physician authorizes a registered nurse employed by the health department to complete the prescription written under this Subsection (4) by inserting the patient's name and address, and the date the prescription is provided to the patient, in accordance with the physician's standing written orders and a written health department protocol approved by the physician and the medical director of the state Department of Health.
(5) A physician assumes responsibility for all prescriptions issued under this section in the physician's name.
(6)
(a) All prescription forms to be used by a physician and health department in accordance with this section shall be serially numbered according to a numbering system assigned to that health department.
(b) All prescriptions issued shall contain all information required under this chapter and rules adopted under this chapter.

Amended by Chapter 150, 2012 General Session

58-17b-621 Automated pharmacy systems.

Automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Utah State Board of Pharmacy, and licensed health care facilities where legally permissible, as approved by the division in collaboration with the board, and described in rule.

Enacted by Chapter 280, 2004 General Session

58-17b-622 Pharmacy benefit management services -- Auditing of pharmacy records -- Appeals.

(1) For purposes of this section:
(a) "Audit" means a review of the records of a pharmacy by or on behalf of an entity that finances or reimburses the cost of health care services or pharmaceutical products.
(b) "Entity" includes:
(i) a pharmacy benefits manager or coordinator;
(ii) a health benefit plan;

(iii) a third party administrator as defined in Section 31A-1-301;
(iv) a state agency; or
(v) a company, group, or agent that represents, or is engaged by, one of the entities described in Subsections (1)(b)(i) through (iv).
(c) "Fraud" means an intentional act of deception, misrepresentation, or concealment in order to gain something of value.
(d) "Health benefit plan" means:
(i) a health benefit plan as defined in Section 31A-1-301; or
(ii) a health, dental, medical, Medicare supplement, or conversion program offered under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.
(2)
(a) Except as provided in Subsection (2)(b), this section applies to:
(i) a contract for the audit of a pharmacy entered into, amended, or renewed on or after July 1, 2012; and
(ii) an entity that conducts an audit of the pharmacy records of a pharmacy licensed under this chapter.
(b) This section does not apply to an audit of pharmacy records:
(i) for a federally funded prescription drug program, including:
(A) the state Medicaid program;
(B) the Medicare Part D program;
(C) a Department of Defense prescription drug program;
(D) a Veteran's Affairs prescription drug program; or
(ii) when fraud or other intentional and willful misrepresentation is alleged and the pharmacy audit entity has evidence that the pharmacy's actions reasonably indicate fraud or intentional and willful misrepresentation.
(3)
(a) An audit that involves clinical or professional judgment shall be conducted by or in consultation with a pharmacist who is employed by or working with the auditing entity and who is licensed in the state or another state.
(b) If an audit is conducted on site at a pharmacy, the entity conducting the audit:
(i) shall give the pharmacy 10 days advanced written notice of:
(A) the audit; and
(B) the range of prescription numbers or a date range included in the audit; and
(ii) may not audit a pharmacy during the first five business days of the month, unless the pharmacy agrees to the timing of the audit.
(c) An entity may not audit claims:
(i) submitted more than 18 months prior to the audit, unless:
(A) required by federal law; or
(B) the originating prescription is dated in the preceding six months; or
(ii) that exceed 200 selected prescription claims.
(4)
(a) An entity may not:
(i) include dispensing fees in the calculations of overpayments unless the prescription is considered a misfill;
(ii) recoup funds for prescription clerical or recordkeeping errors, including typographical errors, scrivener's errors, and computer errors on a required document or record unless the audit entity is alleging fraud or other intentional or willful misrepresentation and the audit entity

has evidence that the pharmacy's actions reasonably indicate fraud or intentional and willful misrepresentation;

(iii) recoup funds for refills dispensed in accordance with Section 58-17b-608.1, unless the health benefit plan does not cover the prescription drug dispensed by the pharmacy; or

(iv) collect any funds, charge-backs, or penalties until the audit and all appeals are final, unless the audit entity is alleging fraud or other intentional or willful misrepresentation and the audit entity has evidence that the pharmacy's actions reasonably indicate fraud or intentional and willful misrepresentation.

(b) Auditors shall only have access to previous audit reports on a particular pharmacy if the previous audit was conducted by the same entity except as required for compliance with state or federal law.

(5) A pharmacy subject to an audit may use the following records to validate a claim for a prescription, refill, or change in a prescription:

(a) electronic or physical copies of records of a health care facility, or a health care provider with prescribing authority; and

(b) any prescription that complies with state law.

(6)

(a) An entity that audits a pharmacy shall provide the pharmacy with a preliminary audit report, delivered to the pharmacy or its corporate office of record within 60 days after completion of the audit.

(b) A pharmacy has 30 days following receipt of the preliminary audit report to respond to questions, provide additional documentation, and comment on and clarify findings of the audit. Receipt of the report shall be based on the postmark date or the date of a computer transmission if transferred electronically.

(7) If an audit results in the dispute or denial of a claim, the entity conducting the audit shall allow the pharmacy to resubmit a claim using any commercially reasonable method, including fax, mail, or electronic claims submission provided that the period of time when a claim may be resubmitted has not expired under the rules of the plan sponsor.

(8)

(a) Within 120 days after the completion of the appeals process under Subsection (9), a final audit report shall be delivered to the pharmacy or its corporate office of record.

(b) The final audit report shall include a disclosure of any money recovered by the entity that conducted the audit.

(9) An entity that audits a pharmacy shall establish a written appeals process for appealing a preliminary audit report and a final audit report, and shall provide the pharmacy with notice of the written appeals process. If the pharmacy benefit manager's contract or provider manual contains the information required by this Subsection (9), the requirement for notice is met.

Amended by Chapter 166, 2013 General Session
Amended by Chapter 262, 2013 General Session

58-17b-623 Disposal of unused prescription drugs.

(1) A pharmacy may accept unused prescription drugs for disposal in accordance with administrative rules adopted by the division.

(2) The division shall adopt administrative rules regarding a pharmacy accepting unused prescription drugs for disposal as permitted by federal law and regulation relating to the disposal of unused prescription drugs.

Enacted by Chapter 61, 2012 General Session

58-17b-624 Prescription drugs -- Sale to a practitioner for office use.

(1) A pharmacy licensed under this chapter may, subject to rules established by the division, repackage or compound a prescription drug for sale to a practitioner if:
  (a) the prescription drug:
    (i) does not include a compounded drug; or
    (ii)
      (A) includes a compounded drug; and
      (B) is not a controlled substance;
  (b) the pharmacy labels the prescription drug "for office use only";
  (c) the practitioner administers the drug to a patient in the practitioner's office or facility; and
  (d) except in accordance with Title 58, Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, the practitioner does not dispense the drug to the patient.
(2) The division shall establish, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, prescription drug labeling and control standards for a prescription drug that a pharmacy provides to a practitioner under this section.

Enacted by Chapter 385, 2014 General Session
Amended by Chapter 385, 2014 General Session, (Coordination Clause)

Part 7
Incapacity

58-17b-701 Mentally incompetent or incapacitated pharmacist -- Division action and procedures.

(1) As used in this section:
  (a) "Incapacitated person" is a person who is incapacitated, as defined in Section 75-1-201.
  (b) "Mental illness" is as defined in Section 62A-15-602.
(2) If a court of competent jurisdiction determines a pharmacist is an incapacitated person, or that the pharmacist has a mental illness and is unable to safely engage in the practice of pharmacy, the director shall immediately suspend the license of the pharmacist upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the pharmacist, in writing, of the suspension.
(3)
  (a) If the division and a majority of the board find reasonable cause to believe a pharmacist, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing pharmacy with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the pharmacist with a notice of hearing on the sole issue of the capacity of the pharmacist to competently and safely engage in the practice of pharmacy.

(b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

(4)

(a) Every pharmacist who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the pharmacist's own expense to an immediate mental or physical examination when directed in writing by the division, with the consent of a majority of the board, to do so; and

(ii) the admissibility of the reports of the examining practitioner's testimony or examination in any proceeding regarding the license of the pharmacist, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the pharmacist has a mental illness, is incapacitated or otherwise unable to practice pharmacy with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the pharmacist's patients or the general public.

(c)

(i) Failure of a pharmacist to submit to the examination ordered under this section is a ground for the division's immediate suspension of the pharmacist's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the pharmacist and was not related directly to the illness or incapacity of the pharmacist.

(5)

(a) A pharmacist whose license is suspended under Subsection (2) or (4) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

(b) The hearing held under this Subsection (5) shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the pharmacist's patients or the general public.

(6) A pharmacist whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the pharmacist, under procedures established by division rule, regarding any change in the pharmacist's condition, to determine whether:

(a) the pharmacist is or is not able to safely and competently engage in the practice of pharmacy; and

(b) the pharmacist is qualified to have the pharmacist's licensure to practice under this chapter restored completely or in part.

Amended by Chapter 364, 2013 General Session

Part 8
Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy

58-17b-801 Title.

This part is known as "Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy."

Enacted by Chapter 72, 2014 General Session

58-17b-802 Definitions.

As used in this part:

(1)
- (a) "Cosmetic drug" means a prescription drug that:
  - (i) is for the purpose of promoting attractiveness or altering the appearance of an individual; and
  - (ii)
    - (A) is listed as a cosmetic drug subject to the exemption under this section by the division by administrative rule; or
    - (B) has been expressly approved for online dispensing, whether or not it is dispensed online or through a physician's office.
- (b) "Cosmetic drug" does not include a prescription drug that is:
  - (i) a controlled substance;
  - (ii) compounded by the physician; or
  - (iii) prescribed for or used by the patient for the purpose of diagnosing, curing, or preventing a disease.

(2) "Employer sponsored clinic" means:
- (a) an entity that has a medical director who is licensed as a physician as defined in Section 58-67-102 and offers health care only to the employees of an exclusive group of employers and the employees' dependents; or
- (b) a clinic designated as a clinic for state employees and their dependents by the Public Employees' Benefit and Insurance Program under the pilot program created by Section 49-20-413 including all the patients at that clinic, regardless of the patients' participation in the pilot program.

(3) "Health care" is as defined in Section 31A-1-301.

(4)
- (a) "Injectable weight loss drug" means an injectable prescription drug:
  - (i) prescribed to promote weight loss; and
  - (ii) listed as an injectable prescription drug subject to exemption under this section by the division by administrative rule.
- (b) "Injectable weight loss drug" does not include a prescription drug that is a controlled substance.

(5) "Prepackaged drug" means a prescription drug that:
- (a) is not listed under federal or state law as a Schedule I, II, III, IV, or V drug; and
- (b) is packaged in a fixed quantity per package by:
  - (i) the drug manufacturer;
  - (ii) a pharmaceutical wholesaler or distributor; or
  - (iii) a pharmacy licensed under this title.

Amended by Chapter 159, 2016 General Session

58-17b-803 Qualifications for licensure as a dispensing medical practitioner -- Scope of practice.

(1) An applicant for a license as a dispensing medical practitioner shall:
  (a) be licensed in good standing under at least one of the chapters listed in Subsection 58-17b-102(23)(a); and
  (b) submit an application for a license as a dispensing medical practitioner in a form prescribed by the division and pay a fee established by the division.
(2) The division shall accept the licensing in good standing under Subsection (1) in lieu of requiring an applicant for a license under this part to comply with Sections 58-17b-303 and 58-17b-307.
(3) A dispensing medical practitioner may dispense, in accordance with this part:
  (a) a cosmetic drug and an injectable weight loss drug if:
    (i) the drug was prescribed by the dispensing medical practitioner to the dispensing medical practitioner's patient; and
    (ii) the dispensing medical practitioner complies with administrative rules adopted by the division under Section 58-17b-802;
  (b) a cancer drug treatment regimen if the dispensing medical practitioner complies with Section 58-17b-805; and
  (c) a pre-packaged drug to an employee or a dependent of an employee at an employer sponsored clinic if the dispensing medical practitioner:
    (i) treats an employee, or the dependent of an employee, of one of an exclusive group of employers at an employer sponsored clinic;
    (ii) prescribes a prepackaged drug to the employee or the employee's dependent;
    (iii) dispenses the prepackaged drug at the employer sponsored clinic; and
    (iv) complies with administrative rules adopted by the division in consultation with the Board of Pharmacy that establish labeling, record keeping, patient counseling, purchasing and distribution, operating, treatment, quality of care, and storage requirements.
(4) A dispensing medical practitioner:
  (a) shall inform the patient:
    (i) that the drug dispensed by the practitioner may be obtained from a pharmacy unaffiliated with the practitioner;
    (ii) of the directions for appropriate use of the dispensed drug;
    (iii) of potential side effects to the use of the dispensed drug; and
    (iv) how to contact the dispensing medical practitioner if the patient has questions or concerns regarding the drug;
  (b) shall report to the controlled substance database in the same manner as required in Section 58-37f-203; and
  (c) may delegate the dispensing of the drug if the individual to whom the dispensing was delegated is:
    (i) employed by the dispensing medical practitioner or the outpatient clinic setting in which the dispensing medical practitioner works; and
    (ii) acting under the direction of a dispensing medical practitioner who is immediately available on site for any necessary consultation.
(5) If the chapter that governs the license of a dispensing medical practitioner, as listed in Subsection 58-17b-102(23), requires physician supervision in its scope of practice requirements, the dispensing medical practitioner shall only dispense a drug under the supervision of an individual licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act.

Amended by Chapter 206, 2015 General Session

58-17b-804 Qualifications for licensure as a dispensing medical practitioner clinic pharmacy.

(1) An applicant for a license as a dispensing medical practitioner clinic pharmacy shall comply with Section 58-17b-306.

(2)

(a) Notwithstanding Section 58-17b-302, a pharmacy licensed under this part is not required to have a pharmacist-in-charge if:

(i) the pharmacy has designated a dispensing medical practitioner as responsible for all activities of the pharmacy; and

(ii) the pharmacy complies with administrative rules adopted by the division in consultation with the Board of Pharmacy and the governing bodies of the practitioners described in Subsection 58-17b-102(23)(a).

(b) Notwithstanding Subsection 58-17b-306(1)(e), the division, in consultation with the Board of Pharmacy and the governing boards of the practitioners described in Subsection 58-17b-102(23)(a), may modify the operating standards for a dispensing medical practitioner clinic pharmacy.

Enacted by Chapter 72, 2014 General Session

58-17b-805 Dispensing medical practitioner -- Cancer drug treatment regimen.

(1) For purposes of this section:

(a) "Cancer drug treatment regimen" means a prescription drug used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient.

(b) "Cancer drug treatment regimen" includes:

(i) a chemotherapy drug administered intravenously, orally, rectally, or by dermal methods; and

(ii) a drug used to support cancer treatment, including a drug used to treat, alleviate, or minimize physical and psychological symptoms or pain, to improve patient tolerance of cancer treatments, or to prepare a patient for a subsequent course of therapy.

(c) "Cancer drug treatment regimen" does not mean a drug listed under federal law as a Schedule I, II, or III drug.

(2) An individual may be licensed as a dispensing medical practitioner with a scope of practice that permits the dispensing medical practitioner to prescribe and dispense a cancer drug treatment regimen if the individual:

(a) is licensed as described in Subsections 58-17b-102(23)(a)(i) and (ii); and

(b) is certified or eligible to be certified by the American Board of Internal Medicine in medical oncology.

(3) A dispensing medical practitioner authorized to prescribe and dispense a cancer drug treatment regimen under this section may prescribe and dispense a cancer drug treatment regimen:

(a) to the practitioner's patient who is currently undergoing chemotherapy in an outpatient clinic setting; and

(b) if the practitioner determines that providing the cancer drug treatment regimen to the patient in the outpatient clinic setting is in the best interest of the patient or provides better access to care for the patient.

Enacted by Chapter 72, 2014 General Session

58-17b-806 Enforcement of dispensing medical practitioner and dispensing medical practitioner clinic pharmacy compliance with Pharmacy Practice Act.

(1)
(a) The division shall consult with the dispensing medical practitioner's appropriate licensing board as designated in Subsection 58-17b-102(23)(a) regarding a violation of this chapter; and
(b) the Pharmacy Board shall, if requested by the licensing board of the dispensing medical practitioner, assist the licensing board for the dispensing medical practitioner with reviewing the violations of the provisions of this chapter.
(2) The division may take appropriate action against a dispensing medical practitioner, in accordance with this chapter, if the licensing board designated in Subsection 58-17b-102(23)(a) recommends to the division that action be taken under this chapter.
(3) The division, in consultation with the board is the primary enforcer under this chapter for a dispensing medical practitioner clinic pharmacy licensed under Section 58-17b-804.

Enacted by Chapter 72, 2014 General Session

Part 9
Charitable Prescription Drug Recycling Act

58-17b-901 Title.

This part is known as the "Charitable Prescription Drug Recycling Act."

Enacted by Chapter 405, 2016 General Session

58-17b-902 Definitions.

As used in this part:
(1) "Assisted living facility" means the same as that term is defined in Section 26-21-2.
(2) "Cancer drug" means a drug that controls or kills neoplastic cells and includes a drug used in chemotherapy to destroy cancer cells.
(3) "Charitable clinic" means a charitable nonprofit corporation that:
(a) holds a valid exemption from federal income taxation issued under Section 501(a), Internal Revenue Code;
(b) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;
(c) provides, on an outpatient basis, for a period of less than 24 consecutive hours, to an individual not residing or confined at a facility owned or operated by the charitable nonprofit corporation:
(i) advice;
(ii) counseling;
(iii) diagnosis;
(iv) treatment;
(v) surgery; or
(vi) care or services relating to the preservation or maintenance of health; and
(d) has a licensed outpatient pharmacy.
(4) "Charitable pharmacy" means an eligible pharmacy that is operated by a charitable clinic.
(5) "County health department" means the same as that term is defined in Section 26A-1-102.

(6) "Donated prescription drug" means a prescription drug that an eligible donor donates to an eligible pharmacy under the program.
(7) "Eligible donor" means a donor that donates a prescription drug from within the state and is:
(a) a nursing care facility;
(b) an assisted living facility;
(c) a licensed intermediate care facility for people with an intellectual disability;
(d) a manufacturer;
(e) a pharmaceutical wholesale distributor;
(f) an eligible pharmacy; or
(g) a physician's office.
(8) "Eligible pharmacy" means a pharmacy that:
(a) is registered by the division as eligible to participate in the program; and
(b) is operated by:
(i) a county;
(ii) a county health department;
(iii) a pharmacy under contract with a county health department;
(iv) the Department of Health, created in Section 26-1-4;
(v) the Division of Substance Abuse and Mental Health, created in Section 62A-15-103; or
(vi) a charitable clinic.
(9) "Eligible prescription drug" means a prescription drug, described in Section 58-17b-904, that is not:
(a) a controlled substance; or
(b) a drug that can only be dispensed to a patient registered with the drug's manufacturer in accordance with federal Food and Drug Administration requirements.
(10) "Licensed intermediate care facility for people with an intellectual disability" means the same as that term is defined in Section 58-17b-503.
(11) "Medically indigent individual" means an individual who:
(a)
(i) does not have health insurance; and
(ii) lacks reasonable means to purchase prescribed medications; or
(b)
(i) is covered under Medicaid or Medicare; and
(ii) lacks reasonable means to pay the insured's portion of the cost of the prescribed medications.
(12) "Nursing care facility" means the same as that term is defined in Section 26-18-501.
(13) "Physician's office" means a fixed medical facility that:
(a) is staffed by a physician, physician's assistant, nurse practitioner, or registered nurse, licensed under Title 58, Occupations and Professions; and
(b) treats an individual who presents at, or is transported to, the facility.
(14) "Program" means the Charitable Prescription Drug Recycling Program created in Section 58-17b-903.
(15) "Unit pack" means the same as that term is defined in Section 58-17b-503.
(16) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-17b-501.
(17) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-17b-502.

Enacted by Chapter 405, 2016 General Session

58-17b-903 Charitable Prescription Drug Recycling Program -- Creation -- Requirements.
(1) There is created the Charitable Prescription Drug Recycling Program.
(2) The division, in consultation with the board, shall:
(a) implement the program, on a statewide basis, to permit an eligible donor to transfer an eligible prescription drug to an eligible pharmacy for dispensing to a medically indigent individual;
(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules necessary to implement the program; and
(c) provide technical assistance to entities that desire to participate in the program.

Enacted by Chapter 405, 2016 General Session

58-17b-904 Criteria for eligible prescription drugs.
An eligible pharmacy may not accept or dispense an unused prescription drug under the program unless the unused prescription drug:
(1)
(a) is in a unit pack or the manufacturer's sealed container; or
(b) is an injectable medication;
(2)
(a) is unopened; or
(b) is a cancer drug packaged in an unopened single-unit dose that has been removed from a multi-dose package;
(3) is accepted and dispensed by the eligible pharmacy before:
(a) a beyond use date that appears on the label;
(b) the expiration date recommended by the manufacturer; or
(c) a date, established by division rule for a specific prescription drug, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that is later than the date in Subsection (3)(a) or (3)(b);
(4)
(a) is not adulterated or mislabeled; and
(b) the pharmacist or licensed pharmacist technician accepting or dispensing the prescription drug does not have reason to believe that the prescription drug is adulterated or mislabeled.

Enacted by Chapter 405, 2016 General Session

58-17b-905 Participation in program -- Requirements -- Fees.
(1) An eligible donor or an eligible pharmacy may participate in the program.
(2) An eligible pharmacy:
(a) shall comply with all applicable federal and state laws related to the storage and distribution of a prescription drug;
(b) shall comply with all applicable federal and state laws related to the acceptance and transfer of a prescription drug, including 21 U.S.C. Chapter 9, Subchapter V, Part H, Pharmaceutical Distribution Supply Chain;
(c) shall, before accepting or dispensing a prescription drug under the program, inspect each prescription drug to determine whether the prescription drug is an eligible prescription drug;
(d) may dispense an eligible prescription drug to a medically indigent individual who:
(i) is a resident of the state; and
(ii) has a prescription issued by a practitioner;

(e) may charge a handling fee, adopted by the division under Section 63J-1-504; and
(f) may not accept, transfer, or dispense a prescription drug in violation of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

Enacted by Chapter 405, 2016 General Session

58-17b-906 Liability of participating organizations and manufacturers.

In the absence of bad faith or gross negligence, a person is not criminally or civilly liable for injury, death, or loss of property based solely on the fact that the person manufactured, provided, donated, accepted, or dispensed an eligible prescription drug under this part.

Enacted by Chapter 405, 2016 General Session

58-17b-907 Rules made by the division.

The rules made by the division under Subsection 58-17b-903(2)(b) shall include:
(1) registration requirements to establish the eligibility of a pharmacy to participate in the program;
(2) a formulary that includes all eligible prescription drugs approved by the federal Food and Drug Administration;
(3) standards and procedures for:
(a) verifying whether a pharmacy or pharmacist participating in the program is licensed and in good standing with the board;
(b) handling of a donated eligible prescription drug, including:
(i) acceptance;
(ii) identification, including redundant criteria for verification;
(iii) documentation, under 21 U.S.C. Sec. 360eee-1, of transaction information, history, and statements;
(iv) safe storage;
(v) security;
(vi) inspection;
(vii) transfer; and
(viii) dispensing;
(c) a pharmacist or licensed pharmacy technician working in or consulting with a participating eligible donor;
(d) disposition of a donated prescription drug that is a controlled substance;
(e) record keeping regarding:
(i) the eligible donor that donated each prescription drug;
(ii) the identification and evaluation of a donated prescription drug by a pharmacist or licensed pharmacy technician; and
(iii) the dispensing or disposition of a prescription drug;
(f) determining the status of a medically indigent individual;
(g) labeling requirements to:
(i) ensure compliance with patient privacy laws relating to:
(A) an individual who receives an eligible prescription drug; and
(B) patient information that may appear on a donated prescription drug;
(ii) clearly identify an eligible prescription drug dispensed under the program; and
(iii) communicate necessary information regarding the manufacturer's recommended expiration date or the beyond use date; and
(h) ensuring compliance with the requirements of this part;

(4) a process for seeking input from:
(a) the Department of Health, created in Section 26-1-4, to establish program standards and procedures for assisted living facilities and nursing care facilities; and
(b) the Division of Substance Abuse and Mental Health, created in Section 62A-15-103, to establish program standards and procedures for mental health and substance abuse clients; and
(5) the creation of a special training program that a pharmacist and a licensed pharmacy technician at an eligible pharmacy must complete before participating in the program.

Enacted by Chapter 405, 2016 General Session

Chapter 20a
Environmental Health Scientist Act

Part 1
General Provisions

58-20a-101 Title.
This chapter is known as the "Environmental Health Scientist Act."

Enacted by Chapter 95, 1995 General Session

58-20a-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Environmental Health Scientist Board created in Section 58-20a-201.
(2) "General supervision" means the supervising environmental health scientist is available for immediate voice communication with the person he or she is supervising.
(3) "Practice of environmental health science" means:
(a) the enforcement of, the issuance of permits required by, or the inspection for the purpose of enforcing state and local public health laws in the following areas:
(i) air quality;
(ii) food quality;
(iii) solid, hazardous, and toxic substances disposal;
(iv) consumer product safety;
(v) housing;
(vi) noise control;
(vii) radiation protection;
(viii) water quality;
(ix) vector control;
(x) drinking water quality;
(xi) milk sanitation;
(xii) rabies control;
(xiii) public health nuisances;
(xiv) indoor clean air regulations;
(xv) institutional and residential sanitation; or

(xvi) recreational facilities sanitation; or
(b) representing oneself in any manner as, or using the titles "environmental health scientist," "environmental health scientist-in-training," or "registered sanitarian."
(4) "Unlawful conduct" is as defined in Section 58-1-501.
(5) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-20a-501 and as may be further defined by division rule.

Amended by Chapter 10, 1997 General Session

Part 2
Board

58-20a-201 Board.
(1) There is created the Environmental Health Scientist Board consisting of four environmental health scientists in good standing and one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
(b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation is disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Enacted by Chapter 95, 1995 General Session

Part 3
Licensing

58-20a-301 Licensure required -- License classifications.
(1) A person shall hold a license under this chapter in order to engage in the practice of environmental health science while employed by any of the following, except as specifically exempted in Section 58-20a-305 or 58-1-307:
(a) a local health department;
(b) the state Department of Health;
(c) the state Department of Human Services;
(d) the Department of Agriculture and Food as a food and dairy compliance officer; or
(e) a local health department as its director of environmental health services.
(2) Any other individual not subject to Subsection (1) may also be licensed under this chapter upon compliance with all requirements.
(3) The division shall issue to persons who qualify under this chapter a license in the classification:
(a) environmental health scientist; or
(b) environmental health scientist-in-training.

Amended by Chapter 82, 1997 General Session

58-20a-302 Qualifications for licensure.

(1) Except as provided in Subsection (2), an applicant for licensure as an environmental health scientist shall:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) be of good moral character;
  (d) hold a bachelor's degree from an accredited program in a university or college, which degree includes completion of specific coursework as defined by rule;
  (e) pass an examination as determined by division rule in collaboration with the board; and
  (f) pass the Utah Law and Rules Examination for Environmental Health Scientists administered by the division.

(2) An applicant for licensure who is currently actively engaged in the practice of environmental health science in Utah on July 1, 1995, and has been practicing in Utah for at least three consecutive months immediately prior to July 1, 1995, shall:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) be of good moral character;
  (d) hold a bachelor's degree from an accredited program in a university or college, which degree includes completion of specific coursework as defined by rule;
  (e) pass the Utah Law and Rules Examination for Environmental Health Scientists administered by the division; and
  (f) submit an affidavit from the applicant's immediate supervisor in the applicant's employment, attesting to the applicant's competence to practice environmental health science.

(3) An applicant for licensure as an environmental health scientist-in-training shall:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) be of good moral character;
  (d) hold a bachelor's degree from an accredited program in a university or college, which degree includes completion of specific coursework as defined by rule;
  (e) pass the Utah Law and Rules Examination for Environmental Health Scientists administered by the division; and
  (f) present evidence acceptable to the division and the board that the applicant, when licensed, will practice as an environmental health scientist-in-training only under the general supervision of a supervising environmental health scientist licensed under this chapter.

Amended by Chapter 183, 2009 General Session

58-20a-303 Term of license -- Expiration -- Renewal.

(1)
  (a) The division shall issue each license for an environmental health scientist in accordance with a two-year renewal cycle established by rule.
  (b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) Each license for an environmental health scientist-in-training shall be issued for a term of two years and may not be renewed.

(3) Each license issued under this chapter automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Enacted by Chapter 95, 1995 General Session

58-20a-304 Continuing education.

Each person holding a license under this chapter as an environmental health scientist or an environmental health scientist-in-training shall complete in each two-year period of licensure not fewer than 30 hours of professional continuing education in accordance with standards defined by division rule.

Enacted by Chapter 95, 1995 General Session

58-20a-305 Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, a person is exempt from the licensure requirements of this chapter if:

(1) the person's practice of environmental health science is limited to inspecting in order to enforce compliance with an inspection and maintenance program established pursuant to Section 41-6a-1642 or to issuing permits under that program;

(2) the person is a laboratory staff person employed by the Department of Agriculture and Food or the Department of Health, and in his employment inspects, permits, certifies, or otherwise enforces laboratory standards in laboratories regulated by state or local public health laws; or

(3) the person is the local health officer of a local public health department which employs a director of environmental health services licensed under this chapter.

Amended by Chapter 2, 2005 General Session

58-20a-306 Holders of license under predecessor law.

An individual who has been issued a Utah license as a registered sanitarian prior to July 1, 1995, under any state licensing act in effect prior to the effective date of this chapter, and who holds that license as of July 1, 1995, may engage in the practice of environmental health science under his existing license and may renew or reinstate that license in accordance with the provisions of Section 58-1-308, under the classification of environmental health scientist, without meeting the qualifications for licensure under Subsection 58-20a-302(1).

Enacted by Chapter 95, 1995 General Session

Part 4
License Denial and Discipline

58-20a-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 95, 1995 General Session

Part 5
Unprofessional Conduct

58-20a-501 Unprofessional conduct.

"Unprofessional conduct" includes:

(1) acting dishonestly or fraudulently in the performance of professional duties as an environmental health scientist or environmental health scientist-in-training;
(2) intentionally filing a false report or record in the performance of professional duties as an environmental health scientist or environmental health scientist-in-training; and
(3) willfully impeding or obstructing another person from filing a report in the performance of professional duties as an environmental health scientist or environmental health scientist-in-training.

Enacted by Chapter 95, 1995 General Session

Chapter 22
Professional Engineers and Professional Land Surveyors Licensing Act

Part 1
General Provisions

58-22-101 Title.

This chapter is known as the "Professional Engineers and Professional Land Surveyors Licensing Act."

Amended by Chapter 259, 1996 General Session

58-22-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Professional Engineers and Professional Land Surveyors Licensing Board created in Section 58-22-201.
(2) "Building" means a structure which has human occupancy or habitation as its principal purpose, and includes the structural, mechanical, and electrical systems, utility services, and other facilities required for the building, and is otherwise governed by the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.
(3) "Complete construction plans" means a final set of plans, specifications, and reports for a building or structure that normally includes:
  (a) floor plans;
  (b) elevations;
  (c) site plans;
  (d) foundation, structural, and framing detail;
  (e) electrical, mechanical, and plumbing design;

(f) information required by the energy code;
(g) specifications and related calculations as appropriate; and
(h) all other documents required to obtain a building permit.
(4) "EAC/ABET" means the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology.
(5) "Fund" means the Professional Engineer, Professional Structural Engineer, and Professional Land Surveyor Education and Enforcement Fund created in Section 58-22-103.
(6) "NCEES" means the National Council of Examiners for Engineering and Surveying.
(7) "Principal" means a licensed professional engineer, professional structural engineer, or professional land surveyor having responsible charge of an organization's professional engineering, professional structural engineering, or professional land surveying practice.
(8) "Professional engineer" means a person licensed under this chapter as a professional engineer.
(9)
(a) "Professional engineering or the practice of engineering" means a service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the service or creative work as consultation, investigation, evaluation, planning, design, and design coordination of engineering works and systems, planning the use of land and water, facility programming, performing engineering surveys and studies, and the review of construction for the purpose of monitoring compliance with drawings and specifications; any of which embraces these services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, and including other professional services as may be necessary to the planning, progress, and completion of any engineering services.
(b) The practice of professional engineering does not include the practice of architecture as defined in Section 58-3a-102, but a licensed professional engineer may perform architecture work as is incidental to the practice of engineering.
(10) "Professional engineering intern" means a person who:
(a) has completed the education requirements to become a professional engineer;
(b) has passed the fundamentals of engineering examination; and
(c) is engaged in obtaining the four years of qualifying experience for licensure under the direct supervision of a licensed professional engineer.
(11) "Professional land surveying or the practice of land surveying" means a service or work, the adequate performance of which requires the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting or locating of property boundaries or points controlling boundaries, and for the platting and layout of lands and subdivisions of lands, including the topography, alignment and grades of streets, and for the preparation and perpetuation of maps, record plats, field notes records, and property descriptions that represent these surveys and other duties as sound surveying practices could direct.
(12) "Professional land surveyor" means an individual licensed under this chapter as a professional land surveyor.

(13) "Professional structural engineer" means a person licensed under this chapter as a professional structural engineer.
(14) "Professional structural engineering or the practice of structural engineering" means a service or creative work in the following areas, and may be further defined by rule by the division in collaboration with the board:
(a) providing structural engineering services for significant structures including:
(i) buildings and other structures representing a substantial hazard to human life, which include:
(A) buildings and other structures whose primary occupancy is public assembly with an occupant load greater than 300;
(B) buildings and other structures with elementary school, secondary school, or day care facilities with an occupant load greater than 250;
(C) buildings and other structures with an occupant load greater than 500 for colleges or adult education facilities;
(D) health care facilities with an occupant load of 50 or more resident patients, but not having surgery or emergency treatment facilities;
(E) jails and detention facilities with a gross area greater than 3,000 square feet; or
(F) an occupancy with an occupant load greater than 5,000;
(ii) buildings and other structures designated as essential facilities, including:
(A) hospitals and other health care facilities having surgery or emergency treatment facilities with a gross area greater than 3,000 square feet;
(B) fire, rescue, and police stations and emergency vehicle garages with a mean height greater than 24 feet or a gross area greater than 5,000 square feet;
(C) designated earthquake, hurricane, or other emergency shelters with a gross area greater than 3,000 square feet;
(D) designated emergency preparedness, communication, and operation centers and other buildings required for emergency response with a mean height more than 24 feet or a gross area greater than 5,000 square feet;
(E) power-generating stations and other public utility facilities required as emergency backup facilities with a gross area greater then 3,000 square feet;
(F) structures with a mean height more than 24 feet or a gross area greater than 5,000 square feet containing highly toxic materials as defined by the division by rule, where the quantity of the material exceeds the maximum allowable quantities set by the division by rule; and
(G) aviation control towers, air traffic control centers, and emergency aircraft hangars at commercial service and cargo air services airports as defined by the Federal Aviation Administration with a mean height greater than 35 feet or a gross area greater than 20,000 square feet; and
(iii) buildings and other structures requiring special consideration, including:
(A) structures or buildings that are:
(I) normally occupied by human beings; and
(II) five stories or more in height; or
(III) that have an average roof height more than 60 feet above the average ground level measured at the perimeter of the structure; or
(B) all buildings over 200,000 aggregate gross square feet in area; and
(b) includes the definition of professional engineering or the practice of professional engineering as provided in Subsection (9).
(15) "Structure" means that which is built or constructed, an edifice or building of any kind, or a piece of work artificially built up or composed of parts joined together in a definite manner, and

as otherwise governed by the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(16) "Supervision of an employee, subordinate, associate, or drafter of a licensee" means that a licensed professional engineer, professional structural engineer, or professional land surveyor is responsible for and personally reviews, corrects when necessary, and approves work performed by an employee, subordinate, associate, or drafter under the direction of the licensee, and may be further defined by rule by the division in collaboration with the board.

(17) "TAC/ABET" means the Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(18) "Unlawful conduct" is defined in Sections 58-1-501 and 58-22-501.

(19) "Unprofessional conduct" as defined in Section 58-1-501 may be further defined by rule by the division in collaboration with the board.

Amended by Chapter 278, 2013 General Session

58-22-103 Education and enforcement fund.

(1) There is created an expendable special revenue fund known as the "Professional Engineer, Professional Structural Engineer, and Professional Land Surveyor Education and Enforcement Fund."

(2) The fund consists of money from:

(a) a surcharge fee placed on initial, renewal, and reinstatement licensure fees under this chapter in accordance with the following:

(i) the surcharge fee shall be established by the department in accordance with Section 63J-1-504; and

(ii) the surcharge fee shall not exceed 50% of the respective initial, renewal, or reinstatement licensure fee; and

(b) administrative penalties collected pursuant to this chapter.

(3) The fund shall earn interest and all interest earned on fund money shall be deposited into the fund.

(4) The director may, with concurrence of the board, make distributions from the fund for the following purposes:

(a) education and training of licensees under this chapter;

(b) education and training of the public or other interested persons in matters concerning engineering, structural engineering, and land surveying laws and practices; and

(c) enforcement of this chapter by:

(i) investigating unprofessional or unlawful conduct; and

(ii) providing legal representation to the division when the division takes legal action against a person engaging in unprofessional or unlawful conduct.

(5) If the balance in the fund exceeds $100,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.

(6) The division shall report annually to the appropriate appropriations subcommittee of the Legislature concerning the fund.

Amended by Chapter 400, 2013 General Session

Part 2

Board

58-22-201 Board.

(1) There is created a Professional Engineers and Professional Land Surveyors Licensing Board. The board shall consist of four licensed professional engineers, one licensed professional structural engineer, one licensed professional land surveyor, and one member from the general public. The composition of the four professional engineers on the board shall be representative of the various professional engineering disciplines.

(2) The board shall be appointed and shall serve in accordance with Section 58-1-201. The members of the board who are professional engineers shall be appointed from among nominees recommended by representative engineering societies in this state. The member of the board who is a land surveyor shall be appointed from among nominees recommended by representative professional land surveyor societies.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:

(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(b) advise the division in its investigation of these complaints.

(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Amended by Chapter 278, 2013 General Session

Part 3
Licensure

58-22-301 License required -- License classifications.

(1) A license is required to engage in the practice of professional engineering, professional structural engineering, or professional land surveying, except as specifically provided in Section 58-1-307 or 58-22-305.

(2) The division shall issue licenses to individuals qualified under the provisions of this chapter in the following classifications:

(a) professional engineer;

(b) professional structural engineer; and

(c) professional land surveyor.

(3) The division may issue a license in a specific engineering discipline or disciplines as defined by rule by the division in collaboration with the board.

Amended by Chapter 259, 1996 General Session

58-22-302 Qualifications for licensure.

(1) Each applicant for licensure as a professional engineer shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory evidence of good moral character;
(d)
(i) have graduated and received a bachelors or masters degree from an engineering program meeting criteria established by rule by the division in collaboration with the board; or
(ii) have completed the Transportation Engineering Technology and Fundamental Engineering College Program prior to July 1, 1998, under the direction of the Utah Department of Transportation and as certified by the Utah Department of Transportation;
(e) have successfully completed a program of qualifying experience established by rule by the division in collaboration with the board;
(f) have successfully passed examinations established by rule by the division in collaboration with the board; and
(g) meet with the board or representative of the division upon request for the purpose of evaluating the applicant's qualification for licensure.
(2) Each applicant for licensure as a professional structural engineer shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) provide satisfactory evidence of good moral character;
(d) have graduated and received an earned bachelors or masters degree from an engineering program meeting criteria established by rule by the division in collaboration with the board;
(e) have successfully completed three years of licensed professional engineering experience established by rule by the division in collaboration with the board, except that prior to January 1, 2009, an applicant for licensure may submit a signed affidavit in a form prescribed by the division stating that the applicant is currently engaged in the practice of structural engineering;
(f) have successfully passed examinations established by rule by the division in collaboration with the board, except that prior to January 1, 2009, an applicant for licensure may submit a signed affidavit in a form prescribed by the division stating that the applicant is currently engaged in the practice of structural engineering; and
(g) meet with the board or representative of the division upon request for the purpose of evaluating the applicant's qualification for licensure.
(3) Each applicant for licensure as a professional land surveyor shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) provide satisfactory evidence of good moral character;
(d)
(i) have graduated and received an associates, bachelors, or masters degree from a land surveying program, or an equivalent land surveying program, such as a program offered by the Utah College of Applied Technology as approved by the State Board of Regents, established by rule by the division in collaboration with the board, and have successfully completed a program of qualifying experience in land surveying established by rule by the division in collaboration with the board; or
(ii) have successfully completed a program of qualifying experience in land surveying prior to January 1, 2007, in accordance with rules established by the division in collaboration with the board;
(e) have successfully passed examinations established by rule by the division in collaboration with the board; and
(f) meet with the board or representative of the division upon request for the purpose of evaluating the applicant's qualification for licensure.
(4) Each applicant for licensure by endorsement shall:

(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) provide satisfactory evidence of good moral character;
(d) submit satisfactory evidence of:
(i) current licensure in good standing in a jurisdiction recognized by rule by the division in collaboration with the board;
(ii) having successfully passed an examination established by rule by the division in collaboration with the board; and
(iii) full-time employment as a principal for at least five of the last seven years immediately preceding the date of the application as a:
(A) licensed professional engineer for licensure as a professional engineer;
(B) licensed professional structural engineer for licensure as a structural engineer; or
(C) licensed professional land surveyor for licensure as a professional land surveyor; and
(e) meet with the board or representative of the division upon request for the purpose of evaluating the applicant's qualifications for license.
(5) The rules made to implement this section shall be in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 367, 2011 General Session

58-22-303 Term of license -- Expiration -- Renewal.
(1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) At the time of renewal the licensee shall show satisfactory evidence of completion of continuing education as may be required by rules enacted pursuant to Section 58-22-304.
(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Amended by Chapter 259, 1996 General Session

58-22-304 Continuing professional education.
(1) Each individual licensed as a professional land surveyor shall be required to complete a program of qualifying continuing professional education in accordance with standards defined by rule.
(2) Each individual licensed as a professional engineer or professional structural engineer may be required to complete a program of qualifying continuing professional education in accordance with standards defined by rule.

Repealed and Re-enacted by Chapter 259, 1996 General Session

58-22-305 Exemption from licensure.
(1) In addition to the exemptions from licensure in Section 58-1-307, the following may engage in the following acts or practices without being licensed under this chapter:
(a) a person offering to render professional engineering, professional structural engineering, or professional land surveying services in this state when not licensed under this chapter if the person:

(i) holds a current and valid professional engineer, professional structural engineer, or professional land surveyor license issued by a licensing authority recognized by rule by the division in collaboration with the board;
(ii) discloses in writing to the potential client the fact that the professional engineer, professional structural engineer, or professional land surveyor:
(A) is not licensed in the state;
(B) may not provide professional engineering, professional structural engineering, or professional land surveying services in the state until licensed in the state; and
(C) that such condition may cause a delay in the ability of the professional engineer, professional structural engineer, or professional land surveyor to provide licensed services in the state;
(iii) notifies the division in writing of the person's intent to offer to render professional engineering, professional structural engineering, or professional land surveying services in the state; and
(iv) does not provide professional engineering, professional structural engineering, or professional land surveying services, or engage in the practice of professional engineering, professional structural engineering, or professional land surveying in this state until licensed to do so;
(b) a person preparing a plan and specification for a one or two-family residence not exceeding two stories in height;
(c) a person licensed to practice architecture under Title 58, Chapter 3a, Architects Licensing Act, performing architecture acts or incidental engineering or structural engineering practices that do not exceed the scope of the education and training of the person performing engineering or structural engineering;
(d) unlicensed employees, subordinates, associates, or drafters of a person licensed under this chapter while preparing plans, maps, sketches, drawings, documents, specifications, plats, and reports under the supervision of a professional engineer, professional structural engineer, or professional land surveyor;
(e) a person preparing a plan or specification for, or supervising the alteration of or repair to, an existing building affecting an area not exceeding 3,000 square feet when structural elements of a building are not changed, such as foundations, beams, columns, and structural slabs, joists, bearing walls, and trusses;
(f) an employee of a communications, utility, railroad, mining, petroleum, or manufacturing company, or an affiliate of such a company, if the professional engineering or professional structural engineering work is performed solely in connection with the products or systems of the company and is not offered directly to the public;
(g) an organization engaged in the practice of professional engineering, structural engineering, or professional land surveying, provided that:
(i) the organization employs a principal; and
(ii) all individuals employed by the organization, who are engaged in the practice of professional engineering, structural engineering, or land surveying, are licensed or exempt from licensure under this chapter; and
(h) a person licensed as a professional engineer, a professional structural engineer, or a professional land surveyor in a state other than Utah serving as an expert witness, provided the expert testimony meets one of the following:
(i) oral testimony as an expert witness in an administrative, civil, or criminal proceeding; or
(ii) written documentation included as part of the testimony in a proceeding, including designs, studies, plans, specifications, or similar documentation, provided that the purpose of the

written documentation is not to establish specifications, plans, designs, processes, or standards to be used in the future in an industrial process, system, construction, design, or repair.

(2) Nothing in this section shall be construed to restrict a draftsman from preparing plans for a client under the exemption provided in Subsection (1)(b), or taking those plans to a professional engineer for the engineer's review, approval, and subsequent fixing of the engineer's seal to that set of plans, if the plans meet the building code standards.

Amended by Chapter 262, 2013 General Session

58-22-306 Admission criteria to take the Fundamentals of Engineering Examination.

The admission criteria to take the NCEES Fundamentals of Engineering Examination shall be enrollment in or graduation from one of the following accredited curriculums, or other curriculums as may be established by rule by the division in collaboration with the board:

(1) EAC/ABET curriculum; or

(2) TAC/ABET curriculum.

Repealed and Re-enacted by Chapter 259, 1996 General Session

Part 4
License Denial and Discipline

58-22-401 Grounds for denial of license and disciplinary proceedings.

The division may refuse to issue a license to an applicant, refuse to renew the license of a licensee, revoke, suspend, restrict, or place on probation the license of a licensee, issue a public or private reprimand to a licensee, and issue cease and desist orders in accordance with Section 58-1-401.

Renumbered and Amended by Chapter 274, 1994 General Session

Part 5
Unlawful Conduct - Penalties

58-22-501 Unlawful conduct.

"Unlawful conduct" includes:

(1) using the title "professional engineer," "professional land surveyor," "land surveyor," "professional structural engineer," "structural engineer," or any other words, letters, abbreviations, or designations which represent recognized professional engineering disciplines indicating that the person using them is a professional engineer, professional land surveyor, or professional structural engineer if the person has not been licensed under this chapter, except as provided in Subsection 58-22-305(1);

(2) using the terms "engineering," "structural engineering," or "surveying" or any similar words, letters, or abbreviations to describe the type of activity performed or offered to be performed if the person has not been licensed under this chapter, except as provided in Subsection 58-22-305(1);

(3) engaging in or representing itself as engaging in the practice of professional engineering, professional structural engineering, or professional land surveying as a corporation, proprietorship, partnership, or limited liability company, except as provided in Subsection 58-22-305(1);
(4) engaging in the practice of engineering, structural engineering, or surveying as set forth in Subsections 58-22-102(9), (11), and (14), if the person has not been licensed under this chapter, except as provided in Section 58-1-307 or Subsections 58-3a-304(1)(b) through (f); or
(5) a professional engineer engaging in the practice of structural engineering as defined in Subsection 58-22-102(14)(a).

Amended by Chapter 277, 2008 General Session

58-22-503 Penalty for unlawful conduct.
(1)
(a) If upon inspection or investigation, the division concludes that a person has violated Subsections 58-1-501(1)(a) through (d) or Section 58-22-501 or any rule or order issued with respect to Section 58-22-501, and that disciplinary action is appropriate, the director or the director's designee from within the division for each alternative respectively, shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
(i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-22-501 or any rule or order issued with respect to Section 58-22-501, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section 58-22-501 or any rule or order issued with respect to this section.
(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-22-401 may not be assessed through a citation.
(b) A citation shall:
(i) be in writing;
(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;
(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.
(c) The division may issue a notice in lieu of a citation.
(d) Each citation issued under this section, or a copy of each citation, may be served upon a person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the person's agent by a division investigator or by any person specially designated by the director or by mail.
(e) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

(f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.
(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.
(i) The director or the director's designee shall assess fines according to the following:
(i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to $1,000;
(ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to $2,000; and
(iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to $2,000 for each day of continued offense.
(2) An action initiated for a first or second offense which has not yet resulted in a final order of the division shall not preclude initiation of any subsequent action for a second or subsequent offense during the pendency of any preceding action. The final order on a subsequent action shall be considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.
(3) Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state shall provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded to the division.

Amended by Chapter 278, 2013 General Session

Part 6
Practice Standards

58-22-601 Seal -- Design and implementation.

Every professional engineer, professional land surveyor, or professional structural engineer shall have a seal, the design and implementation of which shall be established by rule by the division in collaboration with the board.

Enacted by Chapter 259, 1996 General Session

58-22-602 Plans, specifications, reports, maps, sketches, surveys, drawings, documents, and plats to be sealed.

(1) Any final plan, specification, and report of a building or structure erected in this state shall bear the seal of a professional engineer or professional structural engineer licensed under this chapter, except as provided in Section 58-22-305, in Title 58, Chapter 3a, Architects Licensing Act, and by the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.
(2) Any final plan, specification, and report prepared by, or under the supervision of, the professional engineer or professional structural engineer shall bear the seal of the professional engineer or professional structural engineer when submitted to a client, when filed with public

authorities, or when submitted to a building official for the purpose of obtaining a building permit, even if the practice is exempt from licensure under Section 58-22-305.

(3) Any final plan, map, sketch, survey, drawing, document, plat, and report shall bear the seal of the professional land surveyor licensed under this chapter when submitted to a client or when filed with public authorities.

Amended by Chapter 14, 2011 General Session

58-22-603 Seal -- Authorized use.

(1) A professional engineer or professional structural engineer may only affix the licensee's seal to a plan, specification, and report when the plan, specification, and report:
- (a) was personally prepared by the licensee;
- (b) was prepared by an employee, subordinate, associate, or drafter under the supervision of a licensee, provided the licensee or a principal affixing his seal assumes responsibility;
- (c) was prepared by a licensed professional engineer, professional structural engineer, or architect in this state or any other state provided:
  - (i) the licensee in this state affixing the seal performs a thorough review of all work for compliance with all applicable laws and rules and the standards of the profession; and
  - (ii) makes any necessary corrections before submitting the final plan, specification, or report:
    - (A) to a building official for the purpose of obtaining a building permit; or
    - (B) to a client who has contracted with a professional engineer or professional structural engineer for the design of a building or structure, when the licensee represents, or could reasonably expect the client to consider, the plan, specification, or report to be complete and final;
- (d) was prepared in part by a licensed professional engineer, professional structural engineer, or architect in this state or any other state provided:
  - (i) the licensee in this state clearly identifies that portion of the plan, specification, or report for which the licensee is responsible;
  - (ii) the licensee in this state affixing the seal performs a thorough review of that portion of the plan, specification, or report for which the licensee is responsible for compliance with the standards of the profession; and
  - (iii) makes any necessary corrections before submitting the final plan, specification, or report for which the licensee is responsible:
    - (A) to a building official for the purpose of obtaining a building permit; or
    - (B) to a client who has contracted with a professional engineer or professional structural engineer for the design of a building or structure, when the licensee represents, or could reasonably expect the client to consider, the plans, specifications, or reports to be complete and final;
- (e) was prepared by a person exempt from licensure as a professional engineer, professional structural engineer, or architect provided that:
  - (i) the licensee in this state affixing the seal performs a thorough review for compliance with all applicable laws and rules and the standards of the profession; and
  - (ii) makes any necessary corrections before submitting the final plan, specification, or report:
    - (A) to a building official for the purpose of obtaining a building permit; or
    - (B) to a client who has contracted with a professional engineer, professional structural engineer, or architect for the design of a building or structure, when the licensee represents, or could reasonably expect the client to consider, the plan, specification, or report to be complete and final; or

(f) meet any additional requirements established by rule by the division in collaboration with the board.
(2) A professional land surveyor may only affix the licensee's seal to a plan, map, sketch, survey, drawing, document, plat, and report when the plan, map, sketch, survey, drawing, document, plat, and report:
(a) was personally prepared by the licensee; or
(b) was prepared by an employee, subordinate, associate, or drafter under the supervision of a professional land surveyor, provided the professional land surveyor or a principal affixing his seal assumes responsibility.

Enacted by Chapter 259, 1996 General Session

Chapter 24b
Physical Therapy Practice Act

Part 1
General Provisions

58-24b-101 Title.
This chapter is known as the "Physical Therapy Practice Act."

Enacted by Chapter 220, 2009 General Session

58-24b-102 Definitions.
As used in this chapter:
(1) "Animal physical therapy" means practicing physical therapy or physiotherapy on an animal.
(2) "Board" means the Utah Physical Therapy Licensing Board, created in Section 58-24b-201.
(3) "Consultation by telecommunication" means the provision of expert or professional advice by a physical therapist who is licensed outside of Utah to a licensed physical therapist or a health care provider by telecommunication or electronic communication.
(4) "General supervision" means supervision and oversight of a person by a licensed physical therapist when the licensed physical therapist is immediately available in person, by telephone, or by electronic communication to assist the person.
(5) "Licensed physical therapist" means a person licensed under this chapter to engage in the practice of physical therapy.
(6) "Licensed physical therapist assistant" means a person licensed under this chapter to engage in the practice of physical therapy, subject to the provisions of Subsection 58-24b-401(2)(a).
(7) "Licensing examination" means a nationally recognized physical therapy examination that is approved by the division, in consultation with the board.
(8) "On-site supervision" means supervision and oversight of a person by a licensed physical therapist or a licensed physical therapist assistant when the licensed physical therapist or licensed physical therapist assistant is:
(a) continuously present at the facility where the person is providing services;
(b) immediately available to assist the person; and
(c) regularly involved in the services being provided by the person.

(9) "Physical impairment" means:
(a) a mechanical impairment;
(b) a physiological impairment;
(c) a developmental impairment;
(d) a functional limitation;
(e) a disability;
(f) a mobility impairment; or
(g) a bodily malfunction.
(10)
(a) "Physical therapy" or "physiotherapy" means:
(i) examining, evaluating, and testing an individual who has a physical impairment or injury;
(ii) identifying or labeling a physical impairment or injury;
(iii) formulating a therapeutic intervention plan for the treatment of a physical impairment, injury, or pain;
(iv) assessing the ongoing effects of therapeutic intervention for the treatment of a physical impairment or injury;
(v) treating or alleviating a physical impairment by designing, modifying, or implementing a therapeutic intervention;
(vi) reducing the risk of an injury or physical impairment;
(vii) providing instruction on the use of physical measures, activities, or devices for preventative and therapeutic purposes;
(viii) promoting and maintaining health and fitness;
(ix) the administration of a prescription drug pursuant to Section 58-24b-403;
(x) subject to Subsection 58-28-307(12)(b), engaging in the functions described in Subsections (10)(a)(i) through (ix) in relation to an animal, in accordance with the requirements of Section 58-24b-405; and
(xi) engaging in administration, consultation, education, and research relating to the practices described in this Subsection (10)(a).
(b) "Physical therapy" or "physiotherapy" does not include:
(i) diagnosing disease;
(ii) performing surgery;
(iii) performing acupuncture;
(iv) taking x-rays; or
(v) prescribing or dispensing a drug, as defined in Section 58-37-2.
(11) "Physical therapy aide" means a person who:
(a) is trained, on-the-job, by a licensed physical therapist; and
(b) provides routine assistance to a licensed physical therapist or licensed physical therapist assistant, while the licensed physical therapist or licensed physical therapist assistant practices physical therapy, within the scope of the licensed physical therapist's or licensed physical therapist assistant's license.
(12) "Recognized accreditation agency" means an accreditation agency that:
(a) grants accreditation, nationally, in the United States of America; and
(b) is approved by the division, in consultation with the board.
(13)
(a) "Testing" means a standard method or technique used to gather data regarding a patient that is generally and nationally accepted by physical therapists for the practice of physical therapy.
(b) "Testing" includes measurement or evaluation of:
(i) muscle strength, force, endurance, or tone;

(ii) cardiovascular fitness;
(iii) physical work capacity;
(iv) joint motion, mobility, or stability;
(v) reflexes or autonomic reactions;
(vi) movement skill or accuracy;
(vii) sensation;
(viii) perception;
(ix) peripheral nerve integrity;
(x) locomotor skills, stability, and endurance;
(xi) the fit, function, and comfort of prosthetic, orthotic, or other assistive devices;
(xii) posture;
(xiii) body mechanics;
(xiv) limb length, circumference, and volume;
(xv) thoracic excursion and breathing patterns;
(xvi) activities of daily living related to physical movement and mobility;
(xvii) functioning in the physical environment at home or work, as it relates to physical movement and mobility; and
(xviii) neural muscular responses.

(14)
(a) "Trigger point dry needling" means the stimulation of a trigger point using a dry needle to treat neuromuscular pain and functional movement deficits.
(b) "Trigger point dry needling" does not include the stimulation of auricular or distal points.

(15) "Therapeutic intervention" includes:
(a) therapeutic exercise, with or without the use of a device;
(b) functional training in self-care, as it relates to physical movement and mobility;
(c) community or work integration, as it relates to physical movement and mobility;
(d) manual therapy, including:
(i) soft tissue mobilization;
(ii) therapeutic massage; or
(iii) joint mobilization, as defined by the division, by rule;
(e) prescribing, applying, or fabricating an assistive, adaptive, orthotic, prosthetic, protective, or supportive device;
(f) airway clearance techniques, including postural drainage;
(g) integumentary protection and repair techniques;
(h) wound debridement, cleansing, and dressing;
(i) the application of a physical agent, including:
(i) light;
(ii) heat;
(iii) cold;
(iv) water;
(v) air;
(vi) sound;
(vii) compression;
(viii) electricity; and
(ix) electromagnetic radiation;
(j) mechanical or electrotherapeutic modalities;
(k) positioning;

(l) instructing or training a patient in locomotion or other functional activities, with or without an assistive device;
(m) manual or mechanical traction;
(n) correction of posture, body mechanics, or gait; and
(o) trigger point dry needling, under the conditions described in Section 58-24b-505.

Amended by Chapter 354, 2014 General Session

Part 2
Physical Therapy Licensing Board

58-24b-201 Physical Therapy Licensing Board -- Creation -- Membership -- Duties.
(1) There is created the Physical Therapy Licensing Board, consisting of three licensed physical therapists, one physical therapist assistant, and one member of the general public.
(2) Members of the board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board are described in Subsection (4) and Sections 58-1-201 through 58-1-203.
(4) The board shall designate a member of the board, on a permanent or rotating basis, to:
(a) assist the division in reviewing complaints of unlawful or unprofessional conduct of a licensee; and
(b) advise the division during the division's investigation of the complaints described in Subsection (4)(a).
(5) A board member who has reviewed a complaint or been involved in an investigation under Subsection (4) is disqualified from participating in an adjudicative proceeding relating to the complaint or investigation.

Enacted by Chapter 220, 2009 General Session

Part 3
Licensing

58-24b-301 Authority to practice physical therapy.
A person may not engage in the practice of physical therapy, unless the person is:
(1) licensed under this chapter and practices within the scope of that license; or
(2) exempted from the licensing requirements of this chapter under Section 58-1-307 or 58-24b-304.

Amended by Chapter 238, 2016 General Session

58-24b-302 Licensure.
(1) An applicant for a license as a physical therapist shall:
(a) be of good moral character;
(b) complete the application process, including payment of fees;
(c) submit proof of graduation from a professional physical therapist education program that is accredited by a recognized accreditation agency;

(d) after complying with Subsection (1)(c), pass a licensing examination;
(e) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and
(f) meet any other requirements established by the division, by rule.
(2) An applicant for a license as a physical therapist assistant shall:
(a) be of good moral character;
(b) complete the application process, including payment of fees set by the division, in accordance with Section 63J-1-504, to recover the costs of administering the licensing requirements relating to physical therapist assistants;
(c) submit proof of graduation from a physical therapist assistant education program that is accredited by a recognized accreditation agency;
(d) after complying with Subsection (2)(c), pass a licensing examination;
(e) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and
(f) meet any other requirements established by the division, by rule.
(3) An applicant for a license as a physical therapist who is educated outside of the United States shall:
(a) be of good moral character;
(b) complete the application process, including payment of fees;
(c)
(i) provide satisfactory evidence that the applicant graduated from a professional physical therapist education program that is accredited by a recognized accreditation agency; or
(ii)
(A) provide satisfactory evidence that the applicant graduated from a physical therapist education program that prepares the applicant to engage in the practice of physical therapy, without restriction;
(B) provide satisfactory evidence that the education program described in Subsection (3)(c)(ii)(A) is recognized by the government entity responsible for recognizing a physical therapist education program in the country where the program is located; and
(C) pass a credential evaluation to ensure that the applicant has satisfied uniform educational requirements;
(d) after complying with Subsection (3)(c), pass a licensing examination;
(e) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and
(f) meet any other requirements established by the division, by rule.
(4) The division shall issue a license to a person who holds a current unrestricted license to practice physical therapy in a state, district, or territory of the United States of America, other than Utah, if the person:
(a) is of good moral character;
(b) completes the application process, including payment of fees; and
(c) is able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board.
(5)
(a) Notwithstanding Subsection 58-1-307(1)(c), an individual may not engage in an internship in physical therapy, unless the person is:
(i) certified by the division; or
(ii) exempt from licensure under Section 58-24b-304.

(b) The provisions of Subsection (5)(a) apply, regardless of whether the individual is participating in the supervised clinical training program for the purpose of becoming a physical therapist or a physical therapist assistant.

Amended by Chapter 238, 2016 General Session

58-24b-303 Term of license -- Renewal -- Temporary license for physical therapist assistant.

(1) A license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. The division may, by rule, extend or shorten a license renewal process by one year in order to stagger the renewal cycles that the division administers.
(2) At the time of license renewal, the licensee shall provide satisfactory evidence that the licensee completed continuing education competency requirements, established by the division, by rule.
(3) If a license renewal cycle is shortened or extended under Subsection (1), the division shall increase or reduce the required continuing education competency requirements accordingly.
(4) A license issued under this chapter expires on the expiration date indicated on the license, unless the license is renewed under this section.
(5) Notwithstanding any other provision of this chapter, the division may, by rule, grant a temporary license, that expires on July 1, 2014, as a physical therapist assistant to an individual who:
  (a) was working as a physical therapist assistant in Utah before July 1, 2009; and
  (b) complies with the requirements described in Subsections 58-24b-302(2)(a), (b), (c), (e), and (f).

Amended by Chapter 238, 2016 General Session

58-24b-304 Exemptions from licensure.

(1) In addition to the exemptions from licensure described in Section 58-1-307, as modified by Subsection 58-24b-302(5), a person may engage in acts that constitute the practice of physical therapy without a license issued under this chapter if:
  (a) the person is licensed under another law of the state to engage in acts that constitute the practice of physical therapy if that person does not:
    (i) claim to be a physical therapist;
    (ii) claim to be a provider of any type of physical therapy that is outside of the scope of practice of the license that is issued to the person; or
    (iii) engage in any acts that constitute the practice of physical therapy that are outside of the scope of practice of the license that is issued to the person;
  (b) the person practices physical therapy, under federal law, in:
    (i) the United States armed services;
    (ii) the United States Public Health Service; or
    (iii) the Veteran's Administration;
  (c) the person is:
    (i) licensed as a physical therapist in:
      (A) a state, district, or territory of the United States, other than Utah; or
      (B) a country other than the United States; and
    (ii)
      (A) teaching, demonstrating, or providing physical therapy in connection with an educational seminar, if the person engages in this conduct in Utah no more than 60 days per calendar year;

(B) practicing physical therapy directly related to the person's employment with, or contract with, an established athletic team, athletic organization, or performing arts company that plays, practices, competes, or performs in Utah no more than 60 days per calendar year; or
(C) providing consultation by telecommunication to a physical therapist;
(d) the person:
(i)
(A) is licensed as a physical therapist assistant under federal law; and
(B) practices within the scope of practice authorized by federal law for a physical therapist assistant; or
(ii)
(A) is licensed as a physical therapist assistant in:
(I) a state, district, or territory of the United States, other than Utah; or
(II) a country other than the United States; and
(B)
(I) practices within the scope of practice authorized for a physical therapist assistant by the jurisdiction described in Subsection (1)(d)(ii)(A); and
(II) within the limitations for the practice of physical therapy described in Subsection (1)(c)(ii); or
(e) the person:
(i) is a physician, licensed under Title 58, Chapter 67, Utah Medical Practice Act;
(ii) is a physician, licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
(iii) is a chiropractic physician, licensed under Title 58, Chapter 73, Chiropractic Physician Practice Act.
(2) A person who is exempted from licensure under Subsection (1)(b) may practice animal physical therapy without a license under this section if the person:
(a) is authorized to practice animal physical therapy under federal law; and
(b) practices animal physical therapy within the scope of practice authorized by federal law.
(3) A person who is exempted from licensure under Subsection (1)(c) may practice animal physical therapy without a license under this section if the person:
(a) is authorized to practice animal physical therapy in:
(i) a state, district, or territory of the United States, other than Utah; or
(ii) a country other than the United States; and
(b) practices animal physical therapy:
(i) within the scope of practice for the jurisdiction described in Subsection (3)(a) where the person is authorized to practice animal physical therapy; and
(ii) within the limitations for the practice of physical therapy described in Subsection (1)(c)(ii).

Enacted by Chapter 220, 2009 General Session

58-24b-305 License denial -- Discipline -- Cease and desist order.

In accordance with Section 58-1-401, the division may:
(1) refuse to issue a license to an applicant;
(2) refuse to renew a license;
(3) revoke, suspend, or restrict a license;
(4) place a license on probation;
(5) issue a public or private reprimand to a licensee; or

(6) issue a cease and desist order.

Enacted by Chapter 220, 2009 General Session

Part 4
Practice of Physical Therapy

58-24b-401 Authority and ethical standards of a licensed physical therapist and licensed physical therapist assistant -- Function of a physical therapy aide.

(1) A licensed physical therapist:
  (a) is fully authorized to practice physical therapy; and
  (b) shall adhere to the standards of ethics described in:
    (i) the American Physical Therapy Association's Code of Ethics and Guide for Professional Conduct; and
    (ii) rule.
(2) A licensed physical therapist assistant:
  (a) is authorized to practice physical therapy:
    (i) under the on-site supervision or general supervision of a licensed physical therapist; and
    (ii) within the scope of practice of a licensed physical therapist assistant, as described in this chapter and by rule;
  (b) shall adhere to the standards of ethics described in:
    (i) the American Physical Therapy Association's Code of Ethics and Guide for Professional Conduct; and
    (ii) rule; and
  (c) may not be supervised by any person other than a licensed physical therapist.
(3)
  (a) A physical therapy aide may not engage in the practice of physical therapy.
  (b) Notwithstanding Subsection (3)(a), a physical therapy aide may provide routine assistance to:
    (i) a licensed physical therapist while the licensed physical therapist engages in the practice of physical therapy, if the physical therapy aide is under the on-site supervision of the licensed physical therapist; or
    (ii) a licensed physical therapist assistant while the licensed physical therapist assistant engages in the practice of physical therapy, within the scope of the licensed physical therapist assistant's license, if the physical therapy aide is:
      (A) under the general or on-site supervision of a licensed physical therapist; and
      (B) under the on-site supervision of the licensed physical therapist assistant.

Enacted by Chapter 220, 2009 General Session

58-24b-402 Patient care and management.

(1) In practicing physical therapy, a licensed physical therapist shall:
  (a) manage all aspects of the physical therapy of a patient under the licensed physical therapist's care;
  (b) perform the initial evaluation and documentation for each patient;
  (c) perform periodic reevaluation and documentation for each patient;

(d) perform physical therapy interventions that require immediate and continuous examination and evaluation throughout the intervention;
(e) perform all therapeutic intervention on a patient that is outside of the standard scope of practice of a licensed physical therapist assistant or a physical therapy aide;
(f) determine the therapeutic intervention to be performed by a licensed physical therapist assistant under the on-site supervision or general supervision of the licensed physical therapist to ensure that the therapeutic intervention is safe, effective, efficient, and within the scope of practice of the licensed physical therapist assistant;
(g) conduct the discharge of each patient and document for each patient, at the time of discharge, the patient's response to therapeutic intervention; and
(h) provide accurate documentation of the billing and services provided.
(2) A physical therapist assistant or a physical therapy aide may not:
(a) perform a physical therapy evaluation or assessment;
(b) identify or label a physical impairment or injury;
(c) design a plan of care for a patient;
(d) perform the joint mobilization component of manual therapy; or
(e) perform the sharp selective debridement component of wound management.
(3) Subsection (2)(d) does not apply to:
(a) simple joint distraction techniques or stretching; or
(b) a stretch or mobilization that can be given as part of a home exercise program.

Enacted by Chapter 220, 2009 General Session

58-24b-403 Administration of a prescription drug.
(1) A licensed physical therapist may purchase, store, and administer topical and aerosol medications that require a prescription only as provided in this section.
(2) A licensed physical therapist may purchase, store, and administer:
(a) topically applied medicinal agents, including steroids and analgesics, for wound care and for musculoskeletal treatment, using iontophoresis or phonorphoresis; and
(b) aerosols for pulmonary hygiene in an institutional setting, if a licensed respiratory therapist is not available in, or within a 10 mile radius of, the institution.
(3) A licensed physical therapist may only purchase, store, or administer a medication described in this section pursuant to a written prescription issued by a practitioner who is licensed to prescribe that medication.
(4) This section does not authorize a licensed physical therapist to dispense a prescription drug.

Enacted by Chapter 220, 2009 General Session

58-24b-404 Supervision of a licensed physical therapist assistant or a physical therapy aide.
The division shall make rules that describe the circumstances under which general supervision or on-site supervision of a physical therapist assistant or a physical therapy aide is required.

Enacted by Chapter 220, 2009 General Session

58-24b-405 Animal physical therapy.
(1) Subject to Subsection 58-28-307(12)(b), a licensed physical therapist may practice animal physical therapy if the licensed physical therapist completes at least 100 hours of animal physical therapy training and education, which shall include:

(a) 50 hours of on-the-job training under the supervision of a licensed veterinarian;
(b) completion of a quadruped anatomy course; and
(c) continuing education for the required hours remaining.
(2) Subject to Subsection 58-28-307(12)(b), a licensed physical therapist assistant may practice animal physical therapy, within the scope of the licensed physical therapist assistant's practice, if the licensed physical therapist assistant:
(a) is under the on-site supervision or general supervision of a physical therapist who has complied with the requirements of Subsection (1); and
(b) completes at least 100 hours of animal physical therapy training and education, which shall include:
(i) 50 hours of on-the-job training under the supervision of a licensed veterinarian;
(ii) completion of a quadruped anatomy course; and
(iii) continuing education for the required hours remaining.

Enacted by Chapter 220, 2009 General Session

Part 5
Unlawful and Unprofessional Conduct

58-24b-501 Unlawful conduct.

In addition to the conduct described in Subsection 58-1-501(1), "unlawful conduct" includes:
(1) practicing physical therapy, unless the person:
(a) is licensed under this chapter to practice physical therapy and practices within the scope of that license; or
(b) is exempt from licensure under Section 58-24b-304;
(2) practicing animal physical therapy, unless the person is:
(a) authorized to practice animal physical therapy under Section 58-24b-405; or
(b) authorized to practice animal physical therapy under Subsection 58-24b-304(1)(a), (2), or (3);
(3) representing oneself as, or using the title of, a physical therapist, unless the person is:
(a) a licensed physical therapist; or
(b)
(i) licensed as a physical therapist in a jurisdiction other than Utah;
(ii) does not represent oneself as being a physical therapist licensed in Utah; and
(iii) exempt from licensure under Section 58-24b-304;
(4) representing oneself as, or using the title of, a physical therapist assistant, unless the person:
(a) is a licensed physical therapist assistant; or
(b)
(i) is licensed as a physical therapist assistant in a jurisdiction other than Utah;
(ii) does not represent oneself as being a physical therapist assistant licensed in Utah; and
(iii) is exempt from licensure under Section 58-24b-304; and
(5) conduct designated as "unlawful conduct" by the division, by rule.

Enacted by Chapter 220, 2009 General Session

58-24b-502 Unprofessional conduct.

In addition to the conduct described in Subsection 58-1-501(2), "unprofessional conduct" includes:
(1) using or employing the services of an individual to assist a person licensed under this chapter in a manner that is not in accordance with:
  (a) generally recognized practices, standards, or ethics of the profession for which the person is licensed; or
  (b) the requirements of this chapter or rule;
(2) failure by a person licensed under this chapter to confine the person's conduct to that which:
  (a) the person is competent to perform, by education, training, and experience; and
  (b) is within the scope of practice permitted under this chapter or rule;
(3) failure to supervise a licensed physical therapist assistant or a physical therapy aide in accordance with the requirements of this chapter or rule; and
(4) other conduct defined as "unprofessional conduct" by the division, by rule.

Enacted by Chapter 220, 2009 General Session

58-24b-503 Lawful and unlawful use of titles and terms -- Unlawful advertising or promotion.
(1) A person who is a licensed physical therapist shall use the letters "PT" in connection with the person's name or business in order to indicate that the person is a licensed physical therapist.
(2) A person who is a licensed physical therapist assistant shall use the letters "PTA" in connection with the person's name or business in order to indicate that the person is a licensed physical therapist assistant.
(3) It is unlawful for a person who is not a licensed physical therapist, a licensed physical therapist assistant, or a person described in Subsection 58-24b-304(1)(e) to:
  (a) use, in connection with the person's name or business, any of the following words or abbreviations:
    (i) physical therapy, except to the extent that the word is used to describe conduct that a person is licensed to engage in under another law of the state;
    (ii) physiotherapy; or
    (iii) any other word, abbreviation, or insignia, indicating or implying, directly or indirectly, that the person practices physical therapy; or
  (b) offer, provide, or bill a person for:
    (i) physical therapy services or anything that is characterized as physical therapy services; or
    (ii) physiotherapy services or anything that is characterized as physiotherapy services.
(4) It is unlawful for a person who is not a licensed physical therapist to:
  (a) except as provided in Subsection (6), use, in connection with the person's name or business, any of the following words or abbreviations:
    (i) physical therapist;
    (ii) physiotherapist;
    (iii) PT;
    (iv) DPT;
    (v) MPT; or
    (vi) any other word, abbreviation, or insignia, indicating or implying, directly or indirectly, that the person is a physical therapist or physiotherapist;
  (b) advertise that a person who is not a licensed physical therapist is a physical therapist or physiotherapist; or
  (c) promote a person who is not a licensed physical therapist as a physical therapist or physiotherapist.

(5) It is unlawful for a person who is not a licensed physical therapist assistant to:
(a) use, in connection with the person's name or business, any of the following words or abbreviations:
(i) physical therapist assistant;
(ii) physiotherapist assistant;
(iii) PTA; or
(iv) any other word, abbreviation, or insignia, indicating or implying, directly or indirectly, that the person is a physical therapist assistant or a physiotherapist assistant;
(b) advertise that a person who is not a licensed physical therapist assistant is a physical therapist assistant or a physiotherapist assistant; or
(c) promote a person who is not a licensed physical therapist assistant as a physical therapist assistant or physiotherapist assistant.
(6) Subsection (4)(a) does not prohibit a person from using a word or abbreviation described in Subsection (4)(a) in connection with the person's business, if the person employs a physical therapist at the person's business.

Enacted by Chapter 220, 2009 General Session

58-24b-504 Reporting unlawful or unprofessional conduct -- Immunity -- Confidentiality.
(1) A person who is aware that a person who is licensed under this chapter has violated a provision of this chapter, or a rule made pursuant to this chapter, shall report the violation to the division.
(2) A person who makes a good faith report under Subsection (1) is immune from direct or derivative civil liability for making the report.
(3) The division, the board, or a member of the division or the board, may not disclose the identity of a person who makes a report under this section, unless the disclosure is:
(a) essential to the conduct of an investigation or hearing; or
(b) ordered by a court of competent jurisdiction.

Enacted by Chapter 220, 2009 General Session

58-24b-505 Trigger point dry needling -- Experience required -- Registration.
(1) A physical therapist may practice trigger point dry needling if the physical therapist:
(a) has held a license to practice physical therapy under this chapter, and has actively practiced physical therapy, for two years;
(b) has successfully completed a course in trigger point dry needling that:
(i) is approved by the division; and
(ii) includes at least 300 total course hours, including at least:
(A) 54 hours of in-person instruction; and
(B) 250 supervised patient treatment sessions;
(c) files a certificate of completion of the course described in Subsection (1)(b) with the division;
(d) registers with the division as a trigger point dry needling practitioner; and
(e) meets any other requirement to practice trigger point dry needling established by the division.
(2) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:
(a) the criteria for approving a course described in Subsection (1)(b); and
(b) the requirements described in Subsection (1)(e).
(3) The division may charge, in accordance with Section 63J-1-504, a fee for the registration described in Subsection (1)(d).

Enacted by Chapter 354, 2014 General Session

Chapter 26a
Certified Public Accountant Licensing Act

Part 1
General Provisions

58-26a-101 Title.

This chapter is known as the "Certified Public Accountant Licensing Act."

Enacted by Chapter 261, 2000 General Session

58-26a-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Accounting experience" means applying accounting and auditing skills and principles that are taught as a part of the professional education qualifying a person for licensure under this chapter and generally accepted by the profession, under the supervision of a licensed certified public accountant.

(2) "AICPA" means the American Institute of Certified Public Accountants.

(3)

(a) "Attest and attestation engagement" means providing any or all of the following financial statement services:

(i) an audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(ii) a review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS);

(iii) an examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE); or

(iv) an engagement to be performed in accordance with the standards of the PCAOB.

(b) The standards specified in this definition shall be adopted by reference by the division under its rulemaking authority in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and shall be those developed for general application by recognized national accountancy organizations such as the AICPA and the PCAOB.

(4) "Board" means the Utah Board of Accountancy created in Section 58-26a-201.

(5) "Certified Public Accountant" or "CPA" means an individual currently licensed by this state or any other state, district, or territory of the United States of America to practice public accountancy or who has been granted a license as a certified public accountant under prior law or this chapter.

(6) "Certified Public Accountant firm" or "CPA firm" means a qualified business entity holding a valid registration as a Certified Public Accountant firm under this chapter.

(7) "Client" means the person who retains a licensee for the performance of one or more of the services included in the definition of the practice of public accountancy. "Client" does not include a CPA's employer when the licensee works in a salaried or hourly rate position.

(8) "Compilation" means providing a service to be performed in accordance with Statements on Standards for Accounting and Review Services (SSARS) that is presenting, in the form of financial statements, information that is the representation of management or owners, without undertaking to express any assurance on the statements.
(9) "Experience" means:
(a) accounting experience; or
(b) professional experience.
(10) "Licensee" means the holder of a current valid license issued under this chapter.
(11) "NASBA" means the National Association of State Boards of Accountancy.
(12) "PCAOB" means the Public Company Accounting Oversight Board.
(13) "Practice of public accounting" means the offer to perform or the performance by a person holding himself out as a certified public accountant of one or more kinds of services involving the use of auditing or accounting skills including the issuance of reports or opinions on financial statements, performing attestation engagements, the performance of one or more kinds of advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters for a client.
(14) "Peer review" means a study, appraisal, or review of one or more aspects of the professional work of a person or qualified business entity in the practice of public accountancy, by a licensee or any other qualified person in accordance with rules adopted pursuant to this chapter and who is not affiliated with the person or qualified business entity being reviewed.
(15) "Principal place of business" means the office location designated by the licensee for purposes of substantial equivalency and licensure by endorsement.
(16) "Professional experience" means experience lawfully obtained while licensed as a certified public accountant in another jurisdiction, recognized by rule, in the practice of public accountancy performed for a client, which includes expression of assurance or opinion.
(17) "Qualified business entity" means a sole proprietorship, corporation, limited liability company, or partnership engaged in the practice of public accountancy.
(18) "Qualified continuing professional education" means a formal program of education that contributes directly to the professional competence of a certified public accountant.
(19) "Qualifying examinations" means:
(a) the AICPA Uniform CPA Examination;
(b) the AICPA Examination of Professional Ethics for CPAs;
(c) the Utah Laws and Rules Examination; and
(d) any other examination approved by the board and adopted by the division by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(20)
(a) "Report" means:
(i) when used with reference to financial statements, an opinion, report or other form of language that:
(A) states or implies assurance as to the reliability of any financial statements; or
(B) implies that the person or firm issuing it has special knowledge or competence in accounting or auditing and specifically includes compilations and reviews; such an implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is a public accountant or auditor, or from the language of the report itself; or
(ii) any disclaimer of opinion when it is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or language suggesting special competence on the part of the person or firm issuing such language; and it includes

any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

(b) "Report" does not include a financial statement prepared by an unlicensed person if:

(i) that financial statement has a cover page which includes essentially the following language: "I (we) have prepared the accompanying financial statements of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing, in the form of financial statements, information that is the representation of management (owners). I (we) have not audited or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them."; and

(ii) the cover page and any related footnotes do not use the terms "compilation," "review," "audit," "generally accepted auditing standards," "generally accepted accounting principles," or other similar terms.

(21) "Review of financial statements" means performing inquiry and analytical procedures which provide a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting; and, the issuance of a report on the financial statements stating that a review was performed in accordance with the standards established by the American Institute of Certified Public Accountants.

(22)

(a) "Substantial equivalency" means a determination by the division in collaboration with the board or its designee that:

(i) the education, examination, and experience requirements set forth in the statutes and administrative rules of another jurisdiction are comparable to or exceed the education, examination, and experience requirements set forth in the Uniform Accountancy Act; or

(ii) an individual CPA's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements set forth in the Uniform Accountancy Act.

(b) In ascertaining whether an individual's qualifications are substantially equivalent as used in this chapter, the division in collaboration with the board shall take into account the qualifications without regard to the sequence in which the education, examination, and experience requirements were attained.

(23) "Uniform Accountancy Act" means the model public accountancy legislation developed and promulgated by national accounting and regulatory associations that contains standardized definitions and regulations for the practice of public accounting as recognized by the division in collaboration with the board.

(24) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-26a-501.

(25) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-26a-502 and as may be further defined by rule.

(26) "Year of experience" means 2,000 hours of cumulative experience.

Amended by Chapter 278, 2013 General Session

Part 2
Board

58-26a-201 Board.

(1) There is created the Utah Board of Accountancy consisting of four licensed certified public accountants and one member of the general public.
(2) The board shall be appointed and shall serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
  (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
  (b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Enacted by Chapter 261, 2000 General Session

Part 3
Licensing

58-26a-301 Licensure or registration required -- License and registration classifications.

(1)
  (a) A license is required for an individual to engage in the practice of public accounting, except as specifically provided in Section 58-26a-305 or 58-1-307.
  (b) Registration with the division is required for a qualified business entity to engage in the practice of public accounting, except as specifically provided in Section 58-26a-305 or 58-1-307.
(2)
  (a) The division shall issue to an individual who qualifies under this chapter a license in the classification of Certified Public Accountant.
  (b) The division shall issue to a qualified business entity which qualifies under this chapter a registration in the classification of Certified Public Accountant Firm.

Enacted by Chapter 261, 2000 General Session

58-26a-302 Qualifications for licensure and registration -- Licensure by endorsement.

(1) Each applicant for licensure under this chapter as a certified public accountant shall:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) show evidence of good moral character;
  (d) submit a certified transcript of credits from an accredited institution acceptable to the board showing:
    (i) successful completion of a total of 150 semester hours or 225 quarter hours of collegiate level education with a concentration in accounting, auditing, and business;
    (ii) a baccalaureate degree or its equivalent at a college or university approved by the board; and

(iii) compliance with any other education requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) submit evidence of one year of accounting experience in a form prescribed by the division;

(f) submit evidence of having successfully completed the qualifying examinations in accordance with Section 58-26a-306; and

(g) submit to an interview by the board, if requested, for the purpose of examining the applicant's competence and qualifications for licensure.

(2)

(a) The division may issue a license under this chapter to a person who holds a license as a certified public accountant issued by any other jurisdiction of the United States of America if the applicant for licensure by endorsement:

(i) submits an application in a form prescribed by the division;

(ii) pays a fee determined by the department under Section 63J-1-504;

(iii) shows evidence of good moral character;

(iv) submits to an interview by the board, if requested, for the purpose of examining the applicant's competence and qualifications for licensure; and

(v)

(A)

(I) shows evidence of having passed the qualifying examinations; and

(II)

(Aa) meets the requirements for licensure which were applicable in this state at the time of the issuance of the applicant's license by the jurisdiction from which the original licensure by satisfactorily passing the AICPA Uniform CPA Examination was issued; or

(Bb) had four years of professional experience after passing the AICPA Uniform CPA Examination upon which the original license was based, within the 10 years immediately preceding the application for licensure by endorsement; or

(B) shows evidence that the applicant's education, examination record, and experience are substantially equivalent to the requirements of Subsection (1), as provided by rule.

(b) This Subsection (2) applies only to a person seeking to obtain a license issued by this state and does not apply to a person practicing as a certified public accountant in the state under Subsection 58-26a-305(1).

(3)

(a) Each applicant for registration as a Certified Public Accountant firm shall:

(i) submit an application in a form prescribed by the division;

(ii) pay a fee determined by the department under Section 63J-1-504;

(iii) have, notwithstanding any other provision of law, a simple majority of the ownership of the Certified Public Accountant firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members, or managers, held by individuals who are certified public accountants, licensed under this chapter or another jurisdiction of the United States of America, and the partners, officers, shareholders, members, or managers, whose principal place of business is in this state, and who perform professional services in this state hold a valid license issued under Subsection 58-26a-301(2) or the corresponding provisions of prior law; and

(iv) meet any other requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) Each separate location of a qualified business entity within the state seeking registration as a Certified Public Accountant firm shall register separately.

(c) A Certified Public Accountant firm may include owners who are not licensed under this chapter as outlined in Subsection (3)(a)(iii), provided that:
(i) the firm designates a licensee of this state who is responsible for the proper registration of the Certified Public Accountant firm and identifies that individual to the division; and
(ii) all nonlicensed owners are active individual participants in the CPA firm.

Amended by Chapter 183, 2009 General Session

58-26a-303 Term of license and registration -- Expiration -- Renewal.
(1) The division shall issue each license and registration under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
(2) At the time of renewal a licensee shall show satisfactory evidence of each of the following renewal requirements:
(a) completion of qualified continuing education as required under Section 58-26a-304; and
(b) successful completion of a peer review meeting the requirements established by rule by the division in collaboration with the board.
(3) Each license or registration automatically expires on the date shown on the license or registration unless it is renewed in accordance with Section 58-1-308.

Enacted by Chapter 261, 2000 General Session

58-26a-304 Continuing education.
(1) As a condition precedent for a license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by rule, complete 80 hours of qualified continuing professional education in accordance with standards defined by rule.
(2) If a renewal cycle is extended or shortened under Section 58-26a-303, the continuing education hours required for license renewal under this section shall be increased or decreased proportionally.
(3)
(a) A licensee may request a waiver of the requirements of Subsection (1) for a period not exceeding three years by:
(i) submitting an application for waiver in a form approved by the division; and
(ii) demonstrating that the licensee will be engaged in activities or be subject to circumstances which prevent the licensee from meeting the requirements of Subsection (1) during the period of the waiver.
(b) An application for waiver shall be granted upon a showing of good cause.
(c) A licensee who is granted a waiver under this section shall complete 30 hours of continuing professional education within the six months immediately following the expiration of the waiver that includes at least 16 hours of continuing professional education focusing on auditing and accounting.

Amended by Chapter 265, 2008 General Session

58-26a-305 Exemptions from licensure.
(1) In addition to the exemptions from licensure in Section 58-1-307, the following may engage in acts included within the definition of the practice of public accountancy, subject to the stated circumstances and limitations, without being licensed under this chapter:

(a) a person licensed by any other state, district, or territory of the United States as a certified public accountant or its equivalent under any other title while practicing in this state if:
(i) the person's principal place of business is not in this state; and
(A) the person's license as a certified public accountant is from any state which the National Association of State Boards of Accountancy (NASBA) National Qualification Appraisal Service has verified to be substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act; or
(B) the person's license as a certified public accountant is from a state which the NASBA National Qualification Appraisal Service has not verified to be substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act and the person obtains from the NASBA National Qualification Appraisal Service verification that the person's CPA qualifications are substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act and Subsection 58-26a-302(1)(d)(i); and
(ii) the person consents, as a condition of the grant of this privilege:
(A) to personal and subject matter jurisdiction and disciplinary authority of the division;
(B) to comply with this chapter and the rules made under this chapter;
(C) that in the event the license from the state of the person's principal place of business becomes invalid, the person shall cease offering or rendering professional services in this state both individually and on behalf of the firm; and
(D) to the appointment of the state board which issued the person's license as the person's agent upon whom process may be served in an action or proceeding brought by the division against the licensee;
(b) through December 31, 2012, a person licensed by any other state, district, or territory of the United States as a certified public accountant or its equivalent under another title while practicing in this state if:
(i) the person does not qualify for a practice privilege under Subsection (1)(a);
(ii) the practice is incidental to the person's regular practice outside of this state; and
(iii) the person's temporary practice within the state is in conformity with this chapter and the rules established under this chapter;
(c) an officer, member, partner, or employee of any entity or organization who signs any statement or report in reference to the financial affairs of the entity or organization with a designation of that person's position within the entity or organization;
(d) a public official or employee while performing his official duties;
(e) a person using accounting or auditing skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports; or
(f) an employee of a CPA firm registered under this chapter or an assistant to a person licensed under this chapter, working under the supervision of a licensee, if:
(i) neither the employee or assistant nor the licensed employer or registered CPA firm represents that the unlicensed person is a certified public accountant; and
(ii) no accounting or financial statements are issued over the unlicensed person's name.
(2)
(a) Notwithstanding any other provision of law, a person who qualifies under Subsection (1)(a) has all the privileges of a licensee of this state and may engage in acts included within the definition of the practice of public accountancy, whether in person or by mail, telephone, or electronic means, based on a practice privilege in this state, and no notice, fee, or other submission shall be provided by that person.

(b) The division may revoke, suspend, or restrict an exemption granted under Subsection (1)(a) or (b), or place on probation or issue a public or private reprimand to a person exempted under those subsections for the reasons set forth in Subsection 58-1-401(2).

Amended by Chapter 265, 2008 General Session

58-26a-306 Examination requirements.

(1) Before taking the qualifying examinations, an applicant shall:
(a) submit an application in a form approved by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) demonstrate completion of at least 135 semester hours or 200 quarter hours of the education requirement described in Subsection 58-26a-302(1)(d); and
(d) be approved by the board, or an organization designated by the board, to take the qualifying examinations.
(2) A person must sit for and meet the conditioning requirements of the AICPA Uniform CPA Examination as established by the AICPA.

Amended by Chapter 440, 2013 General Session

58-26a-307 CPA emeritus status -- Renewal of license.

(1) A person currently licensed as a certified public accountant may, on any renewal date of that license, apply for and obtain a transfer of that license to a status of CPA emeritus registration if:
(a)
(i) the licensee is at least 60 years of age as of the date of renewal;
(ii) the licensee has a disability; or
(iii) the board finds other good cause for believing that the licensee will not return to the practice of public accountancy;
(b) the licensee makes an application for transfer of status and registration and pays a registration fee determined by the department under Section 63J-1-504;
(c) the licensee, on application for transfer, certifies that the licensee will not engage in the practice of public accountancy while in the status of CPA emeritus registration; and
(d) the licensee is in good standing as a CPA and not subject to any order of revocation, suspension, or probation.
(2) Each CPA emeritus registration shall be issued in accordance with a two-year renewal cycle established by rule.
(3) CPA emeritus registrants may not engage in the practice of public accountancy.
(4) CPA emeritus registrants are not required to fulfill the continuing professional education or peer review provisions of this chapter.
(5) Each CPA emeritus registrant is responsible for renewing the registration, according to procedures that the division establishes by rule in collaboration with the board in accordance with Section 58-1-308.
(6) A CPA emeritus registrant may reinstate the CPA license by:
(a) submitting an application in a form prescribed by the division;
(b) paying a fee determined by the department under Section 63J-1-504; and
(c) showing evidence of having completed the continuing professional education requirement established by rule.

Amended by Chapter 366, 2011 General Session

Part 4
License Denial and Discipline

58-26a-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 261, 2000 General Session

Part 5
Unlawful and Unprofessional Conduct

58-26a-501 Unlawful conduct.

"Unlawful conduct" includes:

(1) using "certified public accountant," "public accountant," "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant, unless that person:
  (a) has a current license as a certified public accountant issued under this chapter; or
  (b) qualifies for a practice privilege as provided in Subsection 58-26a-305(1)(a);
(2) a firm assuming or using "certified public accountant," "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants unless each office of the firm in this state:
  (a) is registered with the division; and
  (b) meets the requirements of Subsections 58-26a-302(3)(a)(iii) and (iv);
(3) signing or affixing to any accounting or financial statement the person's name or any trade or assumed name used in that person's profession or business, with any wording indicating that the person is an auditor, or with any wording indicating that the person has expert knowledge in accounting or auditing, unless that person is licensed under this chapter and all of the person's offices in this state for the practice of public accountancy are maintained and registered as provided in this chapter; and
(4) except as provided in Section 58-26a-305, engaging in the following conduct if not licensed under this chapter to practice public accountancy:
  (a) issuing a report on financial statements of any other person, firm, organization, or governmental unit; or
  (b) issuing a report using any form of language substantially similar to conventional language used by licensees respecting:
    (i) a review of financial statements; or
    (ii) a compilation of financial statements.

Amended by Chapter 238, 2016 General Session

58-26a-502 Unprofessional conduct.

(1) "Unprofessional conduct" includes:
(a) undertaking an engagement when the licensee knows or should know that the licensee could not reasonably expect to complete it with professional competence;
(b) making unauthorized disclosures of confidential information obtained in the practice of public accountancy;
(c) engaging in any business or activity that creates a conflict of interest with a licensee's practice in the profession when the licensee knows or should know that it is a conflict of interest and the licensee does not fully disclose the conflict of interest in writing to all affected parties;
(d) failing to meet the requirements for continuing professional education or peer review required under this chapter; or
(e) issuing a report on financial statements of a client, other than a report in which a lack of independence is disclosed, or performing an attest engagement subject to the attestation standards of the American Institute of Certified Public Accountants when the licensee is not independent, in fact and appearance, to the client.
(2)
(a) A licensee may not, for a commission, recommend or refer to a client a product or service, or for a commission recommend or refer a product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client:
(i) an audit or review of a financial statement;
(ii) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or
(iii) an examination of prospective financial information.
(b) The prohibition under Subsection (2)(a) applies during:
(i) the period in which the licensee is engaged to perform any of the services listed in Subsection (2)(a); and
(ii) the period covered by any historical financial statements involved in any such listed services.
(c) A licensee who is not prohibited under Subsection (2)(a) from performing services or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.
(d) A licensee who accepts a referral fee for recommending or referring a service of a licensee to a person or entity or who pays a referral fee to obtain a client shall disclose the acceptance or payment to the client.
(3)
(a) A licensee may not:
(i) perform for a contingent fee a professional service for, or receive a contingent fee from a client for whom the licensee or the licensee's firm performs:
(A) an audit or review of a financial statement;
(B) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or
(C) an examination of prospective financial information; or
(ii) prepare an original or amended tax return or claim for a tax refund for a contingent fee for a client.
(b) The prohibition in Subsection (3)(a) applies during:

(i) the period in which the licensee is engaged to perform any of the services listed in Subsection (3)(a); and
(ii) the period covered by any historical financial statements involved in the listed services.
(c) Except as stated in Subsections (3)(d) and (e), a contingent fee is a fee established for the performance of a service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of the service.
(d) Solely for the purposes of this Subsection (3), fees are not regarded as being contingent if fixed by courts or other public authorities, or in tax matters, if determined based on the results of judicial proceedings or the findings of a governmental agency.
(e) A licensee's fee may vary depending, for example, on the complexity of service rendered.

Amended by Chapter 265, 2008 General Session

Part 6
Regulatory and Operating Standards

58-26a-601 Ownership of statements, records, schedules, working papers, and memoranda made by licensee.
(1) All statements, records, schedules, working papers, and memoranda made by a licensee under this chapter, incident to or in the course of professional service to a client, are the property of the licensee, in the absence of any express agreement between the licensee and the client to the contrary.
(2) A licensee may not sell, trade, or bequeath statements, records, schedules, working papers, or memoranda without the consent of the client or the client's personal representative or assignee to anyone other than another licensee or one or more surviving partners or shareholders or new partners or shareholders of the licensee or any combined or merged CPA firm or successors-in-interest to the CPA firm.

Enacted by Chapter 261, 2000 General Session

58-26a-602 Privity.
A licensee, a CPA firm registered under this chapter, and any employee, partner, member, officer, or shareholder of a licensee or CPA firm are not liable to persons with whom they are not in privity of contract for civil damages resulting from acts, omissions, decisions, or other conduct in connection with professional services performed by that person, except for:
(1) acts, omissions, decisions, or conduct that constitute fraud or intentional misrepresentations; or
(2) other acts, omissions, decisions, or conduct, if the person performing the professional services:
(a) knew that a primary intent of the client was for the professional services to benefit or influence the particular person seeking to establish liability; and
(b) identified in writing to the client that the professional services performed on behalf of the client were intended to be relied upon by the particular person seeking to establish liability.

Enacted by Chapter 261, 2000 General Session

Chapter 28
Veterinary Practice Act

Part 1
General Provisions

58-28-101 Short title.

This chapter is known as the "Veterinary Practice Act."

Renumbered and Amended by Chapter 109, 2006 General Session

58-28-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Abandonment" means to forsake entirely or to refuse to provide care and support for an animal placed in the custody of a licensed veterinarian.

(2) "Administer" means:

(a) the direct application by a person of a prescription drug or device by injection, inhalation, ingestion, or by any other means, to the body of an animal that is a patient or is a research subject; or

(b) a veterinarian providing to the owner or caretaker of an animal a prescription drug for application by injection, inhalation, ingestion, or any other means to the body of the animal by the owner or caretaker in accordance with the veterinarian's written directions.

(3) "Animal" means any animal other than a human.

(4) "AVMA" means American Veterinary Medical Association.

(5) "Board" means the Veterinary Board established in Section 58-28-201.

(6) "Client" means the patient's owner, the owner's agent, or other person responsible for the patient.

(7) "Direct supervision" means a veterinarian licensed under this chapter is present and available for face-to-face contact with the patient and person being supervised, at the time the patient is receiving veterinary care.

(8) "Extra-label use" means actual use or intended use of a drug in an animal in a manner that is not in accordance with approved labeling.

(9) "Immediate supervision" means the veterinarian licensed under this chapter is present with the individual being supervised, while the individual is performing the delegated tasks.

(10) "Indirect supervision" means a veterinarian licensed under this chapter:

(a) has given either written or verbal instructions for veterinary care of a patient to the person being supervised; and

(b) is available to the person being supervised by telephone or other electronic means of communication during the period of time in which the veterinary care is given to the patient.

(11) "Practice of veterinary medicine, surgery, and dentistry" means to:

(a) diagnose, prognose, or treat any disease, defect, deformity, wound, injury, or physical condition of any animal;

(b) administer, prescribe or dispense any drug, medicine, treatment, method, or practice, perform any operation or manipulation, apply any apparatus or appliance for the cure, relief, or correction of any animal disease, deformity, defect, wound, or injury, or otherwise practice any veterinary medicine, dentistry, or surgery on any animal;

(c) represent by verbal or written claim, sign, word, title, letterhead, card, or any other manner that one is a licensed veterinarian or qualified to practice veterinary medicine, surgery, or dentistry;
(d) hold oneself out as able to practice veterinary medicine, surgery, or dentistry;
(e) solicit, sell, or furnish any parenterally administered animal disease cures, preventions, or treatments, with or without the necessary instruments for the administration of them, or any and all worm and other internal parasitic remedies, upon any agreement, express or implied, to administer these cures, preventions, treatments, or remedies; or
(f) assume or use the title or designation, "veterinary," "veterinarian," "animal doctor," "animal surgeon," or any other title, designation, words, letters, abbreviations, sign, card, or device tending to indicate that such person is qualified to practice veterinary medicine, surgery, or dentistry.
(12) "Unlawful conduct" is defined in Sections 58-1-501 and 58-28-501.
(13) "Unlicensed assistive personnel":
(a) means any unlicensed person, regardless of title, to whom tasks are delegated by a veterinarian licensed under this chapter as permitted by administrative rule and in accordance with the standards of the profession; and
(b) includes:
(i) a veterinary assistant, if working under immediate supervision;
(ii) a veterinary technician who:
(A) has graduated from a program of veterinary technology accredited by the AVMA that is at least a two-year program; and
(B) who is working under direct supervision; and
(iii) a veterinary technologist who:
(A) has graduated from a four-year program of veterinary technology accredited by the AVMA; and
(B) is working under indirect supervision.
(14) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-28-502 and may be further defined by rule.
(15) "Veterinarian-client-patient relationship" means:
(a) a veterinarian licensed under this chapter has assumed responsibility for making clinical judgements regarding the health of an animal and the need for medical treatment of an animal, and the client has agreed to follow the veterinarian's instructions;
(b) the veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, including knowledge of the keeping and care of the animal as a result of recent personal examination of the animal or by medically appropriate visits to the premises where the animal is housed; and
(c) the veterinarian has arranged for emergency coverage for follow-up evaluation in the event of adverse reaction or the failure of the treatment regimen.

Amended by Chapter 189, 2010 General Session

Part 2
Board

58-28-201 Veterinary Board created -- Duties.

(1) There is created a Veterinary Board consisting of four veterinarians who have practiced in the state for not less than five years and one member of the general public.
(2) The board shall be appointed and serve in accordance with the provisions of Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
(4)
(a) The board shall designate one of its members to assist and advise the division with reviewing complaints concerning unlawful or unprofessional conduct under this chapter.
(b) A board member shall be recused from any adjudicative proceeding held by the board concerning a complaint for which the board member advised the division under Subsection (4)(a).

Renumbered and Amended by Chapter 109, 2006 General Session

Part 3
Licensing

58-28-301 Licensure required.
(1)
(a) A license is required to engage in the practice of veterinary medicine, except as specifically provided in Sections 58-1-307 and 58-28-307.
(b) Notwithstanding the provisions of Subsection 58-1-307(1)(c) an individual shall be licensed under this chapter as a veterinary intern in order to engage in a program of indirectly supervised clinical training with a veterinarian licensed under this chapter, and as necessary to meet licensing requirements under Subsection 58-28-302(1)(d).
(2) The division shall issue to a person who qualifies under this chapter a license in the classification of:
(a) veterinarian; or
(b) veterinarian intern.

Enacted by Chapter 109, 2006 General Session

58-28-302 License qualifications.
(1) Every applicant for a license to practice veterinary medicine, surgery, and dentistry shall:
(a) be of good moral character as it relates to the functions and duties of a licensed veterinarian;
(b) pass an examination approved by the board on the theory and practice of the science of veterinary medicine, surgery, dentistry, and other subjects determined by the board, knowledge of which is generally required of veterinarians;
(c)
(i) graduate from a veterinary college accredited by the AVMA; or
(ii) obtain a certificate issued by the Educational Commission for Foreign Veterinary Graduates issued by the AVMA;
(d)
(i) have practiced under the supervision of a veterinarian licensed to practice in this state for a period of at least six months;

(ii) have participated in veterinary investigational, educational, or sanitary control work of a nature and duration as to be the equivalent of the experience of Subsection (1)(d)(i);
(iii) have practiced as a licensed veterinarian outside Utah for a period of at least six months; or
(iv) have practiced as a veterinarian while employed by the United States government, its agencies, or the state or its political subdivisions for a period of at least six months; and
(e) pay a fee to the Department of Commerce determined by it pursuant to Section 63J-1-504 for the examination, for an initial license, and for a renewal license.
(2)
(a) An applicant for licensure as a veterinary intern shall comply with the provisions of Subsections (1)(a) and (c).
(b) An applicant's license as a veterinary intern is limited to the period of time necessary to complete clinical training as described in Subsection (1)(d) and extends not more than one year from the date the minimum requirement for training is completed, unless the individual presents satisfactory evidence to the division and the board that the individual is making reasonable progress toward passing the qualifying examination or is otherwise on a course reasonably expected to lead to licensure as a veterinarian, but the period of time under this Subsection (2)(b) may not exceed two years past the date the minimum supervised clinical training has been completed.

Amended by Chapter 183, 2009 General Session

58-28-303 License -- Display -- Revocation for nondisplay or nonrenewal.

A licensed veterinarian shall display the veterinarian's license in a conspicuous place in the veterinarian's principal place of business. The division may revoke any license which is not displayed in accordance with this section.

Renumbered and Amended by Chapter 109, 2006 General Session

58-28-304 Temporary license -- License reciprocity.

(1) The division may issue a temporary license to practice veterinary medicine, surgery, and dentistry to any person not qualified for licensure under Subsection (4) who meets all requirements of Section 58-28-302 with the exception of Subsections 58-28-302(1)(b) and (d), except that the temporary license shall by its terms expire at the date examination results are available for the examination next following the date of the issuance of the temporary license.
(2) The temporary license shall permit the holder to practice under the indirect supervision of a veterinarian licensed to practice in this state.
(3) The division may extend the expiration date of the temporary license until the following examination date if:
(a) the applicant shows to the board good cause for failing to take or pass the examination; and
(b) the majority of the board members recommend the extension.
(4) Upon the recommendation of the board, the division may issue a license without examination to a person who:
(a) has been licensed or registered to practice veterinary medicine, surgery, and dentistry in any state, district, or territory of the United States or in any foreign country, whose educational, examination, and experience requirements are or were at the time the license was issued equal to those of this state;
(b) has engaged in the practice of veterinary medicine, dentistry, and surgery while licensed by another jurisdiction for at least two years;

(c) obtained the license in another jurisdiction after passing an examination component acceptable to the division and the board;
(d) produces satisfactory evidence of having practiced veterinary medicine competently and in accordance with the standards and ethics of the profession while practicing in another jurisdiction; and
(e) produces satisfactory evidence of identity and good moral character as it relates to the applicant's functions and practice as a licensed veterinarian.

Renumbered and Amended by Chapter 109, 2006 General Session

58-28-305 Term of license -- Expiration -- Renewal.
(1) A license as a veterinarian issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
(2) A license as a veterinarian intern issued under this chapter shall be issued for a term established by the division by rule and consistent with the requirements of Subsection 58-28-302(2)(b).
(3) Each license under this chapter automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Renumbered and Amended by Chapter 109, 2006 General Session

58-28-306 Continuing education.
The division may, by rule, in accordance with Section 58-1-203, establish a continuing education requirement as a condition to renewal of a license under this chapter.

Enacted by Chapter 109, 2006 General Session

58-28-307 Exemptions from chapter.
In addition to the exemptions from licensure in Section 58-1-307 this chapter does not apply to:
(1) any person who practices veterinary medicine, surgery, or dentistry upon any animal owned by him, and the employee of that person when the practice is upon an animal owned by his employer, and incidental to his employment, except:
(a) this exemption does not apply to any person, or his employee, when the ownership of an animal was acquired for the purpose of circumventing this chapter; and
(b) this exemption does not apply to the administration, dispensing, or prescribing of a prescription drug, or nonprescription drug intended for off label use, unless the administration, dispensing, or prescribing of the drug is obtained through an existing veterinarian-patient relationship;
(2) any person who as a student at a veterinary college approved by the board engages in the practice of veterinary medicine, surgery, and dentistry as part of his academic training and under the direct supervision and control of a licensed veterinarian, if that practice is during the last two years of the college course of instruction and does not exceed an 18-month duration;
(3) a veterinarian who is an officer or employee of the government of the United States, or the state, or its political subdivisions, and technicians under his supervision, while engaged in the practice of veterinary medicine, surgery, or dentistry for that government;

(4) any person while engaged in the vaccination of poultry, pullorum testing, typhoid testing of poultry, and related poultry disease control activity;
(5) any person who is engaged in bona fide and legitimate medical, dental, pharmaceutical, or other scientific research, if that practice of veterinary medicine, surgery, or dentistry is directly related to, and a necessary part of, that research;
(6) veterinarians licensed under the laws of another state rendering professional services in association with licensed veterinarians of this state for a period not to exceed 90 days;
(7) registered pharmacists of this state engaged in the sale of veterinary supplies, instruments, and medicines, if the sale is at his regular place of business;
(8) any person in this state engaged in the sale of veterinary supplies, instruments, and medicines, except prescription drugs which must be sold in compliance with state and federal regulations, if the supplies, instruments, and medicines are sold in original packages bearing adequate identification and directions for application and administration and the sale is made in the regular course of, and at the regular place of business;
(9) any person rendering emergency first aid to animals in those areas where a licensed veterinarian is not available, and if suspicious reportable diseases are reported immediately to the state veterinarian;
(10) any person performing or teaching nonsurgical bovine artificial insemination;
(11) any person affiliated with an institution of higher education who teaches nonsurgical bovine embryo transfer or any technician trained by or approved by an institution of higher education who performs nonsurgical bovine embryo transfer, but only if any prescription drug used in the procedure is prescribed and administered under the direction of a veterinarian licensed to practice in Utah;
(12)
(a) upon written referral by a licensed veterinarian, the practice of animal chiropractic by a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act, who has completed an animal chiropractic course approved by the American Veterinary Chiropractic Association or the division;
(b) upon written referral by a licensed veterinarian, the practice of animal physical therapy by a physical therapist licensed under Chapter 24b, Physical Therapy Practice Act, who has completed at least 100 hours of animal physical therapy training, including quadruped anatomy and hands-on training, approved by the division;
(c) upon written referral by a licensed veterinarian, the practice of animal massage therapy by a massage therapist licensed under Chapter 47b, Massage Therapy Practice Act, who has completed at least 60 hours of animal massage therapy training, including quadruped anatomy and hands-on training, approved by the division; and
(d) upon written referral by a licensed veterinarian, the practice of acupuncture by an acupuncturist licensed under Chapter 72, Acupuncture Licensing Act, who has completed a course of study on animal acupuncture approved by the division;
(13) unlicensed assistive personnel performing duties appropriately delegated to the unlicensed assistive personnel in accordance with Section 58-28-502;
(14) an animal shelter employee who is:
(a)
(i) acting under the indirect supervision of a licensed veterinarian; and
(ii) performing animal euthanasia in the course and scope of employment; and
(b) acting under the indirect supervision of a veterinarian who is under contract with the animal shelter, administering a rabies vaccine to a shelter animal in accordance with the Compendium of Animal Rabies Prevention and Control; and

(15) an individual providing appropriate training for animals; however, this exception does not include diagnosing any medical condition, or prescribing or dispensing any prescription drugs or therapeutics.

Amended by Chapter 191, 2014 General Session

58-28-308 Provisions for current practitioners.

An individual who, as of August 1, 2006, is practicing as a veterinarian intern under supervision of a veterinarian licensed under this chapter shall receive a temporary license to practice in the state as a veterinary intern:

(1) if, prior to August 1, 2006, the individual submits an application and any required fees to the division to obtain licensure under this chapter as a veterinary intern; and

(2) while the application for licensure is pending with the division.

Enacted by Chapter 109, 2006 General Session

Part 4
Licensing Denial and Discipline

58-28-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Renumbered and Amended by Chapter 109, 2006 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-28-501 Unlawful conduct.

Unlawful conduct includes, in addition to the definitions in Section 58-1-501:

(1) fraudulently issuing or using any health certificate, inspection certificate, vaccination certificate, test chart, or any other certificate relating to the existence of animal diseases or the sale of animal products for human consumption;

(2) willfully misrepresenting any findings in the inspection of foodstuffs of animal origin; and

(3) fraudulently misapplying or reporting any intradermal, cutaneous, subcutaneous, serological, or chemical test.

Enacted by Chapter 109, 2006 General Session

58-28-502 Unprofessional conduct.

(1) "Unprofessional conduct" includes, in addition to the definitions in Section 58-1-501:

(a) applying unsanitary methods or procedures in the treatment of any animal, contrary to rules adopted by the board and approved by the division;

(b) procuring any fee or recompense on the assurance that a manifestly incurable diseased condition of the body of an animal can be permanently cured;
(c) selling any biologics containing living or dead organisms or products or such organisms, except in a manner which will prevent indiscriminate use of such biologics;
(d) swearing falsely in any testimony or affidavit, relating to, or in the course of, the practice of veterinary medicine, surgery, or dentistry;
(e) willful failure to report any dangerous, infectious, or contagious disease, as required by law;
(f) willful failure to report the results of any medical tests, as required by law, or rule adopted pursuant to law;
(g) violating Chapter 37, Utah Controlled Substances Act;
(h) delegating tasks to unlicensed assistive personnel in violation of standards of the profession and in violation of Subsection (2); and
(i) making any unsubstantiated claim of superiority in training or skill as a veterinarian in the performance of professional services.

(2)
(a) "Unprofessional conduct" does not include the following:
(i) delegating to a veterinary technologist, while under the indirect supervision of a veterinarian licensed under this chapter, patient care and treatment that requires a technical understanding of veterinary medicine if written or oral instructions are provided to the technologist by the veterinarian;
(ii) delegating to a veterinary technician, while under the direct supervision of a veterinarian licensed under this chapter, patient care and treatment that requires a technical understanding of veterinary medicine if written or oral instructions are provided to the technician by the veterinarian; and
(iii) delegating to a veterinary assistant, under the immediate supervision of a licensed veterinarian, tasks that are consistent with the standards and ethics of the profession.
(b) The delegation of tasks permitted under Subsection (2)(a) does not include:
(i) diagnosing;
(ii) prognosing;
(iii) surgery; or
(iv) prescribing drugs, medicines, or appliances.

Amended by Chapter 61, 2015 General Session

58-28-503 Penalty for unlawful or unprofessional conduct.

(1) Any person who violates the unlawful conduct provisions of Section 58-28-501 is guilty of a third degree felony.
(2) After proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and Chapter 1, Division of Occupational and Professional Licensing Act, the division may impose administrative penalties of up to $10,000 for acts of unprofessional conduct or unlawful conduct under this chapter.
(3) Assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.

Amended by Chapter 382, 2008 General Session

Part 6
Standards of Practice

58-28-601 Animal abandonment.

(1) Any animal which suffers abandonment for a period of five days may be sold or placed in the custody of the nearest humane society or county dog pound if the animal is not picked up within seven days after mailing a notification, by certified mail, to the last known address of the person placing the animal in the veterinarian's custody. If no humane society or dog pound is located in the county, the animal may be disposed of in a humane manner.

(2) A veterinarian who complies with this section is relieved from liability for the disposal or sale of abandoned animals.

Renumbered and Amended by Chapter 109, 2006 General Session

58-28-602 Cruelty to animals -- Immunity for reporting.

A licensed veterinarian who in good faith and in the normal course of business, reports a suspected case of animal cruelty to law enforcement or the proper authorities is immune from liability in any civil or criminal action brought against the veterinarian for reporting the suspected cruelty.

Enacted by Chapter 109, 2006 General Session

58-28-603 Medical records.

Medical records maintained by a person licensed under this chapter:

(1) shall meet the standards and ethics of the profession;

(2) shall be maintained in accordance with administrative rules adopted by the division in consultation with the board; and

(3) may be maintained in electronic format.

Enacted by Chapter 109, 2006 General Session

58-28-604 Veterinarian-client-patient relationship.

(1) A licensee under this chapter may only practice under a veterinarian-client-patient relationship as defined in Section 58-28-102.

(2) A veterinarian-client-patient relationship may not be established solely by telephone or other electronic means.

Enacted by Chapter 109, 2006 General Session

58-28-605 Veterinarian-client-patient confidentiality.

(1) A licensee under this chapter may not disclose information about the licensee's care of an animal to anyone other than the client, as defined in Section 58-28-102, unless:

(a) the client consents to the disclosure in writing;

(b) disclosure to public health officials, animal health or welfare officials, agricultural authorities, or federal, state, or local officials is required, or necessary to protect the animal or to protect public health;

(c) disclosure is required by court order or subpoena; or

(d) the client has placed the veterinarian's care or treatment of the animal or the nature or extent of injuries to the animal at issue in a civil or criminal proceeding.
(2) A licensee who releases medical records under the provisions of this section is not liable to the client or any other person for the release of the records.

Enacted by Chapter 109, 2006 General Session

58-28-606 Veterinary corporations, partnerships, and limited liability companies -- Unlicensed individuals -- Ownership of capital stock -- Service as officer or director.
(1) As used in this section:
(a) "Veterinary corporation" means a professional corporation organized to render veterinary services under Title 16, Chapter 11, Professional Corporation Act.
(b) "Veterinary limited liability company" means a limited liability company organized to render veterinary services under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act.
(c) "Veterinary partnership" means a partnership or limited liability partnership organized to render veterinary services under Title 48, Chapter 1, General and Limited Liability Partnerships.
(2) A veterinary corporation may issue or transfer shares of the veterinary corporation's capital stock to a person that is not licensed to practice veterinary medicine, surgery, and dentistry under this chapter.
(3) An individual who is not licensed to practice veterinary medicine, surgery, and dentistry under this chapter:
(a) may not serve as an officer or director of a veterinary corporation; and
(b) may serve as secretary or treasurer of a veterinary corporation.
(4) A veterinary limited liability company or a veterinary partnership may include an individual who is not licensed to practice veterinary medicine, surgery, and dentistry under this chapter.

Enacted by Chapter 61, 2015 General Session

Chapter 31b
Nurse Practice Act

Part 1
General Provisions

58-31b-101 Title.
This chapter is known as the "Nurse Practice Act."

Enacted by Chapter 288, 1998 General Session

58-31b-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Administrative penalty" means a monetary fine or citation imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct in accordance with a

fine schedule established by rule and as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) "Applicant" means a person who applies for licensure or certification under this chapter by submitting a completed application for licensure or certification and the required fees to the department.

(3) "Approved education program" means a nursing education program that is accredited by an accrediting body for nursing education that is approved by the United States Department of Education.

(4) "Board" means the Board of Nursing created in Section 58-31b-201.

(5) "Consultation and referral plan" means a written plan jointly developed by an advanced practice registered nurse and a consulting physician that permits the advanced practice registered nurse to prescribe Schedule II controlled substances in consultation with the consulting physician.

(6) "Consulting physician" means a physician and surgeon or osteopathic physician and surgeon licensed in accordance with this title who has agreed to consult with an advanced practice registered nurse with a controlled substance license, a DEA registration number, and who will be prescribing Schedule II controlled substances.

(7) "Diagnosis" means the identification of and discrimination between physical and psychosocial signs and symptoms essential to the effective execution and management of health care.

(8) "Examinee" means a person who applies to take or does take any examination required under this chapter for licensure.

(9) "Licensee" means a person who is licensed or certified under this chapter.

(10) "Long-term care facility" means any of the following facilities licensed by the Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act:

(a) a nursing care facility;

(b) a small health care facility;

(c) an intermediate care facility for people with an intellectual disability;

(d) an assisted living facility Type I or II; or

(e) a designated swing bed unit in a general hospital.

(11) "Medication aide certified" means a certified nurse aide who:

(a) has a minimum of 2,000 hours experience working as a certified nurse aide;

(b) has received a minimum of 60 hours of classroom and 40 hours of practical training that is approved by the division in collaboration with the board, in administering routine medications to patients or residents of long-term care facilities; and

(c) is certified by the division as a medication aide certified.

(12) "Pain clinic" means the same as that term is defined in Section 58-1-102.

(13)

(a) "Practice as a medication aide certified" means the limited practice of nursing under the supervision, as defined by the division by administrative rule, of a licensed nurse, involving routine patient care that requires minimal or limited specialized or general knowledge, judgment, and skill, to an individual who:

(i) is ill, injured, infirm, has a physical, mental, developmental, or intellectual disability; and

(ii) is in a regulated long-term care facility.

(b) "Practice as a medication aide certified":

(i) includes:

(A) providing direct personal assistance or care; and

(B) administering routine medications to patients in accordance with a formulary and protocols to be defined by the division by rule; and

(ii) does not include assisting a resident of an assisted living facility, a long term care facility, or an intermediate care facility for people with an intellectual disability to self administer a medication, as regulated by the Department of Health by administrative rule.

(14) "Practice of advanced practice registered nursing" means the practice of nursing within the generally recognized scope and standards of advanced practice registered nursing as defined by rule and consistent with professionally recognized preparation and education standards of an advanced practice registered nurse by a person licensed under this chapter as an advanced practice registered nurse. Advanced practice registered nursing includes:

(a) maintenance and promotion of health and prevention of disease;

(b) diagnosis, treatment, correction, consultation, and referral for common health problems;

(c) prescription or administration of prescription drugs or devices including:

(i) local anesthesia;

(ii) Schedule III-V controlled substances; and

(iii) Schedule II controlled substances in accordance with Section 58-31b-803; or

(d) the provision of preoperative, intraoperative, and postoperative anesthesia care and related services upon the request of a licensed health care professional by an advanced practice registered nurse specializing as a certified registered nurse anesthetist, including:

(i) preanesthesia preparation and evaluation including:

(A) performing a preanesthetic assessment of the patient;

(B) ordering and evaluating appropriate lab and other studies to determine the health of the patient; and

(C) selecting, ordering, or administering appropriate medications;

(ii) anesthesia induction, maintenance, and emergence, including:

(A) selecting and initiating the planned anesthetic technique;

(B) selecting and administering anesthetics and adjunct drugs and fluids; and

(C) administering general, regional, and local anesthesia;

(iii) postanesthesia follow-up care, including:

(A) evaluating the patient's response to anesthesia and implementing corrective actions; and

(B) selecting, ordering, or administering the medications and studies listed in Subsection (14)(d); and

(iv) other related services within the scope of practice of a certified registered nurse anesthetist, including:

(A) emergency airway management;

(B) advanced cardiac life support; and

(C) the establishment of peripheral, central, and arterial invasive lines; and

(v) for purposes of Subsection (14)(d), "upon the request of a licensed health care professional":

(A) means a health care professional practicing within the scope of the health care professional's license, requests anesthesia services for a specific patient; and

(B) does not require an advanced practice registered nurse specializing as a certified registered nurse anesthetist to enter into a consultation and referral plan or obtain additional authority to select, administer, or provide preoperative, intraoperative, or postoperative anesthesia care and services.

(15) "Practice of nursing" means assisting individuals or groups to maintain or attain optimal health, implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment. The practice of nursing requires substantial specialized or general knowledge, judgment, and skill based upon principles of the biological, physical, behavioral, and social sciences, and includes:

(a) initiating and maintaining comfort measures;
(b) promoting and supporting human functions and responses;
(c) establishing an environment conducive to well-being;
(d) providing health counseling and teaching;
(e) collaborating with health care professionals on aspects of the health care regimen;
(f) performing delegated procedures only within the education, knowledge, judgment, and skill of the licensee; and
(g) delegating nurse interventions that may be performed by others and are not in conflict with this chapter.

(16) "Practice of practical nursing" means the performance of nursing acts in the generally recognized scope of practice of licensed practical nurses as defined by rule and as provided in this Subsection (16) by a person licensed under this chapter as a licensed practical nurse and under the direction of a registered nurse, licensed physician, or other specified health care professional as defined by rule. Practical nursing acts include:
(a) contributing to the assessment of the health status of individuals and groups;
(b) participating in the development and modification of the strategy of care;
(c) implementing appropriate aspects of the strategy of care;
(d) maintaining safe and effective nursing care rendered to a patient directly or indirectly; and
(e) participating in the evaluation of responses to interventions.

(17) "Practice of registered nursing" means performing acts of nursing as provided in this Subsection (17) by a person licensed under this chapter as a registered nurse within the generally recognized scope of practice of registered nurses as defined by rule. Registered nursing acts include:
(a) assessing the health status of individuals and groups;
(b) identifying health care needs;
(c) establishing goals to meet identified health care needs;
(d) planning a strategy of care;
(e) prescribing nursing interventions to implement the strategy of care;
(f) implementing the strategy of care;
(g) maintaining safe and effective nursing care that is rendered to a patient directly or indirectly;
(h) evaluating responses to interventions;
(i) teaching the theory and practice of nursing; and
(j) managing and supervising the practice of nursing.

(18) "Routine medications":
(a) means established medications administered to a medically stable individual as determined by a licensed health care practitioner or in consultation with a licensed medical practitioner; and
(b) is limited to medications that are administered by the following routes:
(i) oral;
(ii) sublingual;
(iii) buccal;
(iv) eye;
(v) ear;
(vi) nasal;
(vii) rectal;
(viii) vaginal;
(ix) skin ointments, topical including patches and transdermal;
(x) premeasured medication delivered by aerosol/nebulizer; and

(xi) medications delivered by metered hand-held inhalers.
(19) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-31b-501.
(20) "Unlicensed assistive personnel" means any unlicensed person, regardless of title, to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance with the standards of the profession.
(21) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-31b-502 and as may be further defined by rule.

Amended by Chapter 26, 2016 General Session
Amended by Chapter 127, 2016 General Session

58-31b-103 Nurse Education and Enforcement Account.
(1) There is created a restricted account within the General Fund known as the "Nurse Education and Enforcement Account."
(2) The restricted account shall consist of:
(a) administrative penalties imposed under Section 58-31b-503; and
(b) interest earned on money in the account.
(3) Money in the account may be appropriated by the Legislature for the following purposes:
(a) education and training of licensees or potential licensees under this chapter;
(b) enforcement of this chapter by:
(i) investigating unprofessional or unlawful conduct;
(ii) providing legal representation to the division when legal action is taken against a person engaging in unprofessional or unlawful conduct; and
(iii) monitoring compliance of renewal requirements;
(c) survey nursing education programs throughout the state;
(d) education and training of board members; and
(e) review and approve nursing education programs and medication aide certified training programs.

Amended by Chapter 303, 2011 General Session

Part 2
Board

58-31b-201 Board.
(1) There is created the Board of Nursing that consists of the following 11 members:
(a) nine nurses in a manner as may be further defined in division rule; and
(b) two members of the public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and 58-1-203 and shall:
(a)
(i) recommend to the division minimum standards for educational programs qualifying a person for licensure or certification under this chapter;

(ii) recommend to the division denial, approval, or withdrawal of approval regarding educational programs that meet or fail to meet the established minimum standards; and
(iii) designate one of its members on a permanent or rotating basis to:
(A) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
(B) advise the division in its investigation of these complaints.
(b) A board member who has, under Subsection (3)(a)(iii), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.
(4)
(a) The director shall appoint an individual to serve as an ex officio member of the Board of Nursing to represent the position of the division in matters considered by the board.
(b) The ex officio member shall be a licensed registered nurse, shall have earned a masters degree in nursing, and shall have a minimum of five years of experience working in nursing administration or nursing education.

Amended by Chapter 372, 2010 General Session

Part 3
Licensing

58-31b-301 License or certification required -- Classifications.
(1) A license is required to engage in the practice of nursing, except as specifically provided in Sections 58-1-307 and 58-31b-308.
(2) The division shall issue to a person who qualifies under this chapter a license or certification in the classification of:
(a) licensed practical nurse;
(b) registered nurse;
(c) advanced practice registered nurse intern;
(d) advanced practice registered nurse;
(e) advanced practice registered nurse - CRNA without prescriptive practice; and
(f) medication aide certified.
(3) An individual holding an advanced practice registered nurse license as of July 1, 1998, who cannot document the successful completion of advanced course work in patient assessment, diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be issued an "APRN - without prescriptive practice" license.
(4) The division shall grant an advanced practice registered nurse license to any licensed advanced practice registered nurse currently holding prescriptive authority under any predecessor act on July 1, 1998.
(5) An individual holding a certified registered nurse anesthetist license as of July 1, 2007, shall be issued an "APRN - CRNA - without prescriptive practice" license.

Amended by Chapter 57, 2007 General Session

58-31b-302 Qualifications for licensure or certification -- Criminal background checks.
(1) An applicant for certification as a medication aide shall:

(a) submit an application to the division on a form prescribed by the division;
(b) pay a fee to the division as determined under Section 63J-1-504;
(c) have a high school diploma or its equivalent;
(d) have a current certification as a nurse aide, in good standing, from the Department of Health;
(e) have a minimum of 2,000 hours of experience within the two years prior to application, working as a certified nurse aide in a long-term care facility;
(f) obtain letters of recommendation from a long-term care facility administrator and one licensed nurse familiar with the applicant's work practices as a certified nurse aide;
(g) be in a condition of physical and mental health that will permit the applicant to practice safely as a medication aide certified;
(h) have completed an approved education program or an equivalent as determined by the division in collaboration with the board;
(i) have passed the examinations as required by division rule made in collaboration with the board; and
(j) meet with the board, if requested, to determine the applicant's qualifications for certification.

(2) An applicant for licensure as a licensed practical nurse shall:
(a) submit to the division an application in a form prescribed by the division;
(b) pay to the division a fee determined under Section 63J-1-504;
(c) have a high school diploma or its equivalent;
(d) be in a condition of physical and mental health that will permit the applicant to practice safely as a licensed practical nurse;
(e) have completed an approved practical nursing education program or an equivalent as determined by the board;
(f) have passed the examinations as required by division rule made in collaboration with the board; and
(g) meet with the board, if requested, to determine the applicant's qualifications for licensure.

(3) An applicant for licensure as a registered nurse shall:
(a) submit to the division an application form prescribed by the division;
(b) pay to the division a fee determined under Section 63J-1-504;
(c) have a high school diploma or its equivalent;
(d) be in a condition of physical and mental health that will allow the applicant to practice safely as a registered nurse;
(e) have completed an approved registered nursing education program;
(f) have passed the examinations as required by division rule made in collaboration with the board; and
(g) meet with the board, if requested, to determine the applicant's qualifications for licensure.

(4) Applicants for licensure as an advanced practice registered nurse shall:
(a) submit to the division an application on a form prescribed by the division;
(b) pay to the division a fee determined under Section 63J-1-504;
(c) be in a condition of physical and mental health which will allow the applicant to practice safely as an advanced practice registered nurse;
(d) hold a current registered nurse license in good standing issued by the state or be qualified at the time for licensure as a registered nurse;
(e)
(i) have earned a graduate degree in:
(A) an advanced practice registered nurse nursing education program; or
(B) a related area of specialized knowledge as determined appropriate by the division in collaboration with the board; or

(ii) have completed a nurse anesthesia program in accordance with Subsection (4)(f)(ii);
(f) have completed:
(i) course work in patient assessment, diagnosis and treatment, and pharmacotherapeutics from an education program approved by the division in collaboration with the board; or
(ii) a nurse anesthesia program which is approved by the Council on Accreditation of Nurse Anesthesia Educational Programs;
(g) to practice within the psychiatric mental health nursing specialty, demonstrate, as described in division rule, that the applicant, after completion of a doctorate or master's degree required for licensure, is in the process of completing the applicant's clinical practice requirements in psychiatric mental health nursing, including in psychotherapy;
(h) have passed the examinations as required by division rule made in collaboration with the board;
(i) be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification; and
(j) meet with the board, if requested, to determine the applicant's qualifications for licensure.
(5) For each applicant for licensure or certification under this chapter:
(a) the applicant shall:
(i) submit fingerprint cards in a form acceptable to the division at the time the application is filed; and
(ii) consent to a fingerprint background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application; and
(b) the division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check through the national criminal history system (NCIC) or any successor system.
(6) For purposes of conducting the criminal background checks required in Subsection (5), the division shall have direct access to criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.
(7)
(a)
(i) Any new nurse license or certification issued under this section shall be conditional, pending completion of the criminal background check.
(ii) If the criminal background check discloses the applicant has failed to accurately disclose a criminal history, the license or certification shall be immediately and automatically revoked.
(b)
(i) Any person whose conditional license or certification has been revoked under Subsection (7)(a) shall be entitled to a postrevocation hearing to challenge the revocation.
(ii) The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
(8)
(a) If a person has been charged with a violent felony, as defined in Subsection 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of guilty or nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance pending the successful completion of probation:
(i) the person is disqualified for licensure under this chapter; and
(ii)
(A) if the person is licensed under this chapter, the division:
(I) shall act upon the license as required under Section 58-1-401; and
(II) may not renew or subsequently issue a license to the person under this chapter; and

(B) if the person is not licensed under this chapter, the division may not issue a license to the person under this chapter.

(b) If a person has been charged with a felony other than a violent felony, as defined in Subsection 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of guilty or nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance pending the successful completion of probation:

(i) if the person is licensed under this chapter, the division shall determine whether the felony disqualifies the person for licensure under this chapter and act upon the license, as required, in accordance with Section 58-1-401; and

(ii) if the person is not licensed under this chapter, the person may not file an application for licensure under this chapter any sooner than five years after having completed the conditions of the sentence or plea agreement.

Amended by Chapter 316, 2014 General Session

58-31b-303 Qualifications for licensure -- Graduates of nonapproved nursing programs.

An applicant for licensure as a practical nurse or registered nurse who is a graduate of a nursing education program not approved by the division in collaboration with the board must comply with the requirements of this section.

(1) An applicant for licensure as a licensed practical nurse shall:

(a) meet all requirements of Subsection 58-31b-302(2), except Subsection (2)(e); and

(b) produce evidence acceptable to the division and the board that the nursing education program completed by the applicant is equivalent to the minimum standards established by the division in collaboration with the board for an approved licensed practical nursing education program.

(2) An applicant for licensure as a registered nurse shall:

(a) meet all requirements of Subsection 58-31b-302(3), except Subsection (3)(e); and

(b)

(i) pass the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or

(ii) produce evidence acceptable to the division and the board that the applicant is currently licensed as a registered nurse in one of the states, territories, or the District of Columbia of the United States and has passed the NCLEX-RN examination.

Amended by Chapter 291, 2006 General Session

58-31b-304 Qualifications for admission to the examinations.

(1) To be admitted to the examinations required for certification as a medication aide certified, a person shall:

(a) submit an application on a form prescribed by the division;

(b) pay a fee as determined by the division under Section 63J-1-504; and

(c) meet all requirements of Subsection 58-31b-302(1), except the passing of the examination.

(2) To be admitted to the examinations required for licensure as a practical nurse, a person shall:

(a) submit an application form prescribed by the division;

(b) pay a fee as determined by the division under Section 63J-1-504; and

(c) meet all requirements of Subsection 58-31b-302(2), except Subsection (2)(f).

(3) To be admitted to the examinations required for licensure as a registered nurse, a person shall:

(a) submit an application form prescribed by the division;

(b) pay a fee as determined by the division under Section 63J-1-504; and

(c) meet all the requirements of Subsection 58-31b-302(3), except Subsection (3)(f).

Amended by Chapter 183, 2009 General Session

58-31b-305 Term of license -- Expiration -- Renewal.

(1) The division shall issue each license or certification under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) The division shall renew the license of a licensee who, at the time of renewal:

(a) completes and submits an application for renewal in a form prescribed by the division;

(b) pays a renewal fee established by the division under Section 63J-1-504; and

(c) meets continuing competency requirements as established by rule.

(3) In addition to the renewal requirements under Subsection (2), a person licensed as a advanced practice registered nurse shall be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of that qualification or if licensed prior to July 1, 1992, meet the requirements established by rule.

(4) In addition to the requirements described in Subsections (2) and (3), an advanced practice registered nurse licensee specializing in psychiatric mental health nursing who, as of the day on which the division originally issued the licensee's license had not completed the division's clinical practice requirements in psychiatric and mental health nursing, shall, to qualify for renewal:

(a) if renewing less than two years after the day on which the division originally issued the license, demonstrate satisfactory progress toward completing the clinical practice requirements; or

(b) have completed the clinical practice requirements.

(5) Each license or certification automatically expires on the expiration date shown on the license or certification unless renewed in accordance with Section 58-1-308.

Amended by Chapter 316, 2014 General Session

58-31b-306 APRN intern license.

(1)

(a) The division may issue an APRN intern license to a person who meets all qualifications for a license as an advanced practice registered nurse under this chapter, except for the passing of required examinations, if the applicant:

(i) is a graduate of an approved nursing education program within the year immediately preceding application for an intern license;

(ii) has never before taken the examinations; and

(iii) submits to the division evidence of having secured employment conditioned upon issuance of the APRN intern license, and the employment is under the supervision of an advanced practice registered nurse or physician as defined by division rule.

(b) An APRN intern license issued under Subsection (1)(a) expires on the earlier of:

(i) a date following a period established by division rule;

(ii) the date upon which the division receives notice from the examination agency that the individual failed to take or pass the examinations upon notification to the applicant; or

(iii) the date upon which the division issues the individual an APRN license.

(2) An applicant specializing in psychiatric mental health nursing may be issued an APRN intern license upon completion of all licensure requirements, except for the passing of required examinations and completion of required clinical practice hours.
(3)
(a) The division may issue an APRN intern license to a person who meets all qualifications for a license as an advanced practice registered nurse under this chapter, except course work in patient assessment or pharmacotherapeutics, if that applicant:
(i) is licensed in good standing as an advanced practice registered nurse in another state or jurisdiction; and
(ii) submits to the division evidence of having secured employment conditioned upon issuance of the APRN intern license, and the employment is under the supervision of an advanced practice registered nurse or physician as defined by division rule.
(b) An APRN intern license issued under Subsection (3)(a) expires on the earlier of:
(i) a date following a period established by division rule; or
(ii) the date upon which the division issues the individual a regular license.

Enacted by Chapter 288, 1998 General Session

58-31b-308 Exemptions from licensure.
(1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts included within the definition of the practice of nursing, subject to the stated circumstances and limitations, without being licensed under this chapter:
(a) friends, family members, foster parents, or legal guardians of a patient performing gratuitous nursing care for the patient;
(b) persons providing care in a medical emergency;
(c) persons engaged in the practice of religious tenets of a church or religious denomination; and
(d) after July 1, 2000, a person licensed to practice nursing by a jurisdiction that has joined the Nurse Licensure Compact to the extent permitted by Section 58-31c-102.
(2) Notwithstanding Subsection (1)(d), the division may, in accordance with Section 58-31c-102, limit or revoke practice privileges in this state of a person licensed to practice nursing by a jurisdiction that has joined the Nurse Licensing Compact.

Amended by Chapter 50, 2005 General Session
Amended by Chapter 134, 2005 General Session

58-31b-309 Continuing education.
(1) The division in collaboration with the board may establish continuing education requirements for each classification of nurse licensure.
(2) The division may discriminate between classifications of licensure with respect to continuing education requirements upon finding the continuing education requirements are necessary to reasonably protect the public health, safety, or welfare.

Enacted by Chapter 288, 1998 General Session

Part 4
License Denial and Discipline

58-31b-401 Grounds for denial of licensure or certification and disciplinary proceedings.

(1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

(2) If a court of competent jurisdiction determines a nurse is incapacitated as defined in Section 75-1-201 or that the nurse has a mental illness, as defined in Section 62A-15-602, and unable to safely engage in the practice of nursing, the director shall immediately suspend the license of the nurse upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the nurse in writing of the suspension.

(3)

(a) If the division and the majority of the board find reasonable cause to believe a nurse who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing nursing with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the nurse with a notice of hearing on the sole issue of the capacity of the nurse to competently, safely engage in the practice of nursing.

(b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

(4)

(a) Every nurse who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting to an immediate mental or physical examination, at the nurse's expense and by a division-approved practitioner selected by the nurse when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining practitioner's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the nurse has a mental illness, is incapacitated, or otherwise unable to practice nursing with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the nurse's patients or the general public.

(c)

(i) Failure of a nurse to submit to the examination ordered under this section is a ground for the division's immediate suspension of the nurse's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the nurse and was not related directly to the illness or incapacity of the nurse.

(5)

(a) A nurse whose license is suspended under Subsection (2), (3), or (4)(c) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

(b) The hearing held under this Subsection (5) shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the

continuance of the order of suspension in order to prevent harm to the nurse's patients or the general public.

(6) A nurse whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the nurse, under procedures established by division rule, regarding any change in the nurse's condition, to determine whether:
  (a) the nurse is or is not able to safely and competently engage in the practice of nursing; and
  (b) the nurse is qualified to have the nurse's license to practice under this chapter restored completely or in part.

(7) Nothing in Section 63G-2-206 may be construed as limiting the authority of the division to report current significant investigative information to the coordinated licensure information system for transmission to party states as required of the division by Article VII of the Nurse Licensure Compact in Section 58-31c-102.

(8) For purposes of this section:
  (a) "licensed" or "license" includes "certified" or "certification" under this chapter; and
  (b) any terms or conditions applied to the word "nurse" in this section also apply to a medication aide certified.

Amended by Chapter 364, 2013 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-31b-501 Unlawful conduct.

"Unlawful conduct" includes:

(1) using the following titles, names or initials, if the user is not properly licensed or certified under this chapter:
  (a) nurse;
  (b) licensed practical nurse, practical nurse, or L.P.N.;
  (c) medication aide certified, or M.A.C.;
  (d) registered nurse or R.N.;
  (e) registered nurse practitioner, N.P., or R.N.P.;
  (f) registered nurse specialist, N.S., or R.N.S.;
  (g) registered psychiatric mental health nurse specialist;
  (h) advanced practice registered nurse;
  (i) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or C.R.N.A.; or
  (j) other generally recognized names or titles used in the profession of nursing;

(2)
  (a) using any other name, title, or initials that would cause a reasonable person to believe the user is licensed or certified under this chapter if the user is not properly licensed or certified under this chapter; and
  (b) for purposes of Subsection (2)(a), it is unlawful conduct for a medication aide certified to use the term "nurse"; and

(3) conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601.

Amended by Chapter 291, 2006 General Session

58-31b-502 Unprofessional conduct.

"Unprofessional conduct" includes:

(1) failure to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's or person with a certification's position or practice as a nurse or practice as a medication aide certified;

(2) failure to provide nursing service or service as a medication aide certified in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's health problem;

(3) engaging in sexual relations with a patient during any:

(a) period when a generally recognized professional relationship exists between the person licensed or certified under this chapter and patient; or

(b) extended period when a patient has reasonable cause to believe a professional relationship exists between the person licensed or certified under the provisions of this chapter and the patient;

(4)

(a) as a result of any circumstance under Subsection (3), exploiting or using information about a patient or exploiting the licensee's or the person with a certification's professional relationship between the licensee or holder of a certification under this chapter and the patient; or

(b) exploiting the patient by use of the licensee's or person with a certification's knowledge of the patient obtained while acting as a nurse or a medication aide certified;

(5) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;

(6) unauthorized taking or personal use of nursing supplies from an employer;

(7) unauthorized taking or personal use of a patient's personal property;

(8) knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any other circumstance related to the patient and the medical or nursing care provided;

(9) unlawful or inappropriate delegation of nursing care;

(10) failure to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse;

(11) employing or aiding and abetting the employment of an unqualified or unlicensed person to practice as a nurse;

(12) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;

(13) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by a court;

(14) failure to pay a penalty imposed by the division;

(15) prescribing a Schedule II-III controlled substance without complying with the requirements in Section 58-31b-803;

(16) violating Section 58-31b-801;

(17) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable; and
(18) establishing or operating a pain clinic without a consultation and referral plan for Schedule II-III controlled substances.

Amended by Chapter 127, 2016 General Session

58-31b-503 Penalties and administrative actions for unlawful conduct and unprofessional conduct.

(1) Any person who violates the unlawful conduct provision specifically defined in Subsection 58-1-501(1)(a) is guilty of a third degree felony.
(2) Any person who violates any of the unlawful conduct provisions specifically defined in Subsections 58-1-501(1)(b) through (f) and 58-31b-501(1)(d) is guilty of a class A misdemeanor.
(3) Any person who violates any of the unlawful conduct provisions specifically defined in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B misdemeanor.
(4)
  (a) Subject to Subsection (6) and in accordance with Section 58-31b-401, for acts of unprofessional or unlawful conduct, the division may:
    (i) assess administrative penalties; and
    (ii) take any other appropriate administrative action.
  (b) An administrative penalty imposed pursuant to this section shall be deposited in the "Nurse Education and Enforcement Account" as provided in Section 58-31b-103.
(5) If a licensee has been convicted of violating Section 58-31b-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative fine under this chapter for the same offense for which the conviction was obtained.
(6)
  (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Section 58-31b-401, 58-31b-501, or 58-31b-502, Chapter 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and that disciplinary action is appropriate, the director or the director's designee from within the division shall:
    (i) promptly issue a citation to the person according to this chapter and any pertinent administrative rules;
    (ii) attempt to negotiate a stipulated settlement; or
    (iii) notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
  (b) Any person who is in violation of a provision described in Subsection (6)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding may be assessed a fine:
    (i) pursuant to this Subsection (6) of up to $10,000 per single violation or up to $2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; and
    (ii) in addition to or in lieu of the fine imposed under Subsection (6)(b)(i), be ordered to cease and desist from violating a provision of Sections 58-31b-501 and 58-31b-502, Chapter 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to those provisions.

(c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-31b-401 may not be assessed through a citation.
(d) Each citation issued under this section shall:
(i) be in writing; and
(ii) clearly describe or explain:
(A) the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;
(B) that the recipient must notify the division in writing within 20 calendar days of service of the citation in order to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
(C) the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation; and
(iii) be served upon any person upon whom a summons may be served:
(A) in accordance with the Utah Rules of Civil Procedure;
(B) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or
(C) by mail.
(e) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.
(f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with the citation after it becomes final.
(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

Amended by Chapter 340, 2011 General Session

Part 6
Nursing Education Programs

58-31b-601 Minimum standards for nursing programs -- Medication aide training.
(1) Except as provided in Subsection (2), to qualify as an approved education program for the purpose of qualifying graduates for licensure under this chapter, a nursing education program shall be accredited by an accrediting body for nursing education that is approved by the United States Department of Education.
(2)
(a) In accordance with Subsection (2)(b) and Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division, in consultation with the board, may make rules establishing requirements for a nursing education program to qualify for a limited time as an approved education program for the purpose of qualifying graduates for licensure under this chapter, if the program:
(i)
(A) is in the process of obtaining the accreditation described in Subsection (1);

(B) has recently been denied accreditation after seeking to obtain the accreditation described in Subsection (1); or
(C) has recently lost the accreditation described in Subsection (1); and
(ii) is approved under Subsection (2)(a) on or before May 15, 2016.
(b) A program approved under Subsection (2)(a) may qualify graduates for licensure under Subsection (2)(a) until December 31,2020. On or after January 1, 2021, a nursing education program that is not an approved education program under Subsection (1) may not qualify graduates for licensure under this chapter.
(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the provisions of this chapter, the division shall make rules defining the minimum standards for a medication aide certified training program to qualify a person for certification under this chapter as a medication aide certified.

Amended by Chapter 26, 2016 General Session

Part 7
Immunity Provisions

58-31b-701 Immunity from liability.

A person licensed, registered, or certified under this chapter:
(1) who provides emergency care in accordance with Section 78B-4-501 is entitled to the immunity from civil liability provided under that section; and
(2) is considered a health care provider under Chapter 13, Health Care Providers Immunity from Liability Act, and is entitled to the immunity from civil liability provided under that chapter.

Amended by Chapter 3, 2008 General Session

58-31b-702 Reporting of disciplinary action -- Immunity from liability.

(1) A licensed health care facility or organization or a professional society of nurses in the state that takes disciplinary action against a person licensed under this chapter relating to any of the following shall report the action in writing to the division within 30 days after the action is taken:
(a) that person's professional acts or omissions as a licensed nurse;
(b) that person's nursing competence or ability to practice nursing safely; or
(c) that person's use of alcohol or drugs in an unlawful manner or to the extent the person is impaired in his ability to practice nursing safely.
(2) Any person or organization furnishing information in accordance with this section is immune from liability to the extent that the information is furnished in good faith and without malice.

Amended by Chapter 50, 2005 General Session

58-31b-703 Opiate antagonist -- Exclusion from unprofessional or unlawful conduct.

(1) As used in this section:
(a) "Dispense" means the same as that term is defined in Section 58-17b-102.
(b) "Increased risk" means the same as that term is defined in Section 26-55-102.
(c) "Opiate antagonist" means the same as that term is defined in Section 26-55-102.

(d) "Opiate-related drug overdose event" means the same as that term is defined in Section 26-55-102.
(e) "Prescribe" means the same as that term is defined in Section 58-17b-102.
(2) The prescribing or dispensing of an opiate antagonist by a licensee under this chapter is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:
(a) in a good faith effort to assist:
(i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or
(ii) a family member of, friend of, or other person, including a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or
(b) to an overdose outreach provider pursuant to Subsection 26-55-104(2)(a)(iii).
(3) The provisions of this section and Title 26, Chapter 55, Opiate Overdose Response Act, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.

Amended by Chapter 202, 2016 General Session, (Coordination Clause)
Amended by Chapter 202, 2016 General Session
Amended by Chapter 207, 2016 General Session
Amended by Chapter 208, 2016 General Session

Part 8
Practice Standards

58-31b-801 Practice within limits of competency.
(1) Each person licensed under this chapter is responsible for confining his practice as a nurse to those acts and practices permitted by law.
(2) A person licensed under this act may not engage in any act or practice for which he is not competent.

Enacted by Chapter 288, 1998 General Session

58-31b-802 Consumer access to provider charges.
Beginning January 1, 2011, a nurse whose license under this chapter authorizes independent practice shall, when requested by a consumer:
(1) make a list of prices charged by the nurse available for the consumer which includes the nurse's 25 most frequently performed:
(a) clinic procedures or clinic services;
(b) out-patient procedures; and
(c) in-patient procedures; and
(2) provide the consumer with information regarding any discount available for:
(a) services not covered by insurance; or
(b) prompt payment of billed charges.

Enacted by Chapter 68, 2010 General Session

58-31b-803 Prescriptive authority for advanced practice registered nurses -- Schedule II controlled substance or device -- Workers' compensation -- Pain clinics.

(1) This section does not apply to an advanced practice registered nurse specializing as a certified registered nurse anesthetist under Subsection 58-31b-102(14)(d).

(2) Except as provided in Subsection (3), an advanced practice registered nurse shall prescribe or administer a Schedule II controlled substance in accordance with a consultation and referral plan.

(3) Except as provided by Subsection 58-31b-502(18), an advanced practice registered nurse may prescribe or administer a Schedule II controlled substance without a consultation and referral plan if the advanced practice registered nurse:

(a) has the lesser of:

(i) two years of licensure as a nurse practicing advanced practice registered nursing; or

(ii) 2,000 hours of experience practicing advanced practice registered nursing;

(b)

(i) prior to the first time prescribing or administering a Schedule III controlled substance for chronic pain, or a Schedule II controlled substance to a particular patient, unless treating the patient in a licensed general acute hospital, checks information about the patient in the Controlled Substance Database created in Section 58-37f-201; and

(ii) periodically, thereafter, checks information about the patient in the Controlled Substance Database created in Section 58-37f-201; and

(c) follows the health care provider prescribing guidelines for the treatment of an injured worker, developed by the Labor Commission under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act, if:

(i) the patient is an injured worker; and

(ii) the Schedule II or III controlled substance is prescribed for chronic pain.

Enacted by Chapter 127, 2016 General Session

Chapter 31c
Nurse Licensure Compact

58-31c-101 Title.

This chapter is known as the "Nurse Licensure Compact."

Enacted by Chapter 189, 1998 General Session

58-31c-102 Nurse Licensure Compact.

The Nurse Licensure Compact is hereby enacted and entered into with all other jurisdictions that legally join in the compact, which is, in form, substantially as follows:

NURSE LICENSURE COMPACT

ARTICLE I

FINDINGS AND DECLARATION OF PURPOSE

(1) The party states find that:

(a) the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(b) violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(c) the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(d) new practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and

(e) the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(2) The general purposes of this compact are to:

(a) facilitate the states' responsibility to protect the public's health and safety;

(b) ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(c) facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

(d) promote compliance with the laws governing the practice of nursing in each jurisdiction; and

(e) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II

DEFINITIONS

As used in this compact:

(1) "Adverse action" means a home or remote state action.

(2) "Alternative program" means a voluntary, non-disciplinary monitoring program approved by a nurse licensing board.

(3) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(4) "Current significant investigative information" means:

(a) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(b) investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(5) "Home state" means the party state which is the nurse's primary state of residence.

(6) "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(7) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(8) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational

nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(9) "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws.

(10) "Party state" means any state that has adopted this compact.

(11) "Remote state" means a party state, other than the home state:

(a) where the patient is located at the time nursing care is provided; or

(b) in the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(12) "Remote state action" means:

(a) any administrative, civil, equitable, or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state; and

(b) cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "State practice laws" means those individual party's state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III

GENERAL PROVISIONS AND JURISDICTION

(1) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(2) Party states, in accordance with state due process laws, may limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(3) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(4) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(5) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV

APPLICATIONS FOR LICENSURE IN A PARTY STATE

(1) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other party state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(2) A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

(3) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(4) When a nurse changes primary state of residence by:

(a) moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(b) moving from a non-party state to a party state, and obtains a license from the new home state, the individual state license issued by the non-party state is not affected and will remain in full force if so provided by the laws of the non-party state;

(c) moving from a party state to a non-party state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V

ADVERSE ACTIONS

In addition to the General Provisions described in Article III, the following provisions apply:

(1) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(2) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action(s), and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(3) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(4) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(5) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(6) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain non-public if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI

ADDITIONAL AUTHORITIES INVESTED IN

PARTY STATE NURSE LICENSING BOARDS

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(1) if otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(2) issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located;

(3) issue cease and desist orders to limit or revoke a nurse's authority to practice in their state; and

(4) promulgate uniform rules and regulations as provided for in Article VIII(3).

ARTICLE VII

COORDINATED LICENSURE INFORMATION SYSTEM

(1) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(2) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

(3) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(4) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

(5) Any personally identifiable information obtained by a party states' licensing board from the coordinated licensure information system may not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(6) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

(7) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

ARTICLE VIII

COMPACT ADMINISTRATION AND INTERCHANGE OF INFORMATION

(1) The head of the nurse licensing board, or his/her designee, of each party state shall be the administrator of this compact for his/her state.

(2) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(3) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states under the authority invested under Article VI(4).

ARTICLE IX

IMMUNITY

No party state or the officers or employees or agents of a party state's nurse licensing board who acts in accordance with the provisions of this compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE X

ENTRY INTO FORCE, WITHDRAWAL, AND AMENDMENT

(1) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(2) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(3) Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this compact.

(4) This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI

CONSTRUCTION AND SEVERABILITY

(1) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to a severable matter.

(2) In the event party states find a need for settling disputes arising under this compact:

(a) the party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state; an individual appointed by the compact administrator in the remote state(s) involved; and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(b) the decision of a majority of the arbitrators shall be final and binding.

Amended by Chapter 65, 1999 General Session

58-31c-103 Rulemaking authority.

The division may adopt rules necessary to implement the provisions of this chapter.

Enacted by Chapter 189, 1998 General Session

58-31c-104 Executive administrator of the Board of Nursing.

The head of the nurse licensing board, as that term is used in the compact in reference to the Board of Nursing created in Section 58-31b-201, means the executive administrator of the Board of Nursing.

Enacted by Chapter 189, 1998 General Session

58-31c-105 Pending disciplinary actions.

(1) Notwithstanding Sections 58-31b-308 and 58-31c-102, a nurse licensed by a party state whose license is in any way restricted or otherwise subject to disciplinary action on January 1, 2000, or the date on which the nurse's home state adopts the Nurse Licensure Compact, may not practice as a registered nurse in this state without the express permission of the division in consultation with the Board of Nursing created in Section 58-31b-201.

(2) Notwithstanding Section 58-31c-102, unprofessional conduct under Section 58-31b-502 includes practicing in a party state without first obtaining the express permission of that state if the nurse's license issued under Section 58-31b-301 is in anyway restricted or otherwise subject to disciplinary action on January 1, 2000.

Enacted by Chapter 65, 1999 General Session

Chapter 31d
Advanced Practice Registered Nurse Compact

58-31d-101 Title.

This chapter is known as the "Advanced Practice Registered Nurse Compact."

Enacted by Chapter 15, 2004 General Session

58-31d-102 Advanced Practice Registered Nurse Compact.

The Advanced Practice Registered Nurse Compact is hereby enacted and entered into with all other jurisdictions that legally join in the compact, which is, in form, substantially as follows:

Advanced Practice Registered Nurse Compact

ARTICLE I

Findings and Declaration of Purpose

(1) The party states find that:

(a) the health and safety of the public are affected by the degree of compliance with APRN licensure/authority to practice requirements and the effectiveness of enforcement activities related to state APRN licensure/authority to practice laws;

(b) violations of APRN licensure/authority to practice and other laws regulating the practice of nursing may result in injury or harm to the public;

(c) the expanded mobility of APRNs and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of APRN licensure/authority to practice and regulation;

(d) new practice modalities and technology make compliance with individual state APRN licensure/authority to practice laws difficult and complex;

(e) the current system of duplicative APRN licensure/authority to practice for APRNs practicing in multiple states is cumbersome and redundant to both APRNs and states;

(f) uniformity of APRN requirements throughout the states promotes public safety and public health benefits; and

(g) access to APRN services increases the public's access to health care, particularly in rural and underserved areas.

(2) The general purposes of this compact are to:

(a) facilitate the states' responsibilities to protect the public's health and safety;

(b) ensure and encourage the cooperation of party states in the areas of APRN licensure/authority to practice and regulation, including promotion of uniform licensure requirements;

(c) facilitate the exchange of information between party states in the areas of APRN regulation, investigation, and adverse actions;

(d) promote compliance with the laws governing APRN practice in each jurisdiction; and

(e) invest all party states with the authority to hold an APRN accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II

Definitions

As used in this compact:

(1) "Advanced practice registered nurse" or "APRN" means a nurse anesthetist, nurse practitioner, nurse midwife, or clinical nurse specialist to the extent a party state licenses or grants authority to practice in that APRN role and title.

(2) "Adverse action" means a home or remote state disciplinary action.

(3) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a licensing board.

(4) "APRN Licensure/Authority to Practice" means the regulatory mechanism used by a party state to grant legal authority to practice as an APRN.

(5) "APRN Uniform Licensure/Authority to Practice Requirements" means those minimum uniform licensure, education, and examination requirements as agreed to by the compact administrators and adopted by licensing boards for the recognized APRN role and title.

(6) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on APRN licensure/authority to practice and enforcement activities related to APRN licensure/authority to practice laws, which is administered by a nonprofit organization composed of and controlled by state licensing boards.

(7) "Current significant investigative information" means:

(a) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the APRN to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(b) investigative information that indicates that the APRN represents an immediate threat to public health and safety regardless of whether the APRN has been notified and had an opportunity to respond.

(8) "Home state" means the party state that is the APRN's primary state of residence.

(9) "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on an APRN by the home state's licensing board or other authority including actions against an individual's license/authority to practice such as: revocation, suspension, probation, or any other action which affects an APRN's authorization to practice.

(10) "Licensing board" means a party state's regulatory body responsible for issuing APRN licensure/authority to practice.

(11) (a) "Multistate advanced practice privilege" means current authority from a remote state permitting an APRN to practice in that state in the same role and title as the APRN is licensed/ authorized to practice in the home state to the extent that the remote state laws recognize such APRN role and title.

(b) A remote state has the authority, in accordance with existing state due process laws, to take actions against the APRN's privilege, including revocation, suspension, probation, or any other action that affects an APRN's multistate privilege to practice.

(12) "Party state" means any state that has adopted this compact.

(13) "Prescriptive authority" means the legal authority to prescribe medications and devices as defined by party state laws.

(14) "Remote state" means a party state, other than the home state:

(a) where the patient is located at the time APRN care is provided; or

(b) in the case of APRN practice not involving a patient, in the party state where the recipient of APRN practice is located.

(15) "Remote state action" means:

(a) any administrative, civil, equitable, or criminal action permitted by a remote state's laws which are imposed on an APRN by the remote state's licensing board or other authority, including actions against an individual's multistate advanced practice privilege in the remote state; and

(b) cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards of those states.

(16) "State" means a state, territory, or possession of the United States.

(17) (a) "State practice laws" means a party state's laws and regulations that govern APRN practice, define the scope of advanced nursing practice including prescriptive authority, and create the methods and grounds for imposing discipline.

(b) State practice laws do not include the requirements necessary to obtain and retain APRN licensure/authority to practice as an APRN, except for qualifications or requirements of the home state.

(18) "Unencumbered" means that a state has no current disciplinary action against an APRN's license/authority to practice.

ARTICLE III

General Provisions and Jurisdiction

(1) All party states shall participate in the Nurse Licensure Compact for registered nurses and licensed practical/vocational nurses in order to enter into the APRN Compact.

(2) No state shall enter the APRN Compact until the state adopts, at a minimum, the APRN Uniform Licensure/Authority to Practice Requirements for each APRN role and title recognized by the state seeking to enter the APRN Compact.

(3) (a) APRN Licensure/Authority to practice issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate advanced practice privilege to the extent that the role and title are recognized by each party state.

(b) To obtain or retain APRN licensure/authority to practice as an APRN, an applicant must meet the home state's qualifications for authority or renewal of authority as well as all other applicable state laws.

(4) (a) The APRN multistate advanced practice privilege does not include prescriptive authority, and does not affect any requirements imposed by states to grant to an APRN initial and continuing prescriptive authority according to state practice laws.

(b) A party state may grant prescriptive authority to an individual on the basis of a multistate advanced practice privilege to the extent permitted by state practice laws.

(5) (a) A party state may, in accordance with state due process laws, limit or revoke the multistate advanced practice privilege in the party state and may take any other necessary actions under the party state's applicable laws to protect the health and safety of the party state's citizens.

(b) If a party state takes action, the party state shall promptly notify the administrator of the coordinated licensure information system.

(c) The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(6) (a) An APRN practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is provided.

(b) The APRN practice includes patient care and all advanced nursing practice defined by the party state's practice laws.

(c) The APRN practice will subject an APRN to the jurisdiction of the licensing board, the courts, and the laws of the party state.

(7) (a) Individuals not residing in a party state may apply for APRN licensure/authority to practice as an APRN under the laws of a party state.

(b) The authority to practice granted to these individuals will not be recognized as granting the privilege to practice as an APRN in any other party state unless explicitly agreed to by that party state.

ARTICLE IV

Applications for APRN Licensure/Authority to Practice in a Party State

(1) (a) Once an application for APRN licensure/authority to practice is submitted, a party state shall ascertain, through the Coordinated Licensure Information System, whether:

(i) the applicant has held or is the holder of a nursing license/authority to practice issued by another state;

(ii) the applicant has had a history of previous disciplinary action by any state;

(iii) an encumbrance exists on any license/authority to practice; and

(iv) any other adverse action by any other state has been taken against a license/authority to practice.

(b) This information may be used in approving or denying an application for APRN licensure/authority to practice.

(2) An APRN in a party state shall hold APRN licensure/authority to practice in only one party state at a time, issued by the home state.

(3) (a) An APRN who intends to change primary state of residence may apply for APRN licensure/authority to practice in the new home state in advance of the change.

(b) New licensure/authority to practice will not be issued by a party state until after an APRN provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(4) When an APRN changes primary state of residence by:

(a) moving between two party states, and obtains APRN licensure/authority to practice from the new home state, the APRN licensure/authority to practice from the former home state is no longer valid;

(b) moving from a nonparty state to a party state, and obtains APRN licensure/authority to practice from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

(c) moving from a party state to a nonparty state, the APRN licensure/authority to practice issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V

Adverse Actions

In addition to the general provisions described in Article III, the following provisions apply:

(1) (a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for the action, if known.

(b) The licensing board of a remote state shall also promptly report any significant, current investigative information yet to result in a remote state action.

(c) The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(2) (a) The licensing board of a party state shall have the authority to complete any pending investigations for an APRN who changes primary state of residence during the course of those investigations.

(b) It shall also have the authority to take appropriate action, and shall promptly report the conclusions of the investigations to the administrator of the coordinated licensure information system.

(c) The administrator of the coordinated licensure information system shall promptly notify the new home state of the actions.

(3) (a) A remote state may take adverse action affecting the multistate advanced practice privilege to practice within that party state.

(b) Only the home state shall have the power to impose adverse action against the APRN licensure/authority to practice issued by the home state.

(4) (a) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if that conduct had occurred within the home state.

(b) In so doing, it shall apply its own state laws to determine appropriate action.

(5) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing the adverse action.

(6) (a) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action and that the participation shall remain nonpublic if required by the party state's laws.

(b) Party states must require APRNs who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from the other party state.

(7) (a) All home state licensing board disciplinary orders, agreed or otherwise, which limit the scope of the APRN's practice or require monitoring of the APRN as a condition of the order, shall include the requirements that the APRN will limit the APRN's practice to the home state during the pendency of the order.

(b) This requirement may allow the APRN to practice in other party states with prior written authorization from both the home state and party state licensing boards.

ARTICLE VI

Additional Authorities Invested in Party State Licensing Boards

Notwithstanding any other powers, party state licensing boards shall have the authority to:

(1) if otherwise permitted by state law, recover from the affected APRN the costs of investigations and disposition of cases resulting from any adverse action taken against that APRN;

(2) (a) issue subpoenas for both hearings and investigations, which require the attendance and testimony of witnesses, and the production of evidence;

(b) subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it;

(c) the issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence or both are located;

(3) issue cease and desist orders to limit or revoke an APRN's privilege or licensure/ authority to practice in their state; and

(4) promulgate uniform rules and regulations as provided for in Article VIII (3).

ARTICLE VII

Coordinated Licensure Information System

(1) (a) All party states shall participate in a cooperative effort to create a coordinated database of all APRNs.

(b) This system will include information on the APRN licensure/authority to practice and disciplinary history of each APRN, as contributed by party states, to assist in the coordination of APRN licensure/authority to practice and enforcement efforts.

(2) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate advanced practice privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for those denials to the coordinated licensure information system.

(3) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(4) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(5) Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(6) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

(7) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

ARTICLE VIII

Compact Administration and Interchange of Information

(1) The head of the licensing board, or his or her designee, of each party state shall be the administrator of this compact for his or her state.

(2) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(3) (a) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact.

(b) These uniform rules shall be adopted by party states, under the authority invested under Article VI (4).

ARTICLE IX

Immunity

(1) No party state or the officers or employees or agents of a party state's licensing board who acts in accordance with the provisions of this compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact.

(2) Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE X

Entry into Force, Withdrawal, and Amendment

(1) (a) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state.

(b) Any party state may withdraw from this compact by enacting a statute repealing the compact, but no withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(2) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(3) Nothing contained in this compact shall be construed to invalidate or prevent any APRN licensure/authority to practice agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(4) (a) This compact may be amended by the party states.

(b) No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI

Construction and Severability

(1) (a) This compact shall be liberally construed so as to effectuate its purposes.

(b) The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or its applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person, or circumstance shall not be affected thereby.

(c) If this compact shall be held contrary to the constitution of any state party to the compact, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(2) (a) In the event party states find a need for settling disputes arising under this compact, the party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state, an individual appointed by the compact administrator in the remote state involved, and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.

(b) The decision of a majority of the arbitrators shall be final and binding.

Enacted by Chapter 15, 2004 General Session

58-31d-103 Rulemaking authority -- Enabling provisions.

(1) The division may adopt rules necessary to implement Section 58-31d-102.

(2) As used in Article VIII (1) of the Advanced Practice Registered Nurse Compact, "head of the licensing board" means the executive administrator of the Utah Board of Nursing.

(3) For purposes of the Advanced Practice Registered Nurse Compact, "APRN" as defined in Article II (1) of the compact includes an individual who is:

(a) licensed to practice under Subsection 58-31b-301(2) as an advanced practice registered nurse; or

(b) licensed to practice under Section 58-44a-301 as a certified nurse midwife.

(4) An APRN practicing in this state under a multistate licensure privilege may only be granted prescriptive authority if that individual can document completion of graduate level course work in the following areas:

(a) advanced health assessment;

(b) pharmacotherapeutics; and

(c) diagnosis and treatment.

(5)

(a) An APRN practicing in this state under a multistate privilege who seeks to obtain prescriptive authority must:

(i) meet all the requirements of Subsection (4) and this Subsection (5); and

(ii) be placed on a registry with the division.

(b) To be placed on a registry under Subsection (5)(a)(ii), an APRN must:

(i) submit a form prescribed by the division;

(ii) pay a fee; and

(iii) if prescribing a controlled substance:

(A) obtain a controlled substance license as required under Section 58-37-6; and

(B) that is a Schedule II controlled substance, comply with the requirements of Section 58-31b-803.

Amended by Chapter 127, 2016 General Session

Chapter 37
Utah Controlled Substances Act

58-37-1 Short title.

This act shall be known and may be cited as the "Utah Controlled Substances Act."

Enacted by Chapter 145, 1971 General Session

58-37-2 Definitions.

(1) As used in this chapter:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(i) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(ii) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or practitioner but does not include a motor carrier, public warehouseman, or employee of any of them.

(c) "Consumption" means ingesting or having any measurable amount of a controlled substance in a person's body, but this Subsection (1)(c) does not include the metabolite of a controlled substance.

(d) "Continuing criminal enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or groups of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities created or maintained for the purpose of engaging in conduct which constitutes the commission of episodes of activity made unlawful by Title 58, Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise.

(e) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor under Section 58-37-3.

(f)

(i) "Controlled substance" means a drug or substance:

(A) included in Schedules I, II, III, IV, or V of Section 58-37-4;

(B) included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513;

(C) that is a controlled substance analog; or

(D) listed in Section 58-37-4.2.

(ii) "Controlled substance" does not include:

(A) distilled spirits, wine, or malt beverages, as those terms are defined in Title 32B, Alcoholic Beverage Control Act;

(B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(C) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which:

(I) are not otherwise regulated by law; and

(II) may contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(g)

(i) "Controlled substance analog" means:

(A) a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in Schedules I and II of Section 58-37-4, a substance listed in Section 58-37-4.2, or in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513;

(B) a substance which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances listed in Schedules I and II of Section 58-37-4, substances listed in Section 58-37-4.2, or substances listed in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513; or

(C) A substance which, with respect to a particular individual, is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances listed in Schedules I and II of Section 58-37-4, substances listed in Section 58-37-4.2, or substances listed in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513.

(ii) "Controlled substance analog" does not include:

(A) a controlled substance currently scheduled in Schedules I through V of Section 58-37-4;

(B) a substance for which there is an approved new drug application;

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355, to the extent the conduct with respect to the substance is permitted by the exemption;

(D) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance;

(E) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(F) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which are not otherwise regulated by law, which may contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(h)

(i) "Conviction" means a determination of guilt by verdict, whether jury or bench, or plea, whether guilty or no contest, for any offense proscribed by:

(A)Chapter 37, Utah Controlled Substances Act;

(B)Chapter 37a, Utah Drug Paraphernalia Act;

(C)Chapter 37b, Imitation Controlled Substances Act;

(D)Chapter 37c, Utah Controlled Substance Precursor Act; or

(E)Chapter 37d, Clandestine Drug Lab Act; or

(ii) for any offense under the laws of the United States and any other state which, if committed in this state, would be an offense under:

(A)Chapter 37, Utah Controlled Substances Act;

(B)Chapter 37a, Utah Drug Paraphernalia Act;

(C)Chapter 37b, Imitation Controlled Substances Act;
(D)Chapter 37c, Utah Controlled Substance Precursor Act; or
(E)Chapter 37d, Clandestine Drug Lab Act.

(i) "Counterfeit substance" means:
(i) any controlled substance or container or labeling of any controlled substance that:
(A) without authorization bears the trademark, trade name, or other identifying mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance which falsely purports to be a controlled substance distributed by any other manufacturer, distributor, or dispenser; and
(B) a reasonable person would believe to be a controlled substance distributed by an authorized manufacturer, distributor, or dispenser based on the appearance of the substance as described under Subsection (1)(i)(i)(A) or the appearance of the container of that controlled substance; or
(ii) any substance other than under Subsection (1)(i)(i) that:
(A) is falsely represented to be any legally or illegally manufactured controlled substance; and
(B) a reasonable person would believe to be a legal or illegal controlled substance.

(j) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not an agency relationship exists.

(k) "Department" means the Department of Commerce.

(l) "Depressant or stimulant substance" means:
(i) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid;
(ii) a drug which contains any quantity of:
(A) amphetamine or any of its optical isomers;
(B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or
(C) any substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found and by regulation designated habit-forming because of its stimulant effect on the central nervous system;
(iii) lysergic acid diethylamide; or
(iv) any drug which contains any quantity of a substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(m) "Dispense" means the delivery of a controlled substance by a pharmacist to an ultimate user pursuant to the lawful order or prescription of a practitioner, and includes distributing to, leaving with, giving away, or disposing of that substance as well as the packaging, labeling, or compounding necessary to prepare the substance for delivery.

(n) "Dispenser" means a pharmacist who dispenses a controlled substance.

(o) "Distribute" means to deliver other than by administering or dispensing a controlled substance or a listed chemical.

(p) "Distributor" means a person who distributes controlled substances.

(q) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(r)
(i) "Drug" means:
(A) a substance recognized in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to

any of them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(B) a substance that is required by any applicable federal or state law or rule to be dispensed by prescription only or is restricted to administration by practitioners only;

(C) a substance other than food intended to affect the structure or any function of the body of humans or other animals; and

(D) substances intended for use as a component of any substance specified in Subsections (1)(r)(i)(A), (B), and (C).

(ii) "Drug" does not include dietary supplements.

(s) "Drug dependent person" means any individual who unlawfully and habitually uses any controlled substance to endanger the public morals, health, safety, or welfare, or who is so dependent upon the use of controlled substances as to have lost the power of self-control with reference to the individual's dependency.

(t) "Food" means:

(i) any nutrient or substance of plant, mineral, or animal origin other than a drug as specified in this chapter, and normally ingested by human beings; and

(ii) foods for special dietary uses as exist by reason of a physical, physiological, pathological, or other condition including but not limited to the conditions of disease, convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and overweight; uses for supplying a particular dietary need which exist by reason of age including but not limited to the ages of infancy and childbirth, and also uses for supplementing and for fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for use of a food. Any particular use of a food is a special dietary use regardless of the nutritional purposes.

(u) "Immediate precursor" means a substance which the Attorney General of the United States has found to be, and by regulation designated as being, the principal compound used or produced primarily for use in the manufacture of a controlled substance, or which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(v) "Indian" means a member of an Indian tribe.

(w) "Indian religion" means any religion:

(i) the origin and interpretation of which is from within a traditional Indian culture or community; and

(ii) which is practiced by Indians.

(x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village, which is legally recognized as eligible for and is consistent with the special programs, services, and entitlements provided by the United States to Indians because of their status as Indians.

(y) "Manufacture" means the production, preparation, propagation, compounding, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.

(z) "Manufacturer" includes any person who packages, repackages, or labels any container of any controlled substance, except pharmacists who dispense or compound prescription orders for delivery to the ultimate consumer.

(aa) "Marijuana" means all species of the genus cannabis and all parts of the genus, whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or

resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from them, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any synthetic equivalents of the substances contained in the plant cannabis sativa or any other species of the genus cannabis which are chemically indistinguishable and pharmacologically active are also included.

(bb) "Money" means officially issued coin and currency of the United States or any foreign country.

(cc) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(i) opium, coca leaves, and opiates;

(ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(iii) opium poppy and poppy straw; or

(iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the substance, which is chemically identical with any of the substances referred to in Subsection (1)(cc)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or extracts of coca leaves which do not contain cocaine or ecgonine.

(dd) "Negotiable instrument" means documents, containing an unconditional promise to pay a sum of money, which are legally transferable to another party by endorsement or delivery.

(ee) "Opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.

(ff) "Opium poppy" means the plant of the species papaver somniferum L., except the seeds of the plant.

(gg) "Person" means any corporation, association, partnership, trust, other institution or entity or one or more individuals.

(hh) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(ii) "Possession" or "use" means the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection, or consumption, as distinguished from distribution, of controlled substances and includes individual, joint, or group possession or use of controlled substances. For a person to be a possessor or user of a controlled substance, it is not required that the person be shown to have individually possessed, used, or controlled the substance, but it is sufficient if it is shown that the person jointly participated with one or more persons in the use, possession, or control of any substances with knowledge that the activity was occurring, or the controlled substance is found in a place or under circumstances indicating that the person had the ability and the intent to exercise dominion and control over it.

(jj) "Practitioner" means a physician, dentist, naturopathic physician, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(kk) "Prescribe" means to issue a prescription:

(i) orally or in writing; or

(ii) by telephone, facsimile transmission, computer, or other electronic means of communication as defined by division rule.

(ll) "Prescription" means an order issued:
(i) by a licensed practitioner, in the course of that practitioner's professional practice or by collaborative pharmacy practice agreement; and
(ii) for a controlled substance or other prescription drug or device for use by a patient or an animal.
(mm) "Production" means the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.
(nn) "Securities" means any stocks, bonds, notes, or other evidences of debt or of property.
(oo) "State" means the state of Utah.
(pp) "Ultimate user" means any person who lawfully possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administration to an animal owned by the person or a member of the person's household.
(2) If a term used in this chapter is not defined, the definition and terms of Title 76, Utah Criminal Code, shall apply.

Amended by Chapter 258, 2015 General Session

58-37-2.5 Restricted applicability.
This chapter does not restrict the sale and use of herbs, herbal products, or food supplements that are not scheduled in this chapter as controlled substances.

Amended by Chapter 101, 1990 General Session

58-37-3 Controlled substances.
(1) All substances listed in Section 58-37-4 or 58-37-4.2 are controlled.
(2) All substances listed in the federal Controlled Substances Act, Title II, P.L. 91-513, are controlled.

Amended by Chapter 12, 2011 General Session

58-37-4 Schedules of controlled substances -- Schedules I through V -- Findings required -- Specific substances included in schedules.
(1) There are established five schedules of controlled substances known as Schedules I, II, III, IV, and V which consist of substances listed in this section.
(2) Schedules I, II, III, IV, and V consist of the following drugs or other substances by the official name, common or usual name, chemical name, or brand name designated:
(a) Schedule I:
(i) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation:
(A) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
(B) Acetylmethadol;
(C) Allylprodine;
(D) Alphacetylmethadol, except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;
(E) Alphameprodine;

(F) Alphamethadol;
(G) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
(H) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4- piperidinyl]-N-phenylpropanamide);
(I) Benzylpiperazine;
(J) Benzethidine;
(K) Betacetylmethadol;
(L) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4- piperidinyl]-N-phenylpropanamide);
(M) Beta-hydroxy-3-methylfentanyl, other name: N-[1-(2-hydroxy-2- phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;
(N) Betameprodine;
(O) Betamethadol;
(P) Betaprodine;
(Q) Clonitazene;
(R) Dextromoramide;
(S) Diampromide;
(T) Diethylthiambutene;
(U) Difenoxin;
(V) Dimenoxadol;
(W) Dimepheptanol;
(X) Dimethylthiambutene;
(Y) Dioxaphetyl butyrate;
(Z) Dipipanone;
(AA) Ethylmethylthiambutene;
(BB) Etonitazene;
(CC) Etoxeridine;
(DD) Furethidine;
(EE) Hydroxypethidine;
(FF) Ketobemidone;
(GG) Levomoramide;
(HH) Levophenacylmorphan;
(II) Morpheridine;
(JJ) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(KK) Noracymethadol;
(LL) Norlevorphanol;
(MM) Normethadone;
(NN) Norpipanone;
(OO) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4- piperidinyl] propanamide;
(PP) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(QQ) Phenadoxone;
(RR) Phenampromide;
(SS) Phenomorphan;
(TT) Phenoperidine;
(UU) Piritramide;
(VV) Proheptazine;
(WW) Properidine;
(XX) Propiram;

(YY) Racemoramide;
(ZZ) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]- propanamide;
(AAA) Tilidine;
(BBB) Trimeperidine;
(CCC) 3-methylfentanyl, including the optical and geometric isomers (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]- N-phenylpropanamide); and
(DDD) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

(ii) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:
(A) Acetorphine;
(B) Acetyldihydrocodeine;
(C) Benzylmorphine;
(D) Codeine methylbromide;
(E) Codeine-N-Oxide;
(F) Cyprenorphine;
(G) Desomorphine;
(H) Dihydromorphine;
(I) Drotebanol;
(J) Etorphine (except hydrochloride salt);
(K) Heroin;
(L) Hydromorphinol;
(M) Methyldesorphine;
(N) Methylhydromorphine;
(O) Morphine methylbromide;
(P) Morphine methylsulfonate;
(Q) Morphine-N-Oxide;
(R) Myrophine;
(S) Nicocodeine;
(T) Nicomorphine;
(U) Normorphine;
(V) Pholcodine; and
(W) Thebacon.

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation; as used in this Subsection (2)(a)(iii) only, "isomer" includes the optical, position, and geometric isomers:
(A) Alpha-ethyltryptamine, some trade or other names: etryptamine; Monase; α-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; α-ET; and AET;
(B) 4-bromo-2,5-dimethoxy-amphetamine, some trade or other names: 4-bromo-2,5-dimethoxy-α-methylphenethylamine; 4-bromo-2,5-DMA;
(C) 4-bromo-2,5-dimethoxyphenethylamine, some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

(D) 2,5-dimethoxyamphetamine, some trade or other names: 2,5-dimethoxy-α-methylphenethylamine; 2,5-DMA;
(E) 2,5-dimethoxy-4-ethylamphetamine, some trade or other names: DOET;
(F) 4-methoxyamphetamine, some trade or other names: 4-methoxy-α-methylphenethylamine; paramethoxyamphetamine, PMA;
(G) 5-methoxy-3,4-methylenedioxyamphetamine;
(H) 4-methyl-2,5-dimethoxy-amphetamine, some trade and other names: 4-methyl-2,5-dimethoxy-α-methylphenethylamine; "DOM"; and "STP";
(I) 3,4-methylenedioxy amphetamine;
(J) 3,4-methylenedioxymethamphetamine (MDMA);
(K) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl- alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;
(L) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;
(M) 3,4,5-trimethoxy amphetamine;
(N) Bufotenine, some trade and other names: 3-(β-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;
(O) Diethyltryptamine, some trade and other names: N,N-Diethyltryptamine; DET;
(P) Dimethyltryptamine, some trade or other names: DMT;
(Q) Ibogaine, some trade and other names: 7-Ethyl-6,6β,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino [5,4-b] indole; Tabernanthe iboga;
(R) Lysergic acid diethylamide;
(S) Marijuana;
(T) Mescaline;
(U) Parahexyl, some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl;
(V) Peyote, meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12));
(W) N-ethyl-3-piperidyl benzilate;
(X) N-methyl-3-piperidyl benzilate;
(Y) Psilocybin;
(Z) Psilocyn;
(AA) Tetrahydrocannabinols, naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: Δ1 cis or trans tetrahydrocannabinol, and their optical isomers Δ6 cis or trans tetrahydrocannabinol, and their optical isomers Δ3,4 cis or trans tetrahydrocannabinol, and its optical isomers, and since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered;

(BB) Ethylamine analog of phencyclidine, some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;

(CC) Pyrrolidine analog of phencyclidine, some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(DD) Thiophene analog of phencyclidine, some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP; and

(EE) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, some other names: TCPy.

(iv) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Mecloqualone; and

(B) Methaqualone.

(v) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

(A) Aminorex, some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(B) Cathinone, some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

(C) Fenethylline;

(D) Methcathinone, some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432, its salts, optical isomers, and salts of optical isomers;

(E) (±)cis-4-methylaminorex ((±)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(F) N-ethylamphetamine; and

(G) N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

(vi) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their optical isomers, salts, and salts of isomers, subject to temporary emergency scheduling:

(A) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl); and

(B) N-[1- (2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl).

(vii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of gamma hydroxy butyrate (gamma hydrobutyric acid), including its salts, isomers, and salts of isomers.

(b) Schedule II:

(i) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including:

(I) Raw opium;
(II) Opium extracts;
(III) Opium fluid;
(IV) Powdered opium;
(V) Granulated opium;
(VI) Tincture of opium;
(VII) Codeine;
(VIII) Ethylmorphine;
(IX) Etorphine hydrochloride;
(X) Hydrocodone;
(XI) Hydromorphone;
(XII) Metopon;
(XIII) Morphine;
(XIV) Oxycodone;
(XV) Oxymorphone; and
(XVI) Thebaine;

(B) Any salt, compound, derivative, or preparation which is chemically equivalent or identical with any of the substances referred to in Subsection (2)(b)(i)(A), except that these substances may not include the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation which is chemically equivalent or identical with any of these substances, and includes cocaine and ecgonine, their salts, isomers, derivatives, and salts of isomers and derivatives, whether derived from the coca plant or synthetically produced, except the substances may not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(E) Concentrate of poppy straw, which means the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(ii) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation, except dextrorphan and levopropoxyphene:

(A) Alfentanil;

(B) Alphaprodine;

(C) Anileridine;

(D) Bezitramide;

(E) Bulk dextropropoxyphene (nondosage forms);

(F) Carfentanil;

(G) Dihydrocodeine;

(H) Diphenoxylate;

(I) Fentanyl;

(J) Isomethadone;

(K) Levo-alphacetylmethadol, some other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(L) Levomethorphan;

(M) Levorphanol;

(N) Metazocine;

(O) Methadone;

(P) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(Q) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
(R) Pethidine (meperidine);
(S) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(T) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(U) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(V) Phenazocine;
(W) Piminodine;
(X) Racemethorphan;
(Y) Racemorphan;
(Z) Remifentanil; and
(AA) Sufentanil.

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:
(A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
(B) Methamphetamine, its salts, isomers, and salts of its isomers;
(C) Phenmetrazine and its salts; and
(D) Methylphenidate.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:
(A) Amobarbital;
(B) Glutethimide;
(C) Pentobarbital;
(D) Phencyclidine;
(E) Phencyclidine immediate precursors: 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile (PCC); and
(F) Secobarbital.

(v)
(A) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of Phenylacetone.
(B) Some of these substances may be known by trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone.

(vi) Nabilone, another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo[b,d]pyran-9-one.

(c) Schedule III:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers whether optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:
(A) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II, which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under Section 1308.32 of Title 21 of the Code of Federal Regulations, and any other drug of the quantitive composition shown in

that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(B) Benzphetamine;

(C) Chlorphentermine;

(D) Clortermine; and

(E) Phendimetrazine.

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of them, and one or more other active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing amobarbital, secobarbital, or pentobarbital, or any salt of any of these drugs which is approved by the Food and Drug Administration for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid or any salt of any of them;

(D) Chlorhexadol;

(E) Buprenorphine;

(F) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under the federal Food, Drug, and Cosmetic Act, Section 505;

(G) Ketamine, its salts, isomers, and salts of isomers, some other names for ketamine: ± -2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(H) Lysergic acid;

(I) Lysergic acid amide;

(J) Methyprylon;

(K) Sulfondiethylmethane;

(L) Sulfonethylmethane;

(M) Sulfonmethane; and

(N) Tiletamine and zolazepam or any of their salts, some trade or other names for a tiletamine-zolazepam combination product: Telazol, some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone, some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon.

(iii) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product, some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

(iv) Nalorphine.

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid:

(A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
(D) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
(E) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;
(F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts; and
(H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(vi) Unless specifically excepted or unless listed in another schedule, anabolic steroids including any of the following or any isomer, ester, salt, or derivative of the following that promotes muscle growth:
(A) Boldenone;
(B) Chlorotestosterone (4-chlortestosterone);
(C) Clostebol;
(D) Dehydrochlormethyltestosterone;
(E) Dihydrotestosterone (4-dihydrotestosterone);
(F) Drostanolone;
(G) Ethylestrenol;
(H) Fluoxymesterone;
(I) Formebulone (formebolone);
(J) Mesterolone;
(K) Methandienone;
(L) Methandranone;
(M) Methandriol;
(N) Methandrostenolone;
(O) Methenolone;
(P) Methyltestosterone;
(Q) Mibolerone;
(R) Nandrolone;
(S) Norethandrolone;
(T) Oxandrolone;
(U) Oxymesterone;
(V) Oxymetholone;
(W) Stanolone;
(X) Stanozolol;
(Y) Testolactone;
(Z) Testosterone; and
(AA) Trenbolone.

(vii) Anabolic steroids expressly intended for administration through implants to cattle or other nonhuman species, and approved by the Secretary of Health and Human Services for use, may not be classified as a controlled substance.

(d) Schedule IV:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit, or any salts of any of them.

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Alprazolam;
(B) Barbital;
(C) Bromazepam;
(D) Butorphanol;
(E) Camazepam;
(F) Carisoprodol;
(G) Chloral betaine;
(H) Chloral hydrate;
(I) Chlordiazepoxide;
(J) Clobazam;
(K) Clonazepam;
(L) Clorazepate;
(M) Clotiazepam;
(N) Cloxazolam;
(O) Delorazepam;
(P) Diazepam;
(Q) Dichloralphenazone;
(R) Estazolam;
(S) Ethchlorvynol;
(T) Ethinamate;
(U) Ethyl loflazepate;
(V) Fludiazepam;
(W) Flunitrazepam;
(X) Flurazepam;
(Y) Halazepam;
(Z) Haloxazolam;
(AA) Ketazolam;
(BB) Loprazolam;
(CC) Lorazepam;
(DD) Lormetazepam;
(EE) Mebutamate;
(FF) Medazepam;
(GG) Meprobamate;
(HH) Methohexital;
(II) Methylphenobarbital (mephobarbital);
(JJ) Midazolam;
(KK) Nimetazepam;

(LL) Nitrazepam;
(MM) Nordiazepam;
(NN) Oxazepam;
(OO) Oxazolam;
(PP) Paraldehyde;
(QQ) Pentazocine;
(RR) Petrichloral;
(SS) Phenobarbital;
(TT) Pinazepam;
(UU) Prazepam;
(VV) Quazepam;
(WW) Temazepam;
(XX) Tetrazepam;
(YY) Triazolam;
(ZZ) Zaleplon; and
(AAA) Zolpidem.

(iii) Any material, compound, mixture, or preparation of fenfluramine which contains any quantity of the following substances, including its salts, isomers whether optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers whether optical, position, or geometric isomers, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Cathine ((+)-norpseudoephedrine);
(B) Diethylpropion;
(C) Fencamfamine;
(D) Fenproprex;
(E) Mazindol;
(F) Mefenorex;
(G) Modafinil;
(H) Pemoline, including organometallic complexes and chelates thereof;
(I) Phentermine;
(J) Pipradrol;
(K) Sibutramine; and
(L) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane), including its salts.

(e) Schedule V: Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, which includes one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(i) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
(ii) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
(iii) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(iv) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
(v) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
(vi) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;
(vii) unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains Pyrovalerone having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers; and
(viii) all forms of Tramadol.

Amended by Chapter 258, 2015 General Session

58-37-4.2 Listed controlled substances.

The following substances, their analogs, homologs, and synthetic equivalents are listed controlled substances:
(1) AB-001;
(2) AB-PINACA; N-[1-(aminocarbonyl)-2-methylpropyl]-1-pentyl-1H-indazole-3-carboxamide;
(3) AB-FUBINACA; N-[1-(aminocarbonyl)-2-methylpropyl]-1-[(4-fluorophenyl) methyl]-1H-indazole-3-carboxamide;
(4) AKB48;
(5) alpha-Pyrrolidinovalerophenone (alpha-PVP);
(6) AM-694; 1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone;
(7) AM-1248;
(8) AM-2201; 1-(5-fluoropentyl)-3-(1-naphthoyl)indole;
(9) AM-2233;
(10) AM-679;
(11) A796,260;
(12) Butylone;
(13) CP 47,497 and its C6, C8, and C9 homologs; 2-[(1R,3S)-3-hydroxycyclohexyl] -5-(2-methyloctan-2-yl)phenol;
(14) Diisopropyltryptamine (DiPT);
(15) Ethylone;
(16) Ethylphenidate;
(17) Fluoroisocathinone;
(18) Fluoromethamphetamine;
(19) Fluoromethcathinone;
(20) HU-210; (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl) -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
(21) HU-211; Dexanabinol,(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
(22) JWH-015; (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone;
(23) JWH-018; Naphthalen-1-yl-(pentylindol-3-yl)methanone {also known as 1-Pentyl-3-(1-naphthoyl)indole};
(24) JWH-019; 1-hexyl-3-(1-naphthoyl)indole;
(25) JWH-073; Naphthalen-1-yl(1-butylindol-3-yl)methanone {also known as 1-Butyl-3-(1-naphthoyl)indole};
(26) JWH-081; 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone;
(27) JWH-122; CAS#619294-47-2; (1-Pentyl-3-(4-methyl-1-naphthoyl)indole);

(28) JWH-200; 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl)indole;
(29) JWH-203; 1-pentyl-3-(2-chlorophenylacetyl)indole;
(30) JWH-210; 4-ethyl-1-naphthalenyl(1-pentyl-1H-indol-3-yl)-methanone;
(31) JWH-250; 1-pentyl-3-(2-methoxyphenylacetyl)indole;
(32) JWH-251; 2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl)ethanone;
(33) JWH-398; 1-pentyl-3-(4-chloro-1-naphthoyl)indole;
(34) MAM-2201;
(35) MAM-2201; (1-(5-fluoropentyl)-1H-indol-3-yl)(4-ethyl-1-naphthalenyl)-methanone;
(36) Methoxetamine;
(37) Naphyrone;
(38) PB-22; 1-pentyl-1H-indole-3-carboxylic acid 8-quinolinyl ester;
(39) Pentedrone;
(40) Pentylone;
(41) RCS-4; 1-pentyl-3-(4-methoxybenzoyl)indole;
(42) RCS-8; 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole {also known as BTW-8 and SR-18};
(43) STS-135;
(44) UR-144;
(45) UR-144 N-(5-chloropentyl) analog;
(46) XLR11;
(47) 2C-C;
(48) 2C-D;
(49) 2C-E;
(50) 2C-H;
(51) 2C-I;
(52) 2C-N;
(53) 2C-P;
(54) 2C-T-2;
(55) 2C-T-4;
(56) 2NE1;
(57) 25I-NBOMe;
(58) 2,5-Dimethoxy-4-chloroamphetamine (DOC);
(59) 4-methylmethcathinone {also known as mephedrone};
(60) 3,4-methylenedioxypyrovalerone {also known as MDPV};
(61) 3,4-Methylenedioxymethcathinone {also known as methylone};
(62) 4-methoxymethcathinone;
(63) 4-Methyl-alpha-pyrrolidinopropiophenone;
(64) 4-Methylethcathinone;
(65) 5F-AKB48; 1-(5-flouropentyl)-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indazole-3- carboxamide;
(66) 5-fluoro-PB-22; 1-(5-fluoropentyl)-1H-indole-3-carboxylic acid 8-quinolinyl ester;
(67) 5-Iodo-2-aminoindane (5-IAI);
(68) 5-MeO-DALT;
(69) 25B-NBOMe; 2-(r-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl) methyl]ethanamine;
(70) 25C-NBOMe; 2-(4Chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl) methyl]ethanamine; and
(71) 25H-NBOMe; 2-(2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine.

Amended by Chapter 23, 2014 General Session

58-37-4.3 Exemption for use or possession of hemp extract.

(1) As used in this section, "hemp extract" means an extract from a cannabis plant, or a mixture or preparation containing cannabis plant material, that:
  (a) is composed of less than 0.3% tetrahydrocannabinol by weight;
  (b) is composed of at least 5% cannabidiol by weight; and
  (c) contains no other psychoactive substance.
(2) Notwithstanding any other provision of this chapter, an individual who possesses or uses hemp extract is not subject to the penalties described in this chapter for possession or use of the hemp extract if the individual:
  (a) possesses or uses the hemp extract only to treat intractable epilepsy, as defined in Section 26-56-102;
  (b) originally obtained the hemp extract from a sealed container with a label indicating the hemp extract's place of origin, and a number that corresponds with a certificate of analysis;
  (c) possesses, in close proximity to the hemp extract, a certificate of analysis that:
    (i) has a number that corresponds with the number on the label described in Subsection (2)(b);
    (ii) indicates the hemp extract's ingredients, including its percentages of tetrahydrocannabinol and cannabidiol by weight; and
    (iii) is created by a laboratory that is:
      (A) not affiliated with the producer of the hemp extract; and
      (B) licensed in the state where the hemp extract was produced; and
  (d) has a current hemp extract registration card issued by the Department of Health under Section 26-56-103.
(3) Notwithstanding any other provision of this chapter, an individual who possesses hemp extract lawfully under Subsection (2) and administers hemp extract to a minor is not subject to the penalties described in this chapter for administering the hemp extract to the minor if:
  (a) the individual is the minor's parent or legal guardian; and
  (b) the individual is registered with the Department of Health as the minor's parent under Section 26-56-103.

Amended by Chapter 89, 2016 General Session

58-37-5.5 Recognized controlled substance analogs.

(1) A substance listed under Subsection (2) is an analog, as defined in Subsection 58-37-2(1)(g), if the substance, in any quantity, and in any material, compound, mixture, or preparation, is present in:
  (a) any product manufactured, distributed, or possessed for the purpose of human consumption; or
  (b) any product, the use or administration of which results in human consumption.
(2) Substances referred to in Subsection (1) include, but are not limited to:
  (a) gamma butyrolactone (GBL);
  (b) butyrolactone;
  (c) 1,2 butanolide;
  (d) 2-oxanolone;
  (e) tetrahydro-2-furanone;
  (f) dihydro-2 (3H)-furanone;
  (g) tetramethylene glycol;
  (h) 1,4 butanediol; and

(i) gamma valerolactone.

Amended by Chapter 250, 2008 General Session

58-37-6 License to manufacture, produce, distribute, dispense, administer, or conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records required -- Prescriptions.

(1)

(a) The division may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state.

(b) The division may assess reasonable fees to defray the cost of issuing original and renewal licenses under this chapter pursuant to Section 63J-1-504.

(2)

(a)

(i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled substance in Schedules I through V within this state, or who proposes to engage in manufacturing, producing, distributing, prescribing, dispensing, administering, conducting research with, or performing laboratory analysis upon controlled substances included in Schedules I through V within this state shall obtain a license issued by the division.

(ii) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(b) Persons licensed to manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon controlled substances in Schedules I through V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license and in conformity with this chapter.

(c) The following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II through V under this section:

(i) an agent or employee, except a sales representative, of any registered manufacturer, distributor, or dispenser of any controlled substance, if the agent or employee is acting in the usual course of the person's business or employment; however, nothing in this subsection shall be interpreted to permit an agent, employee, sales representative, or detail man to maintain an inventory of controlled substances separate from the location of the person's employer's registered and licensed place of business;

(ii) a motor carrier or warehouseman, or an employee of a motor carrier or warehouseman, who possesses any controlled substance in the usual course of the person's business or employment; and

(iii) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(d) The division may enact rules waiving the license requirement for certain manufacturers, producers, distributors, prescribers, dispensers, administrators, research practitioners, or laboratories performing analysis if consistent with the public health and safety.

(e) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

(f) The division may enact rules providing for the inspection of a licensee or applicant's establishment, and may inspect the establishment according to those rules.

(3)

(a)

(i) Upon proper application, the division shall license a qualified applicant to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances included in Schedules I through V, unless it determines that issuance of a license is inconsistent with the public interest.

(ii) The division may not issue a license to any person to prescribe, dispense, or administer a Schedule I controlled substance except under Subsection (3)(a)(i).

(iii) In determining public interest under this Subsection (3)(a), the division shall consider whether or not the applicant has:

(A) maintained effective controls against diversion of controlled substances and any Schedule I or II substance compounded from any controlled substance into other than legitimate medical, scientific, or industrial channels;

(B) complied with applicable state and local law;

(C) been convicted under federal or state laws relating to the manufacture, distribution, or dispensing of substances;

(D) past experience in the manufacture of controlled dangerous substances;

(E) established effective controls against diversion; and

(F) complied with any other factors that the division establishes that promote the public health and safety.

(b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances in Schedule I other than those specified in the license.

(c)

(i) Practitioners shall be licensed to administer, dispense, or conduct research with substances in Schedules II through V if they are authorized to administer, dispense, or conduct research under the laws of this state.

(ii) The division need not require a separate license for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the licensee is already licensed under this chapter in another capacity.

(iii) With respect to research involving narcotic substances in Schedules II through V, or where the division by rule requires a separate license for research of nonnarcotic substances in Schedules II through V, a practitioner shall apply to the division prior to conducting research.

(iv) Licensing for purposes of bona fide research with controlled substances by a practitioner considered qualified may be denied only on a ground specified in Subsection (4), or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately the practitioner's supply of substances against diversion from medical or scientific use.

(v) Practitioners registered under federal law to conduct research in Schedule I substances may conduct research in Schedule I substances within this state upon furnishing the division evidence of federal registration.

(d) Compliance by manufacturers, producers, and distributors with the provisions of federal law respecting registration, excluding fees, entitles them to be licensed under this chapter.

(e) The division shall initially license those persons who own or operate an establishment engaged in the manufacture, production, distribution, dispensation, or administration of controlled substances prior to April 3, 1980, and who are licensed by the state.

(4)

(a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed on probation, or revoked by the division upon finding that the applicant or licensee has:
(i) materially falsified any application filed or required pursuant to this chapter;
(ii) been convicted of an offense under this chapter or any law of the United States, or any state, relating to any substance defined as a controlled substance;
(iii) been convicted of a felony under any other law of the United States or any state within five years of the date of the issuance of the license;
(iv) had a federal registration or license denied, suspended, or revoked by competent federal authority and is no longer authorized to manufacture, distribute, prescribe, or dispense controlled substances;
(v) had the licensee's license suspended or revoked by competent authority of another state for violation of laws or regulations comparable to those of this state relating to the manufacture, distribution, or dispensing of controlled substances;
(vi) violated any division rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances;
(vii) refused inspection of records required to be maintained under this chapter by a person authorized to inspect them; or
(viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose of manipulating human hormonal structure so as to:
(A) increase muscle mass, strength, or weight without medical necessity and without a written prescription by any practitioner in the course of the practitioner's professional practice; or
(B) improve performance in any form of human exercise, sport, or game.
(b) The division may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.
(c)
(i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, and conducted in conjunction with the appropriate representative committee designated by the director of the department.
(ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses, except where the division is designated by law to perform those functions, or, when not designated by law, is designated by the executive director of the Department of Commerce to conduct the proceedings.
(d)
(i) The division may suspend any license simultaneously with the institution of proceedings under this section if it finds there is an imminent danger to the public health or safety.
(ii) Suspension shall continue in effect until the conclusion of proceedings, including judicial review, unless withdrawn by the division or dissolved by a court of competent jurisdiction.
(e)
(i) If a license is suspended or revoked under this Subsection (4), all controlled substances owned or possessed by the licensee may be placed under seal in the discretion of the division.
(ii) Disposition may not be made of substances under seal until the time for taking an appeal has lapsed, or until all appeals have been concluded, unless a court, upon application, orders the sale of perishable substances and the proceeds deposited with the court.
(iii) If a revocation order becomes final, all controlled substances shall be forfeited.

(f) The division shall notify promptly the Drug Enforcement Administration of all orders suspending or revoking a license and all forfeitures of controlled substances.

(g) If an individual's Drug Enforcement Administration registration is denied, revoked, surrendered, or suspended, the division shall immediately suspend the individual's controlled substance license, which shall only be reinstated by the division upon reinstatement of the federal registration, unless the division has taken further administrative action under Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled substance license.

(5)

(a) Persons licensed under Subsection (2) or (3) shall maintain records and inventories in conformance with the record keeping and inventory requirements of federal and state law and any additional rules issued by the division.

(b)

(i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or other person who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by him and a record of all drugs administered, dispensed, or professionally used by him otherwise than by a prescription.

(ii) A person using small quantities or solutions or other preparations of those drugs for local application has complied with this Subsection (5)(b) if the person keeps a record of the quantity, character, and potency of those solutions or preparations purchased or prepared by him, and of the dates when purchased or prepared.

(6) Controlled substances in Schedules I through V may be distributed only by a licensee and pursuant to an order form prepared in compliance with division rules or a lawful order under the rules and regulations of the United States.

(7)

(a) A person may not write or authorize a prescription for a controlled substance unless the person is:

(i) a practitioner authorized to prescribe drugs and medicine under the laws of this state or under the laws of another state having similar standards; and

(ii) licensed under this chapter or under the laws of another state having similar standards.

(b) A person other than a pharmacist licensed under the laws of this state, or the pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not dispense a controlled substance.

(c)

(i) A controlled substance may not be dispensed without the written prescription of a practitioner, if the written prescription is required by the federal Controlled Substances Act.

(ii) That written prescription shall be made in accordance with Subsection (7)(a) and in conformity with Subsection (7)(d).

(iii) In emergency situations, as defined by division rule, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms designated by the division and filed by the pharmacy.

(iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with Subsection (7)(d).

(d) Except for emergency situations designated by the division, a person may not issue, fill, compound, or dispense a prescription for a controlled substance unless the prescription is signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of the prescriber as authorized by division rule, and contains the following information:

(i) the name, address, and registry number of the prescriber;

(ii) the name, address, and age of the person to whom or for whom the prescription is issued;
(iii) the date of issuance of the prescription; and
(iv) the name, quantity, and specific directions for use by the ultimate user of the controlled substance.

(e) A prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:
(i) the person who writes the prescription is licensed under Subsection (2); and
(ii) the prescribed controlled substance is to be used in research.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the following restrictions:
(i)
(A) A prescription for a Schedule II substance may not be refilled.
(B) A Schedule II controlled substance may not be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions.
(ii) A Schedule III or IV controlled substance may be filled only within six months of issuance, and may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.
(iii) All other controlled substances in Schedule V may be refilled as the prescriber's prescription directs, but they may not be refilled one year after the date the prescription was issued unless renewed by the practitioner.
(iv) Any prescription for a Schedule II substance may not be dispensed if it is not presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days after the date the prescription was issued, or 30 days after the dispensing date, if that date is specified separately from the date of issue.
(v) A practitioner may issue more than one prescription at the same time for the same Schedule II controlled substance, but only under the following conditions:
(A) no more than three prescriptions for the same Schedule II controlled substance may be issued at the same time;
(B) no one prescription may exceed a 30-day supply;
(C) a second or third prescription shall include the date of issuance and the date for dispensing; and
(D) unless the practitioner determines there is a valid medical reason to the contrary, the date for dispensing a second or third prescription may not be fewer than 30 days from the dispensing date of the previous prescription.

(g) An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of this Subsection (7) if the order is:
(i) issued or made by a prescribing practitioner who holds an unrestricted registration with the federal Drug Enforcement Administration, and an active Utah controlled substance license in good standing issued by the division under this section, or a medical resident who is exempted from licensure under Subsection 58-1-307(1)(c);
(ii) authorized by the prescribing practitioner treating the patient and the prescribing practitioner designates the quantity ordered;
(iii) entered upon the record of the patient, the record is signed by the prescriber affirming the prescriber's authorization of the order within 48 hours after filling or administering the order, and the patient's record reflects the quantity actually administered; and

(iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within the physical structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital and the amount taken from the supply is administered directly to the patient authorized to receive it.

(h) A practitioner licensed under this chapter may not prescribe, administer, or dispense a controlled substance to a child, without first obtaining the consent required in Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same meaning as defined in Section 78A-6-105, and "emergency" means any physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering.

(i) A practitioner licensed under this chapter may not prescribe or administer dosages of a controlled substance in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user.

(j) A practitioner licensed under this chapter may not prescribe, administer, or dispense any controlled substance to another person knowing that the other person is using a false name, address, or other personal information for the purpose of securing the controlled substance.

(k) A person who is licensed under this chapter to manufacture, distribute, or dispense a controlled substance may not manufacture, distribute, or dispense a controlled substance to another licensee or any other authorized person not authorized by this license.

(l) A person licensed under this chapter may not omit, remove, alter, or obliterate a symbol required by this chapter or by a rule issued under this chapter.

(m) A person licensed under this chapter may not refuse or fail to make, keep, or furnish any record notification, order form, statement, invoice, or information required under this chapter.

(n) A person licensed under this chapter may not refuse entry into any premises for inspection as authorized by this chapter.

(o) A person licensed under this chapter may not furnish false or fraudulent material information in any application, report, or other document required to be kept by this chapter or willfully make any false statement in any prescription, order, report, or record required by this chapter.

(8)

(a)

(i) Any person licensed under this chapter who is found by the division to have violated any of the provisions of Subsections (7)(k) through (o) or Subsection (10) is subject to a penalty not to exceed $5,000. The division shall determine the procedure for adjudication of any violations in accordance with Sections 58-1-106 and 58-1-108.

(ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

(b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j) or Subsection (10) is:

(i) upon first conviction, guilty of a class B misdemeanor;

(ii) upon second conviction, guilty of a class A misdemeanor; and

(iii) on third or subsequent conviction, guilty of a third degree felony.

(c) Any person who knowingly and intentionally violates Subsections (7)(k) through (o) shall upon conviction be guilty of a third degree felony.

(9) Any information communicated to any licensed practitioner in an attempt to unlawfully procure, or to procure the administration of, a controlled substance is not considered to be a privileged communication.

(10) A person holding a valid license under this chapter who is engaged in medical research may produce, possess, administer, prescribe, or dispense a controlled substance for research

purposes as licensed under Subsection (2) but may not otherwise prescribe or dispense a controlled substance listed in Section 58-37-4.2.

Amended by Chapter 78, 2014 General Session

58-37-6.5 Continuing education for controlled substance prescribers.

(1) For the purposes of this section:
  (a) "Controlled substance prescriber" means an individual, other than a veterinarian, who:
    (i) is licensed to prescribe a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act; and
    (ii) possesses the authority, in accordance with the individual's scope of practice, to prescribe schedule II controlled substances and schedule III controlled substances that are applicable to opioid narcotics, hypnotic depressants, or psychostimulants.
  (b) "FDA" means the United States Food and Drug Administration.
  (c) "M.D." means a physician and surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act.
  (d) "D.O." means an osteopathic physician and surgeon licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
(2) Beginning with the licensing period that begins after January 1, 2014, as a condition precedent for license renewal, each controlled substance prescriber shall complete at least four continuing education hours per licensing period that satisfy the requirements of Subsections (3) and (4).
(3) As provided in Subsection 58-37f-402(8), the online tutorial and passing the online test described in Section 58-37f-402 shall count as 1/2 hour of continuing professional education under Subsection (2) per licensing period.
(4) A controlled substance prescriber shall complete at least 3.5 hours of continuing education hours in one or more controlled substance prescribing classes, except dentists who shall complete at least 2 such hours, that satisfy the requirements of Subsections (5) and (7).
(5) A controlled substance prescribing class shall:
  (a) satisfy the division's requirements for the continuing education required for the renewal of the controlled substance prescriber's respective license type;
  (b) be delivered by an accredited or approved continuing education provider recognized by the division as offering continuing education appropriate for the controlled substance prescriber's respective license type; and
  (c) include a postcourse knowledge assessment.
(6) An M.D. or D.O. completing continuing professional education hours under Subsection (4) shall complete those hours in classes that qualify for the American Medical Association Physician's Recognition Award Category 1 Credit.
(7) The 3.5 hours of the controlled substance prescribing classes under Subsection (4) shall include educational content covering the following:
  (a) the scope of the controlled substance abuse problem in Utah and the nation;
  (b) all elements of the FDA Blueprint for Prescriber Education under the FDA's Extended-Release and Long-Acting Opioid Analgesics Risk Evaluation and Mitigation Strategy, as published July 9, 2012, or as it may be subsequently revised;
  (c) the national and Utah-specific resources available to prescribers to assist in appropriate controlled substance and opioid prescribing;
  (d) patient record documentation for controlled substance and opioid prescribing; and
  (e) office policies, procedures, and implementation.
(8)

(a) The division, in consultation with the Utah Medical Association Foundation, shall determine whether a particular controlled substance prescribing class satisfies the educational content requirements of Subsections (5) and (7) for an M.D. or D.O.
(b) The division, in consultation with the applicable professional licensing boards, shall determine whether a particular controlled substance prescribing class satisfies the educational content requirements of Subsections (5) and (7) for a controlled substance prescriber other than an M.D. or D.O.
(c) The division may by rule establish a committee that may audit compliance with the Utah Risk Evaluation and Mitigation Strategy (REMS) Educational Programming Project grant, that satisfies the educational content requirements of Subsections (5) and (7) for a controlled substance prescriber.
(9) A controlled substance prescribing class required under this section:
(a) may be held:
(i) in conjunction with other continuing professional education programs; and
(ii) online; and
(b) does not increase the total number of state-required continuing professional education hours required for prescriber licensing.
(10) The division may establish rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

Repealed and Re-enacted by Chapter 450, 2013 General Session

58-37-7 Labeling and packaging controlled substance.
(1) A person licensed pursuant to this act may not distribute a controlled substance unless it is packaged and labeled in compliance with the requirements of Section 305 of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970.
(2) No person except a pharmacist for the purpose of filling a prescription shall alter, deface, or remove any label affixed by the manufacturer.
(3) Whenever a pharmacist sells or dispenses any controlled substance on a prescription issued by a practitioner, he shall affix to the container in which the substance is sold or dispensed:
(a) a label showing the:
(i) pharmacy name and address;
(ii) serial number; and
(iii) date of initial filling;
(b) the prescription number, the name of the patient, or if the patient is an animal, the name of the owner of the animal and the species of the animal;
(c) the name of the practitioner by whom the prescription was written;
(d) any directions stated on the prescription; and
(e) any directions required by rules and regulations promulgated by the department.
(4) A person may not alter the face or remove any label so long as any of the original contents remain.
(5)
(a) An individual to whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner and the owner of any animal for which any controlled substance has been prescribed, sold, or dispensed by a veterinarian may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing it.

(b) It is a defense to a prosecution under this subsection that the person being prosecuted produces in court a valid prescription for the controlled substance or the original container with the label attached.

Amended by Chapter 241, 2004 General Session

58-37-8 Prohibited acts -- Penalties.

(1) Prohibited acts A -- Penalties and reporting:

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally:

(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;

(iii) possess a controlled or counterfeit substance with intent to distribute; or

(iv) engage in a continuing criminal enterprise where:

(A) the person participates, directs, or engages in conduct that results in any violation of any provision of Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d, Clandestine Drug Lab Act, that is a felony; and

(B) the violation is a part of a continuing series of two or more violations of Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) Any person convicted of violating Subsection (1)(a) with respect to:

(i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony, punishable by imprisonment for not more than 15 years, and upon a second or subsequent conviction is guilty of a first degree felony;

(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

(iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

(c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his person or in his immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

(d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than seven years and which may be for life. Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(e) The Administrative Office of the Courts shall report to the Division of Occupational and Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).

(2) Prohibited acts B -- Penalties and reporting:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;

(ii) for any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or

(iii) for any person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.

(b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

(i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony; or

(ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty of a class A misdemeanor on a first or second conviction, and on a third or subsequent conviction is guilty of a third degree felony.

(c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).

(d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor. Upon a third conviction the person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the person is guilty of a third degree felony.

(e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:

(i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:

(A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.

(f) Any person convicted of violating Subsection (2)(a)(ii) or(iii) is:

(i) on a first conviction, guilty of a class B misdemeanor;

(ii) on a second conviction, guilty of a class A misdemeanor; and

(iii) on a third or subsequent conviction, guilty of a third degree felony.

(g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not amounting to a violation of Section 76-5-207:

(i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's body any measurable amount of a controlled substance; and
(ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner, causing serious bodily injury as defined in Section 76-1-601 or the death of another.
(h) A person who violates Subsection (2)(g) by having in the person's body:
(i) a controlled substance classified under Schedule I, other than those described in Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second degree felony;
(ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third degree felony; or
(iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class A misdemeanor.
(i) A person is guilty of a separate offense for each victim suffering serious bodily injury or death as a result of the person's negligent driving in violation of Subsection 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.
(j) The Administrative Office of the Courts shall report to the Division of Occupational and Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).
(3) Prohibited acts C -- Penalties:
(a) It is unlawful for any person knowingly and intentionally:
(i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;
(ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to acquire or obtain possession of, or to procure the administration of any controlled substance by misrepresentation or failure by the person to disclose receiving any controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;
(iii) to make any false or forged prescription or written order for a controlled substance, or to utter the same, or to alter any prescription or written order issued or written under the terms of this chapter; or
(iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render any drug a counterfeit controlled substance.
(b)
(i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A misdemeanor.
(ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third degree felony.
(c) A violation of Subsection (3)(a)(iv) is a third degree felony.
(4) Prohibited acts D -- Penalties:
(a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act that is unlawful under Subsection (1)(a), Section 58-37a-5, or Section 58-37b-4 is upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed:

(i) in a public or private elementary or secondary school or on the grounds of any of those schools during the hours of 6 a.m. through 10 p.m.;
(ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;
(iii) in or on the grounds of a preschool or child-care facility during the preschool's or facility's hours of operation;
(iv) in a public park, amusement park, arcade, or recreation center when the public or amusement park, arcade, or recreation center is open to the public;
(v) in or on the grounds of a house of worship as defined in Section 76-10-501;
(vi) in or on the grounds of a library when the library is open to the public;
(vii) within any area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);
(viii) in the presence of a person younger than 18 years of age, regardless of where the act occurs; or
(ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of any correctional facility as defined in Section 76-8-311.3.

(b)
(i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony.
(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

(d)
(i) If the violation is of Subsection (4)(a)(ix):
(A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and
(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and
(ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(ix).

(e) It is not a defense to a prosecution under this Subsection (4) that the actor mistakenly believed the individual to be 18 years of age or older at the time of the offense or was unaware of the individual's true age; nor that the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).

(5) Any violation of this chapter for which no penalty is specified is a class B misdemeanor.

(6)
(a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of guilty or no contest to a violation or attempted violation of this section or a plea which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the

charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a conviction that is:

(i) from a separate criminal episode than the current charge; and

(ii) from a conviction that is separate from any other conviction used to enhance the current charge.

(7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.

(8)

(a) Any penalty imposed for violation of this section is in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(b) Where violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

(9) In any prosecution for a violation of this chapter, evidence or proof that shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.

(10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under the veterinarian's direction and supervision.

(11) Civil or criminal liability may not be imposed under this section on:

(a) any person registered under this chapter who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research; or

(b) any law enforcement officer acting in the course and legitimate scope of the officer's employment.

(12)

(a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Subsection 58-37-2(1)(w).

(b) In a prosecution alleging violation of this section regarding peyote as defined in Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.

(c)

(i) The defendant shall provide written notice of intent to claim an affirmative defense under this Subsection (12) as soon as practicable, but not later than 10 days prior to trial.

(ii) The notice shall include the specific claims of the affirmative defense.

(iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(13)

(a) It is an affirmative defense that the person produced, possessed, or administered a controlled substance listed in Section 58-37-4.2 if the person:
(i) was engaged in medical research; and
(ii) was a holder of a valid license to possess controlled substances under Section 58-37-6.
(b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled substance listed in Section 58-37-4.2.
(14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance listed in Section 58-37-4.2 if:
(a) the person was the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and
(b) the substance was administered to the person by the medical researcher.
(15) The application of any increase in penalty under this section to a violation of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This Subsection (15) takes precedence over any conflicting provision of this section.
(16)
(a) It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)(b) that the person:
(i) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;
(ii) reports in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (16);
(iii) provides in the report under Subsection (16)(a)(ii) a functional description of the actual location of the overdose event that facilitates responding to the person experiencing the overdose event;
(iv) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;
(v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and
(vi) is alleged to have committed the offense in the same course of events from which the reported overdose arose.
(b) The offenses referred to in Subsection (16)(a) are:
(i) the possession or use of less than 16 ounces of marijuana;
(ii) the possession or use of a scheduled or listed controlled substance other than marijuana; and
(iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act.
(c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not include seeking medical assistance under this section during the course of a law enforcement agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

(17) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.
(18) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.
(19)
(a) If a minor who is under 18 years of age is found by a court to have violated this section and the violation is the minor's first violation of this section, the court may:
(i) order the minor to complete a screening as defined in Section 41-6a-501;
(ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
(iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.
(b) If a minor who is under 18 years of age is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:
(i) order the minor to complete a screening as defined in Section 41-6a-501;
(ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
(iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.

Amended by Chapter 99, 2016 General Session
Amended by Chapter 348, 2016 General Session

58-37-8.5 Applicability of Title 76 prosecutions under this chapter.

Unless specifically excluded in or inconsistent with the provisions of this chapter, the provisions of Title 76, Chapter 1, General Provisions, Chapter 2, Principles of Criminal Responsibility, Chapter 3, Punishments, and Chapter 4, Inchoate Offenses, are fully applicable to prosecutions under this chapter.

Enacted by Chapter 64, 1997 General Session

58-37-9 Investigators -- Status of peace officers.

Investigators for the Department of Commerce shall for the purpose of enforcing the provisions of this chapter have the status of peace officers.

Amended by Chapter 20, 1995 General Session

58-37-10 Search warrants -- Administrative inspection warrants -- Inspections and seizures of property without warrant.

(1) Search warrants relating to offenses involving controlled substances may be authorized pursuant to the Utah Rules of Criminal Procedure.
(2) Issuance and execution of administrative inspection warrants shall be as follows:
(a) Any judge or magistrate of this state within his jurisdiction upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this act or regulations thereunder and seizures of property appropriate to such inspections. Probable cause for purposes of this act exists upon showing a valid public interest in the effective enforcement of the act or rules promulgated thereunder

sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.

(b) A warrant shall issue only upon an affidavit of an officer or employee duly designated and having knowledge of the facts alleged sworn to before a judge or magistrate which establish the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and if appropriate, the type of property to be inspected, if any. The warrant shall:

(i) state the grounds for its issuance and the name of each person whose affidavit has been taken to support it;

(ii) be directed to a person authorized by Section 58-37-9 of this act to execute it;

(iii) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and if appropriate, direct the seizure of the property specified;

(iv) identify the item or types of property to be seized, if any; and

(v) direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned.

(c) A warrant issued pursuant to this section must be executed and returned within 10 days after its date unless, upon a showing of a need for additional time, the court instructs otherwise in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or leave the copy and receipt at the place where the property was taken. Return of the warrant shall be made promptly and be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(d) The judge or magistrate who issued the warrant under this section shall attach a copy of the return and all other papers to the warrant and file them with the court.

(3) The department is authorized to make administrative inspections of controlled premises in accordance with the following provisions:

(a) For purposes of this section only, "controlled premises" means:

(i) Places where persons licensed or exempted from licensing requirements under this act are required to keep records.

(ii) Places including factories, warehouses, establishments, and conveyances where persons licensed or exempted from licensing requirements are permitted to possess, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(b) When authorized by an administrative inspection warrant a law enforcement officer or employee designated in Section 58-37-9, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, has the right to enter controlled premises for the purpose of conducting an administrative inspection.

(c) When authorized by an administrative inspection warrant, a law enforcement officer or employee designated in Section 58-37-9 has the right:

(i) To inspect and copy records required by this chapter.

(ii) To inspect within reasonable limits and a reasonable manner, the controlled premises and all pertinent equipment, finished and unfinished material, containers, and labeling found,

and except as provided in Subsection (3)(e), all other things including records, files, papers, processes, controls, and facilities subject to regulation and control by this chapter or by rules promulgated by the department.

(iii) To inventory and take stock of any controlled substance and obtain samples of any substance.

(d) This section shall not be construed to prevent the inspection of books and records without a warrant pursuant to an administrative subpoena issued by a court or the department nor shall it be construed to prevent entries and administrative inspections including seizures of property without a warrant:

(i) with the consent of the owner, operator, or agent in charge of the controlled premises;

(ii) in situations presenting imminent danger to health or safety;

(iii) in situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(iv) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and

(v) in all other situations where a warrant is not constitutionally required.

(e) No inspection authorized by this section shall extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

Amended by Chapter 278, 2013 General Session

58-37-11 District court jurisdiction to enjoin violations -- Jury trial.

(1) The district courts of this state shall have jurisdiction in proceedings in accordance with the rules of those courts to enjoin violations of this act.

(2) If an alleged violation of an injunction or restraining order issued under this section occurs, the accused may demand a jury trial in accordance with the rules of the district courts.

Enacted by Chapter 145, 1971 General Session

58-37-12 Enforcement -- Coordination and cooperation of federal and state agencies -- Powers.

The department and all law enforcement agencies charged with enforcing this act shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they are authorized to:

(1) Arrange for the exchange of information between governmental officials concerning the use and abuse of dangerous substances.

(2) Coordinate and cooperate in training programs in controlled substance law enforcement at the local and state levels.

(3) Cooperate with the United States Department of Justice and the Utah Department of Public Safety by establishing a centralized unit which will receive, catalog, file, and collect statistics, including records of drug-dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state, and local law enforcement purposes.

(4) Conduct programs of eradication aimed at destroying the wild or illicit growth of plant species from which controlled substances may be extracted.

Amended by Chapter 64, 1997 General Session

58-37-14 Resort for illegal use or possession of controlled substances deemed common nuisance -- District court power to suppress and enjoin.

(1) Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or other place to which users or possessors of any controlled substances, listed in schedules I through V, resort or where use or possession of any substances violates this act, or which is used for illegal keeping, storing, or selling any substances listed as controlled substances in schedules I through V shall be deemed a common nuisance. No person shall open, keep, or maintain any such place.

(2) The district court has the power to make any order necessary or reasonable to suppress any nuisance and to enjoin any person or persons from doing any act calculated to cause, or permit the continuation of a nuisance.

Enacted by Chapter 145, 1971 General Session

58-37-15 Burden of proof in proceedings on violations -- Enforcement officers exempt from liability.

(1) It is not necessary for the state to negate any exemption or exception set forth in this act in any complaint, information, indictment or other pleading or trial, hearing, or other proceeding under this act, and the burden of proof of any exemption or exception is upon the person claiming its benefit.

(2) In absence of proof that a person is the duly authorized holder of an appropriate license, registration, order form, or prescription issued under this act, he shall be presumed not to be the holder of a license, registration, order form, or prescription, and the burden of proof is upon him to rebut the presumption.

(3) No liability shall be imposed upon any duly authorized state or federal officer engaged in the enforcement of this act who is engaged in the enforcement of any law, municipal ordinance, or regulation relating to controlled substances.

Enacted by Chapter 145, 1971 General Session

58-37-17 Judicial review.

(1) Any person aggrieved by a department's final order may obtain judicial review.

(2) Venue for judicial review of informal adjudicative proceedings is in the district court of Salt Lake County.

Amended by Chapter 161, 1987 General Session

58-37-18 Prior prosecutions and proceedings continued -- Uniform construction.

(1)

(a) Prosecution for violation of any law or offense occurring prior to the effective date of this act shall not be affected by this act; provided, that sentences imposed after the effective date of this act may not exceed the maximum terms specified and the judge has discretion to impose any minimum sentence.

(b) Civil seizures, forfeitures, and injunctive proceedings commenced prior to the effective date of this act shall not be affected by this act.

(c) All administrative proceedings pending before any agency or court on the effective date of this act shall be continued and brought to final determination in accordance with laws and regulations in effect prior to the effective date of this act. Drugs placed under control prior to enactment of this act which are not listed within schedules I through V shall be automatically controlled and listed in the appropriate schedule without further proceedings.

(2) This act does not affect rights and duties that mature, penalties that are incurred, and proceedings that are begun before its effective date.

(3) This act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it where laws are similar to this act.

Enacted by Chapter 145, 1971 General Session

Chapter 37a
Utah Drug Paraphernalia Act

58-37a-1 Short title.

This chapter shall be known and may be cited as the "Utah Drug Paraphernalia Act."

Enacted by Chapter 76, 1981 General Session

58-37a-2 Purpose.

It is the intent of this chapter to discourage the use of narcotics by eliminating paraphernalia designed for processing, ingesting, or otherwise using a controlled substance.

Enacted by Chapter 76, 1981 General Session

58-37a-3 "Drug paraphernalia" defined.

As used in this chapter, "drug paraphernalia" means any equipment, product, or material used, or intended for use, to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, conceal, inject, ingest, inhale, or to otherwise introduce a controlled substance into the human body in violation of Title 58, Chapter 37, Utah Controlled Substances Act, and includes, but is not limited to:

(1) kits used, or intended for use, in planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) kits used, or intended for use, in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(3) isomerization devices used, or intended for use, to increase the potency of any species of plant which is a controlled substance;

(4) testing equipment used, or intended for use, to identify or to analyze the strength, effectiveness, or purity of a controlled substance;

(5) scales and balances used, or intended for use, in weighing or measuring a controlled substance;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannited, dextrose and lactose, used, or intended for use to cut a controlled substance;

(7) separation gins and sifters used, or intended for use to remove twigs, seeds, or other impurities from marihuana;
(8) blenders, bowls, containers, spoons and mixing devices used, or intended for use to compound a controlled substance;
(9) capsules, balloons, envelopes, and other containers used, or intended for use to package small quantities of a controlled substance;
(10) containers and other objects used, or intended for use to store or conceal a controlled substance;
(11) hypodermic syringes, needles, and other objects used, or intended for use to parenterally inject a controlled substance into the human body, except as provided in Section 58-37a-5; and
(12) objects used, or intended for use to ingest, inhale, or otherwise introduce a controlled substance into the human body, including but not limited to:
(a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
(b) water pipes;
(c) carburetion tubes and devices;
(d) smoking and carburetion masks;
(e) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;
(f) miniature cocaine spoons and cocaine vials;
(g) chamber pipes;
(h) carburetor pipes;
(i) electric pipes;
(j) air-driven pipes;
(k) chillums;
(l) bongs; and
(m) ice pipes or chillers.

Amended by Chapter 101, 2011 General Session

58-37a-4 Considerations in determining whether object is drug paraphernalia.

In determining whether an object is drug paraphernalia, the trier of fact, in addition to all other logically relevant factors, should consider:
(1) statements by an owner or by anyone in control of the object concerning its use;
(2) prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to a controlled substance;
(3) the proximity of the object, in time and space, to a direct violation of this chapter;
(4) the proximity of the object to a controlled substance;
(5) the existence of any residue of a controlled substance on the object;
(6) instructions whether oral or written, provided with the object concerning its use;
(7) descriptive materials accompanying the object which explain or depict its use;
(8) national and local advertising concerning its use;
(9) the manner in which the object is displayed for sale;
(10) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
(11) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
(12) the existence and scope of legitimate uses of the object in the community;

(13) whether the object is subject to Section 58-37a-5; and
(14) expert testimony concerning its use.

Amended by Chapter 101, 2011 General Session

58-37a-5 Unlawful acts.

(1)
(a) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body in violation of this chapter.
(b) Any person who violates Subsection (1)(a) is guilty of a class B misdemeanor.
(2)
(a) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body in violation of this act.
(b) Any person who violates Subsection (2)(a) is guilty of a class A misdemeanor.
(3) Any person 18 years of age or older who delivers drug paraphernalia to a person younger than 18 years of age and who is three years or more younger than the person making the delivery is guilty of a third degree felony.
(4)
(a) It is unlawful for any person to place in this state in any newspaper, magazine, handbill, or other publication any advertisement, knowing that the purpose of the advertisement is to promote the sale of drug paraphernalia.
(b) Any person who violates Subsection (4)(a) is guilty of a class B misdemeanor.
(5)
(a) A person may not be charged with distribution of hypodermic syringes as drug paraphernalia if at the time of sale or distribution the syringes are in a sealed sterile package and are for a legitimate medical purpose, including:
(i) injection of prescription medications as prescribed by a practitioner; or
(ii) the prevention of disease transmission.
(b) A person may not be charged with possession of hypodermic syringes as drug paraphernalia if the syringe is unused and is in a sealed sterile package.
(6) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.

Amended by Chapter 101, 2011 General Session

58-37a-6 Seizure -- Forfeiture -- Property rights.

Drug paraphernalia is subject to seizure and forfeiture in accordance with the procedures and substantive protections of Title 24, Forfeiture and Disposition of Property Act.

Amended by Chapter 258, 2015 General Session

58-37a-7 Sentencing requirements for minors.

(1) If a minor who is under 18 years of age is found by a court to have violated this chapter and the violation is the minor's first violation of this chapter, the court may:
  (a) order the minor to complete a screening as defined in Section 41-6a-501;
  (b) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
  (c) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.
(2) If a minor who is under 18 years of age is found by a court to have violated this chapter and the violation is the minor's second or subsequent violation of this chapter, the court shall:
  (a) order the minor to complete a screening as defined in Section 41-6a-501;
  (b) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
  (c) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.

Enacted by Chapter 165, 2015 General Session

Chapter 37b
Imitation Controlled Substances Act

58-37b-1 Short title.
This act shall be known and may be cited as the "Imitation Controlled Substances Act."

Enacted by Chapter 32, 1982 General Session

58-37b-2 Definitions.
As used in this chapter:
(1) "Controlled substance" has the same meaning as provided in Section 58-37-2.
(2) "Distribute" means the actual, constructive, or attempted sale, transfer, delivery, or dispensing to another of an imitation controlled substance.
(3) "Imitation controlled substance" means a substance designed or packaged to substantially resemble any legally or illegally manufactured controlled substance, but that is not:
  (a) a controlled substance; or
  (b) represented to be any legally or illegally manufactured controlled substance under Subsection 58-37-2(1)(i)(ii).
(4) "Manufacture" means the production, preparation, compounding, processing, encapsulating, tableting, packaging or repackaging, labeling or relabeling, of an imitation controlled substance.

Amended by Chapter 64, 2010 General Session

58-37b-4 Manufacture, distribution or possession of substance unlawful -- Penalty.
It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Any person who violates this section is guilty of a class A misdemeanor.

Amended by Chapter 241, 1991 General Session

58-37b-6 Use of substance unlawful -- Penalty.

It is unlawful for any person to use, or to possess with intent to use, an imitation controlled substance. Any person who violates this section is guilty of a class C misdemeanor.

Amended by Chapter 178, 1986 General Session

58-37b-7 Advertisement of substance unlawful -- Penalty.

It is unlawful for any person to place any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution of imitation controlled substances. Any person who violates this section is guilty of a class A misdemeanor.

Amended by Chapter 241, 1991 General Session

58-37b-8 Exemption of persons registered under Controlled Substances Act.

No civil or criminal liability shall be imposed by virtue of this act on any person registered under the Controlled Substances Act who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research or on any law enforcement officer acting in the course and legitimate scope of that employment.

Enacted by Chapter 32, 1982 General Session

58-37b-9 Sentencing requirements for minors.

(1) If a minor who is under 18 years of age is found by a court to have violated this chapter and the violation is the minor's first violation of this chapter, the court may:
  (a) order the minor to complete a screening as defined in Section 41-6a-501;
  (b) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
  (c) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.
(2) If a minor is found by a court to have violated this chapter and the violation is the minor's second or subsequent violation of this chapter, the court shall:
  (a) order the minor to complete a screening as defined in Section 41-6a-501;
  (b) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
  (c) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.

Enacted by Chapter 165, 2015 General Session

Chapter 37c
Utah Controlled Substance Precursor Act

58-37c-1 Short title.

This act shall be known as the "Utah Controlled Substance Precursor Act."

Repealed and Re-enacted by Chapter 155, 1992 General Session

58-37c-2 Purpose.

The purpose of this act is to provide for the licensure of regulated distributors and regulated purchasers engaged in regulated transactions of listed controlled substance precursor chemicals as they are identified in the act or rules adopted pursuant to the act, to provide for maintaining of records and submission of reports with respect to regulated transactions, to provide for reasonable and necessary regulation of defined types of transactions, to provide that violation of the provisions of this act shall be unlawful and unprofessional conduct, and to provide for criminal and administrative actions for that conduct.

Repealed and Re-enacted by Chapter 155, 1992 General Session

58-37c-3 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Controlled substance precursor" includes a chemical reagent and means any of the following:

(a) Phenyl-2-propanone;
(b) Methylamine;
(c) Ethylamine;
(d) D-lysergic acid;
(e) Ergotamine and its salts;
(f) Diethyl malonate;
(g) Malonic acid;
(h) Ethyl malonate;
(i) Barbituric acid;
(j) Piperidine and its salts;
(k) N-acetylanthranilic acid and its salts;
(l) Pyrrolidine;
(m) Phenylacetic acid and its salts;
(n) Anthranilic acid and its salts;
(o) Morpholine;
(p) Ephedrine;
(q) Pseudoephedrine;
(r) Norpseudoephedrine;
(s) Phenylpropanolamine;
(t) Benzyl cyanide;
(u) Ergonovine and its salts;
(v) 3,4-Methylenedioxyphenyl-2-propanone;
(w) propionic anhydride;
(x) Insosafrole;
(y) Safrole;
(z) Piperonal;
(aa) N-Methylephedrine;
(bb) N-ethylephedrine;
(cc) N-methylpseudoephedrine;

(dd) N-ethylpseudoephedrine;
(ee) Hydriotic acid;
(ff) gamma butyrolactone (GBL), including butyrolactone, 1,2 butanolide, 2-oxanolone, tetrahydro-2-furanone, dihydro-2(3H)-furanone, and tetramethylene glycol, but not including gamma aminobutric acid (GABA);
(gg) 1,4 butanediol;
(hh) any salt, isomer, or salt of an isomer of the chemicals listed in Subsections (1)(a) through (gg);
(ii) Crystal iodine;
(jj) Iodine at concentrations greater than 1.5% by weight in a solution or matrix;
(kk) Red phosphorous, except as provided in Section 58-37c-19.7;
(ll) anhydrous ammonia, except as provided in Section 58-37c-19.9;
(mm) any controlled substance precursor listed under the provisions of the Federal Controlled Substances Act which is designated by the director under the emergency listing provisions set forth in Section 58-37c-14; and
(nn) any chemical which is designated by the director under the emergency listing provisions set forth in Section 58-37c-14.

(2) "Deliver," "delivery," "transfer," or "furnish" means the actual, constructive, or attempted transfer of a controlled substance precursor.

(3) "Matrix" means something, as a substance, in which something else originates, develops, or is contained.

(4) "Person" means any individual, group of individuals, proprietorship, partnership, joint venture, corporation, or organization of any type or kind.

(5) "Practitioner" means a physician, dentist, podiatric physician, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, pharmaceutical manufacturer, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(6)
(a) "Regulated distributor" means a person within the state who provides, sells, furnishes, transfers, or otherwise supplies a listed controlled substance precursor chemical in a regulated transaction.
(b) "Regulated distributor" does not include any person excluded from regulation under this chapter.

(7)
(a) "Regulated purchaser" means any person within the state who receives a listed controlled substance precursor chemical in a regulated transaction.
(b) "Regulated purchaser" does not include any person excluded from regulation under this chapter.

(8) "Regulated transaction" means any actual, constructive or attempted:
(a) transfer, distribution, delivery, or furnishing by a person within the state to another person within or outside of the state of a threshold amount of a listed precursor chemical; or
(b) purchase or acquisition by any means by a person within the state from another person within or outside the state of a threshold amount of a listed precursor chemical.

(9) "Retail distributor" means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor are limited almost exclusively to sales for personal use:
(a) in both number of sales and volume of sales; and

(b) either directly to walk-in customers or in face-to-face transactions by direct sales.

(10) "Threshold amount of a listed precursor chemical" means any amount of a controlled substance precursor or a specified amount of a controlled substance precursor in a matrix; however, the division may exempt from the provisions of this chapter a specific controlled substance precursor in a specific amount and in certain types of transactions which provisions for exemption shall be defined by the division by rule adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(11) "Unlawful conduct" as defined in Section 58-1-501 includes knowingly and intentionally:

(a) engaging in a regulated transaction without first being appropriately licensed or exempted from licensure under this chapter;

(b) acting as a regulated distributor and selling, transferring, or in any other way conveying a controlled substance precursor to a person within the state who is not appropriately licensed or exempted from licensure as a regulated purchaser, or selling, transferring, or otherwise conveying a controlled substance precursor to a person outside of the state and failing to report the transaction as required;

(c) acting as a regulated purchaser and purchasing or in any other way obtaining a controlled substance precursor from a person within the state who is not a licensed regulated distributor, or purchasing or otherwise obtaining a controlled substance precursor from a person outside of the state and failing to report the transaction as required;

(d) engaging in a regulated transaction and failing to submit reports and keep required records of inventories required under the provisions of this chapter or rules adopted pursuant to this chapter;

(e) making any false statement in any application for license, in any record to be kept, or on any report submitted as required under this chapter;

(f) with the intent of causing the evasion of the recordkeeping or reporting requirements of this chapter and rules related to this chapter, receiving or distributing any listed controlled substance precursor chemical in any manner designed so that the making of records or filing of reports required under this chapter is not required;

(g) failing to take immediate steps to comply with licensure, reporting, or recordkeeping requirements of this chapter because of lack of knowledge of those requirements, upon becoming informed of the requirements;

(h) presenting false or fraudulent identification where or when receiving or purchasing a listed controlled substance precursor chemical;

(i) creating a chemical mixture for the purpose of evading any licensure, reporting or recordkeeping requirement of this chapter or rules related to this chapter, or receiving a chemical mixture created for that purpose;

(j) if the person is at least 18 years of age, employing, hiring, using, persuading, inducing, enticing, or coercing another person under 18 years of age to violate any provision of this chapter, or assisting in avoiding detection or apprehension for any violation of this chapter by any federal, state, or local law enforcement official; and

(k) obtaining or attempting to obtain or to possess any controlled substance precursor or any combination of controlled substance precursors knowing or having a reasonable cause to believe that the controlled substance precursor is intended to be used in the unlawful manufacture of any controlled substance.

(12) "Unprofessional conduct" as defined in Section 58-1-102 and as may be further defined by rule includes the following:

(a) violation of any provision of this chapter, the Controlled Substance Act of this state or any other state, or the Federal Controlled Substance Act; and

(b) refusing to allow agents or representatives of the division or authorized law enforcement personnel to inspect inventories or controlled substance precursors or records or reports relating to purchases and sales or distribution of controlled substance precursors as such records and reports are required under this chapter.

Amended by Chapter 258, 2015 General Session

58-37c-5 Responsibility of Department of Commerce -- Delegation to the Division of Occupational and Professional Licensing -- Rulemaking authority of the division.

(1) Responsibility for the enforcement of the licensing and reporting provisions of this chapter shall be with the Department of Commerce.
(2) The executive director shall delegate specific responsibility within the department to the Division of Occupational and Professional Licensing.
(3) The division shall make, adopt, amend, and repeal rules necessary for the proper administration and enforcement of this chapter.

Repealed and Re-enacted by Chapter 155, 1992 General Session

58-37c-6 Division duties.

The division shall be responsible for the licensing and reporting provisions of this chapter and those duties shall include:

(1) providing for a system of licensure of regulated distributors and regulated purchasers;
(2) refusing to renew a license or revoking, suspending, restricting, placing on probation, issuing a private or public letter of censure or reprimand, or imposing other appropriate action against a license;
(3) with respect to the licensure and reporting provisions of this chapter, investigating or causing to be investigated any violation of this chapter by any person and to cause, when necessary, appropriate administrative action with respect to the license of that person;
(4) presenting evidence obtained from investigations conducted by appropriate county attorneys and the Office of the Attorney General for civil or criminal prosecution or for administrative action against a licensee;
(5) conducting hearings for the purpose of revoking, suspending, placing on probation, or imposing other appropriate administrative action against the license of regulated distributors or regulated purchasers in accordance with the provisions of Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, and Title 63G, Chapter 4, Administrative Procedures Act;
(6) assisting all other law enforcement agencies of the state in enforcing all laws regarding controlled substance precursors;
(7) specifying reports, frequency of reports, and conditions under which reports are to be submitted and to whom reports are to be submitted by regulated distributors and regulated purchasers with respect to transactions involving threshold amounts of controlled substance precursors; and
(8) performing all other functions necessary to fulfill division duties and responsibilities as outlined under this chapter or rules adopted pursuant to this chapter.

Amended by Chapter 382, 2008 General Session

58-37c-7 Controlled substance precursor license.

(1) The division shall issue to persons qualified under the provisions of this chapter and rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a controlled substance precursor license.
(2) It is unlawful for a person to engage in the distribution, sale, or transfer, or in the purchase or obtaining of a controlled substance precursor in a regulated transaction without being licensed or excepted from licensure under this chapter.

Amended by Chapter 240, 2010 General Session

58-37c-8 License -- Exceptions from licensure or regulation.
(1) A person engaged in a regulated transaction under this chapter shall hold a controlled substance precursor license issued under Section 58-37c-7, unless excepted from licensure under this chapter.
(2) The division shall:
  (a) establish the form of application for a license, the requirements for licensure, and fees for initial licensure and renewal; and
  (b) identify required information to be contained in the application as a condition of licensure.
(3) A practitioner who holds a Utah Controlled Substance License and a Controlled Substance Registration issued by the Drug Enforcement Administration of the U.S. Government is excepted from licensure under this chapter.
(4) The purchase, sale, transfer, furnishing, or receipt of a drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription pursuant to the federal Food, Drug and Cosmetic Act, 21 USC, Sec. 301 et seq., or regulations adopted under that act, are excepted from licensure, reporting, and recordkeeping under this chapter, except that products containing ephedrine, pseudoephedrine, or phenylpropanolamine are subject to Section 58-37c-20.5.
(5) The purchase, sale, transfer, receipt, or manufacture of dietary supplements, vitamins, minerals, herbs, or other similar substances, including concentrates or extracts, which are not otherwise prohibited by law, and which may contain naturally occurring amounts of chemicals or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, are exempt from licensure under this chapter.
(6) A purchaser of two ounces or less of crystal iodine in a single transaction is not required to be licensed as a regulated purchaser if the transaction complies with Section 58-37c-18.
(7) The purchase, sale, transfer, receipt, or manufacture of a product that contains a precursor chemical listed in Subsection 58-37c-3(1)(ff) or (gg) and that is not intended for human consumption is exempt from licensure or regulation and is not subject to criminal penalties under this chapter.

Amended by Chapter 262, 2013 General Session
Amended by Chapter 413, 2013 General Session

58-37c-9 Term of license -- Expiration -- Renewal.
(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-37c-10 Reporting and recordkeeping.

(1) Any person who engages in a regulated transaction, unless excepted under the provisions of Subsections 58-37c-8(3) and (4), shall submit a report with respect to such transaction and shall maintain records of inventories in accordance with rules adopted by the division.
(2) The division shall provide reporting forms upon which regulated transactions shall be reported.
(3) The division shall furnish copies of reports of transactions under this section to appropriate law enforcement agencies.
(4) The division shall adopt rules regulating:
  (a) records which shall be maintained and reports which shall be submitted by regulated distributors and regulated purchasers with respect to listed controlled substance precursors obtained, distributed, and held in inventory;
  (b) records which shall be maintained and reports which shall be submitted by regulated distributors and regulated purchasers with respect to extraordinary or unusual regulated transactions and a requirement that in such cases the report must be received at least three working days prior to transfer of the listed controlled substance precursor;
  (c) identification which must be presented by a purchaser of any listed controlled substance precursor before the sale or transfer can be completed and recordkeeping requirements related to such identification presented;
  (d) filing by each licensee the identification of all locations where any listed controlled substance precursor is held in inventory or stored and amending such filing when any change in location is made;
  (e) reports and actions which must be taken by a regulated distributor or regulated purchaser in the event of any theft, loss, or shortage of a listed controlled substance precursor;
  (f) reports and actions which must be taken by a regulated distributor relating to a regulated transaction with an out-of-state purchaser;
  (g) reports and actions which must be taken by a regulated purchaser relating to a regulated transaction with an out-of-state distributor; and
  (h) regulated transactions to the extent such regulation is reasonable and necessary to protect the public health, safety, or welfare.
(5) A person who engages in a regulated transaction may not accept a driving privilege card issued in accordance with Section 53-3-207 as proof of identification as required under Subsection (4)(c).

Amended by Chapter 322, 2008 General Session

58-37c-11 Penalty for unlawful conduct.

(1) A person who violates the unlawful conduct provision defined in Subsections 58-37c-3(11)(a) through (j) is guilty of a class A misdemeanor.
(2) A person who violates the unlawful conduct provisions defined in Subsection 58-37c-3(11)(k) is guilty of a second degree felony.

Amended by Chapter 262, 2013 General Session
Amended by Chapter 413, 2013 General Session

58-37c-12 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-37c-13 License does not authorize possession of controlled substances.

Nothing in the provisions of this chapter shall authorize persons not licensed under provisions of Title 58, Chapter 37, Utah Controlled Substances Act, to distribute, possess, dispense, administer, or otherwise deal in controlled substances as defined in the Utah Controlled Substance Act.

Enacted by Chapter 155, 1992 General Session

58-37c-14 Emergency listing provision.

(1) Upon a written finding of cause by the director that the listing of a chemical as a controlled substance precursor is necessary to protect the public health, safety, or welfare, the director may make an emergency listing of that chemical as a controlled substance precursor by adopting a rule pursuant to the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(2) Such listing shall have effect until the close of the next immediately succeeding regular session of the Legislature. In the event the Legislature adopts the chemical as a controlled precursor by amendment to this chapter, the chemical shall remain listed under emergency provisions until the effective date of the amendment.
(3) Any violation of this chapter dealing with a controlled substance precursor listed under the emergency listing provisions of this section shall constitute a violation subject only to civil or administrative penalties.

Amended by Chapter 382, 2008 General Session

58-37c-15 Civil forfeiture.

The following shall be subject to forfeiture in accordance with the procedures and substantive protections of Title 24, Forfeiture and Disposition of Property Act:
(1) all listed controlled substance precursor chemicals regulated under the provisions of this chapter which have been distributed, possessed, or are intended to be distributed or otherwise transferred in violation of any felony provision of this chapter; and
(2) all property used by any person to facilitate, aid, or otherwise cause the unlawful distribution, transfer, possession, or intent to distribute, transfer, or possess a listed controlled substance precursor chemical in violation of any felony provision of this chapter.

Amended by Chapter 258, 2015 General Session

58-37c-16 Civil penalties.

Any person who is a regulated distributor or a regulated purchaser who acts in violation of the provisions of Section 58-37c-10 in addition to any criminal penalties, shall be subject to a civil penalty of not more than $25,000 for each offense.

Enacted by Chapter 155, 1992 General Session

58-37c-17 Inspection authority.

For the purpose of inspecting, copying, and auditing records and reports required under this chapter and rules adopted pursuant thereto, and for the purpose of inspecting and auditing inventories of listed controlled substance precursors, the director, or his authorized agent, and law enforcement personnel of any federal, state, or local law enforcement agency is authorized to enter the premises of regulated distributors and regulated purchasers during normal business hours to conduct administrative inspections.

Amended by Chapter 278, 2013 General Session

58-37c-18 Recordkeeping requirements for sale of crystal iodine.

(1) Any person licensed to engage in a regulated transaction and who sells crystal iodine to another person shall:
  (a) comply with the recordkeeping requirements of Section 58-37c-10;
  (b) require photo identification of the purchaser;
  (c) obtain from the purchaser a signature on a certificate of identification provided by the seller; and
  (d) obtain from the purchaser a legible fingerprint, preferably of the right thumb, which shall be placed on the certificate next to the purchaser's signature.
(2) Any failure to comply with Subsection (1) is a class B misdemeanor.

Amended by Chapter 21, 1999 General Session

58-37c-19 Possession or sale of crystal iodine.

(1) A person licensed to engage in a regulated transaction is guilty of a class B misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37d-4(1)(c), offers to sell, sells, or distributes more than two ounces of crystal iodine to another person who is:
  (a) not licensed as a regulated purchaser of crystal iodine;
  (b) not excepted from licensure; or
  (c) not excepted under Subsection (3).
(2) A person who is not licensed to engage in regulated transactions and not excepted from licensure is guilty of a class A misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37c-3(11)(k) or Subsection 58-37d-4(1)(a):
  (a) possesses more than two ounces of crystal iodine; or
  (b) offers to sell, sells, or distributes crystal iodine to another person.
(3) Subsection (2)(a) does not apply to:
  (a) a chemistry laboratory maintained by:
    (i) a public or private regularly established secondary school; or
    (ii) a public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;
  (b) a veterinarian licensed to practice under Title 58, Chapter 28, Veterinary Practice Act; or
  (c) a general acute hospital.

Amended by Chapter 262, 2013 General Session
Amended by Chapter 413, 2013 General Session

58-37c-19.5 Iodine solution greater than 1.5% -- Prescription or permit required -- Penalties.

(1) As used in this section, "iodine matrix" means iodine at concentrations greater than 1.5% by weight in a matrix or solution.
(2) A person may offer to sell, sell, or distribute an iodine matrix only:
  (a) as a prescription drug, pursuant to a prescription issued by a veterinarian or physician licensed within the state; or
  (b) to a person who is actively engaged in the legal practice of animal husbandry of livestock, as defined in Section 4-1-8.
(3) Prescriptions issued under this section:
  (a) shall provide for a specified number of refills;
  (b) may be issued by electronic means, in accordance with Title 58, Chapter 17b, Pharmacy Practice Act; and
  (c) may be filled by a person other than the veterinarian or physician issuing the prescription.
(4) A retailer offering iodine matrix for sale:
  (a) shall store the iodine matrix so that the public does not have access to the iodine matrix without the direct assistance or intervention of a retail employee;
  (b) shall keep a record, which may consist of sales receipts, of each person purchasing iodine matrix; and
  (c) may, if necessary to ascertain the identity of the purchaser, ask for proof of identification from the purchaser.
(5) A person engaging in a regulated transaction under Subsection (2) is guilty of a class B misdemeanor if the person, under circumstances not amounting to a violation of Subsection 58-37d-4(1)(c), offers to sell, sells, or distributes an iodine matrix to a person who:
  (a) does not present a prescription or is not engaged in animal husbandry, as required under Subsection (2); or
  (b) is not excepted under Subsection (7).
(6) A person is guilty of a class A misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37c-3(11)(k) or 58-37d-4(1)(a):
  (a) possesses an iodine matrix without proof of obtaining the solution in compliance with Subsection (2); or
  (b) offers to sell, sells, or distributes an iodine matrix in violation of Subsection (2).
(7) Subsection (6)(a) does not apply to:
  (a) a chemistry or chemistry-related laboratory maintained by:
    (i) a public or private regularly established secondary school; or
    (ii) a public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;
  (b) a veterinarian licensed to practice under Title 58, Chapter 28, Veterinary Practice Act;
  (c) a general acute hospital; or
  (d) a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons who possesses an iodine matrix in the regular course of lawful business activities.

Amended by Chapter 262, 2013 General Session
Amended by Chapter 413, 2013 General Session

58-37c-19.7 Red phosphorus is a precursor -- Affirmative defense.

(1) A person is guilty of a class A misdemeanor who is not licensed to engage in a regulated transaction and is not excepted from licensure who, under circumstances not amounting to a violation of Subsection 58-37c-3(11)(k) or 58-37d-4(1)(a), possesses any amount of red phosphorus.
(2) It is an affirmative defense to a charge under Subsection (1) that the person in possession of red phosphorus:
  (a) is conducting a licensed business that involves red phosphorus in the manufacture of any of the following:
    (i) the striking surface used for lighting matches, which is sometimes referred to as the striker plate;
    (ii) flame retardant in polymers; or
    (iii) fireworks, for which the person or entity possesses a federal license to manufacture explosives as required under 27 CFR Chapter II, Part 555, Commerce in Explosives; or
  (b)
    (i) is a wholesaler, manufacturer, warehouseman, or common carrier handling red phosphorus, or is an agent of any of these persons; and
    (ii) possesses the substances in the regular course of lawful business activities.
(3)
  (a) A defendant shall provide written notice of intent to claim an affirmative defense under this section as soon as practicable, but not later than 10 days prior to trial. The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.
  (b) The notice shall include the specifics of the affirmative defense.
  (c) The defendant shall establish the affirmative defense by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.
(4) Subsection (1) does not apply to:
  (a) a chemistry or chemistry-related laboratory maintained by:
    (i) a public or private regularly established secondary school; or
    (ii) a public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education; or
  (b) a retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons who possesses red phosphorus in the regular course of lawful business activities.

Amended by Chapter 262, 2013 General Session
Amended by Chapter 413, 2013 General Session

58-37c-19.9 Anhydrous ammonia is a precursor -- Requirements regarding purposes and containers.

(1) A person is guilty of a class A misdemeanor who is not licensed to engage in a regulated transaction and is not excepted from licensure or exempted under Subsection (2), and who possesses any amount of anhydrous ammonia under circumstances not amounting to a violation of Subsection 58-37c-3(11)(k) or 58-37d-4(1)(a).
(2) A person who possesses anhydrous ammonia has an affirmative defense to a charge under Subsection (1) if the person is:
  (a) directly involved in or actively operating land in agricultural use as defined in Section 59-2-502;

(b) a retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons, who possesses anhydrous ammonia in the regular course of lawful business activities;
(c) directly involved in or actively operating a business or other lawful activity providing or using anhydrous ammonia for refrigeration applications; or
(d) directly involved in or actively operating a lawful business enterprise, including an industrial enterprise, that uses anhydrous ammonia in the regular course of its business activities.

Amended by Chapter 262, 2013 General Session
Amended by Chapter 413, 2013 General Session

58-37c-20 Possession of ephedrine, pseudoephedrine, or phenylpropanolamine -- Penalties.

(1) A person is guilty of a class A misdemeanor:
(a) who is not licensed to engage in regulated transactions and is not excepted from licensure; and
(b) who, under circumstances not amounting to a violation of Subsection 58-37c-3(11)(k) or Subsection 58-37d-4(1)(a), possesses more than 9 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances.
(2) It is an affirmative defense to a charge under Subsection (1) that the person in possession of ephedrine, pseudoephedrine, phenylpropanolamine, or a combination of these two substances:
(a)
(i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons; and
(ii) possesses the substances in the regular course of lawful business activities; or
(b) possesses the substance pursuant to a valid prescription as defined in Section 58-37-2.
(3)
(a) A defendant shall provide written notice of intent to claim an affirmative defense under this section as soon as practicable, but not later than 10 days prior to trial. The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.
(b) The notice shall include the specifics of the asserted defense.
(c) The defendant shall establish the affirmative defense by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.
(4) This section does not apply to dietary supplements, herbs, or other natural products, including concentrates or extracts, which:
(a) are not otherwise prohibited by law; and
(b) may contain naturally occurring ephedrine, ephedrine alkaloids, or pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these substances, that:
(i) are contained in a matrix of organic material; and
(ii) do not exceed 15% of the total weight of the natural product.

Amended by Chapter 262, 2013 General Session
Amended by Chapter 413, 2013 General Session

58-37c-20.5 Pseudoephedrine products -- Limitations on retail sale.

(1) As used in this section:

(a) "Mobile retail vendor" means a person or entity that sells product at retail from a stand that is intended to be temporary, or that is capable of being moved from one location to another, whether the stand is located within or on the premises of a fixed facility or is located on unimproved real estate; and
(b) "Product" means any product, mixture, or preparation, or any combination of products that contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or isomers, or salts of optical isomers, or a combination of any of these substances.
(2) A retail distributor or a mobile retail vendor may not distribute or sell any product that exceeds the threshold amount of 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, or any combination of these, regardless of the number of transactions, during any 24-hour period.
(3) A mobile retail vendor may not distribute or sell any product that exceeds the threshold amount of 7.5 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, regardless of the number of transactions, during any 30-day period.
(4) A retail distributor or a mobile retail vendor may not distribute or sell any product, unless the retail distributor or mobile retail vendor:
(a) stores the product in an area not accessible to customers prior to the sale, which area may include a locked cabinet to display the product in an area accessible to customers, if the locked cabinet may be opened only by the retail distributor or mobile retail vendor or its employees;
(b) stores all nonliquid scheduled listed chemical products in packaging containing blister packs, with each blister containing no more than two dosage units;
(c) requires the purchaser of the product to provide photo identification issued by a governmental agency and that includes the purchaser's date of birth;
(d) maintains a written or electronic log under Subsection (5) of the sales made under this section; and
(e) provides a notice concerning federal penalties for making false statements or misrepresentations, as provided in Subsection (5)(d).
(5) Each retail distributor or mobile retail vendor shall maintain an electronic or written log that contains the following information regarding each person to whom product is distributed or sold under this section. The log shall include:
(a) the following information, provided or written in the log by the purchaser:
(i) the purchaser's name, address, and date of birth, as demonstrated by a form of personal identification issued by the state or the federal government and that provides an identifying photograph of the person;
(ii) the date and time of the transaction; and
(iii) the purchaser's signature; and
(b) the following information verified or written in by the retail distributor or the mobile retail vendor:
(i) verification of the identity of the purchaser as indicated by the form of identification presented by the purchaser;
(ii) verification that the date and time of the transaction as entered in the log is correct; and
(iii) entry of the brand name and the quantity of the product sold in the transaction.
(c) The retail distributor or the mobile retail vendor shall maintain the information required to be recorded in a log under Subsections (5)(a) and (b) for not less than two years from the most recent date contained in the log.
(d) In addition to the log information required under this Subsection (5), the log, or a prominently displayed sign, shall contain the following statement verbatim which shall be visible to purchasers of product:

"WARNING: Section 1001 of Title 18, United States Code, states that whoever, with respect to the information to be provided in this log, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document, knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than $250,000 if an individual or $500,000 if an organization, imprisoned for not more than five years, or both."

(6)

(a) A person may not knowingly and intentionally use, release, publish, or otherwise make available to any person or entity any information in or obtained from a log maintained by a retail distributor or a mobile retail vendor under this section for any purpose other than those specified in Subsection (6)(b).

(b) The retail distributor or its designee shall make information in the log available only to:

(i) federal, state, and local law enforcement authorities engaged as a duty of their employment in enforcing laws regulating controlled substances; and

(ii) an individual:

(A) whose request is for records in the log of that individual's purchase or receipt of product; and

(B) who has provided evidence satisfactory to the retail distributor that the individual is in fact the person regarding whom the requested log entry is made.

(c) Any person who knowingly and intentionally releases or modifies any information in the log in violation of this Subsection (6) is guilty of a class B misdemeanor.

(7)

(a) A person may not purchase product that exceeds the threshold amount of 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, or any combination of these, regardless of the number of transactions, during any 24-hour period.

(b) A person may not purchase product that exceeds the threshold amount of 9 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, or any combination of these, regardless of the number of transactions, during any 30-day period.

(c) A violation of this Subsection (7) is a class B misdemeanor.

(8) This section does not apply to any quantity of product possessed by:

(a) a physician, pharmacist, veterinarian, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or any agent of these persons, who possess the product in the regular course of lawful business activities; or

(b) a person who possesses the product pursuant to a valid prescription as defined in Section 58-37-2.

(9) This section does not apply to dietary supplements, herbs, or other natural products, including concentrates or extracts, which:

(a) are not otherwise prohibited by law; and

(b) may contain naturally occurring ephedrine, ephedrine alkaloids, or pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these substances, that:

(i) are contained in a matrix of organic material; and

(ii) do not exceed 15% of the total weight of the natural product.

(10) This section does not apply to an individual sales transaction in which the purchaser purchases a single package containing no more than 60 mg of pseudoephedrine.

(11)

(a) A violation of this section is a class B misdemeanor, and a second or subsequent violation of this section is a class A misdemeanor.

(b) For purposes of this section, a plea of guilty or no contest to a violation of this section which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction for a violation of this section, even if the charge has been subsequently reduced or dismissed in accordance with a plea in abeyance agreement.

Enacted by Chapter 358, 2007 General Session

58-37c-21 Department of Public Safety enforcement authority.

(1) As used in this section, "division" means the Criminal Investigations and Technical Services Division of the Department of Public Safety, created in Section 53-10-103.

(2) The division has authority to enforce this chapter. To carry out this purpose, the division may:

(a) inspect, copy, and audit records, inventories of controlled substance precursors, and reports required under this chapter and rules adopted under this chapter;

(b) enter the premises of regulated distributors and regulated purchasers during normal business hours to conduct administrative inspections;

(c) assist the law enforcement agencies of the state in enforcing this chapter;

(d) conduct investigations to enforce this chapter;

(e) present evidence obtained from investigations conducted in conjunction with appropriate county and district attorneys and the Office of the Attorney General for civil or criminal prosecution or for administrative action against a licensee; and

(f) work in cooperation with the Division of Occupational and Professional Licensing, created under Section 58-1-103, to accomplish the purposes of this section.

Amended by Chapter 21, 1999 General Session

Chapter 37d
Clandestine Drug Lab Act

58-37d-1 Short title.

This act shall be known as the "Clandestine Drug Lab Act."

Enacted by Chapter 156, 1992 General Session

58-37d-2 Purpose.

The clandestine production of methamphetamine, other amphetamines, phencyclidine, narcotic analgesic analogs, so-called "designer drugs," various hallucinogens, cocaine and methamphetamine base "crack" cocaine and methamphetamine "ice" respectively, has increased dramatically throughout the western states and Utah. These highly technical illegal operations create substantial dangers to the general public and environment from fire, explosions, and the release of toxic chemicals. By their very nature these activities often involve a number of persons in a conspiratorial enterprise to bring together all necessary components for clandestine production, to thwart regulation and detection, and to distribute the final product. Therefore, the Legislature enacts the following Utah Clandestine Laboratory Act for prosecution of specific illegal laboratory operations. With regard to the controlled substances specified herein, this act shall control, notwithstanding the prohibitions and penalties in Title 58, Chapter 37, Utah Controlled Substances Act.

Amended by Chapter 278, 2013 General Session

58-37d-3 Definitions.

(1) As used in this chapter:

(a)

(i) "Booby trap" means a concealed or camouflaged device designed to cause bodily injury when triggered by the action of a person making contact with the device.

(ii) "Booby trap" includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines or wires with hooks attached, and devices for the production of toxic fumes or gases.

(b) "Clandestine laboratory operation" means the:

(i) purchase or procurement of chemicals, supplies, equipment, or laboratory location for the illegal manufacture of specified controlled substances;

(ii) transportation or arranging for the transportation of chemicals, supplies, or equipment for the illegal manufacture of specified controlled substances;

(iii) setting up of equipment or supplies in preparation for the illegal manufacture of specified controlled substances;

(iv) activity of compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing of a substance, including a controlled substance precursor, or the packaging, repackaging, labeling, or relabeling of a container holding a substance that is a product of any of these activities, when the substance is to be used for the illegal manufacture of specified controlled substances;

(v) illegal manufacture of specified controlled substances; or

(vi) distribution or disposal of chemicals, equipment, supplies, or products used in or produced by the illegal manufacture of specified controlled substances.

(c) "Controlled substance precursor" means those chemicals designated in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, except those substances designated in Subsections 58-37c-3(1)(kk) and (ll).

(d) "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking, or placing of hazardous or dangerous material into or on property, land, or water so that the material may enter the environment, be emitted into the air, or discharged into any waters, including groundwater.

(e) "Hazardous or dangerous material" means a substance that because of its quantity, concentration, physical characteristics, or chemical characteristics may cause or significantly contribute to an increase in mortality, an increase in serious illness, or may pose a substantial present or potential future hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise improperly managed.

(f) "Illegal manufacture of specified controlled substances" means in violation of Title 58, Chapter 37, Utah Controlled Substances Act, the:

(i) compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing for the purpose of producing methamphetamine, other amphetamine compounds as listed in Schedule I of the Utah Controlled Substances Act, phencyclidine, narcotic analgesic analogs as listed in Schedule I of the Utah Controlled Substances Act, lysergic acid diethylamide, or mescaline;

(ii) conversion of cocaine or methamphetamine to their base forms; or

(iii) extraction, concentration, or synthesis of marijuana as that drug is defined in Section 58-37-2.

(2) Unless otherwise specified, the definitions in Section 58-37-2 also apply to this chapter.

Amended by Chapter 262, 2013 General Session
Amended by Chapter 413, 2013 General Session

58-37d-4 Prohibited acts -- Second degree felony.

(1) It is unlawful for any person to knowingly or intentionally:
  (a) possess a controlled substance precursor with the intent to engage in a clandestine laboratory operation;
  (b) possess laboratory equipment or supplies with the intent to engage in a clandestine laboratory operation;
  (c) sell, distribute, or otherwise supply a precursor chemical, laboratory equipment, or laboratory supplies, knowing or having reasonable cause to believe any of these items will be used for a clandestine laboratory operation;
  (d) evade the recordkeeping provisions of Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, knowing or having reasonable cause to believe that the material distributed or received will be used for a clandestine laboratory operation;
  (e) conspire with or aid another to engage in a clandestine laboratory operation;
  (f) produce or manufacture, or possess with intent to produce or manufacture a controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah Controlled Substances Act;
  (g) transport or convey a controlled or counterfeit substance with the intent to distribute or to be distributed by the person transporting or conveying the controlled or counterfeit substance or by any other person regardless of whether the final destination for the distribution is within this state or any other location; or
  (h) engage in compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing of any substance, including a controlled substance precursor, or the packaging, repackaging, labeling, or relabeling of a container holding a substance that is a product of any of these activities, knowing or having reasonable cause to believe that the substance is a product of any of these activities and will be used in the illegal manufacture of specified controlled substances.
(2) A person who violates any provision of Subsection (1) is guilty of a second degree felony punishable by imprisonment for an indeterminate term of not less than 3 years nor more than 15 years.

Amended by Chapter 305, 2008 General Session

58-37d-5 Prohibited acts -- First degree felony.

(1) A person who violates Subsection 58-37d-4(1)(a), (b), (e), (f), or (h) is guilty of a first degree felony if the trier of fact also finds any one of the following conditions occurred in conjunction with that violation:
  (a) possession of a firearm;
  (b) use of a booby trap;
  (c) illegal possession, transportation, or disposal of hazardous or dangerous material or while transporting or causing to be transported materials in furtherance of a clandestine laboratory operation, there was created a substantial risk to human health or safety or a danger to the environment;

(d) intended laboratory operation was to take place or did take place within 500 feet of a residence, place of business, church, or school;
(e) clandestine laboratory operation actually produced any amount of a specified controlled substance; or
(f) intended clandestine laboratory operation was for the production of cocaine base or methamphetamine base.
(2) If the trier of fact finds that two or more of the conditions listed in Subsections (1)(a) through (f) of this section occurred in conjunction with the violation, at sentencing for the first degree felony:
(a) probation shall not be granted;
(b) the execution or imposition of sentence shall not be suspended; and
(c) the court shall not enter a judgment for a lower category of offense.

Amended by Chapter 115, 2003 General Session

58-37d-6 Legal inference of intent -- Illegal possession of a controlled substance precursor or clandestine laboratory equipment.

The trier of fact may infer that the defendant intended to engage in a clandestine laboratory operation if the defendant:
(1) is in illegal possession of a controlled substance precursor; or
(2) illegally possesses or attempts to illegally possess a controlled substance precursor and is in possession of any one of the following pieces of equipment:
(a) glass reaction vessel;
(b) separatory funnel;
(c) glass condenser;
(d) analytical balance; or
(e) heating mantle.

Enacted by Chapter 156, 1992 General Session

58-37d-7 Seizure and forfeiture.

Chemicals, equipment, supplies, vehicles, aircraft, vessels, and personal and real property used in furtherance of a clandestine laboratory operation are subject to seizure and forfeiture under the procedures and substantive protections of Title 24, Forfeiture and Disposition of Property Act.

Amended by Chapter 258, 2015 General Session

58-37d-8 Applicability of Title 76 prosecutions under this chapter.

Unless specifically excluded in or inconsistent with the provisions of this chapter, the provisions of Title 76, Chapter 1, General Provisions, Chapter 2, Principles of Criminal Responsibility, Chapter 3, Punishments, and Chapter 4, Inchoate Offenses, are fully applicable to prosecutions under this chapter.

Enacted by Chapter 64, 1997 General Session

58-37d-9 Department of Public Safety enforcement authority.

(1) As used in this section, "division" means the Criminal Investigations and Technical Services Division of the Department of Public Safety, created in Section 53-10-103.

(2) The division has authority to enforce this chapter. To carry out this purpose, the division may:
(a) assist the law enforcement agencies of the state in enforcing this chapter;
(b) conduct investigations to enforce this chapter;
(c) present evidence obtained from investigations conducted in conjunction with appropriate county and district attorneys and the Office of the Attorney General for civil or criminal prosecution or for administrative action against a licensee; and
(d) work in cooperation with the Division of Occupational and Professional Licensing, created under Section 58-1-103, to accomplish the purposes of this section.

Amended by Chapter 21, 1999 General Session

Chapter 37e
Drug Dealer's Liability Act

58-37e-1 Title.
This chapter is known as the "Drug Dealer's Liability Act."

Enacted by Chapter 349, 1997 General Session

58-37e-2 Definitions.
As used in this chapter:
(1) "Illegal drug" means a drug or controlled substance whose distribution is a violation of state law.
(2) "Illegal drug market" means the support system of illegal drug-related operations, from production to retail sales, through which an illegal drug reaches the user.
(3) "Illegal drug market target community" is the area described in Section 58-37e-7.
(4) "Individual drug user" means the individual whose illegal drug use is the basis of an action brought under this chapter.
(5) "Level 1 offense" means possession of 16 ounces or more or distribution of four ounces or more of a mixture containing a specified illegal drug or possession of 16 pounds or more or 100 plants or more or distribution of 10 pounds or more of marijuana.
(6) "Level 2 offense" means possession of eight ounces or more, but less than 16 ounces, or distribution of two ounces or more, but less than four ounces, of a mixture containing a specified illegal drug or possession of eight pounds or more or 75 plants or more, but less than 16 pounds or 100 plants, or distribution of more than five pounds, but less than 10 pounds of marijuana.
(7) "Level 3 offense" means possession of four ounces or more, but less than eight ounces, or distribution of one ounce or more, but less than two ounces, of a mixture containing a specified illegal drug or possession of four pounds or more or 50 plants or more, but less than eight pounds or 75 plants, or distribution of more than one pound, but less than five pounds of marijuana.
(8) "Level 4 offense" means possession of 1/4 ounce or more, but less than four ounces, or distribution of less than one ounce of a mixture containing a specified illegal drug or possession of one pound or more or 25 plants or more, but less than four pounds or 50 plants, or distribution of less than one pound of marijuana.
(9) "Participate in the illegal drug market" means to distribute, possess with an intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute,

possess with an intent to distribute, or commit an act intended to facilitate the marketing and distribution of an illegal drug. "Participate in the illegal drug market" does not include the purchase or receipt of an illegal drug for personal use only.

(10) "Period of illegal drug use" means, in relation to the individual drug user, the time of the individual's first use of an illegal drug to the accrual of the cause of the action. The period of illegal drug use is presumed to commence two years before the cause of action accrues unless the defendant proves otherwise by clear and convincing evidence.

(11) "Person" means an individual, governmental entity, corporation, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized by the laws of this state, another state, or foreign country.

(12) "Place of illegal drug activity" means, in relation to the individual drug user, each county in which the individual possesses or uses an illegal drug or in which the individual resides, attends school, or is employed during the period of the individual's illegal drug use, unless the defendant proves otherwise by clear and convincing evidence.

(13) "Place of participation" means, in relation to a defendant in an action brought under this chapter, each county in which the person participates in the illegal drug market or in which the person resides, attends school, or is employed during the period of the person's participation in the illegal drug market.

(14) "Specified illegal drug" means cocaine, heroin, or methamphetamine and any other controlled substance the distribution of which is a violation of state law.

Enacted by Chapter 349, 1997 General Session

58-37e-3 Liability for participation in the illegal drug market.

(1) A person who knowingly participates in the illegal drug market within this state is liable for civil damages as provided in this chapter. A person may recover damages under this chapter for injury resulting from an individual's use of an illegal drug.

(2) A law enforcement officer or agency, the state, or a person acting at the direction of a law enforcement officer or agency or the state is not liable for participating in the illegal drug market, if the participation is in furtherance of an official investigation.

Enacted by Chapter 349, 1997 General Session

58-37e-4 Recovery of damages.

(1) One or more of the following persons may bring an action for damages caused by an individual's use of an illegal drug:

(a) a parent, legal guardian, child, spouse, or sibling of the individual drug user;

(b) an individual who was exposed to an illegal drug in utero;

(c) an employer of the individual drug user;

(d) a medical facility, insurer, governmental entity, employer, or other entity that funds a drug treatment program or employee assistance program for the individual drug user or that otherwise expended money on behalf of the individual drug user; or

(e) a person injured as a result of the willful, reckless, or negligent actions of an individual drug user.

(2) A person entitled to bring an action under this section may seek damages from one or more of the following:

(a) a person who knowingly distributed, or knowingly participated in the chain of distribution of, an illegal drug that was actually used by the individual drug user;

(b) a person who knowingly participated in the illegal drug market if:
(i) the place of illegal drug activity by the individual drug user is within the illegal drug market target community of the defendant;
(ii) the defendant's participation in the illegal drug market was connected with the same type of illegal drug used by the individual drug user; and
(iii) the defendant participated in the illegal drug market at any time during the individual drug user's period of illegal drug use.
(3) A person entitled to bring an action under this section may recover all of the following damages:
(a) economic damages, including the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the illegal drug use;
(b) noneconomic damages, including physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses proximately caused by an individual's use of an illegal drug;
(c) exemplary damages;
(d) reasonable attorney's fees; and
(e) costs of suit, including reasonable expenses for expert testimony.

Enacted by Chapter 349, 1997 General Session

58-37e-5 Limited recovery of damages.
(1) An individual drug user may not bring an action for damages caused by the use of an illegal drug, except as otherwise provided in this section. An individual drug user may bring an action for damages caused by the use of an illegal drug only if all of the following conditions are met:
(a) the individual personally discloses to narcotics enforcement authorities, more than six months before filing the action, all of the information known to the individual regarding all that individual's sources of illegal drugs;
(b) the individual has not used an illegal drug within the six months before filing the action; and
(c) the individual continues to remain free of the use of an illegal drug throughout the pendency of the action.
(2) A person entitled to bring an action under this section may seek damages only from a person who distributed, or is in the chain of distribution of, an illegal drug that was actually used by the individual drug user.
(3) A person entitled to bring an action under this section may recover only the following damages:
(a) economic damages, including the cost of treatment, rehabilitation, and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss proximately caused by the person's illegal drug use;
(b) reasonable attorney's fees; and
(c) costs of suit, including reasonable expenses for expert testimony.

Enacted by Chapter 349, 1997 General Session

58-37e-6 Third party cases.
A third party may not pay damages awarded under this chapter, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification.

Enacted by Chapter 349, 1997 General Session

58-37e-7 Illegal drug market target community.

A person whose participation in the illegal drug market constitutes the following level offense shall be considered to have the following illegal drug market target community:

(1) Level 4: the county in which the defendant's place of participation is situated;
(2) Level 3: the target community described in Subsection (1) plus all counties with a border contiguous to that target community;
(3) Level 2: the target community described in Subsection (2) plus all counties with a border contiguous to that target community;
(4) Level 1: the state.

Enacted by Chapter 349, 1997 General Session

58-37e-8 Joinder of parties.

(1) Two or more persons may join in one action under this chapter as plaintiffs if their respective actions have at least one place of illegal drug activity in common and if any portion of the period of illegal drug use overlaps with the period of illegal drug use for every other plaintiff.
(2) Two or more persons may be joined in one action under this chapter as defendants if those persons are liable to at least one plaintiff.
(3) A plaintiff need not be interested in obtaining and a defendant need not be interested in defending against all the relief demanded. Judgment may be given for one or more plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities.

Enacted by Chapter 349, 1997 General Session

58-37e-9 Comparative responsibility.

(1) An action by an individual drug user is governed by the principles of comparative responsibility. Comparative responsibility attributed to the plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally, according to the measure of responsibility attributed to the plaintiff.
(2) The burden of proving the comparative responsibility of the plaintiff is on the defendant, which shall be shown by clear and convincing evidence.
(3) Comparative responsibility may not be applied in an action brought by a third party who was not an individual drug user.

Enacted by Chapter 349, 1997 General Session

58-37e-10 Contribution among and recovery from multiple defendants.

A person subject to liability under this chapter has a right of action for contribution against another person subject to liability under this chapter. Contribution may be enforced either in the original action or by a separate action brought for that purpose. A plaintiff may seek recovery in accordance with this chapter and existing law against a person whom a defendant has asserted a right of contribution.

Enacted by Chapter 349, 1997 General Session

58-37e-11 Standard of proof -- Effect of criminal drug conviction.

(1) Proof of participation in the illegal drug market in an action brought under this chapter shall be shown by clear and convincing evidence. Except as otherwise provided in this chapter, other elements of the cause of action shall be shown by a preponderance of the evidence.
(2) A person against whom recovery is sought who has a criminal conviction pursuant to state drug laws or the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. 91-513, 84 Stat. 1236, codified at 21 U.S.C. Sec. 801 et seq., is estopped from denying participation in the illegal drug market. A conviction is also prima facie evidence of the person's participation in the illegal drug market during the two years preceding the date of an act giving rise to a conviction.
(3) The absence of a criminal drug conviction of a person against whom recovery is sought does not bar an action against that person.

Enacted by Chapter 349, 1997 General Session

58-37e-12 Prejudgment attachment and execution on judgments.
(1) A plaintiff under this chapter, subject to Subsection (3), may request an ex parte prejudgment writ of attachment from the court pursuant to Utah Rules of Civil Procedure, Rule 64A against all assets of a defendant sufficient to satisfy a potential award. If attachment is instituted, a defendant is entitled to an immediate hearing. Attachment may be lifted if the defendant demonstrates that the assets will be available for a potential award or if the defendant posts a bond sufficient to cover a potential award.
(2) A person against whom a judgment has been rendered under this chapter is not eligible to exempt any property, of whatever kind, from process to levy or process to execute on the judgment, unless the property is exempt by operation of law.
(3) Any assets sought to satisfy a judgment under this chapter that are named in a forfeiture action or have been seized for forfeiture by any state or federal agency may not be used to satisfy a judgment unless and until the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.

Enacted by Chapter 349, 1997 General Session

58-37e-13 Statute of limitations.
(1) Except as otherwise provided in this section, a claim under this chapter may not be brought more than two years after the cause of action accrues. A cause of action accrues under this chapter when a person who may recover has reason to know of the harm from illegal drug use that is the basis for the cause of action and has reason to know that the illegal drug use is the cause of the harm.
(2)
  (a) For a plaintiff, the statute of limitations under this section is tolled while the individual potential plaintiff is incapacitated by the use of an illegal drug to the extent that the individual cannot reasonably be expected to seek recovery under this chapter or as otherwise provided by law.
  (b) For a defendant, the statute of limitations under this section is tolled until six months after the individual potential defendant is convicted of a criminal drug offense or as otherwise provided by law.
(3) The statute of limitations under this chapter for a claim based on participation in the illegal drug market that occurred prior to the effective date of this chapter does not begin to run until the effective date of this chapter.

Enacted by Chapter 349, 1997 General Session

58-37e-14 Representation of governmental entities -- Stay of action.
(1) A county attorney, district attorney, or city attorney may represent any political subdivision of the state, and the attorney general may represent the state in an action brought under this chapter.
(2) On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this chapter shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.

Enacted by Chapter 349, 1997 General Session

Chapter 37f
Controlled Substance Database Act

Part 1
General Provisions

58-37f-101 Title.
This chapter is known as the "Controlled Substance Database Act."

Enacted by Chapter 287, 2010 General Session

58-37f-102 Definitions.
(1) The definitions in Section 58-37-2 apply to this chapter.
(2) As used in this chapter:
(a) "Board" means the Utah State Board of Pharmacy created in Section 58-17b-201.
(b) "Business associate" is as defined under the HIPAA privacy, security, and breach notification rules in 45 C.F.R. 164.502(a), 164.504(e), and 164.532(d) and (e).
(c) "Database" means the controlled substance database created in Section 58-37f-201.
(d) "De-identified" is as defined in 45 C.F.R. 164.502(d) and 164.514(a), (b), and (c).
(e) "Health care facility" is as defined in Section 26-21-2.
(f) "Mental health therapist" is as defined in Section 58-60-102.
(g) "Pharmacy" or "pharmaceutical facility" is as defined in Section 58-17b-102.
(h) "Prospective patient" means an individual who:
(i) is seeking medical advice, medical treatment, or medical services from a practitioner; and
(ii) the practitioner described in Subsection (2)(h)(i) is considering accepting as a patient.
(i) "Substance abuse treatment program" is as defined in Section 62A-2-101.

Amended by Chapter 130, 2013 General Session

Part 2
Controlled Substance Database

58-37f-201 Controlled substance database -- Creation -- Purpose.
(1) There is created within the division a controlled substance database.

(2) The division shall administer and direct the functioning of the database in accordance with this chapter.
(3) The division may, under state procurement laws, contract with another state agency or a private entity to establish, operate, or maintain the database.
(4) The division shall, in collaboration with the board, determine whether to operate the database within the division or contract with another entity to operate the database, based on an analysis of costs and benefits.
(5) The purpose of the database is to contain:
(a) the data described in Section 58-37f-203 regarding every prescription for a controlled substance dispensed in the state to any individual other than an inpatient in a licensed health care facility;
(b) data reported to the division under Section 26-21-26 regarding poisoning or overdose;
(c) data reported to the division under Subsection 41-6a-502(4) or 41-6a-502.5(5)(b) regarding convictions for driving under the influence of a prescribed controlled substance or impaired driving; and
(d) data reported to the division under Subsection 58-37-8(1)(e) or 58-37-8(2)(j) regarding certain violations of the Utah Controlled Substances Act.
(6) The division shall maintain the database in an electronic file or by other means established by the division to facilitate use of the database for identification of:
(a) prescribing practices and patterns of prescribing and dispensing controlled substances;
(b) practitioners prescribing controlled substances in an unprofessional or unlawful manner;
(c) individuals receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance;
(d) individuals presenting forged or otherwise false or altered prescriptions for controlled substances to a pharmacy;
(e) individuals admitted to a general acute hospital for poisoning or overdose involving a prescribed controlled substance; and
(f) individuals convicted for:
(i) driving under the influence of a prescribed controlled substance that renders the individual incapable of safely operating a vehicle;
(ii) driving while impaired, in whole or in part, by a prescribed controlled substance; or
(iii) certain violations of the Utah Controlled Substances Act.

Amended by Chapter 99, 2016 General Session

58-37f-202 Duties of board in relation to the database.
The board shall advise the division regarding:
(1) establishing, maintaining, and operating the database;
(2) access to the database and how access is obtained; and
(3) control of information contained in the database.

Enacted by Chapter 287, 2010 General Session

58-37f-203 Submission, collection, and maintenance of data.
(1)

(a) The division shall implement on a statewide basis, including non-resident pharmacies as defined in Section 58-17b-102, the following two options for a pharmacist to submit information:
(i) real-time submission of the information required to be submitted under this part to the controlled substance database; and
(ii) 24-hour daily or next business day, whichever is later, batch submission of the information required to be submitted under this part to the controlled substance database.
(b)
(i) On and after January 1, 2016, a pharmacist shall comply with either:
(A) the submission time requirements established by the division under Subsection (1)(a)(i); or
(B) the submission time requirements established by the division under Subsection (1)(a)(ii).
(ii) Prior to January 1, 2016, a pharmacist may submit information using either option under this Subsection (1).
(c) The division shall comply with Title 63G, Chapter 6a, Utah Procurement Code.
(2)
(a) The pharmacist in charge of the drug outlet where a controlled substance is dispensed shall submit the data described in this section to the division:
(i) in accordance with the requirements of this section;
(ii) in accordance with the procedures established by the division; and
(iii) in the format established by the division.
(b) A dispensing medical practitioner licensed under Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, shall comply with the provisions of this section and the dispensing medical practitioner shall assume the duties of the pharmacist under this chapter.
(3) The pharmacist described in Subsection (2) shall, for each controlled substance dispensed by a pharmacist under the pharmacist's supervision other than those dispensed for an inpatient at a health care facility, submit to the division the following information:
(a) the name of the prescribing practitioner;
(b) the date of the prescription;
(c) the date the prescription was filled;
(d) the name of the individual for whom the prescription was written;
(e) positive identification of the individual receiving the prescription, including the type of identification and any identifying numbers on the identification;
(f) the name of the controlled substance;
(g) the quantity of the controlled substance prescribed;
(h) the strength of the controlled substance;
(i) the quantity of the controlled substance dispensed;
(j) the dosage quantity and frequency as prescribed;
(k) the name of the drug outlet dispensing the controlled substance; and
(l) the name of the pharmacist dispensing the controlled substance.
(4) An individual whose records are in the database may obtain those records upon submission of a written request to the division.
(5)
(a) A patient whose record is in the database may contact the division in writing to request correction of any of the patient's database information that is incorrect. The patient shall provide a postal address for the division's response.

(b) The division shall grant or deny the request within 30 days from receipt of the request and shall advise the requesting patient of its decision by mail postmarked within 35 days of receipt of the request.
(c) If the division denies a request under this Subsection (5) or does not respond within 35 days, the patient may submit an appeal to the Department of Commerce, within 60 days after the postmark date of the patient's letter making a request for a correction under this Subsection (5).
(6) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish submission requirements under this part, including the electronic format in which the information required under this section shall be submitted to the division.
(7) The division shall ensure that the database system records and maintains for reference:
(a) the identification of each individual who requests or receives information from the database;
(b) the information provided to each individual; and
(c) the date and time that the information is requested or provided.

Amended by Chapter 89, 2015 General Session
Amended by Chapter 326, 2015 General Session

Part 3
Access and Utilization

58-37f-301 Access to database.
(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
(a) effectively enforce the limitations on access to the database as described in this part; and
(b) establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information without request from the database.
(2) The division shall make information in the database and information obtained from other state or federal prescription monitoring programs by means of the database available only to the following individuals, in accordance with the requirements of this chapter and division rules:
(a)
(i) personnel of the division specifically assigned to conduct investigations related to controlled substance laws under the jurisdiction of the division; and
(ii) the following law enforcement officers, but the division may only provide nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding individuals for whom a controlled substance has been prescribed or to whom a controlled substance has been dispensed:
(A) a law enforcement agency officer who is engaged in a joint investigation with the division; and
(B) a law enforcement agency officer to whom the division has referred a suspected criminal violation of controlled substance laws;
(b) authorized division personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment;
(c) a board member if:
(i) the board member is assigned to monitor a licensee on probation; and

(ii) the board member is limited to obtaining information from the database regarding the specific licensee on probation;

(d) a member of a diversion committee established in accordance with Subsection 58-1-404(2) if:

(i) the diversion committee member is limited to obtaining information from the database regarding the person whose conduct is the subject of the committee's consideration; and

(ii) the conduct that is the subject of the committee's consideration includes a violation or a potential violation of Chapter 37, Utah Controlled Substances Act, or another relevant violation or potential violation under this title;

(e) in accordance with a written agreement entered into with the department, employees of the Department of Health:

(i) whom the director of the Department of Health assigns to conduct scientific studies regarding the use or abuse of controlled substances, if the identity of the individuals and pharmacies in the database are confidential and are not disclosed in any manner to any individual who is not directly involved in the scientific studies;

(ii) when the information is requested by the Department of Health in relation to a person or provider whom the Department of Health suspects may be improperly obtaining or providing a controlled substance; or

(iii) in the medical examiner's office;

(f) in accordance with a written agreement entered into with the department, a designee of the director of the Department of Health, who is not an employee of the Department of Health, whom the director of the Department of Health assigns to conduct scientific studies regarding the use or abuse of controlled substances pursuant to an application process established in rule by the Department of Health, if:

(i) the designee provides explicit information to the Department of Health regarding the purpose of the scientific studies;

(ii) the scientific studies to be conducted by the designee:

(A) fit within the responsibilities of the Department of Health for health and welfare;

(B) are reviewed and approved by an Institutional Review Board that is approved for human subject research by the United States Department of Health and Human Services; and

(C) are not conducted for profit or commercial gain; and

(D) are conducted in a research facility, as defined by division rule, that is associated with a university or college accredited by one or more regional or national accrediting agencies recognized by the United States Department of Education;

(iii) the designee protects the information as a business associate of the Department of Health; and

(iv) the identity of the prescribers, patients, and pharmacies in the database are de-identified, confidential, not disclosed in any manner to the designee or to any individual who is not directly involved in the scientific studies;

(g) in accordance with the written agreement entered into with the department and the Department of Health, authorized employees of a managed care organization, as defined in 42 C.F.R. Sec. 438, if:

(i) the managed care organization contracts with the Department of Health under the provisions of Section 26-18-405 and the contract includes provisions that:

(A) require a managed care organization employee who will have access to information from the database to submit to a criminal background check; and

(B) limit the authorized employee of the managed care organization to requesting either the division or the Department of Health to conduct a search of the database regarding

a specific Medicaid enrollee and to report the results of the search to the authorized employee; and

(ii) the information is requested by an authorized employee of the managed care organization in relation to a person who is enrolled in the Medicaid program with the managed care organization, and the managed care organization suspects the person may be improperly obtaining or providing a controlled substance;

(h) a licensed practitioner having authority to prescribe controlled substances, to the extent the information:

(i)

(A) relates specifically to a current or prospective patient of the practitioner; and

(B) is provided to or sought by the practitioner for the purpose of:

(I) prescribing or considering prescribing any controlled substance to the current or prospective patient;

(II) diagnosing the current or prospective patient;

(III) providing medical treatment or medical advice to the current or prospective patient; or

(IV) determining whether the current or prospective patient:

(Aa) is attempting to fraudulently obtain a controlled substance from the practitioner; or

(Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the practitioner;

(ii)

(A) relates specifically to a former patient of the practitioner; and

(B) is provided to or sought by the practitioner for the purpose of determining whether the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled substance from the practitioner;

(iii) relates specifically to an individual who has access to the practitioner's Drug Enforcement Administration identification number, and the practitioner suspects that the individual may have used the practitioner's Drug Enforcement Administration identification number to fraudulently acquire or prescribe a controlled substance;

(iv) relates to the practitioner's own prescribing practices, except when specifically prohibited by the division by administrative rule;

(v) relates to the use of the controlled substance database by an employee of the practitioner, described in Subsection (2)(i); or

(vi) relates to any use of the practitioner's Drug Enforcement Administration identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a controlled substance;

(i) in accordance with Subsection (3)(a), an employee of a practitioner described in Subsection (2)(h), for a purpose described in Subsection (2)(h)(i) or (ii), if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner provides written notice to the division of the identity of the employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(5) with respect to the employee;

(j) an employee of the same business that employs a licensed practitioner under Subsection (2)(h) if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;
(ii) the practitioner and the employing business provide written notice to the division of the identity of the designated employee; and
(iii) the division:
(A) grants the employee access to the database; and
(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(5) with respect to the employee;
(k) a licensed pharmacist having authority to dispense a controlled substance to the extent the information is provided or sought for the purpose of:
(i) dispensing or considering dispensing any controlled substance; or
(ii) determining whether a person:
(A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or
(B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the pharmacist;
(l) in accordance with Subsection (3)(a), a licensed pharmacy technician and pharmacy intern who is an employee of a pharmacy as defined in Section 58-17b-102, for the purposes described in Subsection (2)(j)(i) or (ii), if:
(i) the employee is designated by the pharmacist-in-charge as an individual authorized to access the information on behalf of a licensed pharmacist employed by the pharmacy;
(ii) the pharmacist-in-charge provides written notice to the division of the identity of the employee; and
(iii) the division:
(A) grants the employee access to the database; and
(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(5) with respect to the employee;
(m) pursuant to a valid search warrant, federal, state, and local law enforcement officers and state and local prosecutors who are engaged in an investigation related to:
(i) one or more controlled substances; and
(ii) a specific person who is a subject of the investigation;
(n) subject to Subsection (7), a probation or parole officer, employed by the Department of Corrections or by a political subdivision, to gain access to database information necessary for the officer's supervision of a specific probationer or parolee who is under the officer's direct supervision;
(o) employees of the Office of Internal Audit and Program Integrity within the Department of Health who are engaged in their specified duty of ensuring Medicaid program integrity under Section 26-18-2.3;
(p) a mental health therapist, if:
(i) the information relates to a patient who is:
(A) enrolled in a licensed substance abuse treatment program; and
(B) receiving treatment from, or under the direction of, the mental health therapist as part of the patient's participation in the licensed substance abuse treatment program described in Subsection (2)(p)(i)(A);
(ii) the information is sought for the purpose of determining whether the patient is using a controlled substance while the patient is enrolled in the licensed substance abuse treatment program described in Subsection (2)(p)(i)(A); and

(iii) the licensed substance abuse treatment program described in Subsection (2)(p)(i)(A) is associated with a practitioner who:
(A) is a physician, a physician assistant, an advance practice registered nurse, or a pharmacist; and
(B) is available to consult with the mental health therapist regarding the information obtained by the mental health therapist, under this Subsection (2)(p), from the database;
(q) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the division that the individual requesting the information is in fact the individual about whom the data entry was made;
(r) an individual under Subsection (2)(q) for the purpose of obtaining a list of the persons and entities that have requested or received any information from the database regarding the individual, except if the individual's record is subject to a pending or current investigation as authorized under this Subsection (2);
(s) the inspector general, or a designee of the inspector general, of the Office of Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in Title 63A, Chapter 13, Part 2, Office and Powers; and
(t) the following licensed physicians for the purpose of reviewing and offering an opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:
(i) a member of the medical panel described in Section 34A-2-601;
(ii) a physician employed as medical director for a licensed workers' compensation insurer or an approved self-insured employer; or
(iii) a physician offering a second opinion regarding treatment.
(3)
(a)
(i) A practitioner described in Subsection (2)(h) may designate up to three employees to access information from the database under Subsection (2)(i), (2)(j), or (4)(c).
(ii) A pharmacist described in Subsection (2)(k) who is a pharmacist-in-charge may designate up to five employees to access information from the database under Subsection (2)(l).
(b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
(i) establish background check procedures to determine whether an employee designated under Subsection (2)(i), (2)(j), or (4)(c) should be granted access to the database; and
(ii) establish the information to be provided by an emergency room employee under Subsection (4); and
(iii) facilitate providing controlled substance prescription information to a third party under Subsection (5).
(c) The division shall grant an employee designated under Subsection (2)(i), (2)(j), or (4)(c) access to the database, unless the division determines, based on a background check, that the employee poses a security risk to the information contained in the database.
(4)
(a) An individual who is employed in the emergency room of a hospital may exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if the individual is designated under Subsection (4)(c) and the licensed practitioner:
(i) is employed in the emergency room;
(ii) is treating an emergency room patient for an emergency medical condition; and

(iii) requests that an individual employed in the emergency room and designated under Subsection (4)(c) obtain information regarding the patient from the database as needed in the course of treatment.

(b) The emergency room employee obtaining information from the database shall, when gaining access to the database, provide to the database the name and any additional identifiers regarding the requesting practitioner as required by division administrative rule established under Subsection (3)(b).

(c) An individual employed in the emergency room under this Subsection (4) may obtain information from the database as provided in Subsection (4)(a) if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner and the hospital operating the emergency room provide written notice to the division of the identity of the designated employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(5) with respect to the employee.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a practitioner who designates an employee under Subsection (2)(i), (2)(j), or (4)(c) to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (3)(b).

(5)

(a)

(i) An individual may request that the division provide the information under Subsection (5)(b) to a third party who is designated by the individual each time a controlled substance prescription for the individual is dispensed.

(ii) The division shall upon receipt of the request under this Subsection (5)(a) advise the individual in writing that the individual may direct the division to discontinue providing the information to a third party and that notice of the individual's direction to discontinue will be provided to the third party.

(b) The information the division shall provide under Subsection (5)(a) is:

(i) the fact a controlled substance has been dispensed to the individual, but without identifying the controlled substance; and

(ii) the date the controlled substance was dispensed.

(c)

(i) An individual who has made a request under Subsection (5)(a) may direct that the division discontinue providing information to the third party.

(ii) The division shall:

(A) notify the third party that the individual has directed the division to no longer provide information to the third party; and

(B) discontinue providing information to the third party.

(6)

(a) An individual who is granted access to the database based on the fact that the individual is a licensed practitioner or a mental health therapist shall be denied access to the database when the individual is no longer licensed.

(b) An individual who is granted access to the database based on the fact that the individual is a designated employee of a licensed practitioner shall be denied access to the database when the practitioner is no longer licensed.
(7) A probation or parole officer is not required to obtain a search warrant to access the database in accordance with Subsection (2)(n).

Amended by Chapter 5, 2016 Special Session 3

58-37f-302 Other restrictions on access to database.
(1) A person who is a relative of a deceased individual is not entitled to access information from the database relating to the deceased individual based on the fact or claim that the person is:
(a) related to the deceased individual; or
(b) subrogated to the rights of the deceased individual.
(2) Except as provided in Subsection (3), data provided to, maintained in, or accessed from the database that may be identified to, or with, a particular person is not subject to discovery, subpoena, or similar compulsory process in any civil, judicial, administrative, or legislative proceeding, nor shall any individual or organization with lawful access to the data be compelled to testify with regard to the data.
(3) The restrictions described in Subsection (2) do not apply to a civil, judicial, or administrative action brought to enforce the provisions of this chapter.

Enacted by Chapter 287, 2010 General Session

58-37f-303 Access to opioid prescription information via an electronic data system.
(1) As used in this section:
(a) "Dispense" means the same as that term is defined in Section 58-17b-102.
(b) "EDS user":
(i) means:
(A) a prescriber;
(B) a pharmacist; or
(C) an individual granted access to the database under Subsection 58-37f-301(3)(c); and
(ii) does not mean an individual whose access to the database has been revoked by the division pursuant to Subsection 58-37f-301(5)(b).
(c) "Electronic data system" means a software product or an electronic service used by:
(i) a prescriber to manage electronic health records; or
(ii) a pharmacist to manage the dispensing of prescription drugs.
(d) "Opioid" means any substance listed in Subsection 58-37-4(2)(b)(i) or (2)(b)(ii).
(e) "Pharmacist" means the same as that term is defined in Section 58-17b-102.
(f) "Prescriber" means a practitioner, as that term is defined in Section 58-37-2, who is licensed under Section 58-37-6 to prescribe an opioid.
(g) "Prescription drug" means the same as that term is defined in Section 58-17b-102.
(2) Subject to Subsections (3) through (6), no later than January 1, 2017, the division shall make opioid prescription information in the database available to an EDS user via the user's electronic data system.
(3) An electronic data system may be used to make opioid prescription information in the database available to an EDS user only if the electronic data system complies with rules established by the division under Subsection (4).
(4)

(a) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying:
(i) an electronic data system's:
(A) allowable access to and use of opioid prescription information in the database; and
(B) minimum actions that must be taken to ensure that opioid prescription information accessed from the database is protected from inappropriate disclosure or use; and
(ii) an EDS user's:
(A) allowable access to opioid prescription information in the database via an electronic data system; and
(B) allowable use of the information.
(b) The rules shall establish:
(i) minimum user identification requirements that in substance are the same as the database identification requirements in Section 58-37f-301;
(ii) user access restrictions that in substance are the same as the database identification requirements in Section 58-37f-301; and
(iii) any other requirements necessary to ensure that in substance the provisions of Sections 58-37f-301 and 58-37f-302 apply to opioid prescription information in the database that has been made available to an EDS user via an electronic data system.
(5) The division may not make opioid prescription information in the database available to an EDS user via the user's electronic data system if:
(a) the electronic data system does not comply with the rules established by the division under Subsection (4); or
(b) the EDS user does not comply with the rules established by the division under Subsection (4).
(6)
(a) The division shall periodically audit the use of opioid prescription information made available to an EDS user via the user's electronic data system.
(b) The audit shall review compliance by:
(i) the electronic data system with rules established by the division under Subsection (4); and
(ii) the EDS user with rules established by the division under Subsection (4).
(c)
(i) If the division determines by audit or other means that an electronic data system is not in compliance with rules established by the division under Subsection (4), the division shall immediately suspend or revoke the electronic data system's access to opioid prescription information in the database.
(ii) If the division determines by audit or other means that an EDS user is not in compliance with rules established by the division under Subsection (4), the division shall immediately suspend or revoke the EDS user's access to opioid prescription information in the database via an electronic data system.
(iii) If the division suspends or revokes access to opioid prescription information in the database under Subsection (6)(c)(i) or (6)(c)(ii), the division shall also take any other appropriate corrective or disciplinary action authorized by this chapter or title.
(7) The division shall report to the Health and Human Services Interim Committee during the 2017 interim and the 2018 interim on the implementation of this section. The reports shall be made before October 1 each year.

Enacted by Chapter 112, 2016 General Session

58-37f-304 Database utilization.

(1) As used in this section:
(a) "Dispenser" means a licensed pharmacist, as described in Section 58-17b-303, or the pharmacist's licensed intern, as described in Section 58-17b-304, who is also licensed to dispense a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.
(b) "Opioid" means those substances listed in Subsection 58-37-4(2)(b)(i) or (2)(b)(ii).
(c) "Outpatient" means a setting in which an individual visits a licensed healthcare facility or a healthcare provider's office for a diagnosis or treatment but is not admitted to a licensed healthcare facility for an overnight stay.
(d) "Prescriber" means an individual authorized to prescribe a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.
(2) To address the serious public health concern of life-altering and life-threatening opioid abuse and overdose, and to achieve the purposes of this chapter and as described in Section 58-37f-201, which includes identifying and reducing the prescribing and dispensing of opioids in an unprofessional or unlawful manner or in quantities or frequencies inconsistent with generally recognized standards of dosage for an opioid, through utilization of the carefully developed and highly respected database:
(a) a prescriber or dispenser of an opioid for individual outpatient usage shall access and review the database as necessary in the prescriber's or dispenser's professional judgment and to achieve the purpose of this chapter as described in Section 58-37f-201;
(b) a prescriber may assign the access and review required under Subsection (2)(a) to an employee, in accordance with Subsections 58-37f-301(2)(g) and (h).
(3) The division shall, in collaboration with the licensing boards for prescribers and dispensers:
(a) develop a system that gathers and reports to prescribers and dispensers the progress and results of the prescriber's and dispenser's individual access and review of the database, as provided in this section; and
(b) reduce or waive the division's continuing education requirements regarding opioid prescriptions, described in Section 58-37-6.5, including the online tutorial and test relating to the database, for prescribers and dispensers whose individual utilization of the database contribute to the life-saving and public safety purposes of this section and as described in Subsection (2).
(4) If the dispenser's access and review of the database suggest that the individual seeking an opioid may be obtaining opioids in quantities or frequencies inconsistent with generally recognized standards as provided in this section and Section 58-37f-201, the dispenser shall reasonably attempt to contact the prescriber to obtain the prescriber's informed, current, and professional decision regarding whether the prescribed opioid is medically justified, notwithstanding the results of the database search.

Enacted by Chapter 275, 2016 General Session

Part 4
Registration and Training

58-37f-401 Database registration required -- Penalties for failure to register.
(1) Each individual, other than a veterinarian, who, on June 30, 2010, has a license to prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, but is not registered

with the division to use the database shall, on or before September 30, 2010, register with the division to use the database.

(2) Each individual who, on November 1, 2012, is registered with the division to use the database shall, on or before January 1, 2013, participate in the online tutorial and pass the online test described in Section 58-37f-402.

(3)

(a) An individual who is not a veterinarian, who obtains a new license to prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, shall, within 30 days after the day on which the individual obtains a license to prescribe a controlled substance from the Drug Enforcement Administration, register with the division to use the database.

(b) An individual who is not a veterinarian may not renew a license to prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, unless the individual registers with the division to use the database.

(4) Beginning on November 2, 2012, in order to register to use the database, the individual registering must participate in the online tutorial and pass the online test described in Section 58-37f-402.

(5) Failure by an individual to comply with the requirements of this section is grounds for the division to take the following actions in accordance with Section 58-1-401:

(a) refuse to issue a license to the individual;

(b) refuse to renew the individual's license; or

(c) revoke, suspend, restrict, or place on probation the license.

(6) Beginning on July 1, 2010, the division shall, in accordance with Section 63J-1-504, impose an annual database registration fee on an individual who registers to use the database, to pay the startup and ongoing costs of the division for complying with the requirements of this section and Section 58-37f-402.

Amended by Chapter 23, 2011 General Session

58-37f-402 Online tutorial and test relating to the database -- Fees -- Rulemaking authority -- Continuing professional education credit.

(1) The division shall develop an online tutorial and an online test for registration to use the database that provides instruction regarding, and tests, the following:

(a) the purpose of the database;

(b) how to access and use the database;

(c) the law relating to:

(i) the use of the database; and

(ii) the information submitted to, and obtained from, the database; and

(d) basic knowledge that is important for all people who prescribe controlled substances to know in order to help ensure the health and safety of an individual to whom a controlled substance is prescribed.

(2) The division shall design the test described in this section as follows:

(a) an individual shall answer all of the questions correctly in order to pass the test;

(b) an individual shall be permitted to immediately retake the portion of the test that the individual answers incorrectly as many times as necessary for the individual to pass the test; and

(c) after an individual takes the test, the test software shall:

(i) immediately inform the individual of the number of questions that were answered incorrectly;

(ii) provide the correct answers;

(iii) replay the portion of the tutorial that relates to the incorrectly answered questions; and

(iv) ask the individual the incorrectly answered questions again.
(3) The division shall design the tutorial and test so that it is possible to take the tutorial and complete the test in 20 minutes or less, if the individual answers all of the questions correctly on the first attempt.
(4) The division shall ensure that the tutorial and test described in this section are fully functional and available for use online on or before November 1, 2010.
(5) The division shall impose a fee, in accordance with Section 63J-1-504, on an individual who takes the test described in this section, to pay the costs incurred by the division to:
(a) develop, implement, and administer the tutorial and test described in this section; and
(b) fulfill the other duties imposed on the division under this part.
(6) The division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
(a) develop, implement, and administer the tutorial and test described in this section; and
(b) fulfill the other duties imposed on the division under this part.
(7) The Department of Health shall assist the division in developing the portion of the test described in Subsection (1)(d).
(8) Completing the online tutorial and passing the online test described in this section shall count as 1/2 hour of continuing professional education under Subsection 58-37-6.5(2).

Amended by Chapter 450, 2013 General Session

Part 5
Costs and Funding

58-37f-501 Costs of operating database and recording and submitting data.
(1) All department and division costs necessary to establish and operate the database shall be funded by appropriations from:
(a) the Commerce Service Account; and
(b) the General Fund.
(2) All costs associated with recording and submitting data as required in this chapter shall be assumed by the submitting pharmacy.

Amended by Chapter 287, 2010 General Session, (Coordination Clause)
Enacted by Chapter 287, 2010 General Session

58-37f-502 Use of dedicated credits -- Controlled Substance Database -- Collection of penalties.
(1) The director may use the money deposited in the General Fund as a dedicated credit under Subsections 58-37-6(8)(a), 58-37f-601(3)(d), and 58-37f-602(2) for the following purposes:
(a) maintenance and replacement of the database equipment, including hardware and software;
(b) training of staff; and
(c) pursuit of external grants and matching funds.
(2) The director of the division may collect any penalty imposed under Subsections 58-37-6(8)(a), 58-37f-601(3)(d), and 58-37f-602(2) and which is not paid by:
(a) referring the matter to the Office of State Debt Collection or a collection agency; or

(b) bringing an action in the district court of the county in which the person owing the debt resides or in the county where the office of the director is located.
(3) The director may seek legal assistance from the attorney general or the county or district attorney of the district in which the action is brought to collect the fine.
(4) The court shall award reasonable attorney fees and costs to the division for successful collection actions under Subsection (2)(b).

Renumbered and Amended by Chapter 287, 2010 General Session
Amended by Chapter 391, 2010 General Session

Part 6
Penalties

58-37f-601 Unlawful release or use of database information -- Criminal and civil penalties.
(1)
(a) Any person who knowingly and intentionally releases:
(i) any information in the database or any information obtained from other state or federal prescription monitoring programs by means of the database in violation of the limitations under Part 3, Access, is guilty of a third degree felony; or
(ii) any information in the database accessed under Section 58-37f-303 by an electronic data system, or accessed by a person via an electronic data system, in violation of rules established by the division under Subsection 58-37f-303(4) is guilty of a third degree felony.
(b) Any person who negligently or recklessly releases:
(i) any information in the database or any information obtained from other state or federal prescription monitoring programs by means of the database in violation of the limitations under Part 3, Access, is guilty of a class C misdemeanor; or
(ii) any information in the database accessed under Section 58-37f-303 by an electronic data system, or accessed by a person via an electronic data system, in violation of rules established by the division under Subsection 58-37f-303(4) is guilty of a class C misdemeanor.
(2)
(a) Any person who obtains or attempts to obtain the following by misrepresentation or fraud is guilty of a third degree felony:
(i) information from the database;
(ii) information from any other state or federal prescription monitoring program by means of the database; or
(iii) information from the database or any other state or federal prescription monitoring program via an electronic data system under Section 58-37f-303.
(b) Any person who obtains or attempts to obtain information from the database, including via an electronic data system under Section 58-37f-303 that has access to the database, for a purpose other than a purpose authorized by this chapter or by rule is guilty of a third degree felony.
(3)
(a) Except as provided in Subsection (3)(e), a person may not knowingly and intentionally use, release, publish, or otherwise make available to any other person the following information for any purpose other than those specified in Part 3, Access:

(i) information obtained from the database;
(ii) information obtained from any other state or federal prescription monitoring program by means of the database; or
(iii) information in the database accessed under Section 58-37f-303 by:
(A) an electronic data system; or
(B) a person via an electronic data system.
(b) Each separate violation of this Subsection (3) is a third degree felony and is also subject to a civil penalty not to exceed $5,000.
(c) The procedure for determining a civil violation of this Subsection (3) is in accordance with Section 58-1-108, regarding adjudicative proceedings within the division.
(d) Civil penalties assessed under this Subsection (3) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).
(e) This Subsection (3) does not prohibit a person who obtains information from the database under Subsection 58-37f-301(2) (h), (i), (k), or (4)(c) from:
(i) including the information in the person's medical chart or file for access by a person authorized to review the medical chart or file; or
(ii) providing the information to a person in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996.

Amended by Chapter 112, 2016 General Session
Amended by Chapter 238, 2016 General Session

58-37f-602 Failure by pharmacist to submit information -- Penalties.
(1) The failure of a pharmacist in charge to submit information to the database as required under Section 58-37f-203, after the division has submitted a specific written request for the information or when the division determines the individual has a demonstrable pattern of failing to submit the information as required, is grounds for the division to take the following actions in accordance with Section 58-1-401:
(a) refuse to issue a license to the individual;
(b) refuse to renew the individual's license;
(c) revoke, suspend, restrict, or place on probation the license;
(d) issue a public reprimand to the individual;
(e) issue a cease and desist order; and
(f) impose a civil penalty of not more than $1,000 for each dispensed prescription regarding which the required information is not submitted.
(2) Civil penalties assessed under Subsection (1)(f) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).
(3) The procedure for determining a civil violation of this section shall be in accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

Enacted by Chapter 287, 2010 General Session

Part 7
Miscellaneous

58-37f-701 Immunity from liability.

(1) An individual who has submitted information to or accessed and reviewed the database in accordance with this chapter may not be held civilly liable, including under Title 78B, Chapter 3, Part 4, Utah Health Care Malpractice Act, for such actions, or a lack of action, which are protected and are not subject to civil discovery, as provided in Section 58-37f-302.
(2) Notwithstanding any other provision of law, any action or lack of action by a prescriber or dispenser to meet the requirements of Section 58-37f-304 may not be used by the division in any action against the prescriber or dispenser.
(3) Nothing in Section 58-37f-304 establishes a minimum standard of care for prescribers and dispensers.

Amended by Chapter 275, 2016 General Session

58-37f-702 Reporting prescribed controlled substance poisoning or overdose to a practitioner.

(1) The division shall take the actions described in Subsection (2) if the division receives a report from:
  (a) a medical examiner under Section 26-4-10.5 regarding a death caused by poisoning or overdose involving a prescribed controlled substance; or
  (b) a general acute hospital under Section 26-21-26 regarding admission to a general acute hospital for poisoning or overdose involving a prescribed controlled substance.
(2) The division shall, within three business days after the day on which a report in Subsection (1) is received:
  (a) attempt to identify, through the database, each practitioner who may have prescribed the controlled substance to the patient; and
  (b) provide each practitioner identified under Subsection (2)(a) with:
    (i) a copy of the report provided by the medical examiner under Section 26-4-10.5 or the general acute hospital under Section 26-21-26; and
    (ii) the information obtained from the database that led the division to determine that the practitioner receiving the information may have prescribed the controlled substance to the person named in the report.
(3) It is the intent of the Legislature that the information provided under Subsection (2)(b) is provided for the purpose of assisting the practitioner in:
  (a) discussing with the patient or others issues relating to the poisoning or overdose;
  (b) advising the patient or others of measures that may be taken to avoid a future poisoning or overdose; and
  (c) making decisions regarding future prescriptions written for the patient or others.
(4) Beginning on July 1, 2010, the division shall, in accordance with Section 63J-1-504, increase the licensing fee described in Subsection 58-37-6(1)(b) to pay the startup and ongoing costs of the division for complying with the requirements of this section.

Amended by Chapter 99, 2016 General Session
Amended by Chapter 104, 2016 General Session

58-37f-703 Entering certain convictions into the database and reporting them to practitioners.

(1) When the division receives a report from a court under Subsection 41-6a-502(4) or 41-6a-502.5(5)(b) relating to a conviction for driving under the influence of, or while impaired by, a prescribed controlled substance, the division shall:

(a) daily enter into the database the information supplied in the report, including the date on which the person was convicted;
(b) attempt to identify, through the database, each practitioner who may have prescribed the controlled substance to the convicted person; and
(c) provide each practitioner identified under Subsection (1)(b) with:
(i) a copy of the information provided by the court; and
(ii) the information obtained from the database that led the division to determine that the practitioner receiving the information may have prescribed the controlled substance to the convicted person.
(2) It is the intent of the Legislature that the information provided under Subsection (1)(b) is provided for the purpose of assisting the practitioner in:
(a) discussing the manner in which the controlled substance may impact the convicted person's driving;
(b) advising the convicted person on measures that may be taken to avoid adverse impacts of the controlled substance on future driving; and
(c) making decisions regarding future prescriptions written for the convicted person.
(3) Beginning on July 1, 2010, the division shall, in accordance with Section 63J-1-504, increase the licensing fee described in Subsection 58-37-6(1)(b) to pay the startup and ongoing costs of the division for complying with the requirements of this section.

Amended by Chapter 99, 2016 General Session

58-37f-704 Entering certain convictions into the database.
Beginning October 1, 2016, if the division receives a report from a court under Subsection 58-37-8(1)(e) or 58-37-8(2)(j), the division shall daily enter into the database the information supplied in the report.

Enacted by Chapter 99, 2016 General Session

Chapter 38a
Controlled Substances Advisory Committee Act

Part 1
General Provisions

58-38a-101 Title.
This chapter is referred to as the "Controlled Substances Advisory Committee Act."

Enacted by Chapter 231, 2010 General Session

58-38a-102 Definitions.
(1) "Committee" means the Controlled Substances Advisory Committee created in this chapter.
(2) "Controlled substance schedule" or "schedule" means a schedule as defined under Section 58-37-4.

Enacted by Chapter 231, 2010 General Session

Part 2
Controlled Substances Advisory Committee

58-38a-201 Controlled Substances Advisory Committee.

There is created within the Division of Occupational and Professional Licensing the Controlled Substances Advisory Committee. The committee consists of:

(1) the director of the Department of Health or the director's designee;
(2) the State Medical Examiner or the examiner's designee;
(3) the commissioner of the Department of Public Safety or the commissioner's designee;
(4) one physician who is a member of the Physicians Licensing Board and is designated by that board;
(5) one pharmacist who is a member of the Utah State Board of Pharmacy and is designated by that board;
(6) one dentist who is a member of the Dentist and Dental Hygienist Licensing Board and is designated by that board;
(7) one physician who is currently licensed and practicing in the state, to be appointed by the governor;
(8) one psychiatrist who is currently licensed and practicing in the state, to be appointed by the governor;
(9) one individual with expertise in substance abuse addiction, to be appointed by the governor;
(10) one representative from the Statewide Association of Prosecutors, to be designated by that association;
(11) one naturopathic physician who is currently licensed and practicing in the state, to be appointed by the governor;
(12) one advanced practice registered nurse who is currently licensed and practicing in this state, to be appointed by the governor; and
(13) one member of the public, to be appointed by the governor.

Amended by Chapter 60, 2011 General Session

58-38a-202 Terms of committee service.

(1)
  (a) Members of the advisory committee shall serve terms of four years, except that the members under Subsections 58-38a-201(1), (2), and (3) shall serve during their terms as appointed officials.
  (b) Vacancies in the committee occurring otherwise than by the expiration of a term shall be filled for the unexpired term in the same manner as original appointments.
(2) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  (a) Section 63A-3-106;
  (b) Section 63A-3-107; and
  (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(3)

(a) The director of the Department of Health, or the director's designee, is the chair of the committee.
(b) The advisory committee meets at the call of the chair or at the call of a majority of the committee members.
(c) The advisory committee meets annually and more often as required to carry out its duties under this chapter.
(d) Seven members of the advisory committee constitute a quorum.
(e) Action by the committee requires a majority vote of a quorum.

Amended by Chapter 60, 2011 General Session

58-38a-203 Duties of the committee.

(1) The committee serves as a consultative and advisory body to the Legislature regarding:
(a) the movement of a controlled substance from one schedule or list to another;
(b) the removal of a controlled substance from any schedule or list; and
(c) the designation of a substance as a controlled substance and the placement of the substance in a designated schedule or list.
(2) On or before September 30 of each year, the committee shall submit to the Health and Human Services Interim Committee a written report:
(a) describing any substances recommended by the committee for scheduling, rescheduling, listing, or deletion from the schedules or list by the Legislature; and
(b) stating the reasons for the recommendation.
(3) In advising the Legislature regarding the need to add, delete, relist, or reschedule a substance, the committee shall consider:
(a) the actual or probable abuse of the substance, including:
(i) the history and current pattern of abuse both in Utah and in other states;
(ii) the scope, duration, and significance of abuse;
(iii) the degree of actual or probable detriment to public health which may result from abuse of the substance; and
(iv) the probable physical and social impact of widespread abuse of the substance;
(b) the biomedical hazard of the substance, including:
(i) its pharmacology, including the effects and modifiers of the effects of the substance;
(ii) its toxicology, acute and chronic toxicity, interaction with other substances, whether controlled or not, and the degree to which it may cause psychological or physiological dependence; and
(iii) the risk to public health and the particular susceptibility of segments of the population;
(c) whether the substance is an immediate precursor, as defined in Section 58-37-2, of a substance that is currently a controlled substance;
(d) the current state of scientific knowledge regarding the substance, including whether there is any acceptable means to safely use the substance under medical supervision;
(e) the relationship between the use of the substance and criminal activity, including whether:
(i) persons engaged in illicit trafficking of the substance are also engaged in other criminal activity;
(ii) the nature and relative profitability of manufacturing or delivering the substance encourages illicit trafficking in the substance;
(iii) the commission of other crimes is one of the recognized effects of abuse of the substance; and

(iv) addiction to the substance relates to the commission of crimes to facilitate the continued use of the substance;
(f) whether the substance has been scheduled by other states; and
(g) whether the substance has any accepted medical use in treatment in the United States.
(4) The committee's duties under this chapter do not include tobacco products as defined in Section 59-14-102 or alcoholic beverages as defined in Section 32B-1-102.

Amended by Chapter 12, 2011 General Session
Amended by Chapter 340, 2011 General Session

58-38a-204 Guidelines for scheduling or listing drugs.
(1)
(a) The committee shall recommend placement of a substance in Schedule I if it finds:
(i) that the substance has high potential for abuse; and
(ii) that an accepted standard has not been established for safe use in treatment for medical purposes.
(b) The committee may recommend placement of a substance in Schedule I under Section 58-37-4 if it finds that the substance is classified as a controlled substance in Schedule I under federal law.
(2)
(a) The committee shall recommend placement of a substance in Schedule II if it finds that:
(i) the substance has high potential for abuse;
(ii) the substance has a currently accepted medical use in treatment in the United States, or a currently accepted medical use subject to severe restrictions; and
(iii) the abuse of the substance may lead to severe psychological or physiological dependence.
(b) The committee may recommend placement of a substance in Schedule II if it finds that the substance is classified as a controlled substance in Schedule II under federal law.
(3)
(a) The committee shall recommend placement of a substance in Schedule III if it finds that:
(i) the substance has a potential for abuse that is less than the potential for substances listed in Schedules I and II;
(ii) the substance has a currently accepted medical use in treatment in the United States; and
(iii) abuse of the substance may lead to moderate or low physiological dependence or high psychological dependence.
(b) The committee may recommend placement of a substance in Schedule III if it finds that the substance is classified as a controlled substance in Schedule III under federal law.
(4)
(a) The committee shall recommend placement of a substance in Schedule IV if it finds that:
(i) the substance has a low potential for abuse relative to substances in Schedule III;
(ii) the substance has currently accepted medical use in treatment in the United States; and
(iii) abuse of the substance may lead to limited physiological dependence or psychological dependence relative to the substances in Schedule III.
(b) The committee may recommend placement of a substance in Schedule IV if it finds that the substance is classified as a controlled substance in Schedule IV under federal law.
(5)
(a) The committee shall recommend placement of a substance in Schedule V if it finds that:
(i) the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(ii) the substance has currently accepted medical use in treatment in the United States; and
(iii) the substance has limited physiological dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.
(b) The committee may recommend placement of a substance in Schedule V under this chapter if it finds that the substance is classified as a controlled substance in Schedule V under federal law.
(6) The committee may recommend placement of a substance on a controlled substance list if it finds that the substance has a potential for abuse and that an accepted standard has not been established for safe use in treatment for medical purposes.

Amended by Chapter 12, 2011 General Session

Chapter 40
Recreational Therapy Practice Act

Part 1
General Provisions

58-40-101 Title.
This chapter is known as the "Recreational Therapy Practice Act."

Renumbered and Amended by Chapter 82, 2012 General Session

58-40-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Approved" means approval by the division in collaboration with the board when used to refer to a licensing requirement.
(2)
(a) "Assessment" means:
(i) a systematic collection of data to identify the strengths and limitations of a person's physical, cognitive, social, behavioral, emotional, spiritual, and leisure capabilities; and
(ii) interpreting and analyzing collected data to identify and determine a course of action for recreational therapy services for a patient.
(b) "Assessment" includes:
(i) a record review;
(ii) the implementation of standardized and non-standardized instruments, tests, and measurements; and
(iii) the skilled observation and interview of a person.
(3) "Board" means the Board of Recreational Therapy created in Section 58-40-201.
(4) "Practice of recreational therapy" means to engage in the paid performance of providing recreational therapy services according to the therapeutic recreation process to a person with an emotional, social, intellectual, or physical pathology.
(5) "Recreational therapy" or "therapeutic recreation" means a person-centered process that uses recreation and psychoeducational activities as intervention tools to improve the physical,

cognitive, social, behavioral, emotional, or spiritual well-being of a person with an illness or a disability.

(6)
(a) "Recreational therapy services" means using recreation and psychoeducational activities as intervention tools to improve or maintain the physical, cognitive, social, behavioral, emotional, or spiritual well-being of a person with an illness or a disability.
(b) "Recreational therapy services" include:
(i) assessing a person's need for recreational therapy treatment or intervention;
(ii) developing an individualized treatment or intervention plan that identifies goals, objectives, and treatment strategies for a person;
(iii) implementing the individualized treatment or intervention plan;
(iv) documenting a person's response to the individualized treatment or intervention plan, including documenting the overall outcome of the person's treatment;
(v) regularly evaluating a person's response to the individualized treatment or intervention plan and modifying the plan when appropriate;
(vi) in collaboration with a person, the person's family, or other team members, developing a discharge or transition plan for the person;
(vii) serving as a resource to help a person find recreation opportunities that will promote the person's physical, cognitive, social, behavioral, emotional, or spiritual health and well-being; and
(viii) organizing and managing recreational services according to a written plan of operation as defined by rule of the division.

(7) "Treatment or intervention plan" means a written record containing the information required by Section 58-40-602, which is composed for each patient by a person licensed under this chapter as a master therapeutic recreation specialist or a therapeutic recreation specialist.

(8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-40-501.

(9) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-40-502.

Renumbered and Amended by Chapter 82, 2012 General Session

58-40-103 Rulemaking.

When exercising rulemaking authority under this chapter, the division shall comply with the requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 82, 2012 General Session

Part 2
Board

58-40-201 Board.

(1) There is created the Board of Recreational Therapy, consisting of:
(a) two master therapeutic recreation specialists;
(b) one therapeutic recreation specialist;
(c) one therapeutic recreation technician; and
(d) one member of the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3)
(a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
(b) In addition, the board shall designate one of its members on a permanent rotating basis to:
(i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
(ii) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in the investigation of a complaint may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding relating to the complaint.

Renumbered and Amended by Chapter 82, 2012 General Session

Part 3
Licensing

58-40-301 Licensure required -- License classifications.
(1) A license is required to engage in the practice of recreational therapy, except as specifically provided in Section 58-40-305 or 58-1-307.
(2) The division shall issue to a person who qualifies under this chapter a license in the classification of:
(a) master therapeutic recreation specialist;
(b) therapeutic recreation specialist; or
(c) therapeutic recreation technician.

Enacted by Chapter 82, 2012 General Session

58-40-302 Qualifications for licensure.
(1) An applicant for licensure under this chapter shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504; and
(c) be of good moral character.
(2) In addition to the requirements of Subsection (1), an applicant for licensure as a master therapeutic recreation specialist under this chapter shall as defined by division rule:
(a) complete an approved graduate degree;
(b) complete 4,000 qualifying hours of paid experience as:
(i) a licensed therapeutic recreation specialist if completed in the state; or
(ii) a certified therapeutic recreation specialist certified by the National Council for Therapeutic Recreation Certification if completed outside of the state; and
(c) pass an approved examination.
(3) In addition to the requirements of Subsection (1), an applicant for licensure as a therapeutic recreation specialist under this chapter shall, as defined by division rule:
(a) complete an approved:
(i) bachelor's degree in therapeutic recreation or recreational therapy;
(ii) bachelor's degree with an approved emphasis, option, or concentration in therapeutic recreation or recreational therapy; or

(iii) graduate degree;
(b) complete an approved practicum; and
(c) pass an approved examination.
(4) In addition to the requirements of Subsection (1), an applicant for licensure as a therapeutic recreation technician under this chapter shall, as defined by division rule:
(a) have a high school diploma or GED equivalent;
(b) complete an approved:
(i) educational course in therapeutic recreation taught by a licensed master therapeutic recreation specialist; or
(ii) six semester hours or nine quarter hours in therapeutic recreation or recreational therapy from an accredited college or university;
(c) complete an approved practicum under the supervision of:
(i) a licensed master therapeutic recreation specialist; or
(ii) an on-site, full-time, employed therapeutic recreation specialist;
(d) pass an approved examination; and
(e) complete a minimum of two hours of training in suicide prevention via a course that the division designates as approved.

Amended by Chapter 77, 2015 General Session

58-40-303 Term of license -- Expiration -- Renewal.
(1) The division shall issue a license under this chapter in accordance with a two-year renewal cycle established by rule.
(2) The division may, by rule, extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
(3) A license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Renumbered and Amended by Chapter 82, 2012 General Session

58-40-304 Continuing education.
(1) In collaboration with the board, the division shall make rules to provide that as a condition precedent for license renewal, a licensee shall complete continuing education requirements during each license period.
(2) In addition to a continuing education requirement provided by the division under Subsection (1), the division shall require a licensee, as a condition of renewal of the licensee's license, to complete a minimum of two hours of training in suicide prevention via a course that the division designates as approved.

Amended by Chapter 77, 2015 General Session

58-40-305 Exemptions from licensure.
In addition to the exemptions from licensure in Section 58-1-307, a person may conduct or participate in a recreational activity without being licensed under this chapter if the person is using the recreational activity for the sole outcome of the recreational experience and is not using recreational activity as a therapeutic intervention following the therapeutic recreation process.

Enacted by Chapter 82, 2012 General Session

Part 4
License Denial and Discipline

58-40-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusal to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Renumbered and Amended by Chapter 82, 2012 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-40-501 Unlawful conduct.

"Unlawful conduct" includes:

(1) providing, leading, facilitating, teaching, or offering to provide or teach recreational therapy services unless licensed under this chapter or exempted from licensure under Section 58-1-307 or 58-40-305;
(2) using the initials MTRS, TRS, or TRT, or other abbreviation, term, title, or sign relating to the practice of recreational therapy services unless licensed under this chapter; and
(3) employing or aiding and abetting the employment of an unqualified or unlicensed person to:
  (a) practice as a recreational therapist; or
  (b) provide recreational therapy services.

Enacted by Chapter 82, 2012 General Session

58-40-502 Unprofessional conduct.

"Unprofessional conduct" includes:

(1) failing to supervise a therapeutic recreation technician, a student intern, or a temporarily licensed therapeutic recreation specialist when required to do so under this chapter or by rule;
(2) failing to keep or maintain a recreational therapy treatment plan;
(3) failing to safeguard a person's right to privacy as to the person's identity, condition, diagnosis, personal effects, or other matters about which the licensee is privileged to know from providing recreational therapy services;
(4) failing to report to the division the unsafe, unethical, or illegal practice of a person who is providing recreational therapy services;
(5) making sexual advances to a patient, requesting sexual intercourse or sexual favors from a patient, or engaging in other verbal or physical conduct of a sexual nature in the presence of a patient;
(6) exploiting a patient or former patient for personal gain;
(7) possessing or dispensing illegal or non-prescribed prescription drugs or medications;
(8) using or being under the influence of alcohol or an illegal or non-prescribed prescription drug or medication while performing recreational therapy services; and

(9) other actions as defined by division rule.

Enacted by Chapter 82, 2012 General Session

Part 6
Scope of Practice - Treatment or Intervention Plans

58-40-601 Scope of practice.

(1) A master therapeutic recreation specialist licensed under this chapter may:
  (a) practice recreational therapy:
    (i) as an employee of a hospital, clinic, agency, or other facility;
    (ii) in private practice; or
    (iii) as a consultant; and
  (b) supervise and train other licensees under this chapter.
(2) A therapeutic recreation specialist licensed under this chapter:
  (a) may practice recreational therapy as the employee of a hospital, clinic, agency, or other facility;
  (b) may not practice recreational therapy in private practice or as a consultant; and
  (c) may supervise other licensees under this chapter.
(3) A therapeutic recreation technician:
  (a) may perform recreational therapy services if:
    (i) under the supervision of a master therapeutic recreation specialist or a therapeutic recreation specialist employed full-time and on-site in the same hospital, clinic, or facility; or
    (ii) in consultation with a master therapeutic recreation specialist;
  (b) may maintain the ongoing documentation of services provided in accordance with a treatment or intervention plan if:
    (i) under the supervision of either a master therapeutic recreation specialist or a therapeutic recreation specialist employed full-time and on-site in the same hospital, clinic, or facility; or
    (ii) in consultation with a master therapeutic recreation specialist;
  (c) may perform the portion of an assessment described in Subsection 58-40-102(2)(a)(i);
  (d) may not perform the portion of an assessment described in Subsection 58-40-102(2)(a)(ii);
  (e) may not prescribe or create a treatment or intervention plan; and
  (f) may not approve or cosign a modification to a treatment or intervention plan.

Renumbered and Amended by Chapter 82, 2012 General Session

58-40-602 Recreational therapy treatment or intervention plans.

(1) A recreational therapy treatment or intervention plan shall be maintained for each patient receiving recreational therapy services under this chapter.
(2) The treatment or intervention plan shall include:
  (a) goals and objectives for a patient that are developed from an assessment based on the strengths and limitations of the patient's physical, cognitive, social, behavioral, emotional, spiritual, and leisure capabilities;
  (b) the selection and adaptation of interventions designed to achieve and maintain the highest possible level of functional independence and quality of life for a patient;

(c) a schedule for regular evaluation of goals and objectives to make changes to the treatment or intervention plan when required; and
(d) expected outcomes related to the goals and objectives.

Renumbered and Amended by Chapter 82, 2012 General Session

Chapter 40a
Athletic Trainer Licensing Act

Part 1
General Provisions

58-40a-101 Title.
This chapter is known as the "Athletic Trainer Licensing Act."

Enacted by Chapter 206, 2006 General Session

58-40a-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Adequate records" means legible records that contain, at a minimum:
(a) the athletic training service plan or protocol;
(b) an evaluation of objective findings;
(c) the plan of care and the treatment records; or
(d) written orders.
(2) "Athlete" means an individual, referee, coach, or athletic staff member who participates in exercises, sports, or games requiring physical strength, agility, flexibility, range of motion, speed, or stamina, and the exercises, sports, or games are of a type generally conducted in association with an educational institution or professional, amateur, or recreational sports club or organization.
(3) "Athletic injury" means:
(a) an injury sustained by an athlete that affects the individual's participation or performance in sports, games, recreation, or exercise; or
(b) a condition that is within the scope of practice of an athletic trainer identified by a directing physician or physical therapist as benefitting from athletic training services.
(4) "Athletic trainer" means an individual who is licensed under this chapter and carries out the practice of athletic training.
(5) "Board" means the Athletic Trainers Licensing Board created in Section 58-40a-201.
(6) "Directing physician" means a physician and surgeon licensed under Section 58-67-301, an osteopathic physician and surgeon licensed under Section 58-68-301, a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act, a naturopathic physician licensed under Chapter 71, Naturopathic Physician Practice Act, or dentist licensed under Section 58-69-301 who, within the licensee's scope of practice and individual competency, is responsible for the athletic training services provided by the athletic trainer and oversees the practice of athletic training by the athletic trainer, as established by board rule.

(7) The "practice of athletic training" means the application by a licensed and certified athletic trainer of principles and methods of:
(a) prevention of athletic injuries;
(b) recognition, evaluation, and assessment of athletic injuries and conditions;
(c) immediate care of athletic injuries, including common emergency medical situations;
(d) rehabilitation and reconditioning of athletic injuries;
(e) athletic training services administration and organization; and
(f) education of athletes.

Enacted by Chapter 206, 2006 General Session

58-40a-103 Duties of directing physician.

A directing physician shall provide direction to an athletic trainer by a verbal order when in the presence of the athletic trainer and by written order or by athletic training service plans or protocols when a directing physician is not present.

Enacted by Chapter 206, 2006 General Session

Part 2
Board

58-40a-201 Board composition -- Duties and responsibilities.

(1) There is created the Athletic Trainers Licensing Board consisting of four licensed athletic trainers, one member representative of the directing physicians referred to in Subsection 58-40a-102(6), and one member of the general public who has never been authorized to practice a healing art and never had a substantial personal, business, professional, or pecuniary connection with a healing art or with a medical education or health care facility, except as a client or potential client.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and 58-1-203, and shall designate one of its members on a permanent or rotating basis to:
(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee under this chapter; and
(b) advise the division of its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Enacted by Chapter 206, 2006 General Session

Part 3
Licensing

58-40a-301 Licensure required.

(1) A license is required to engage in the practice of athletic training, except as specifically provided in Section 58-1-307 or 58-40a-305.
(2) The division shall issue to an individual who qualifies under this chapter a license in the classification of athletic trainer.
(3) An individual may not use the title "licensed athletic trainer," or "athletic trainer," or abbreviations or insignias to imply that the individual is an athletic trainer unless the individual is licensed under this chapter.

Enacted by Chapter 206, 2006 General Session

58-40a-302 Qualifications for licensure.

The division shall issue a license to practice as an athletic trainer to an applicant who:
(1) has obtained a bachelor's or advanced degree from an accredited four-year college or university and meets the minimum athletic training curriculum requirement established by the board by rule;
(2) has successfully completed the certification examination administered by the Board of Certification Inc. or equivalent examination approved or recognized by the board;
(3) is in good standing with and provides documentation of current certification by the Board of Certification Inc. or a nationally recognized credentialing agency approved by the board;
(4) submits an application to the division on a form prescribed by the division; and
(5) pays the required licensing fee as determined by the department under Section 63J-1-504.

Amended by Chapter 183, 2009 General Session

58-40a-303 Scope of practice.

An athletic trainer may:
(1) prevent injuries by:
  (a) designing and implementing physical conditioning programs, which may include:
    (i) strength and range of motion testing;
    (ii) nutritional advisement; and
    (iii) psychosocial intervention and referral;
  (b) performing preparticipation screening;
  (c) fitting protective equipment;
  (d) designing and constructing protective products; and
  (e) continuously monitoring changes in the environment;
(2) recognize and evaluate injuries by:
  (a) obtaining a history of the injury;
  (b) inspecting an injured body part and associated structures;
  (c) palpating bony landmarks and soft tissue structures; and
  (d) performing clinical tests to determine the extent of an injury;
(3) provide immediate care of injuries by:
  (a) initiating cardiopulmonary resuscitation;
  (b) administering basic or advanced first aid;
  (c) removing athletic equipment; and
  (d) immobilizing and transporting an injured athlete;
(4) determine whether an athlete may return to participation or, if the injury requires further definitive care, refer the athlete to the appropriate directing physician;

(5) rehabilitate and recondition an injury by administering therapeutic exercise and therapeutic and physical modalities, including cryotherapy, thermotherapy, and intermittent compression, electrical stimulation, ultra sound, traction devices, or mechanical devices as directed by established, written athletic training service plans or protocols or upon the order of a directing physician;
(6) provide athletic training services administration, including:
(a) implementing athletic training service plans or protocols;
(b) writing organizational policies and procedures;
(c) complying with governmental and institutional standards; and
(d) maintaining records to document services rendered; and
(7) educate athletes to facilitate physical conditioning and reconditioning by designing and implementing appropriate programs to minimize the risk of injury.

Enacted by Chapter 206, 2006 General Session

58-40a-304 Term of license -- Expiration -- Renewal.
(1)
(a) The division shall issue each license for an athletic trainer in accordance with a two-year renewal cycle established by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(b) The division may, by rule, extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Amended by Chapter 382, 2008 General Session

58-40a-305 Exemptions from licensure.
In addition to the exemptions from licensure in Section 58-1-307, this chapter does not require the licensure of a medical assistant as defined in Section 58-67-102 or 58-68-102 or an individual who assists in an emergency or in providing services for which no fee is contemplated, charged, or received, provided the individual does not hold himself out as an athletic trainer.

Enacted by Chapter 206, 2006 General Session

Part 4
License Denial and Discipline

58-40a-401 Grounds for denial of license.
The division may refuse to issue a license to an applicant, refuse to renew the license of a licensee, revoke, suspend, restrict, or place on probation the license of a licensee, issue a public or private reprimand to a licensee, and issue cease and desist orders in accordance with Section 58-1-401.

Enacted by Chapter 206, 2006 General Session

Part 5
Unprofessional Conduct

58-40a-501 Unprofessional conduct.

In addition to the provisions of Subsection 58-1-501(2), "unprofessional conduct" includes:

(1) failing to report to the division an act or omission that violates a provision of this chapter by a licensee, applicant, or another individual;
(2) interfering with an investigation of a disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against a client or witness to prevent that individual from providing evidence in a disciplinary proceeding, investigation, or other legal action;
(3) failing to maintain client confidentiality unless otherwise required by law;
(4) promoting an unnecessary device, treatment, intervention, or service for financial gain by the athletic trainer or a third party; and
(5) failing to maintain adequate records.

Amended by Chapter 262, 2013 General Session

Chapter 41
Speech-Language Pathology and Audiology Licensing Act

58-41-1 Title of chapter.

This chapter is known as the "Speech-language Pathology and Audiology Licensing Act."

Amended by Chapter 207, 1989 General Session

58-41-2 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "ASHA" means the American Speech and Hearing Association.
(2) "Association" means the Utah Speech and Hearing Association.
(3) "Audiologist" means a person who practices audiology or who holds himself out to the public directly or indirectly by any means, act, title, identification, performance, method, or procedure as one who nonmedically examines, measures, tests, interprets, evaluates, assesses, diagnoses, directs, instructs, treats, counsels, prescribes, and recommends for persons affected by or suspected of having disorders of or conditions of impaired hearing, or assists persons in achieving the reception, communication, and perception of sound and determines the range, nature, and degree of hearing function related to communication needs, or provides audiology services and uses audio electronic equipment and provides audiology services and consultation regarding noise control and hearing conservation, conducts tests and interpretation of vestibular function and nystagmus, prepares ear impressions and provides ear molds, aids, accessories, prescriptions, and prostheses for hearing, evaluates sound environment and equipment, and calibrates instruments used in testing and supplementing auditory function. A person is deemed to be an audiologist if he directly or indirectly provides or offers to provide these services or functions set forth in Subsection (4) or any related function.

(4) "Audiology" means the application of principles, methods, and procedures, and measuring, testing, examining, interpreting, diagnosing, predicting, evaluating, prescribing, consulting, treating, instructing, and researching, which is related to hearing, vestibular function, and the disorders of hearing, to related language and speech disorders and to aberrant behavior related to loss of hearing or vestibular function, for the purpose of preventing and modifying disorders related to loss of hearing or vestibular function, and planning, directing, managing, conducting, and participating in hearing conservation, evoked potentials evaluation, nonmedical tinnitus evaluation or treatment, noise control, habilitation, and rehabilitation programs, including hearing aid evaluation, assistive listening device evaluation, prescription, preparation, and dispensing, and auditory training and lip reading.

(5) "Audiology aide" means an individual who:

(a) meets the minimum qualifications established by the board for audiology aides. Those qualifications shall be substantial but less than those established by this chapter for licensing an audiologist;

(b) does not act independently; and

(c) works under the personal direction and direct supervision of a licensed audiologist who accepts responsibility for the acts and performance of that audiology aide under this chapter.

(6) "Board" means the Speech-language Pathology and Audiology Licensing Board created under Section 58-41-6.

(7) "CCC" means the certificate of clinical competence awarded by the American Speech and Hearing Association.

(8) "CFY" means the clinical fellowship year prescribed by ASHA.

(9) "Disorder" means the condition of decreased, absent, or impaired auditory, speech, voice, or language function.

(10) "Hearing aid dealer" means one who sells, repairs, and adjusts hearing aids.

(11) "Licensed audiologist" means any individual to whom a license has been issued under this chapter if that license is in force and has not been suspended or revoked.

(12) "Licensed speech-language pathologist" means any individual licensed under this chapter whose license is in force and has not been suspended or revoked.

(13) "Person" means any individual, group, organization, partnership, or corporate body, except that only an individual may be licensed under this chapter.

(14) "Practice of audiology" means rendering or offering to render to individuals, groups, agencies, organizations, industries, or the public any performance or service in audiology.

(15) "Practice of speech-language pathology" means rendering, prescribing, or offering to render to individuals, groups, agencies, organizations, industries or the public any service in speech-language pathology.

(16) "Prescribe" means to:

(a) determine, specify, and give the directions, procedures, or rules for a person to follow in determining and ordering the preparation, delivery, and use of specific mechanical, acoustic, or electronic aids to hearing or speech; and

(b) determine or designate a remedy for a person.

(17) "Prescription" means a written or oral order for the delivery or execution of that which has been prescribed.

(18) "Speech-language pathologist" means:

(a) a person who practices speech-language pathology or who holds himself out to the public by any means, or by any service or function he performs, directly or indirectly, or by using the terms "speech-language pathologist," "speech-language therapist," "language disability

specialist," or any variation, derivation, synonym, coinage, or whatever expresses, employs, or implies these terms, names, or functions; or

(b) a person who performs any of the functions described in Subsection (19) or any related functions.

(19) "Speech-language pathology" means the application of principles, methods, and procedures for the examination, measurement, prevention, testing, identification, evaluation, diagnosis, treatment, instruction, modification, prescription, restoration, counseling, habilitation, prediction, management, and research related to the development and the disorders or disabilities of human communication, speech, voice, language, cognitive communication, or oral, pharyngeal, or laryngeal sensorimotor competencies, for the purpose of identifying, evaluating, diagnosing, prescribing, preventing, managing, correcting, ameliorating, or modifying those disorders and their effects in individuals or groups of individuals.

(20) "Speech-language pathology aide" means an individual who:

(a) meets the minimum qualifications established by the board for speech-language pathology aides. Those qualifications shall be substantial but less than those established by this chapter for licensing a speech-language pathologist;

(b) does not act independently; and

(c) works under the personal direction and direct supervision of a licensed speech-language pathologist who accepts the responsibility for the acts and performances of that speech-language pathology aide while working under this chapter.

(21) "Treatment" means the services of a speech-language pathologist or audiologist to examine, diagnose, correct, or ameliorate speech or hearing disorders, abnormalities, behavior, or their effects.

(22) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) failing to maintain a level of professional practice consistent with all initial and subsequent requirements by which a license is achieved or maintained under this chapter;

(b) utilizing substandard or inappropriate facilities or equipment;

(c) treating any disorder for which the licensee has not had the necessary training and experience; or

(d) failing to comply with the requirements of Section 58-41-17.

Amended by Chapter 249, 1998 General Session

58-41-3 Scope of licenses -- Practicing without license prohibited.

(1) Licensing shall be granted independently either in speech-language pathology or audiology. A person shall be licensed in one or both areas when he meets the respective qualifications.

(2) No person may practice, represent himself to be, consult, or perform as a speech-language pathologist or audiologist in this state unless he is licensed in accordance with this chapter.

Amended by Chapter 207, 1989 General Session

58-41-4 Exemptions from chapter.

(1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of speech-language pathology and audiology subject to the stated circumstances and limitations without being licensed under this chapter:

(a) a qualified person licensed in this state under any law existing in this state prior to May 13, 1975, from engaging in the profession for which he is licensed;

(b) a medical doctor, physician, or surgeon licensed in this state, from engaging in his specialty in the practice of medicine;
(c) a hearing aid dealer or salesman from selling, fitting, adjusting, and repairing hearing aids, and conducting hearing tests solely for that purpose. However, a hearing aid dealer may not conduct audiologic testing on persons under the age of 18 years except under the direct supervision of an audiologist licensed under this chapter;
(d) a person who has obtained a valid and current credential issued by the State Board of Education while performing specifically the functions of a speech-language pathologist or audiologist, in no way in his own interest, solely within the confines of and under the direction and jurisdiction of and only in the academic interest of the schools by which employed in this state;
(e) a person employed as a speech-language pathologist or audiologist by federal government agencies or subdivisions or, prior to July 1, 1989, by state or local government agencies or subdivisions, while specifically performing speech-language pathology or audiology services in no way in his own interest, solely within the confines of and under the direction and jurisdiction of and in the specific interest of that agency or subdivision;
(f) a person identified in Subsections (1)(d) and (e) may offer lectures for a fee, or monetary or other compensation, without being licensed; however, such person may elect to be subject to the requirements of this chapter;
(g) a person employed by accredited colleges or universities as a speech-language pathologist or audiologist from performing the services or functions described in this chapter when they are:
(i) performed solely as an assigned teaching function of employment;
(ii) solely in academic interest and pursuit as a function of that employment;
(iii) in no way for their own interest; and
(iv) provided for no fee, monetary or otherwise, other than their agreed institutional salary;
(h) a person pursuing a course of study leading to a degree in speech-language pathology or audiology while enrolled in an accredited college or university, provided those activities constitute an assigned, directed, and supervised part of his curricular study, and in no other interest, and that all examinations, tests, histories, charts, progress notes, reports, correspondence, and all documents and records which he produces be identified clearly as having been conducted and prepared by a student in training and that such a person is obviously identified and designated by appropriate title clearly indicating the training status and provided that he does not hold himself out directly or indirectly as being qualified to practice independently;
(i) a person trained in elementary audiometry and qualified to perform basic audiometric tests while employed by a licensed medical doctor to perform solely for him while under his direct supervision, the elementary conventional audiometric tests of air conduction screening, air conduction threshold testing, and tympanometry;
(j) a person while performing as a speech-language pathologist or audiologist for the purpose of obtaining required professional experience under the provisions of this chapter, if he meets all training requirements and is professionally responsible to and under the supervision of a speech-language pathologist or audiologist who holds the CCC or a state license in speech-language pathology or audiology. This provision is applicable only during the time that person is obtaining the required professional experience;
(k) a corporation, partnership, trust, association, group practice, or like organization engaging in speech-language pathology or audiology services without certification or license, if it acts only through employees or consists only of persons who are licensed under this chapter;

(l) performance of speech-language pathology or audiology services in this state by a speech-language pathologist or audiologist who is not a resident of this state and is not licensed under this chapter if those services are performed for no more than one month in any calendar year in association with a speech-language pathologist or audiologist licensed under this chapter, and if that person meets the qualifications and requirements for application for licensure described in Section 58-41-5; and

(m) a person certified under Title 53A, State System of Public Education, as a teacher of the deaf, from providing the services or performing the functions he is certified to perform.

(2) No person is exempt from the requirements of this chapter who performs or provides any services as a speech-language pathologist or audiologist for which a fee, salary, bonus, gratuity, or compensation of any kind paid by the recipient of the service; or who engages any part of his professional work for a fee practicing in conjunction with, by permission of, or apart from his position of employment as speech-language pathologist or audiologist in any branch or subdivision of local, state, or federal government or as otherwise identified in this section.

Amended by Chapter 144, 2016 General Session

58-41-5 Licensure requirements.

(1) To obtain and maintain a license as an audiologist beginning July 1, 2010, an applicant must:

(a) submit a completed application in the form and content prescribed by the division and pay a fee to the department in accordance with Section 63J-1-504;

(b) be of good moral character;

(c) provide the committee with verification that the applicant is the legal holder of a clinical doctor's degree or AuD, in audiology, from an accredited university or college, based on a program of studies primarily in the field of audiology;

(d) be in compliance with the regulations of conduct and codes of ethics for the profession of audiology;

(e) submit to the board certified evidence of having completed at least one year of professional experience, at least 30 hours per week for an academic year, of direct clinical experience in treatment and management of patients, supervised and attested to by one holding an audiologist license under this chapter, the CCC, or their full equivalent; and

(f) pass a nationally standardized examination in audiology which is the same as or equivalent to the examination required for the CCC and with pass-fail criteria equivalent to current ASHA standards, and the board may require the applicant to pass an acceptable practical demonstration of clinical skills to an examining committee of licensed audiologists appointed by the board.

(2) To obtain and maintain a license as an audiologist prior to July 1, 2010, an applicant shall:

(a) comply with Subsections (1)(a), (b), (d), (e), and (f); and

(b) provide the committee with verification that the applicant has received at least a master's degree in the area of audiology from an accredited university or college, based on a program of studies primarily in the field of audiology, and holds the CCC or its full equivalent.

(3) An individual who, prior to July 1, 2010, is licensed as an audiologist under this chapter is, on or after July 1, 2010, considered to hold a current license under this chapter as an audiologist and is subject to this chapter.

(4) To obtain and maintain a license as a speech-language pathologist, an applicant must:

(a) comply with Subsections (1)(a) and (b);

(b) provide the committee with verification that the applicant has received at least a master's degree in speech-language pathology from an accredited university or college, based on a program of studies primarily in the field of speech-language pathology;
(c) be in compliance with the regulations of conduct and code of ethics for the profession of speech-language pathology;
(d) comply with Subsection (1)(e), except that the supervision and attestation requirement shall be from a licensed speech-language pathologist rather than a licensed audiologist; and
(e) pass a nationally standardized examination in speech-language pathology which is the same as or equivalent to the examination required for the CCC and with pass-fail criteria equivalent to current ASHA standards, and the board may require the applicant to pass an acceptable practical demonstration of clinical skills to an examining committee of licensed speech-language pathologists appointed by the board.

Amended by Chapter 397, 2010 General Session

58-41-5.5 Temporary licenses.
(1)
(a) The division may issue a temporary license to an applicant for an audiology license who:
(i) has obtained a master's or doctorate degree in audiology prior to July 1, 2010, or a clinical doctorate degree in audiology or AuD, after June 30, 2010; and
(ii) is practicing audiology in a year of clinical fellowship.
(b) The temporary license is valid for up to 12 months.
(2)
(a) The division may issue a temporary license to an applicant for a speech-language pathology license who:
(i) has completed all requirements for licensure as a speech-language pathologist under this chapter, except for Subsection 58-41-5(4)(d); and
(ii) is practicing speech-language pathology in a year of clinical fellowship.
(b) The temporary license is valid for up to 12 months.

Enacted by Chapter 397, 2010 General Session

58-41-6 Board.
(1) There is created the Speech-language Pathologist and Audiologist Licensing Board, consisting of four speech-language pathologists or audiologists and one member of the general public.
(a) The nonpublic members of the board shall be licensed to provide and shall be engaged in providing speech-language pathology or audiology services to the public as a major interest as follows:
(i) one member shall be in private practice as a primary professional interest and activity or shall be a provider or speech-language pathology or audiology services at large;
(ii) one member shall be from a nonschool clinic setting which provides ongoing speech-language pathology or audiology services;
(iii) one member shall be a provider of speech-language pathology and audiology services in the elementary or secondary schools; and
(iv) one member shall be a provider of a speech-language pathology and audiology college or university training program.
(b) At no time may the board consist of more than two members who represent speech-language pathology or more than two members who represent audiology.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Amended by Chapter 297, 1993 General Session

58-41-8 Issuance of license.

Upon the recommendation of the board the division shall issue licenses in accordance with Section 58-1-301.

Amended by Chapter 297, 1993 General Session

58-41-9 Grounds for denial of license -- Resumption of practice.

(1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.
(2) After one year from the date of revocation of a license, application may be made to the board for relicensing.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-41-12 Term of license -- Expiration -- Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
(2) At the time of renewal the licensee shall show satisfactory evidence of completion of scheduled graduate level professional training, related clinically to the profession of speech-language pathology or audiology, as may be established by the division by rule, in cooperation with the board.
(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-41-13 Fees.

The department shall set fees in cooperation with the board and in accordance with Section 63J-1-504 and shall collect all fees.

Amended by Chapter 183, 2009 General Session

58-41-14 Single license for speech-language pathologist and audiologist -- Single fee.

An applicant who qualifies to be licensed as both a speech-language pathologist and audiologist shall receive a single license reflecting licensure in both classifications. A fee may only be assessed for a single license.

Amended by Chapter 207, 1989 General Session

58-41-15 Violation of chapter -- Penalties.

A person who violates any provision of this chapter is, upon conviction, guilty of a class A misdemeanor. Whenever any person other than a licensed speech-language pathologist or audiologist has engaged in any practice that constitutes an offense under this chapter, a court of appropriate jurisdiction may issue an injunction or other appropriate order restraining that conduct.

Amended by Chapter 207, 1989 General Session

58-41-16 Privileged communication.

A person licensed under this chapter may not be examined or required to reveal any findings, examinations, or representation made by his client to him, or any advice or treatment given to his client in the course of professional practice, without the consent of his client or the client's representative. A person employed by a person licensed under this chapter may not be examined without the consent of the employer concerning any fact of which the employee has acquired knowledge in his professional capacity.

Amended by Chapter 207, 1989 General Session

58-41-17 Requirements for selling hearing aids.

(1) As used in this section:
  (a) "Hearing aid" means a wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing, including its parts, attachments, or accessories.
  (b) "Hearing aid" does not include a device that is surgically implanted in the cochlea or under the skin near the ear.
(2) A person licensed under this chapter who offers to sell a hearing aid to a consumer shall inform the consumer about hearing aids that work with assistive listening systems that are compliant with the ADA Standards for Accessible Design adopted by the United States Department of Justice in accordance with the Americans with Disabilities Act, 42 U.S.C. Sec. 12101 et seq.
(3) A person licensed under this chapter who sells a hearing aid to a consumer shall provide a written receipt or written contract to the consumer that provides the consumer with a 30-day right to cancel the purchase and to obtain a refund if the consumer returns the hearing aid to the seller in the same condition as when purchased, excluding ordinary wear and tear.
(4) The written receipt or contract shall notify the consumer of the 30-day right to cancel in at least 12-point font.
(5) The 30-day right to cancel shall commence from the date the hearing aid is originally delivered to the consumer or the date the written receipt or contract is delivered to the consumer, whichever is later.
(6) The 30-day period shall be tolled for any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original delivery.
(7) Upon exercise of the 30-day right to cancel a hearing aid purchase, the seller of the hearing aid is entitled to a cancellation fee equal to the actual cost that will be incurred by the seller in order to return the hearing aid to the manufacturer, provided that the written receipt or contract states the exact amount that will be retained by the seller as a cancellation fee.

Amended by Chapter 252, 2015 General Session

Chapter 42a
Occupational Therapy Practice Act

Part 1
General Provisions

58-42a-101 Title.
This chapter is known as the "Occupational Therapy Practice Act."

Enacted by Chapter 240, 1994 General Session

58-42a-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Board of Occupational Therapy created in Section 58-42a-201.
(2)
(a) "Individual treatment plan" means a written record composed for each client by a person licensed under this chapter to engage in the practice of occupational therapy.
(b) "Individual treatment plan" includes:
(i) planning and directing specific exercises and programs to improve sensory integration and motor functioning at the level of performance neurologically appropriate for the individual's stage of development;
(ii) establishing a program of instruction to teach a client skills, behaviors, and attitudes necessary for the client's independent productive, emotional, and social functioning;
(iii) analyzing, selecting, and adapting functional exercises to achieve and maintain the client's optimal functioning in activities of daily living and to prevent further disability; and
(iv) planning and directing specific programs to evaluate and enhance perceptual, motor, and cognitive skills.
(3) "Occupational therapist" means a person licensed under this chapter to practice occupational therapy.
(4) "Occupational therapy aide" means a person who is not licensed under this chapter but who provides supportive services under the supervision of an occupational therapist or occupational therapy assistant.
(5) "Occupational therapy assistant" means a person licensed under this chapter to practice occupational therapy under the supervision of an occupational therapist as described in Sections 58-42a-305 and 58-42a-306.
(6)
(a) "Practice of occupational therapy" means the therapeutic use of everyday life activities with an individual:
(i) that has or is at risk of developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction; and
(ii) to develop or restore the individual's ability to engage in everyday life activities by addressing physical, cognitive, psychosocial, sensory, or other aspects of the individual's performance.
(b) "Practice of occupational therapy" includes:
(i) establishing, remediating, or restoring an undeveloped or impaired skill or ability of an individual;
(ii) modifying or adapting an activity or environment to enhance an individual's performance;

(iii) maintaining and improving an individual's capabilities to avoid declining performance in everyday life activities;
(iv) promoting health and wellness to develop or improve an individual's performance in everyday life activities;
(v) performance-barrier prevention for an individual, including disability prevention;
(vi) evaluating factors that affect an individual's activities of daily living in educational, work, play, leisure, and social situations, including:
(A) body functions and structures;
(B) habits, routines, roles, and behavioral patterns;
(C) cultural, physical, environmental, social, virtual, and spiritual contexts and activity demands that affect performance; and
(D) motor, process, communication, interaction, and other performance skills;
(vii) providing interventions and procedures to promote or enhance an individual's safety and performance in activities of daily living in educational, work, and social situations, including:
(A) the therapeutic use of occupations and exercises;
(B) training in self-care, self-management, home-management, and community and work reintegration;
(C) the development, remediation, or compensation of behavioral skills and physical, cognitive, neuromuscular, and sensory functions;
(D) the education and training of an individual's family members and caregivers;
(E) care coordination, case management, and transition services;
(F) providing consulting services to groups, programs, organizations, or communities,
(G) modifying the environment and adapting processes, including the application of ergonomic principles;
(H) assessing, designing, fabricating, applying, fitting, and providing training in assistive technology, adaptive devices, orthotic devices, and prosthetic devices;
(I) assessing, recommending, and training an individual in techniques to enhance functional mobility, including wheelchair management;
(J) driver rehabilitation and community mobility;
(K) enhancing eating and feeding performance; and
(L) applying physical agent modalities, managing wound care, and using manual therapy techniques to enhance an individual's performance skills, if the occupational therapist has received the necessary training as determined by division rule in collaboration with the board.
(7) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-42a-501.
(8) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-42a-502.

Amended by Chapter 432, 2015 General Session

58-42a-103 Rulemaking.

When exercising rulemaking authority under this chapter, the division shall comply with the requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 432, 2015 General Session

Part 2
Board

58-42a-201 Board.

(1) There is created the Board of Occupational Therapy consisting of three licensed occupational therapists, one licensed occupational therapy assistant, and one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
(4) The board shall designate one of its members on a permanent or rotating basis to:
  (a) assist the division in reviewing complaints concerning the unlawful or unprofessional practice of a licensee; and
  (b) advise the division in its investigation of these complaints.
(5) A board member who has, under Subsection (4), reviewed a complaint or advised in its investigation may not participate with the board while the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Amended by Chapter 432, 2015 General Session

Part 3
Licensing

58-42a-301 Licensure required -- License classification.

(1) A license is required to engage in the practice of occupational therapy, except as specifically provided in Section 58-1-307 or 58-42a-304.
(2) The division shall issue to a person who qualifies under this chapter a license in the classification of:
  (a) occupational therapist; or
  (b) occupational therapy assistant.
(3) Nothing in this chapter shall permit an individual licensed under this chapter to engage in the practice of mental health therapy.

Enacted by Chapter 240, 1994 General Session

58-42a-302 Qualifications for licensure.

(1) An applicant for licensure as an occupational therapist shall:
  (a) submit an application in a form as prescribed by the division;
  (b) pay a fee as determined by the department under Section 63J-1-504;
  (c) be of good moral character as it relates to the functions and responsibilities of the practice of occupational therapy;
  (d) graduate with a bachelor's or graduate degree for the practice of occupational therapy from an education program accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education, a predecessor organization, or an equivalent organization as determined by division rule;
  (e) if applying for licensure on or after July 1, 2015, complete a minimum of 24 weeks of supervised fieldwork experience; and

(f) pass an examination approved by the division in consultation with the board and administered by the National Board for Certification in Occupational Therapy, or by another nationally recognized credentialing body as approved by division rule, to demonstrate knowledge of the practice, skills, theory, and professional ethics related to occupational therapy.

(2) All applicants for licensure as an occupational therapy assistant shall:

(a) submit an application in a form as prescribed by the division;

(b) pay a fee as determined by the department under Section 63J-1-504;

(c) be of good moral character as it relates to the functions and responsibilities of the practice of occupational therapy;

(d) graduate from an educational program for the practice of occupational therapy as an occupational therapy assistant that is accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education, a predecessor organization, or an equivalent organization as determined by division rule;

(e) if applying for licensure on or after July 1, 2015, complete a minimum of 16 weeks of supervised fieldwork experience; and

(f) pass an examination approved by the division in consultation with the board and administered by the National Board for Certification in Occupational Therapy, or by another nationally recognized credentialing body as approved by division rule, to demonstrate knowledge of the practice, skills, theory, and professional ethics related to occupational therapy.

(3) Notwithstanding the other requirements of this section, the division may issue a license as an occupational therapist or as an occupational therapy assistant to an applicant who:

(a) meets the requirements of receiving a license by endorsement under Section 58-1-302; or

(b) has been licensed in a state, district, or territory of the United States, or in a foreign country, where the education, experience, or examination requirements are not substantially equal to the requirements of this state, if the applicant passes the applicable examination described in Subsection (1)(f) or (2)(f).

Amended by Chapter 28, 2015 General Session
Amended by Chapter 28, 2015 General Session, (Coordination Clause)
Amended by Chapter 432, 2015 General Session

58-42a-303 Term of license -- Expiration -- Renewal.

(1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.

(2) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(3) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Amended by Chapter 432, 2015 General Session

58-42a-303.5 Continuing education.

(1) As a condition for renewal of a license under this chapter, a licensee shall complete 24 hours of qualified continuing professional education, in accordance with standards defined by division rule in collaboration with the board, during each two-year licensure cycle.

(2) If a renewal cycle is extended or shortened under Subsection (1), the continuing education hours required for license renewal under this section shall be increased or decreased proportionally.

Enacted by Chapter 432, 2015 General Session

58-42a-304 Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following may engage in the stated limited acts or practices without being licensed under this chapter:

(1) a person licensed in the state who is engaging in the practice of the person's profession or occupation as defined in statute under which the person is licensed;

(2) a person pursuing a course of study leading to a degree for the practice of occupational therapy at an accredited education program, if that person is acting under appropriate supervision and is designated by a title that clearly indicates the person's status as a student; and

(3) a person fulfilling the supervised fieldwork experience requirements for licensure described in Section 58-42a-302, if the person is acting under appropriate supervision and is designated by a title that clearly indicates the person is performing supervised fieldwork experience to qualify for a license under this chapter.

Amended by Chapter 432, 2015 General Session

58-42a-305 Limitation upon occupational therapy services provided by an occupational therapy assistant and an occupational therapy aide.

(1) An occupational therapy assistant:

(a) may only perform occupational therapy services under the supervision of an occupational therapist as described in Section 58-42a-306;

(b) may not write an individual treatment plan;

(c) may not approve or cosign modifications to an individual treatment plan; and

(d) may contribute to and maintain an individual treatment plan.

(2) An occupational therapy aide:

(a) may only perform occupational therapy services under the direct supervision of an occupational therapist or an occupational therapy assistant;

(b) may not write, modify, contribute, or maintain an individual treatment plan; and

(c) may only perform tasks that are repetitive and routine for which the aide has been trained and has demonstrated competence.

Amended by Chapter 432, 2015 General Session

58-42a-306 Supervision requirements.

An occupational therapist who is supervising an occupational therapy assistant shall:

(1) write or contribute to an individual treatment plan before referring a client to a supervised occupational therapy assistant for treatment;

(2) approve and cosign on all modifications to the individual treatment plan;

(3) meet face to face with the supervised occupational therapy assistant as often as necessary but at least once every two weeks in person or by video conference, and at least one time every month in person, to adequately provide consultation, advice, training, and direction to the occupational therapy assistant;

(4) meet with each client who has been referred to a supervised occupational therapy assistant at least once each month, to further assess the patient, evaluate the treatment, and modify the individual's treatment plan, except that if the interval of client care occurs one time per month or less, the occupational therapist shall meet with the client at least once every four visits;

(5) supervise no more than two full-time occupational therapy assistants at one time, or four part-time occupational therapy assistants if the combined work hours of the assistants do not exceed 40 hours per week, unless otherwise approved by the division in collaboration with the board;
(6) remain responsible for client treatment provided by the occupational therapy assistant; and
(7) fulfill any other supervisory responsibilities as determined by division rule.

Amended by Chapter 432, 2015 General Session

Part 4
License Denial and Discipline

58-42a-401 Denial of license -- Discipline.

The division may refuse to issue a license to an applicant, refuse to renew the license of a licensee, revoke, suspend, restrict, or place on probation the license of a licensee, issue a public or private reprimand to a licensee, and issue a cease and desist order under the grounds specified in Section 58-1-401.

Enacted by Chapter 240, 1994 General Session

Part 5
Unlawful and Unprofessional Conduct

58-42a-501 Unlawful conduct.

"Unlawful conduct," as defined in Section 58-1-501 and as may be further defined by division rule, includes:
(1) engaging or offering to engage in the practice of occupational therapy unless licensed under this chapter or exempted from licensure under Section 58-1-307 or 58-42a-304;
(2) using the title occupational therapist or occupational therapy assistant unless licensed under this chapter;
(3) employing or aiding and abetting an unqualified or unlicensed person to engage or offer to engage in the practice of occupational therapy unless the person is exempted from licensure under Section 58-1-307 or 58-42a-304; and
(4) obtaining a license under this chapter by means of fraud, misrepresentation, or concealment of a material fact.

Repealed and Re-enacted by Chapter 432, 2015 General Session

58-42a-502 Unprofessional conduct.

"Unprofessional conduct," as defined in Section 58-1-501 and as may be further defined by division rule, includes:
(1) being convicted of a crime in any court except for minor offenses;
(2) violating a lawful order, rule, or regulation adopted by the division in consultation with the board;
(3) providing substandard care as an occupational therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the client is established;

(4) providing substandard care as an occupational therapy assistant, including exceeding the authority to perform components of intervention selected and delegated by the supervising occupational therapist, regardless of whether actual injury to the client is established;
(5) knowingly delegating responsibilities related to the practice of occupational therapy to an individual, including an occupational therapy aide, who does not have the knowledge, skills, or abilities to perform those responsibilities;
(6) failing to provide appropriate supervision in accordance with this chapter to an occupational therapy assistant or occupational therapy aide;
(7) practicing as an occupational therapist or occupational therapy assistant when physical or mental impairment of the occupational therapist or occupational therapy assistant prevents the provision of competent services to clients;
(8) having had an occupational therapist, occupational therapy assistant, or equivalent license or application refused, revoked, suspended, or other disciplinary action taken in another state, United States territory, or country;
(9) engaging in sexual misconduct, including:
(a) engaging in or soliciting a sexual relationship with a client;
(b) making a sexual advance, requesting a sexual favor, or engaging in physical contact of a sexual nature with a client; and
(c) engaging in verbal or physical conduct of a sexual nature in the presence of a client; and
(10) abandoning or neglecting a client in need of immediate professional care without making reasonable arrangements for the continuation of care.

Enacted by Chapter 432, 2015 General Session

Chapter 44a
Nurse Midwife Practice Act

Part 1
General Provisions

58-44a-101 Title.
This chapter is the "Nurse Midwife Practice Act."

Enacted by Chapter 187, 1994 General Session

58-44a-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct in accordance with a fine schedule established by rule and as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
(2) "Board" means the Certified Nurse Midwife Board created in Section 58-44a-201.
(3) "Consultation and Referral Plan" means a written plan jointly developed by a certified nurse midwife, as defined in Subsection (7), and a consulting physician that permits the certified

nurse midwife to prescribe schedule II-III controlled substances in consultation with the consulting physician.

(4) "Consulting physician" means a physician and surgeon or osteopathic physician:
- (a) with an unrestricted license as a physician;
- (b) qualified by education, training, and current practice in obstetrics, gynecology, or both to act as a consulting physician to a nurse midwife practicing under this chapter and providing intrapartum care or prescribing Schedule II-III controlled substances; and
- (c) who is available to consult with a nurse midwife, which does not include the consulting physician being present at the time or place the nurse midwife is engaged in practice.

(5) "Individual" means a natural person.

(6) "Intrapartum referral plan":
- (a) means a written plan prepared by a nurse midwife describing the guidelines under which the nurse midwife will consult with a consulting physician, collaborate with a consulting physician, and refer patients to a consulting physician; and
- (b) does not require the nurse midwife to obtain the signature of a physician on the intrapartum referral plan.

(7) "Nurse midwife" means a person licensed under this chapter to engage in practice as a certified nurse midwife.

(8) "Physician" means a physician and surgeon or osteopathic surgeon licensed under Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act.

(9) "Practice as a certified nurse midwife" means:
- (a) practice as a registered nurse as defined in Section 58-31b-102, and as consistent with the education, training, experience, and current competency of the licensee;
- (b) practice of nursing within the generally recognized scope and standards of nurse midwifery as defined by rule and consistent with professionally recognized preparations and educational standards of a certified nurse midwife by a person licensed under this chapter, which practice includes:
  - (i) having a safe mechanism for obtaining medical consultation, collaboration, and referral with one or more consulting physicians who have agreed to consult, collaborate, and receive referrals, but who are not required to sign a written document regarding the agreement;
  - (ii) providing a patient with information regarding other health care providers and health care services and referral to other health care providers and health care services when requested or when care is not within the scope of practice of a certified nurse midwife; and
  - (iii) maintaining written documentation of the parameters of service for independent and collaborative midwifery management and transfer of care when needed; and
- (c) the authority to:
  - (i) elicit and record a patient's complete health information, including physical examination, history, and laboratory findings commonly used in providing obstetrical, gynecological, and well infant services to a patient;
  - (ii) assess findings and upon abnormal findings from the history, physical examination, or laboratory findings, manage the treatment of the patient, collaborate with the consulting physician or another qualified physician, or refer the patient to the consulting physician or to another qualified physician as appropriate;
  - (iii) diagnose, plan, and implement appropriate patient care, including the administration and prescribing of:
    - (A) prescription drugs;
    - (B) schedule IV-V controlled substances; and
    - (C) schedule II-III controlled substances in accordance with a consultation and referral plan;

(iv) evaluate the results of patient care;
(v) consult as is appropriate regarding patient care and the results of patient care;
(vi) manage the intrapartum period according to accepted standards of nurse midwifery practice and a written intrapartum referral plan, including performance of routine episiotomy and repairs, and administration of anesthesia, including local, pudendal, or paracervical block anesthesia, but not including general anesthesia and major conduction anesthesia;
(vii) manage the postpartum period;
(viii) provide gynecological services;
(ix) provide noncomplicated newborn and infant care to the age of one year; and
(x) represent or hold oneself out as a certified nurse midwife, or nurse midwife, or use the title certified nurse midwife, nurse midwife, or the initials C.N.M., N.M., or R.N.
(10) "Unlawful conduct" is defined in Sections 58-1-501 and 58-44a-501.
(11) "Unlicensed assistive personnel" means any unlicensed person, regardless of title, to whom tasks are delegated by a licensed certified nurse midwife in accordance with the standards of the profession as defined by rule.
(12) "Unprofessional conduct" is defined in Sections 58-1-501 and 58-44a-502 and as may be further defined by rule.

Amended by Chapter 285, 2012 General Session

Part 2
Board

58-44a-201 Board.
(1) There is created the Certified Nurse Midwife Board consisting of four certified nurse midwives and one member representing the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203, and the board shall also:
(a) designate one of its members on a permanent or rotating basis to assist the division in reviewing complaints concerning the unlawful or unprofessional practice of a certified nurse midwife; and
(b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Amended by Chapter 288, 1998 General Session

Part 3
Licensing

58-44a-301 Licensure required -- License classification.
(1) A license is required to engage in practice as a certified nurse midwife, except as provided in Section 58-1-307.

(2) The division shall issue to individuals qualified under the provisions of this chapter a license in the classification certified nurse midwife.
(3) An individual holding a certified nurse midwife license as of July 1, 1998, who cannot document the successful completion of advanced course work approved by the division in collaboration with the board in patient assessment, diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be issued a "CNM without prescriptive practice" license.
(4) The division shall grant a certified nurse midwife license to any licensed certified nurse midwife currently holding prescriptive authority under any predecessor act on July 1, 1998.

Amended by Chapter 288, 1998 General Session

58-44a-302 Qualifications for licensure.
(1) An applicant for licensure as a nurse midwife shall:
(a) submit an application in a form as prescribed by the division;
(b) pay a fee as determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) at the time of application for licensure hold a license in good standing as a registered nurse in Utah, or be at that time qualified for a license as a registered nurse under Title 58, Chapter 31b, Nurse Practice Act;
(e) have completed:
(i) a certified nurse midwifery education program accredited by the Accreditation Commission for Midwifery Education and approved by the division; or
(ii) a nurse midwifery education program located outside of the United States which is approved by the division and is equivalent to a program accredited by the Accreditation Commission for Midwifery Education, as demonstrated by a graduate's being accepted to sit for the national certifying examination administered by the Accreditation Commission for Midwifery Education or its designee; and
(f) have passed examinations established by the division rule in collaboration with the board within two years after completion of the approved education program required under Subsection (1)(e).
(2) For purposes of Subsection (1)(e), as of January 1, 2010, the accredited education program or it's equivalent must grant a graduate degree, including post-master's certificate, in nurse midwifery.

Amended by Chapter 238, 2016 General Session

58-44a-303 Term of license -- Expiration -- Renewal.
(1)
(a) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule.
(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
(2) At the time of renewal, the licensee shall:
(a) hold a valid certification from the American College of Nurse Midwives Certification Council, Inc.; and
(b) have met continuing competency requirements defined by the division rule in collaboration with the board.

Amended by Chapter 268, 2001 General Session

58-44a-304 Continuing education.

The division in collaboration with the board may establish by rule continuing education requirements for renewal of licensure under this chapter, upon a finding by the division that continuing education requirements are necessary to protect the public health, safety, and welfare.

Enacted by Chapter 187, 1994 General Session

58-44a-305 Intern license.

(1) The division may issue an intern license to an individual who meets all qualifications for licensure except the passing of the qualifying examination if the applicant:
  (a) graduated from an approved education program within the 12 months immediately preceding the application for licensure;
  (b) has never before taken the qualifying examination;
  (c) is registered to take the next qualifying examination; and
  (d) presents a plan acceptable to the division and board under which the applicant will practice under any intern license issued only under the direct supervision of a nurse midwife or physician.
(2) An intern license issued under this section expires on:
  (a) the date of the next qualifying examination immediately following issuance of the intern license if the intern license holder does not sit for that examination;
  (b) the date the examination results are available if the intern license holder sits for the next succeeding qualifying examination and fails the examination; or
  (c) the date on which a regular license is issued if the intern license holder passes the examination and is otherwise qualified for licensure.

Amended by Chapter 288, 1998 General Session

Part 4
License Denial and Discipline

58-44a-401 Grounds for denial of license -- Disciplinary proceedings.

Division grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders are in accordance with Section 58-1-401.

Enacted by Chapter 187, 1994 General Session

58-44a-402 Authority to assess penalty.

(1) After a proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the division may impose an administrative penalty of up to $10,000 for unprofessional or unlawful conduct under this chapter in accordance with a fine schedule established by rule.

(2) The assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.
(3) The division may impose an administrative penalty of up to $500 for any violation of Subsection 58-44a-501(2), (3), or (4), consistent with Section 58-44a-503.

Amended by Chapter 382, 2008 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-44a-501 Unlawful conduct.

"Unlawful conduct" includes:
(1) engaging in practice as a certified nurse midwife when not licensed or exempted from licensure under this chapter, or engaging in practice as a registered nurse when not licensed or exempted from licensure under this chapter or Title 58, Chapter 31b, Nurse Practice Act;
(2) representing or holding oneself out as a certified nurse midwife, nurse midwife, or identifying oneself by the initials C.N.M. or N.M. when not licensed under this chapter;
(3) representing or holding out oneself as a registered nurse or identifying oneself by the initials R.N. when not licensed under this chapter or Title 58, Chapter 31b, Nurse Practice Act; and
(4) using any other title, initials, or any other means indicating that one is licensed under this chapter.

Repealed and Re-enacted by Chapter 288, 1998 General Session

58-44a-502 Unprofessional conduct.

"Unprofessional conduct" includes:
(1) disregard for a patient's dignity or right to privacy as to his person, condition, possessions, or medical record;
(2) engaging in an act, practice, or omission which when considered with the duties and responsibilities of a certified nurse midwife does or could jeopardize the health, safety, or welfare of a patient or the public;
(3) failure to confine one's practice as a certified nurse midwife to those acts or practices permitted by law;
(4) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;
(5) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by the court;
(6) failure to pay a penalty imposed by the division;
(7) prescribing a schedule II-III controlled substance without a consulting physician; and
(8)
  (a) failure to have and maintain a safe mechanism for obtaining medical consultation, collaboration, and referral with a consulting physician, including failure to identify one or more consulting physicians in the written documents required by Subsection 58-44a-102(9)(b)(iii); or
  (b) representing that the certified nurse midwife is in compliance with Subsection (8)(a) when the certified nurse midwife is not in compliance with Subsection (8)(a).

Amended by Chapter 285, 2012 General Session

58-44a-503 Penalty for unlawful conduct.

(1) Any individual who violates the unlawful conduct provisions of Subsection 58-44a-501(1) is guilty of a third degree felony.
(2) Any individual who violates the unlawful conduct provisions of Subsection 58-44a-501(2), (3), or (4) is guilty of a class A misdemeanor.
(3) Subject to Subsection (4), the division may assess administrative penalties in accordance with the provisions of Section 58-44a-402 for acts of unprofessional or unlawful conduct, or any other appropriate administrative action in accordance with the provisions of Section 58-44a-401.
(4) If a licensee has been convicted of violating Section 58-44a-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed a administrative penalty under this chapter for the same offense for which the conviction was obtained.

Enacted by Chapter 288, 1998 General Session

Part 6
Delivery by Parents

58-44a-601 Parents delivering their children.

This chapter does not abridge, limit, or change in any way the right of parents to deliver their baby where, when, how, and with whom they choose, regardless of licensure under this chapter.

Repealed and Re-enacted by Chapter 288, 1998 General Session

Chapter 46a
Hearing Instrument Specialist Licensing Act

Part 1
General Provisions

58-46a-101 Title.

This chapter is known as the "Hearing Instrument Specialist Licensing Act."

Enacted by Chapter 28, 1994 General Session

58-46a-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Hearing Instrument Specialist Licensing Board created in Section 58-46a-201.

(2) "Direct supervision" means that the supervising hearing instrument specialist is present in the same facility as is the person being supervised and is available for immediate in person consultation.
(3) "Hearing instrument intern" means a person licensed under this chapter who is obtaining education and experience in the practice of a hearing instrument specialist under the supervision of a supervising hearing instrument specialist.
(4) "Hearing instrument" or "hearing aid" means any device designed or offered to be worn on or by an individual to enhance impaired human hearing, including the device's specialized parts, attachments, or accessories.
(5) "Indirect supervision" means that the supervising hearing instrument specialist is not required to be present in the same facility as is the person being supervised, but is available for voice to voice contact by telephone, radio, or other means at the initiation of the person being supervised.
(6) "Practice of a hearing instrument specialist" means:
(a) establishing a place of business to practice as a hearing instrument specialist;
(b) testing the hearing of a human patient over the age of 17 for the sole purpose of determining whether a hearing loss will be sufficiently improved by the use of a hearing instrument to justify prescribing and selling the hearing instrument and whether that hearing instrument will be in the best interest of the patient;
(c) providing the patient a written statement of prognosis regarding the need for or usefulness of a hearing instrument for the patient's condition;
(d) prescribing an appropriate hearing instrument;
(e) making impressions or earmolds for the fitting of a hearing instrument;
(f) sale and professional placement of the hearing instrument on a patient;
(g) evaluating the hearing loss overcome by the installation of the hearing instrument and evaluating the hearing recovery against the representations made to the patient by the hearing instrument specialist;
(h) necessary intervention to produce satisfactory hearing recovery results from a hearing instrument; or
(i) instructing the patient on the use and care of the hearing instrument.
(7) "Supervising hearing instrument specialist" means a hearing instrument specialist who:
(a) is licensed by and in good standing with the division;
(b) has practiced full-time as a hearing instrument specialist for not less than two years; and
(c) is approved as a supervisor by the division in collaboration with the board.
(8) "Unlawful conduct" is as defined in Section 58-1-501.
(9) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-46a-501.

Enacted by Chapter 28, 1994 General Session

Part 2
Board

58-46a-201 Board.
(1) There is created the Hearing Instrument Specialist Licensing Board consisting of three licensed hearing instrument specialists and two members of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3)
(a) The duties and responsibilities of the board shall be as provided in Sections 58-1-202 and 58-1-203.
(b)
(i) The board shall designate one of its members on a permanent or rotating basis to assist the division in the review of complaints concerning unlawful or unprofessional practice by a licensee regulated by the board under this chapter and to advise the division with respect to the conduct of investigations of such complaints.
(ii) A board member who under Subsection (3)(b) reviewed a complaint or advised the division in its investigation is disqualified from participating as a member of the board when the board serves as a presiding officer in any administrative or adjudicative procedure concerning the complaint.

Enacted by Chapter 28, 1994 General Session

Part 3
Licensing

58-46a-301 License required -- License classifications.
(1) A license is required to engage in the practice of hearing instrument specialist or hearing instrument intern, except as specifically provided in Section 58-1-307 or 58-46a-305.
(2) The division shall issue to an individual qualified under the provisions of this chapter a license in the classification of:
(a) hearing instrument specialist; or
(b) hearing instrument intern.

Enacted by Chapter 28, 1994 General Session

58-46a-302 Qualifications for licensure.
(1) Each applicant for licensure as a hearing instrument specialist shall:
(a) submit to the division an application in a form prescribed by the division;
(b) pay a fee as determined by the division pursuant to Section 63J-1-504;
(c) be of good moral character;
(d) have qualified for and currently hold board certification by the National Board for Certification - Hearing Instrument Sciences, or an equivalent certification approved by the division in collaboration with the board;
(e) have passed the Utah Law and Rules Examination for Hearing Instrument Specialists; and
(f) if the applicant holds a hearing instrument intern license, surrender the hearing instrument intern license at the time of licensure as a hearing instrument specialist.
(2) Each applicant for licensure as a hearing instrument intern shall:
(a) submit to the division an application in a form prescribed by the division;
(b) pay a fee as determined by the division pursuant to Section 63J-1-504;
(c) be of good moral character;
(d) have passed the Utah Law and Rules Examination for Hearing Instrument Specialists; and

(e) present evidence acceptable to the division and the board that the applicant, when licensed, will practice as a hearing instrument intern only under the supervision of a supervising hearing instrument specialist in accordance with:
(i) Section 58-46a-302.5; and
(ii) the supervision requirements for obtaining board certification by the National Board for Certification - Hearing Instrument Sciences, or an equivalent certification approved by the division in collaboration with the board.

Amended by Chapter 87, 2013 General Session

58-46a-302.5 Supervision requirements -- Hearing instrument interns.
(1) A hearing instrument intern shall practice as a hearing instrument intern only under the direct supervision of a licensed hearing instrument specialist, until the intern:
(a) receives a passing score on a practical examination demonstrating acceptable skills in the area of hearing testing as approved by the division in collaboration with the board; and
(b) completes the National Institute for Hearing instrument studies education and examination program, or an equivalent college level program as approved by the division in collaboration with the board.
(2) Upon satisfaction of the direct supervision requirement of Subsection (1) the intern shall:
(a) practice as a hearing instrument intern only under the indirect supervision of a licensed hearing instrument specialist; and
(b) receive a passing score on the International Licensing Examination of the hearing instrument dispenser or other tests approved by the division prior to applying for licensure as a hearing instrument specialist.

Amended by Chapter 87, 2013 General Session

58-46a-303 Term of license -- Expiration -- Renewal of specialist license -- Limitation on renewal of intern license.
(1) The division shall issue each license for a hearing instrument specialist in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) Each license as a hearing instrument intern shall be issued for a term of three years and may not be renewed.
(3) At the time of renewal, the licensed hearing instrument specialist shall demonstrate satisfactory evidence of each of the following:
(a) current certification by the National Board for Certification Hearing Instrument Sciences, or other acceptable certification approved by the division in collaboration with the board;
(b) calibration of all appropriate technical instruments used in practice; and
(c) completion of continuing professional education required in Section 58-46a-304.
(4) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with the provisions of Section 58-1-308, or unless surrendered in accordance with the provisions of Section 58-1-306.

Amended by Chapter 268, 2001 General Session

58-46a-304 Continuing professional education.

As a condition precedent for license renewal each individual licensed under this chapter as a hearing instrument specialist shall complete qualified continuing professional education related to practice of hearing instrument specialist as established by division rule.

Enacted by Chapter 28, 1994 General Session

58-46a-305 Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts and practices included within the definition of practice as a hearing instrument specialist or hearing instrument intern, subject to their professional licensure authorization and restrictions, without being licensed under this chapter:

(1) an audiologist licensed under the provisions of Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act; and

(2) a physician and surgeon licensed under the provisions of Title 58, Chapter 67, Utah Medical Practice Act, or osteopathic physician licensed under the provisions of Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

Amended by Chapter 90, 2004 General Session

58-46a-307 Licensee required to prove licensure to commence or maintain action.

A person may not commence or maintain an action in any court of the state for collection or compensation in any amount resulting from performance of acts or practices for which a license is required under this chapter unless that person was properly licensed under this chapter as a hearing instrument specialist at the time there was an agreement made to perform the regulated acts and practices, when the regulated acts and practices were performed, and when the alleged cause of action arose.

Enacted by Chapter 28, 1994 General Session

Part 4
License Denial and Discipline

58-46a-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 28, 1994 General Session

Part 5
Unprofessional Conduct

58-46a-501 Unprofessional conduct.

"Unprofessional conduct" includes:

(1) testing the hearing of a patient for any purpose other than to determine whether a hearing loss will be improved by the use of a hearing instrument;
(2) failing to make an appropriate referral to a qualified health care provider with respect to a condition detected in a patient examined by a licensee under this chapter if the condition is generally recognized in the profession as one that should be referred;
(3) designating a hearing instrument for a patient whose hearing will not be sufficiently improved to justify prescribing and selling of the hearing instrument;
(4) making false, misleading, deceptive, fraudulent, or exaggerated claims with respect to practice under this chapter and specifically with respect to the benefits of a hearing instrument or the degree to which a hearing instrument will benefit a patient;
(5) failing to exercise caution in providing a patient a prognosis to assure the patient is not led to expect results that cannot be accurately predicted;
(6) failing to provide appropriate follow-up care and consultation with respect to a patient to whom a hearing instrument has been prescribed and sold upon being informed by the patient that the hearing instrument does not produce the results represented by the licensee;
(7) failing to disclose in writing to the patient the charge for all services and hearing instruments prescribed and sold to a patient prior to providing the services or hearing instrument;
(8) failing to refund fees paid by a patient for a hearing instrument and all accessories, upon a determination by the division in collaboration with the board that the patient has not obtained the recovery of hearing represented by the licensee in writing prior to designation and sale of the hearing instrument;
(9) paying any professional person any consideration of any kind for referral of a patient;
(10) failing, when acting as a supervising hearing instrument specialist, to provide supervision and training in hearing instrument sciences in accordance with Section 58-46a-302.5;
(11) engaging in the practice as a hearing instrument intern when not under the supervision of a supervising hearing instrument specialist in accordance with Section 58-46a-302.5;
(12) failing to describe the circuitry in any advertisement, presentation, purchase, or trial agreement as being either "digital" or "analog"; or other acceptable terms as determined by the division in collaboration with the board;
(13) failing to follow the guidelines or policies of the United States Federal Trade Commission in any advertisement;
(14) failing to adhere to the rules and regulations prescribed by the United States Food and Drug Administration as they pertain to the hearing instrument specialist;
(15) failing to maintain all equipment used in the practice of a hearing instrument specialist properly calibrated and in good working condition; and
(16) failing to comply with any of the requirements set forth in Section 58-46a-502 or 58-46a-503.

Amended by Chapter 50, 2002 General Session

58-46a-502 Additional requirements for practicing as a hearing instrument specialist.

A person engaging in the practice of a hearing instrument specialist shall:
(1) have a regular place or places of business from which the person conducts business as a hearing instrument specialist and the place or places of business shall be represented to a patient and others with whom business is conducted by the street address at which the place of business is located;
(2) include in all advertising or other representation the street address at which the business is located and the telephone number of the business at that street address;

(3) provide as part of each transaction between a licensee and a patient related to testing for hearing loss and selling of a hearing instrument written documentation provided to the patient that includes:
  (a) identification of all services and products provided to the patient by the hearing instrument specialist and the charges for each service or product;
  (b) a statement whether any hearing instrument provided to a patient is "new," "used," or "reconditioned" and the terms and conditions of any warranty or guarantee that applies to each instrument; and
  (c) the identity and license number of each hearing instrument specialist or hearing instrument intern who provided services or products to the patient;
(4) before providing services or products to a patient:
  (a) advise the patient regarding services and products offered to the patient, including the expected results of the services and products;
  (b) inform each patient who is being offered a hearing instrument about hearing instruments that work with assistive listening systems that are compliant with the ADA Standards for Accessible Design adopted by the United States Department of Justice in accordance with the Americans with Disabilities Act, 42 U.S.C. Sec. 12101 et seq.; and
  (c) obtain written informed consent from the patient regarding offered services, products, and the expected results of the services and products in a form approved by the division in collaboration with the board;
(5) refer all individuals under the age of 18 who seek testing of hearing to a physician or surgeon, osteopathic physician, or audiologist, licensed under the provisions of Title 58, Occupations and Professions, and shall dispense a hearing aid to that individual only on prescription of a physician or surgeon, osteopathic physician, or audiologist;
(6) obtain the patient's informed consent and agreement to purchase the hearing instrument based on that informed consent either by the hearing instrument specialist or the hearing instrument intern, before designating an appropriate hearing instrument; and
(7) if a hearing instrument does not substantially enhance the patient's hearing consistent with the representations of the hearing instrument specialist at the time informed consent was given prior to the sale and fitting of the hearing instrument, provide:
  (a) necessary intervention to produce satisfactory hearing recovery results consistent with representations made; or
  (b) for the refund of fees paid by the patient for the hearing instrument to the hearing instrument specialist within a reasonable time after finding that the hearing instrument does not substantially enhance the patient's hearing.

Amended by Chapter 252, 2015 General Session

58-46a-503 Testing period for hearing aids.

(1) Any person licensed under this chapter who sells a hearing aid to a consumer shall provide a written receipt or written contract to the consumer. The written receipt or contract shall provide the consumer with a 30-day right to cancel the purchase if the consumer finds that the hearing aid does not function adequately for the consumer and to obtain a refund if the consumer returns the hearing aid to the seller in the same condition, ordinary wear and tear excluded, as when purchased. The written receipt or contract shall notify the consumer of the 30-day right to cancel in at least 10 point type. The 30-day right to cancel shall commence from either the date the hearing aid is originally delivered to the consumer or the date the written receipt or contract is delivered to the consumer, whichever is later. The 30-day period shall be tolled for

any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original delivery.
(2) Upon exercise of the right to cancel a hearing aid purchase, the seller of the hearing aid is entitled to a cancellation fee not to exceed 15% of all fees charged to the consumer, including testing, fitting, counseling, and the purchase price of the hearing aid. The exact amount of the cancellation fee shall be stated in the written receipt or contract provided to the consumer.

Enacted by Chapter 249, 1998 General Session

Chapter 47b
Massage Therapy Practice Act

Part 1
General Provisions

58-47b-101 Title.
This chapter is known as the "Massage Therapy Practice Act."

Amended by Chapter 159, 1998 General Session

58-47b-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Board of Massage Therapy created in Section 58-47b-201.
(2) "Breast" means the female mammary gland and does not include the muscles, connective tissue, or other soft tissue of the upper chest.
(3) "Homeostasis" means maintaining, stabilizing, or returning to equilibrium the muscular system.
(4) "Massage apprentice" means an individual licensed under this chapter as a massage apprentice to work under the direct supervision of a licensed massage therapist.
(5) "Massage therapist" means an individual licensed under this chapter as a massage therapist.
(6) "Practice of massage therapy" means:
(a) the examination, assessment, and evaluation of the soft tissue structures of the body for the purpose of devising a treatment plan to promote homeostasis;
(b) the systematic manual or mechanical manipulation of the soft tissue of the body for the purpose of:
(i) promoting the therapeutic health and well-being of a client;
(ii) enhancing the circulation of the blood and lymph;
(iii) relaxing and lengthening muscles;
(iv) relieving pain;
(v) restoring metabolic balance;
(vi) achieving homeostasis; or
(vii) other purposes;
(c) the use of the hands or a mechanical or electrical apparatus in connection with this Subsection (6);
(d) the use of rehabilitative procedures involving the soft tissue of the body;
(e) range of motion or movements without spinal adjustment as set forth in Section 58-73-102;

(f) oil rubs, heat lamps, salt glows, hot and cold packs, or tub, shower, steam, and cabinet baths;
(g) manual traction and stretching exercise;
(h) correction of muscular distortion by treatment of the soft tissues of the body;
(i) counseling, education, and other advisory services to reduce the incidence and severity of physical disability, movement dysfunction, and pain;
(j) similar or related activities and modality techniques;
(k) the practice described in this Subsection (6) on an animal to the extent permitted by:
(i) Subsection 58-28-307(12);
(ii) the provisions of this chapter; and
(iii) division rule; or
(l) providing, offering, or advertising a paid service using the term massage or a derivative of the word massage, regardless of whether the service includes physical contact.
(7) "Soft tissue" means the muscles and related connective tissue.
(8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-47b-501.
(9) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-47b-502 and as may be further defined by division rule.

Amended by Chapter 34, 2012 General Session

Part 2
Board

58-47b-201 Board.
(1) There is created the Board of Massage Therapy consisting of:
(a) four massage therapists; and
(b) one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
(b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Amended by Chapter 159, 1998 General Session

Part 3
Licensing

58-47b-301 Licensure required.
(1) An individual shall hold a license issued under this chapter in order to engage in the practice of massage therapy, except as specifically provided in Section 58-1-307 or 58-47b-304.

(2) An individual shall have a license in order to:
(a) represent himself as a massage therapist or massage apprentice;
(b) represent himself as providing a service that is within the practice of massage therapy or use the word massage or any other word to describe such services; or
(c) charge or receive a fee or any consideration for providing a service that is within the practice of massage therapy.

Amended by Chapter 278, 2013 General Session

58-47b-302 License classifications -- Qualifications for licensure.
(1) The division shall issue licenses under this chapter in the classifications of:
(a) massage therapist; and
(b) massage apprentice.
(2) Each applicant for licensure as a massage therapist shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) be 18 years of age or older;
(e) have either:
(i)
(A) graduated from a school of massage having a curriculum which meets standards established by division rule made in collaboration with the board; or
(B) completed equivalent education and training in compliance with division rule; or
(ii) completed a massage apprenticeship program consisting of a minimum of 1,000 hours of supervised training over a minimum of 12 months and in accordance with standards established by the division by rule made in collaboration with the board; and
(f) pass examinations established by rule by the division in collaboration with the board.
(3) Each applicant for licensure as a massage apprentice shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) be 18 years of age or older;
(e) provide satisfactory evidence to the division that the individual will practice as a massage apprentice only under the direct supervision of a licensed massage therapist in good standing and who has engaged in the lawful practice of massage therapy as a licensed massage therapist for not less than 6,000 hours; and
(f) successfully complete an examination as required by division rule.
(4)
(a) Any new massage therapist or massage apprentice applicant shall submit fingerprint cards in a form acceptable to the division at the time the license application is filed and shall consent to a fingerprint background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.
(b) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each new massage therapist or apprentice applicant through the national criminal history system (NCIC) or any successor system.
(c) The cost of the background check and the fingerprinting shall be borne by the applicant.
(5)

(a) Any new massage therapist or massage apprentice license issued under this section shall be conditional, pending completion of the criminal background check. If the criminal background check discloses the applicant has failed to accurately disclose a criminal history, the license shall be immediately and automatically revoked.
(b) Any person whose conditional license has been revoked under Subsection (5)(a) shall be entitled to a post-revocation hearing to challenge the revocation. The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
(6) An applicant who successfully completes a fingerprint background check under Subsection (4) may not be required by any other state or local government body to submit to a second fingerprint background check as a condition of lawfully practicing massage therapy in this state.

Amended by Chapter 183, 2009 General Session

58-47b-303 Term of license -- Expiration -- Renewal.
(1)
(a) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule.
(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Enacted by Chapter 76, 1996 General Session

58-47b-304 Exemptions from licensure.
(1) In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the practice of massage therapy as defined under this chapter, subject to the stated circumstances and limitations, without being licensed, but may not represent themselves as a massage therapist or massage apprentice:
(a) a physician or surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act;
(b) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act;
(c) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice Act;
(d) a physical therapist assistant licensed under Title 58, Chapter 24b, Physical Therapy Practice Act, while under the general supervision of a physical therapist;
(e) an osteopathic physician or surgeon licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
(f) a chiropractic physician licensed under Title 58, Chapter 73, Chiropractic Physician Practice Act;
(g) a hospital staff member employed by a hospital, who practices massage as part of the staff member's responsibilities;
(h) an athletic trainer licensed under Title 58, Chapter 40a, Athletic Trainer Licensing Act;
(i) a student in training enrolled in a massage therapy school approved by the division;
(j) a naturopathic physician licensed under Title 58, Chapter 71, Naturopathic Physician Practice Act;
(k) an occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy Practice Act;
(l) an individual performing gratuitous massage; and

(m) an individual:
(i) certified by or through, and in good standing with, an industry organization that is recognized by the division, and that represents a profession with established standards and ethics;
(ii)
(A) who limits the manipulation of the soft tissues of the body to the hands, feet, and outer ears only, including the practice of reflexology and foot zone therapy; or
(B) who is certified to practice ortho-bionomy and whose practice is limited to the scope of practice of ortho-bionomy;
(iii) whose clients remain fully clothed from the shoulders to the knees; and
(iv) whose clients do not receive gratuitous massage from the individual.
(2) This chapter may not be construed to authorize any individual licensed under this chapter to engage in any manner in the practice of medicine as defined by the laws of this state.
(3) This chapter may not be construed to:
(a) require insurance coverage or reimbursement for massage therapy from third party payors; or
(b) prevent an insurance carrier from offering coverage for massage therapy.

Amended by Chapter 330, 2014 General Session
Amended by Chapter 330, 2014 General Session, (Coordination Clause)
Amended by Chapter 348, 2014 General Session

58-47b-305 State and local jurisdiction.
(1)
(a) The division is the only agency authorized to license individuals to practice massage therapy within the state or any of its political subdivisions.
(b) This chapter does not prevent any political subdivision of the state from enacting:
(i) ordinances governing the operation of establishments offering massages; or
(ii) ordinances regulating the practice of massage therapy, if the ordinances are not less stringent than this chapter.
(2) This chapter does not prohibit any political subdivision of the state from prosecuting unlicensed individuals engaged in the practice of massage therapy or from prosecuting licensed individuals who are engaged in unlawful conduct.

Amended by Chapter 159, 1998 General Session

Part 4
License Denial and Discipline

58-47b-401 Grounds for denial of license -- Disciplinary proceedings.
Grounds for the following actions regarding a license under this chapter are in accordance with Section 58-1-401:
(1) refusal to issue a license to an applicant;
(2) refusal to renew the license of a licensee;
(3) revocation, suspension, restriction, or placement on probation of a license;
(4) issuance of a public or private reprimand to a licensee; and
(5) issuance of a cease and desist order.

Enacted by Chapter 76, 1996 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-47b-501 Unlawful conduct.

"Unlawful conduct" includes:

(1) practicing, engaging in, or attempting to practice or engage in massage therapy without holding a current license as a massage therapist or a massage apprentice under this chapter;
(2) advertising or representing himself as practicing massage therapy when not licensed to do so; and
(3) massaging, touching, or applying any instrument or device by a licensee in the course of practicing or engaging in massage therapy to:
  (a) genitals or anus; and
  (b) breasts of a female patron, except when a female patron requests breast massage, as may be further defined by division rule, and signs a written consent form, which must also include the signature of a parent or legal guardian if the patron is a minor, authorizing the procedure and outlining the reason for it before the procedure is performed.

Amended by Chapter 309, 2000 General Session

58-47b-502 Unprofessional conduct.

"Unprofessional conduct" includes the following and may be further defined by division rule:

(1) maintaining, operating, or assisting in the establishment or operation of any place of business for the purpose of performing massage without first obtaining a business license, if a license is required;
(2) failing to comply with any applicable ordinances relating to the regulation of massage establishment;
(3) failing to comply with all applicable state and local health or sanitation codes;
(4) failing to properly supervise an apprentice;
(5) failing to maintain mechanical or electrical equipment in a safe operating condition;
(6) failing to adequately monitor patrons utilizing steam rooms, dry heat cabinets, or water baths;
(7) prescribing or administering medicine or drugs;
(8) engaging in any act or practice in a professional capacity that is outside of the practice of massage therapy; and
(9) engaging in any act or practice in a professional capacity for which the licensee is not competent to perform through training or experience.

Amended by Chapter 159, 1998 General Session

58-47b-503 Penalties.

(1) Except as provided in Subsection (2), any individual who commits an act of unlawful conduct under Section 58-47b-501 is guilty of a class A misdemeanor.
(2) Sexual conduct that violates Section 58-47b-501 and Title 76, Utah Criminal Code, shall be subject to the applicable penalties in Title 76, Utah Criminal Code.

Amended by Chapter 309, 2000 General Session

Chapter 49
Dietitian Certification Act

58-49-1 Short title.
This chapter is known as the "Dietitian Certification Act."

Enacted by Chapter 192, 1986 General Session

58-49-2 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Dietitian Board created in Section 58-49-3.
(2) "Certified dietitian" means a person who is certified by the division as meeting the certification requirements provided in this chapter.
(3) "Commission on Dietetic Registration" means the credentialing component of the American Dietetic Association.
(4) "Dietetics" means the integration and application of principles derived from the sciences of food for the development, management, and provision of dietary services for individuals and groups for meeting their health care needs. "Dietetics" includes:
(a) the evaluation of a person's dietary status;
(b) the advising and education of persons on dietary needs; and
(c) the evaluation of needs, implementation of systems to support needs, and maintenance of appropriate standards of quality in food and dietary service for individuals, groups, or patients in licensed institutional facilities or in private office settings.
(5) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes failing to maintain a level of professional practice consistent with all initial and subsequent requirements by which certification is achieved or maintained under this chapter.

Amended by Chapter 297, 1993 General Session

58-49-3 Board created -- Duties.
(1) There is created the Dietitian Board consisting of four certified dietitians and one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-49-4 Qualifications for certification -- Fee.
Each applicant for certification under this chapter shall provide proof satisfactory to the division that the applicant:
(1) is of good moral character as it relates to the practice of dietetics;

(2) holds a baccalaureate or post-baccalaureate degree conferred by a college or university approved by the division at the time the degree was conferred with a major course of study in the sciences of food, dietetics, food systems management, or an equivalent major course of study;
(3) has completed an internship or preplanned professional baccalaureate or post-baccalaureate experience in a dietetic program under the supervision of a certified dietitian who is certified under this chapter or certified, registered, or licensed under the laws of another state or territory of the United States;
(4) has satisfactorily passed a competency examination, approved by or given at the direction of the board in collaboration with the division; and
(5) has paid the appropriate fees determined by the Department of Commerce. The fee assessed by the Department of Commerce shall be fair and reasonable and shall reflect the cost of services provided.

Amended by Chapter 225, 1989 General Session

58-49-5 Certification of persons currently qualified.

The requirements of Subsections 58-49-4(2), (3), and (4) are waived and a certificate shall be issued by the division upon application and payment of the appropriate fees by any person who, prior to December 31, 1986, has provided to the division proof that on May 1, 1985, he was and is currently registered by the Commission on Dietetic Registration.

Enacted by Chapter 192, 1986 General Session

58-49-6 Certification of persons qualified in other jurisdictions.

Upon receipt of an application and application fee, and upon the recommendation of the board, the division may waive the examination requirement for an applicant who, at the time of application:
(1) holds a valid dietitian license or certificate issued by another state or territory of the United States, provided his qualifications meet the requirements of this chapter; or
(2) is registered by the Commission on Dietetic Registration.

Enacted by Chapter 192, 1986 General Session

58-49-7 Certificates -- Display -- Surrender.

(1) Any person who meets the certification qualifications of this chapter shall receive a certificate stating that he has met these qualifications.
(2) Each certified dietitian shall:
  (a) display the certificate in an appropriate, conspicuous, and public manner; and
  (b) keep the division informed of his current address.
(3) A certificate issued by the division is the property of the division and shall be surrendered on demand.

Enacted by Chapter 192, 1986 General Session

58-49-8 Term of license -- Expiration -- Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-49-9 Use of titles by uncertified person.

No person, without first being certified under this chapter may:
(1) assume or use the title or designation "dietitian," "dietician," "certified dietitian," the letters "C.D.," the letter "D," or any other title, words, letters, abbreviations, or insignia indicating or implying that the person is a certified dietitian; or
(2) represent in any way, whether orally, in writing, in print, or by signature, directly or by implication, that he is a certified dietitian.

Enacted by Chapter 192, 1986 General Session

58-49-10 Violation -- Misdemeanor.

The violation of any provision of this chapter is a class B misdemeanor.

Enacted by Chapter 192, 1986 General Session

58-49-11 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Enacted by Chapter 297, 1993 General Session

Chapter 50
Private Probation Provider Licensing Act

58-50-1 Short title.

This chapter shall be known as the "Private Probation Provider Licensing Act."

Enacted by Chapter 124, 1990 General Session

58-50-2 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Private Probation Provider Licensing Board created in Section 58-50-3.
(2) "Court" means the particular court which orders probation in a case.
(3) "Private probation" means the preparation of presentence investigation reports and the performance of supervision services by a private probation provider and funded by a court-ordered fee, to be paid by the defendant, pursuant to Section 77-18-1.

(4)
(a) "Private probation provider" means any private individual preparing presentence investigation reports or providing probation supervision pursuant to court order under Section 77-18-1 and who is licensed under this chapter, and whose services are limited to minor offenses and misdemeanor violations.
(b) A private probation provider does not have the authority of a peace officer.
(5) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:
(a) failure to disclose any financial or personal interest or prior relationship with parties that affects the private probation provider's impartiality or otherwise constitutes a conflict of interest;
(b) providing contract probation services when any financial or personal interest or prior relationship with parties affects the private probation provider's impartiality or otherwise constitutes an actual conflict of interest;
(c) failure to clearly define to the offender the services provided by the private probation provider, the rules of conduct, the criteria used, and the fees charged;
(d) failure to provide adequate supervision, or supervision as ordered by the court, as determined by the division in collaboration with the board; and
(e) failure to comply with the standards specified in Section 58-50-9.

Amended by Chapter 196, 2006 General Session

58-50-3 Board -- Membership -- Duties.
(1) There is created the Private Probation Provider Licensing Board. The board shall consist of five members as follows:
(a) one member representing the administrative office of the courts;
(b) one member representing the Department of Corrections;
(c) two members licensed as private probation providers; and
(d) one member from the general public.
(2) The board shall be appointed by the governor and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Amended by Chapter 297, 1993 General Session

58-50-4 License required -- License classifications.
(1) An individual may not engage in practice as a private probation provider unless licensed or exempted from licensure under this chapter.
(2) The division shall issue to a person qualified for licensure under the provisions of this chapter a license as a private probation provider.

Amended by Chapter 297, 1993 General Session

58-50-5 Qualifications for licensure.
An applicant for licensure as a private probation provider shall:
(1) have a baccalaureate degree in a program approved by the division in collaboration with the board or have a combination of equivalent education and training as determined by the division in collaboration with the board;

(2) submit evidence that a business license to engage in private probation has been issued by the political subdivision of the state in which the applicant intends to establish his business office or offices; and
(3) apply for licensure and pay the required fees.

Amended by Chapter 120, 1991 General Session

58-50-6 Term of license -- Expiration -- Renewal.
(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
(2) At the time of renewal the licensee shall show satisfactory evidence of completion of continuing education as required under this chapter.
(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-50-7 Grounds for denial of license -- Disciplinary proceedings.
Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-50-9 Standards of conduct for private probation providers.
The private probation provider:
(1) shall maintain impartiality toward all parties;
(2) shall ensure that all parties understand the nature of the process, the procedure, the particular role of the private probation provider, and the parties' relationship to the private probation provider;
(3) shall maintain confidentiality or, in cases where confidentiality is not protected, the private probation provider shall so advise the parties;
(4) shall disclose any circumstance that may create or give the appearance of a conflict of interest and any circumstance that may reasonably raise a question as to the private probation provider's impartiality; if the contract probation supervisor perceives or believes a conflict of interest to exist, the contract probation supervisor shall refrain from entering into those probation services;
(5) shall adhere to the standards regarding private probation services adopted by the licensing board;
(6) shall comply with orders of court and perform services as directed by judges in individual cases;
(7) shall perform duties established under Section 77-18-1, as ordered by the court.

Amended by Chapter 20, 1995 General Session
Amended by Chapter 352, 1995 General Session

58-50-10 Exceptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in probation supervision services subject to the stated circumstances and limitations without being licensed under this chapter:
(1) employees of the Department of Corrections while performing probation services as part of their normal duties and responsibilities;
(2) members of the armed forces and employees, agents, or representatives of the federal government while acting in their official capacity; and
(3) agencies of local government, pursuant to Section 77-18-1.

Amended by Chapter 20, 1995 General Session
Amended by Chapter 352, 1995 General Session

Chapter 53
Landscape Architects Licensing Act

Part 1
General Provisions

58-53-101 Title.
This chapter is known as the "Landscape Architects Licensing Act."

Renumbered and Amended by Chapter 191, 1998 General Session

58-53-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Landscape Architects Board created in Section 58-53-201.
(2) "Fund" means the Landscape Architects Education and Enforcement Fund created in Section 58-53-103.
(3) "Practice of landscape architecture" means rendering or offering to render any of the following services:
(a) production of a site plan which may include the design of any of the following:
(i) sprinkler irrigation systems;
(ii) landscape grading and drainage plans; or
(iii) parking lots;
(b) design of any of the following structures incidental to the production of a site plan:
(i) retaining walls; or
(ii) raised platforms, decks, and walkways;
(c) design of any of the following structures incidental to the production of a site plan when the structure does not exceed 1,000 square feet:
(i) covered pavilions;
(ii) gazebos;
(iii) restrooms;
(iv) storage and maintenance facilities; or
(v) other accessory structures; or

(d) collaboration with architects and professional engineers in the design of roads, bridges, buildings, and structures with respect to the functional and aesthetic requirements of the area in which they are to be placed.
(4) "Principal" means a licensed landscape architect having responsible charge of a landscape architectural practice.
(5) "Supervision" with respect to the supervision of an employee of a landscape architect, means that a licensed landscape architect is responsible for and personally reviews, corrects when necessary, and approves work performed by any employee under the direction of the landscape architect, and may be further defined by rule of the division in collaboration with the board.
(6) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-53-501.
(7) "Unprofessional conduct" is as defined in Section 58-1-501 and as may be further defined by rule of the division in collaboration with the board.

Renumbered and Amended by Chapter 191, 1998 General Session

58-53-103 Education and enforcement fund.
(1) There is created an expendable special revenue fund known as the "Landscape Architects Education and Enforcement Fund."
(2) The fund consists of money from:
(a) a surcharge placed on application fees for initial, renewal, and reinstatement licensure under this chapter, in an amount established by the division with the collaboration of the board in accordance with Section 63J-1-504, not to exceed 50% of the respective fee; and
(b) administrative penalties collected pursuant to this chapter.
(3) The fund shall earn interest, and all interest earned on fund money shall be deposited into the fund.
(4) The director may, with concurrence of the board, make distributions from the fund for the following purposes:
(a) education and training of licensees under this chapter;
(b) education and training of the public or other interested persons in matters concerning landscape architectural laws and practices; and
(c) enforcement of this chapter by:
(i) investigating unprofessional or unlawful conduct; and
(ii) providing legal representation to the division when the division takes legal action against a person engaging in unprofessional or unlawful conduct.
(5) If the balance in the fund exceeds $100,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.
(6) The division shall report annually to the appropriate appropriations subcommittee of the Legislature concerning the fund.

Amended by Chapter 400, 2013 General Session

Part 2
Board

58-53-201 Creation of board -- Duties.

(1) There is created the Landscape Architects Board consisting of four landscape architects and one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
(4) The board shall designate one of its member on a permanent or rotating basis to:
  (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
  (b) advise the division in its investigation of these complaints.
(5) A board member who has, under Subsection (4), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Renumbered and Amended by Chapter 191, 1998 General Session

Part 3
Licensing

58-53-301 Licensure required--License classification.
(1) A license is required to engage in the practice of landscape architecture except as specifically provided in Section 58-1-307 or 58-53-304.
(2) The division shall issue a license under this chapter to a qualified person in the classification of landscape architecture.

Enacted by Chapter 191, 1998 General Session

58-53-302 Qualifications for licensure.
(1) Each applicant for licensure as a landscape architect shall:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee as determined by the department under Section 63J-1-504;
  (c) provide satisfactory evidence of good moral character;
  (d)
    (i) have graduated and received an earned bachelors or masters degree from a landscape architecture program meeting criteria established by rule by the division in collaboration with the board; or
    (ii) have completed not less than eight years of supervised practical experience in landscape architecture which meets the requirements established by rule by the division in collaboration with the board; and
  (e) have successfully passed examinations established by rule by the division in collaboration with the board.
(2) Satisfactory completion of each year of a landscape architectural program described in Subsection (1)(d)(i) is equivalent to one year of experience for purposes of Subsection (1)(d)(ii).

Amended by Chapter 183, 2009 General Session

58-53-303 Term of license -- Expiration -- Renewal.

(1)
(a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule.
(b) The division may by renewal extend or shorten a license expiration date by as much as one year to stagger the renewal cycles it administers.
(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.
(3) Each person holding a current license issued under this chapter shall complete in each period of licensure a program of qualifying continuing professional education in accordance with standards defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 263, 2011 General Session

58-53-304 Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following may engage in the stated limited acts or practices without being licensed under this chapter:
(1) a person preparing a site plan as defined in Subsection 58-53-102(3), for a one-, two-, three-, or four-family residence not exceeding two stories in height, exclusive of the basement;
(2) a person designing sprinkler irrigation systems when licensed as a landscape contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act;
(3) a person licensed to practice professional engineering or professional structural engineering under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
(4) a person licensed to practice architecture under Title 58, Chapter 3a, Architects Licensing Act;
(5) unlicensed employees of a person licensed under this chapter while preparing site plans as defined in Subsection 58-53-102(3), under the supervision of a landscape architect; and
(6) an organization engaged in the practice of landscape architecture, provided that:
(a) the organization employs a principal; and
(b) all individuals employed by the organization, who are engaged in the practice of landscape architecture, are licensed or exempt from licensure under this chapter.

Renumbered and Amended by Chapter 191, 1998 General Session

Part 4
License Denial and Discipline

58-53-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing cease and desist orders shall be in accordance with Section 58-1-401.

Renumbered and Amended by Chapter 191, 1998 General Session

Part 5
Unlawful Conduct - Penalties

58-53-501 Unlawful conduct.

"Unlawful conduct" includes:

(1) using the title landscape architect or any other description, words, letters, or abbreviation indicating that the person is a landscape architect if the person has not been licensed under this chapter; and

(2) engaging in or representing oneself as engaging in the practice of landscape architecture as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure under Section 58-1-307 or 58-53-304.

Enacted by Chapter 191, 1998 General Session

58-53-502 Citations -- Penalty for unlawful conduct.

(1)

(a) If upon inspection or investigation, the division concludes that a person has violated Subsections 58-1-501(1)(a) through (d), Section 58-53-501, or Section 58-53-603 or any rule or order issued with respect to Section 58-53-501, and that disciplinary action is appropriate, the director or the director's designee from within the division for each alternative respectively, shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-53-501 or any rule or order issued with respect to Section 58-53-501, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to Subsection (1)(i) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section 58-53-501 or any rule or order issued with respect to Section 58-53-501.

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-53-401 may not be assessed through a citation.

(b) A citation shall:

(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon any person whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the person's agent by a division investigator or by any person specially designated by the director or by mail.

(e) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.
(f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.
(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.
(i) The director or the director's designee shall assess fines according to the following:
(i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to $1,000;
(ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to $2,000; and
(iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to $2,000 for each day of continued offense.
(2) An action initiated for a first or second offense which has not yet resulted in a final order of the division does not preclude initiation of any subsequent action for a second or subsequent offense during the pendency of any preceding action. The final order on a subsequent action shall be considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.
(3) Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state shall provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded to the division.

Amended by Chapter 382, 2008 General Session

Part 6
Seals

58-53-601 Seal -- Design and implementation.
Every landscape architect shall have a seal, the design and implementation of which shall be established by rule by the division in collaboration with the board.

Enacted by Chapter 191, 1998 General Session

58-53-602 Site plans to be sealed.
(1) Any site plan prepared in this state shall bear the seal of a landscape architect licensed under this chapter, except as provided in Section 58-53-304, in Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, in Title 58, Chapter 3a, Architects Licensing Act, or by the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(2) Any final site plan prepared by or under the supervision of the licensed landscape architect shall bear the seal of the landscape architect when submitted to a client, or when submitted to a building official for the purpose of obtaining a building permit, even if the practice is exempt from licensure under Section 58-53-304.

Amended by Chapter 14, 2011 General Session

58-53-603 Seal -- Authorized use.

A landscape architect may only affix the landscape architect's seal to a site plan when the site plan:

(1) was personally prepared by the landscape architect;

(2) was prepared by an employee, subordinate, associate, or drafter under the supervision of a licensee, provided the licensee or a principal affixing the seal assumes responsibility;

(3) was prepared by a licensed landscape architect in this state or any other state provided that the licensee in this state affixing the seal:

(a) performs a thorough review of all work for compliance with all applicable laws and rules and the standards of the profession; and

(b) makes any necessary corrections before submitting the final site plan:

(i) to a building official for the purpose of obtaining a building permit; or

(ii) to a client who has contracted with a landscape architect for the production of a site plan, when the landscape architect represents, or could reasonably expect the client to consider, the site plan to be complete and final;

(4) was prepared by a person exempt from licensure as a landscape architect, provided that the licensee in this state affixing the seal:

(a) performs a thorough review for compliance with all applicable laws and rules and the standards of the profession; and

(b) makes any necessary corrections before submitting the final site plan:

(i) to a building official for the purpose of obtaining a building permit; or

(ii) to a client who has contracted with a landscape architect for the production of a site plan, when the landscape architect represents, or could reasonably expect the client to consider, the site plan to be complete and final; or

(5) meets any additional requirements established by rule by the division in collaboration with the board.

Enacted by Chapter 191, 1998 General Session

Chapter 54
Radiologic Technologist, Radiologistassistant, and Radiology Practical Technician Licensing Act

Part 1
General Provisions

58-54-101 Title.

This chapter is known as the "Radiologic Technologist, Radiologist Assistant, and Radiology Practical Technician Licensing Act."

Renumbered and Amended by Chapter 61, 2011 General Session

58-54-102 Definitions.

In addition to the definition in Section 58-1-102, as used in this chapter:

(1) "Board" means the Radiologic Technologist Licensing Board established under this chapter.

(2) "Critical access hospital" means a hospital in a rural or medically underserved area that is recognized by the Centers for Medicare and Medicaid Services as meeting the conditions of participation specified in 42 C.F.R. 485.601-647.

(3) "General supervision" means the supervising radiologist is available to provide immediate communication with the supervised person and is aware of the procedure before it is performed.

(4) "Indirect supervision" means the supervising radiologist:

(a) has given either written or verbal instructions to the person being supervised;

(b) is present in the facility in which the person being supervised is providing services; and

(c) is available to provide immediate face-to-face communications with the person being supervised.

(5) "Practice of radiologic technology" means using radiation from a radioactive substance, radiology equipment, or any other source, in amounts beyond normal background levels, for diagnostic or therapeutic purposes on humans.

(6) "Practice of radiologist assistant" means the performance of non-invasive and minimally invasive radiological procedures:

(a) delegated to a radiologist assistant by a radiologist; and

(b) performed under the indirect supervision of a radiologist.

(7) "Radiologic technologist" means a person licensed under this chapter to engage in the practice of radiologic technology under the general supervision of a radiologist or radiology practitioner including the administration of parenteral contrast media, radionuclides, and other medications incidental to radiology procedures provided the administrations are under the direct supervision of a qualified physician and the technologist is currently certified in cardiopulmonary resuscitation (CPR) and appropriate patient care procedures.

(8) "Radiologist" means a physician certified by the American Board of Radiology, the American Osteopathic Board of Radiology, the British Royal College of Radiology, or the Canadian College of Physicians and Surgeons.

(9) "Radiologist assistant" means a person licensed under this chapter to engage in the practice of a radiologist assistant.

(10) "Radiology equipment" means any medical radiation device that emits ionizing or nonionizing radiation or detects that radiation for the purpose or intended purpose of:

(a) diagnosing disease or other medical conditions in humans; or

(b) treating, curing, mitigating, or preventing disease in humans.

(11) "Radiology practical technician" means a person licensed under this chapter to engage in a practice of radiologic technology performing limited diagnostic radiology procedures:

(a) as defined and permitted by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) under the supervision of a radiologist or radiology practitioner.

(12) "Radiology practitioner" means any person or individual licensed in this state as a physician and surgeon, osteopathic physician, podiatric physician, chiropractic physician, dentist, dental

hygienist, or a physician's assistant, nurse practitioner, or nurse specialist practicing under the supervision of an approved supervising physician and in accordance with an approved protocol and utilization plan.
(13) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-54-501.
(14) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-54-501 and as may be further defined by administrative rule adopted by the division.

Amended by Chapter 387, 2013 General Session

Part 2
Board

58-54-201 Board created -- Membership -- Duties.
(1) There is created a Radiologic Technologist Licensing Board consisting of nine members as follows:
(a) three licensed radiologic technologists;
(b) one licensed radiology practical technician;
(c) one licensed radiologist assistant;
(d) two radiologists;
(e) one physician licensed under this title who is not a radiologist, and who uses radiologic services in the physician's practice; and
(f) one member from the general public.
(2) The board shall be appointed in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
(4) In accordance with Subsection 58-1-203(1)(f), there is established an advisory peer committee to the board consisting of eight members broadly representative of the state and including:
(a) one licensed physician and surgeon who is not a radiologist and who uses radiology equipment in a rural office-based practice, appointed from among recommendations of the Physicians Licensing Board;
(b) one licensed physician and surgeon who is not a radiologist and who uses radiology equipment in an urban office-based practice, appointed from among recommendations of the Physicians Licensing Board;
(c) one licensed physician and surgeon who is a radiologist practicing in radiology, appointed from among recommendations of the Physicians Licensing Board;
(d) one licensed osteopathic physician, appointed from among recommendations of the Osteopathic Physicians Licensing Board;
(e) one licensed chiropractic physician, appointed from among recommendations of the Chiropractors Licensing Board;
(f) one licensed podiatric physician, appointed from among recommendations of the Podiatric Physician Board;
(g) one representative of the state agency with primary responsibility for regulation of sources of radiation, recommended by that agency; and
(h) one representative of a general acute hospital, as defined in Section 26-21-2, that is located in a rural area of the state.
(5)

(a) Except as required by Subsection (5)(b), members of the advisory peer committee shall be appointed to four-year terms by the director in collaboration with the board from among the recommendations.
(b) Notwithstanding the requirements of Subsection (5)(a), the director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.
(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(7) The duties, responsibilities, and scope of authority of the advisory peer committee are:
(a) to advise the board with respect to the board's fulfillment of its duties, functions, and responsibilities under Sections 58-1-202 and 58-1-203; and
(b) to advise the division with respect to the examination the division is to adopt by rule, by which a radiology practical technician may qualify for licensure under Section 58-54-302.

Renumbered and Amended by Chapter 61, 2011 General Session

Part 3
Licensing

58-54-301 License required.
(1) An individual may not engage in the practice of radiologic technology or the practice of a radiologist assistant unless licensed or exempted from licensure under this chapter.
(2) The division shall issue to persons qualified under this chapter a license in the classification of radiologic technologist, radiologist assistant, or radiology practical technician.
(3)
(a) A license shall be issued without regard to any area of practice specialty as a radiologic technologist.
(b) A license for a radiology practical technician may be issued certifying the practical technician for a specialty type or limited practice.

Renumbered and Amended by Chapter 61, 2011 General Session

58-54-302 Requirements for licensure.
(1) Each applicant for licensure as a radiologic technologist, radiology assistant, or radiology practical technician shall:
(a) submit an application in a form prescribed by the division in collaboration with the board;
(b) pay a fee as determined by the department pursuant to Section 63J-1-504; and
(c) be of good moral character.
(2) Each applicant for licensure as a radiologic technologist shall, in addition to the requirements of Subsection (1):

(a) be a graduate of an accredited educational program in radiologic technology or certified by the American Registry of Radiologic Technologists or any equivalent educational program approved by the division in collaboration with the board; and
(b) have passed an examination approved by the division in collaboration with the board.
(3) Each applicant for licensure as a radiology practical technician shall, in addition to the requirements of Subsection (1), have passed a basic examination and one or more specialty examinations that are competency based, using a task analysis of the scope of practice of radiology practical technicians in the state. The basic examination and the specialty examination shall be approved by the division in collaboration with the board and the licensing board of the profession within which the radiology practical technician will be practicing.
(4) The division shall provide for administration of the radiology practical technician examination not less than monthly at offices designated by the division and located:
(a) in Salt Lake City; and
(b) within each local health department jurisdictional area.
(5)
(a) Except as provided in Subsection (5)(b), each applicant for licensure as a radiologist assistant shall:
(i) meet the requirements of Subsections (1) and (2);
(ii) have a Bachelor of Science degree; and
(iii) be certified as:
(A) a radiologist assistant by the American Registry of Radiologic Technologists; or
(B) a radiology practitioner assistant by the Certification Board of Radiology Practitioner Assistants.
(b) An individual who meets the requirements of Subsections (5)(a)(i) and (iii), but not Subsection (5)(a)(ii), may be licensed as a radiologist assistant under this chapter until May 31, 2013, at which time, the individual must have completed the Bachelor of Science degree in order to retain the license of radiologist assistant.

Amended by Chapter 369, 2012 General Session

58-54-303 Supervision and prescription required.

The practice of radiologic technology by a radiologic technologist licensed under this chapter shall be under the general supervision of a radiologist or radiology practitioner and may be performed only upon the order of a radiologist or radiology practitioner acting within the scope of the radiologist's or radiology practitioner's license and experience within the scope of practice of a radiology practitioner.

Renumbered and Amended by Chapter 61, 2011 General Session

58-54-304 Scope of practice for radiologist assistant.

(1) The scope of practice for a radiologist assistant includes:
(a) determination of whether a patient has been appropriately prepared for the radiologic procedure;
(b) assessment and evaluation of the physiologic responsiveness of a patient undergoing a radiologic procedure;
(c) assessment and evaluation of possible contraindications to a procedure;

(d) obtaining informed consent from the patient as specified by a Delegation of Services Agreement between the radiologic assistant and the supervising radiologist in accordance with Subsection (2);
(e) evaluation of image quality and communication of initial image observations only to the supervising radiologist;
(f) administration of contrast media or other medications prescribed by the supervising radiologist;
(g) performance of radiologic procedures under the indirect supervision of a radiologist; and
(h) performance of radiologic procedures under the general supervision of a radiologist only if:
(i) the radiologist assistant is practicing in a critical access hospital; and
(ii) the supervising radiologist has the necessary privileges for the procedure to be performed by the radiologist assistant.
(2) The radiologist assistant and supervising radiologist shall enter into a Delegation of Services Agreement identifying radiologic procedures to be performed by the radiologist assistant and establishing a regular review process by the supervising radiologist for all work performed by and records kept by the radiologist assistant. The Delegation of Services Agreement shall:
(a) be kept at the place of practice at which the radiologist assistant is performing delegated services; and
(b) be consistent with radiologist assistant practice guidelines developed by the American College of Radiology, as supplemented by recognized radiology organizations such as the American Society of Radiologic Technologists and the American Registry of Radiologic Technologists.
(3) The radiologist assistant shall not interpret images, provide diagnosis, or prescribe medications or therapies.

Amended by Chapter 387, 2013 General Session

58-54-305 Term of license -- Expiration -- Renewal.
(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
(2) At the time of renewal, licensees shall show satisfactory evidence of each of the following renewal requirements:
(a) 24 hours of approved professional education during a two-year period, as defined by administrative rule, before renewal of a radiologic technologist license;
(b) 10 hours of approved professional education during a two-year period, as defined by administrative rule, before renewal of a radiology practical technician license; and
(c) 50 hours of approved professional education during a two-year period, as defined by administrative rule, before renewal of a radiologist assistant license.
(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Amended by Chapter 369, 2012 General Session

58-54-306 Exemption from licensure.
A person may engage in the practice of radiologic technology without being licensed under this chapter if:
(1)

(a) the person is filling a new or existing position as an employee performing the duties of a radiology practical technician when a licensed radiology practical technician is not available to begin in the new position or continue filling the existing position;
(b) the total period in which the position is filled by the unlicensed person is not more than 90 days;
(c) the unlicensed person at all times performs services as a radiology practical technician under the direct on-premises supervision of a radiology practitioner; and
(d) the employee position filled by an unlicensed person under this section is an existing position and was filled by a person licensed under this chapter immediately prior to employment of the unlicensed person;
(2) the person:
(a) performs services in a dental facility under the supervision of a dentist licensed to practice in this state; and
(b) has completed a radiology course approved by the Dentists and Dental Hygienists Board created under Section 58-69-201; or
(3) the person:
(a) performs services in a medical facility under the supervision of a podiatric physician licensed to practice in this state; and
(b) has completed a radiology course approved by the Podiatric Physician Board created under Section 58-5a-201.

Renumbered and Amended by Chapter 61, 2011 General Session

Part 4
License Denial and Discipline

58-54-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Renumbered and Amended by Chapter 61, 2011 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-54-501 Unlawful and unprofessional conduct.

(1) "Unlawful conduct" includes:
(a) using any of the following titles if not licensed as a radiology technologist under this chapter:
(i) radiology practical technician;
(ii) radiologic technologist;
(iii) medical radiographer;
(iv) radiation therapist; or
(v) nuclear medicine technologist;

(b) using the title "radiology practical technician" if not licensed as a radiology practical technician under this chapter; and
(c) using the title "radiologist assistant" if not licensed as a radiologist assistant under this chapter.
(2) "Unprofessional conduct" includes:
(a) any act or omission by a person licensed under this chapter that is contrary to the instructions of the radiologist or radiology practitioner responsible for supervising the licensee and which does or reasonably could pose a threat to the health, safety, or welfare of a patient or any other person;
(b) operating any radiology equipment that is known to be unsafe or not in compliance with all applicable state requirements regulating radiology equipment;
(c) permitting any person to operate any radiology equipment who is not permitted to do so under provisions of law or who is incompetent to operate radiology equipment for any reason;
(d) revealing to any unauthorized person any information considered confidential or privileged regarding any patient;
(e) the use of any controlled substance as defined by the statutes of this state except to the extent the controlled substance is lawfully prescribed to the licensee and used in accordance with the instructions of the prescribing practitioner; and
(f) willfully and intentionally or negligently making any false statement or entry on any patient record or upon any record used to facilitate payment for radiology services.

Enacted by Chapter 61, 2011 General Session

Chapter 55
Utah Construction Trades Licensing Act

Part 1
General Provisions

58-55-101 Short title.
This chapter is known as the "Utah Construction Trades Licensing Act."

Renumbered and Amended by Chapter 181, 1994 General Session

58-55-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1)
(a) "Alarm business or company" means a person engaged in the sale, installation, maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system, except as provided in Subsection (1)(b).
(b) "Alarm business or company" does not include:
(i) a person engaged in the manufacture or sale of alarm systems unless:
(A) that person is also engaged in the installation, maintenance, alteration, repair, replacement, servicing, or monitoring of alarm systems;

(B) the manufacture or sale occurs at a location other than a place of business established by the person engaged in the manufacture or sale; or
(C) the manufacture or sale involves site visits at the place or intended place of installation of an alarm system; or
(ii) an owner of an alarm system, or an employee of the owner of an alarm system who is engaged in installation, maintenance, alteration, repair, replacement, servicing, or monitoring of the alarm system owned by that owner.
(2) "Alarm company agent":
(a) except as provided in Subsection (2)(b), means any individual employed within this state by an alarm business; and
(b) does not include an individual who:
(i) is not engaged in the sale, installation, maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system; and
(ii) does not, during the normal course of the individual's employment with an alarm business, use or have access to sensitive alarm system information.
(3) "Alarm system" means equipment and devices assembled for the purpose of:
(a) detecting and signaling unauthorized intrusion or entry into or onto certain premises; or
(b) signaling a robbery or attempted robbery on protected premises.
(4) "Apprentice electrician" means a person licensed under this chapter as an apprentice electrician who is learning the electrical trade under the immediate supervision of a master electrician, residential master electrician, a journeyman electrician, or a residential journeyman electrician.
(5) "Apprentice plumber" means a person licensed under this chapter as an apprentice plumber who is learning the plumbing trade under the immediate supervision of a master plumber, residential master plumber, journeyman plumber, or a residential journeyman plumber.
(6) "Approved continuing education" means instruction provided through courses under a program established under Subsection 58-55-302.5(2).
(7) "Board" means the Electrician Licensing Board, Alarm System Security and Licensing Board, or Plumbers Licensing Board created in Section 58-55-201.
(8) "Combustion system" means an assembly consisting of:
(a) piping and components with a means for conveying, either continuously or intermittently, natural gas from the outlet of the natural gas provider's meter to the burner of the appliance;
(b) the electric control and combustion air supply and venting systems, including air ducts; and
(c) components intended to achieve control of quantity, flow, and pressure.
(9) "Commission" means the Construction Services Commission created under Section 58-55-103.
(10) "Construction trade" means any trade or occupation involving:
(a)
(i) construction, alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation or other project, development, or improvement to other than personal property; and
(ii) constructing, remodeling, or repairing a manufactured home or mobile home as defined in Section 15A-1-302; or
(b) installation or repair of a residential or commercial natural gas appliance or combustion system.
(11) "Construction trades instructor" means a person licensed under this chapter to teach one or more construction trades in both a classroom and project environment, where a project is intended for sale to or use by the public and is completed under the direction of the instructor, who has no economic interest in the project.

(12)
(a) "Contractor" means any person who for compensation other than wages as an employee undertakes any work in the construction, plumbing, or electrical trade for which licensure is required under this chapter and includes:
(i) a person who builds any structure on the person's own property for the purpose of sale or who builds any structure intended for public use on the person's own property;
(ii) any person who represents that the person is a contractor, or will perform a service described in this Subsection (12), by advertising on a website or social media, or any other means;
(iii) any person engaged as a maintenance person, other than an employee, who regularly engages in activities set forth under the definition of "construction trade";
(iv) any person engaged in, or offering to engage in, any construction trade for which licensure is required under this chapter; or
(v) a construction manager, construction consultant, construction assistant, or any other person who, for a fee:
(A) performs or offers to perform construction consulting;
(B) performs or offers to perform management of construction subcontractors;
(C) provides or offers to provide a list of subcontractors or suppliers; or
(D) provides or offers to provide management or counseling services on a construction project.
(b) "Contractor" does not include:
(i) an alarm company or alarm company agent; or
(ii) a material supplier who provides consulting to customers regarding the design and installation of the material supplier's products.
(13)
(a) "Electrical trade" means the performance of any electrical work involved in the installation, construction, alteration, change, repair, removal, or maintenance of facilities, buildings, or appendages or appurtenances.
(b) "Electrical trade" does not include:
(i) transporting or handling electrical materials;
(ii) preparing clearance for raceways for wiring; or
(iii) work commonly done by unskilled labor on any installations under the exclusive control of electrical utilities.
(c) For purposes of Subsection (13)(b):
(i) no more than one unlicensed person may be so employed unless more than five licensed electricians are employed by the shop; and
(ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio permitted by this Subsection (13)(c).
(14) "Elevator" means the same as that term is defined in Section 34A-7-202, except that for purposes of this chapter it does not mean a stair chair, a vertical platform lift, or an incline platform lift.
(15) "Elevator contractor" means a sole proprietor, firm, or corporation licensed under this chapter that is engaged in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator.
(16) "Elevator mechanic" means an individual who is licensed under this chapter as an elevator mechanic and who is engaged in erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator under the immediate supervision of an elevator contractor.

(17) "Employee" means an individual as defined by the division by rule giving consideration to the definition adopted by the Internal Revenue Service and the Department of Workforce Services.
(18) "Engage in a construction trade" means to:
(a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged in a construction trade; or
(b) use the name "contractor" or "builder" or in any other way lead a reasonable person to believe one is or will act as a contractor.
(19)
(a) "Financial responsibility" means a demonstration of a current and expected future condition of financial solvency evidencing a reasonable expectation to the division and the board that an applicant or licensee can successfully engage in business as a contractor without jeopardy to the public health, safety, and welfare.
(b) Financial responsibility may be determined by an evaluation of the total history concerning the licensee or applicant including past, present, and expected condition and record of financial solvency and business conduct.
(20) "Gas appliance" means any device that uses natural gas to produce light, heat, power, steam, hot water, refrigeration, or air conditioning.
(21)
(a) "General building contractor" means a person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind or any of the components of that construction except plumbing, electrical work, mechanical work, work related to the operating integrity of an elevator, and manufactured housing installation, for which the general building contractor shall employ the services of a contractor licensed in the particular specialty, except that a general building contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.
(b) The division may by rule exclude general building contractors from engaging in the performance of other construction specialties in which there is represented a substantial risk to the public health, safety, and welfare, and for which a license is required unless that general building contractor holds a valid license in that specialty classification.
(22)
(a) "General engineering contractor" means a person licensed under this chapter as a general engineering contractor qualified by education, training, experience, and knowledge to perform construction of fixed works in any of the following: irrigation, drainage, water, power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants requiring specialized engineering knowledge and skill, piers, and foundations, or any of the components of those works.
(b) A general engineering contractor may not perform construction of structures built primarily for the support, shelter, and enclosure of persons, animals, and chattels.
(23) "Immediate supervision" means reasonable direction, oversight, inspection, and evaluation of the work of a person:
(a) as the division specifies in rule;
(b) by, as applicable, a qualified electrician or plumber;
(c) as part of a planned program of training; and
(d) to ensure that the end result complies with applicable standards.

(24) "Individual" means a natural person.
(25) "Journeyman electrician" means a person licensed under this chapter as a journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.
(26) "Journeyman plumber" means a person licensed under this chapter as a journeyman plumber having the qualifications, training, experience, and technical knowledge to engage in the plumbing trade.
(27) "Master electrician" means a person licensed under this chapter as a master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes.
(28) "Master plumber" means a person licensed under this chapter as a master plumber having the qualifications, training, experience, and knowledge to properly plan and layout projects and supervise persons in the plumbing trade.
(29) "Person" means a natural person, sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.
(30)
(a) "Plumbing trade" means the performance of any mechanical work pertaining to the installation, alteration, change, repair, removal, maintenance, or use in buildings, or within three feet beyond the outside walls of buildings of pipes, fixtures, and fittings for:
(i) delivery of the water supply;
(ii) discharge of liquid and water carried waste; or
(iii) the building drainage system within the walls of the building.
(b) "Plumbing trade" includes work pertaining to the water supply, distribution pipes, fixtures and fixture traps, soil, waste and vent pipes, and the building drain and roof drains together with their devices, appurtenances, and connections where installed within the outside walls of the building.
(31)
(a) "Ratio of apprentices" means, for the purpose of determining compliance with the requirements for planned programs of training and electrician apprentice licensing applications, the shop ratio of apprentice electricians to journeyman or master electricians shall be one journeyman or master electrician to one apprentice on industrial and commercial work, and one journeyman or master electrician to three apprentices on residential work.
(b) On-the-job training shall be under circumstances in which the ratio of apprentices to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to three apprentices to one supervisor on residential projects.
(32) "Residential and small commercial contractor" means a person licensed under this chapter as a residential and small commercial contractor qualified by education, training, experience, and knowledge to perform or superintend the construction of single-family residences, multifamily residences up to four units, and commercial construction of not more than three stories above ground and not more than 20,000 square feet, or any of the components of that construction except plumbing, electrical work, mechanical work, and manufactured housing installation, for which the residential and small commercial contractor shall employ the services of a contractor licensed in the particular specialty, except that a residential and small commercial contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

(33) "Residential building," as it relates to the license classification of residential journeyman plumber and residential master plumber, means a single or multiple family dwelling of up to four units.
(34) "Residential journeyman electrician" means a person licensed under this chapter as a residential journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes on buildings using primarily nonmetallic sheath cable.
(35) "Residential journeyman plumber" means a person licensed under this chapter as a residential journeyman plumber having the qualifications, training, experience, and knowledge to engage in the plumbing trade as limited to the plumbing of residential buildings.
(36) "Residential master electrician" means a person licensed under this chapter as a residential master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes on residential projects.
(37) "Residential master plumber" means a person licensed under this chapter as a residential master plumber having the qualifications, training, experience, and knowledge to properly plan and layout projects and supervise persons in the plumbing trade as limited to the plumbing of residential buildings.
(38) "Residential project," as it relates to an electrician or electrical contractor, means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard rules and regulations governing this work, including the National Electrical Code, and in which the voltage does not exceed 250 volts line to line and 125 volts to ground.
(39) "Sensitive alarm system information" means:
(a) a pass code or other code used in the operation of an alarm system;
(b) information on the location of alarm system components at the premises of a customer of the alarm business providing the alarm system;
(c) information that would allow the circumvention, bypass, deactivation, or other compromise of an alarm system of a customer of the alarm business providing the alarm system; and
(d) any other similar information that the division by rule determines to be information that an individual employed by an alarm business should use or have access to only if the individual is licensed as provided in this chapter.
(40)
(a) "Specialty contractor" means a person licensed under this chapter under a specialty contractor classification established by rule, who is qualified by education, training, experience, and knowledge to perform those construction trades and crafts requiring specialized skill, the regulation of which are determined by the division to be in the best interest of the public health, safety, and welfare.
(b) A specialty contractor may perform work in crafts or trades other than those in which the specialty contractor is licensed if they are incidental to the performance of the specialty contractor's licensed craft or trade.
(41) "Unincorporated entity" means an entity that is not:
(a) an individual;
(b) a corporation; or
(c) publicly traded.
(42) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-55-501.
(43) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-55-502 and as may be further defined by rule.

(44) "Wages" means amounts due to an employee for labor or services whether the amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating the amount.

Amended by Chapter 268, 2016 General Session

58-55-103 Construction Services Commission created -- Functions -- Appointment -- Qualifications and terms of members -- Vacancies -- Expenses -- Meetings -- Concurrence.

(1)
- (a) There is created within the division the Construction Services Commission.
- (b) The commission shall:
  - (i) with the concurrence of the director, make reasonable rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer and enforce this chapter which are consistent with this chapter including:
    - (A) licensing of various licensees;
    - (B) examination requirements and administration of the examinations, to include approving and establishing a passing score for applicant examinations;
    - (C) standards of supervision for students or persons in training to become qualified to obtain a license in the trade they represent; and
    - (D) standards of conduct for various licensees;
  - (ii) approve or disapprove fees adopted by the division under Section 63J-1-504;
  - (iii) except where the boards conduct them, conduct all administrative hearings not delegated to an administrative law judge relating to the licensing of any applicant;
  - (iv) except as otherwise provided in Sections 38-11-207 and 58-55-503, with the concurrence of the director, impose sanctions against licensees and certificate holders with the same authority as the division under Section 58-1-401;
  - (v) advise the director on the administration and enforcement of any matters affecting the division and the construction industry;
  - (vi) advise the director on matters affecting the division budget;
  - (vii) advise and assist trade associations in conducting construction trade seminars and industry education and promotion; and
  - (viii) perform other duties as provided by this chapter.

(2)
- (a) Initially the commission shall be comprised of the five members of the Contractors Licensing Board and two of the three chair persons from the Plumbers Licensing Board, the Alarm System Security and Licensing Board, and the Electricians Licensing Board.
- (b) The terms of office of the commission members who are serving on the Contractors Licensing Board shall continue as they serve on the commission.
- (c) Beginning July 1, 2004, the commission shall be comprised of nine members appointed by the executive director with the approval of the governor from the following groups:
  - (i) one member shall be a licensed general engineering contractor;
  - (ii) one member shall be a licensed general building contractor;
  - (iii) two members shall be licensed residential and small commercial contractors;
  - (iv) three members shall be the three chair persons from the Plumbers Licensing Board, the Alarm System Security and Licensing Board, and the Electricians Licensing Board; and
  - (v) two members shall be from the general public, provided, however that the certified public accountant on the Contractors Licensing Board will continue to serve until the current term

expires, after which both members under this Subsection (2)(c)(v) shall be appointed from the general public.

(3)
- (a) Except as required by Subsection (3)(b), as terms of current commission members expire, the executive director with the approval of the governor shall appoint each new member or reappointed member to a four-year term ending June 30.
- (b) Notwithstanding the requirements of Subsection (3)(a), the executive director with the approval of the governor shall, at the time of appointment or reappointment, adjust the length of terms to stagger the terms of commission members so that approximately 1/2 of the commission members are appointed every two years.
- (c) A commission member may not serve more than two consecutive terms.

(4) The commission shall elect annually one of its members as chair, for a term of one year.

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7)
- (a) The commission shall meet at least monthly unless the director determines otherwise.
- (b) The director may call additional meetings at the director's discretion, upon the request of the chair, or upon the written request of four or more commission members.

(8)
- (a) Five members constitute a quorum for the transaction of business.
- (b) If a quorum is present when a vote is taken, the affirmative vote of commission members present is the act of the commission.

(9) The commission shall comply with the procedures and requirements of Title 13, Chapter 1, Department of Commerce, and Title 63G, Chapter 4, Administrative Procedures Act, in all of its adjudicative proceedings.

(10)
- (a) For purposes of this Subsection (10), "concurrence" means the entities given a concurring role must jointly agree for the action to be taken.
- (b) If a provision of this chapter requires concurrence between the director or division and the commission and no concurrence can be reached, the director or division has final authority.
- (c) When this chapter requires concurrence between the director or division and the commission:
  - (i) the director or division shall report to and update the commission on a regular basis related to matters requiring concurrence; and
  - (ii) the commission shall review the report submitted by the director or division under this Subsection (10)(c) and concur with the report, or:
    - (A) provide a reason for not concurring with the report; and
    - (B) provide recommendations to the director or division.

Amended by Chapter 25, 2016 General Session

Part 2

Board

58-55-201 Boards created -- Duties.

(1) There is created a Plumbers Licensing Board, an Alarm System Security and Licensing Board, and an Electricians Licensing Board. Members of the boards shall be selected to provide representation as follows:

(a) The Plumbers Licensing Board consists of five members as follows:

(i) two members shall be licensed from among the license classifications of master or journeyman plumber;

(ii) two members shall be licensed plumbing contractors; and

(iii) one member shall be from the public at large with no history of involvement in the construction trades.

(b)

(i) The Alarm System Security and Licensing Board consists of five members as follows:

(A) three individuals who are officers or owners of a licensed alarm business;

(B) one individual from among nominees of the Utah Peace Officers Association; and

(C) one individual representing the general public.

(ii) The Alarm System Security and Licensing Board shall designate one of its members on a permanent or rotating basis to:

(A) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(B) advise the division in its investigation of these complaints.

(iii) A board member who has, under this Subsection (1)(b)(iii), reviewed a complaint or advised in its investigation is disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

(c) The Electricians Licensing Board consists of five members as follows:

(i) two members shall be licensed from among the license classifications of master or journeyman electrician, of whom one shall represent a union organization and one shall be selected having no union affiliation;

(ii) two shall be licensed electrical contractors of whom one shall represent a union organization and one shall be selected having no union affiliation; and

(iii) one member shall be from the public at large with no history of involvement in the construction trades or union affiliation.

(2) The duties, functions, and responsibilities of each board include the following:

(a) recommending to the commission appropriate rules;

(b) recommending to the commission policy and budgetary matters;

(c) approving and establishing a passing score for applicant examinations;

(d) overseeing the screening of applicants for licensing, renewal, reinstatement, and relicensure;

(e) assisting the commission in establishing standards of supervision for students or persons in training to become qualified to obtain a license in the occupation or profession it represents; and

(f) acting as presiding officer in conducting hearings associated with the adjudicative proceedings and in issuing recommended orders when so authorized by the commission.

Amended by Chapter 215, 2008 General Session

Part 3
Licensing

58-55-301 License required -- License classifications.

(1)
(a) A person engaged in the construction trades licensed under this chapter, as a contractor regulated under this chapter, as an alarm business or company, or as an alarm company agent, shall become licensed under this chapter before engaging in that trade or contracting activity in this state unless specifically exempted from licensure under Section 58-1-307 or 58-55-305.
(b) The license issued under this chapter and the business license issued by the local jurisdiction in which the licensee has its principal place of business shall be the only licenses required for the licensee to engage in a trade licensed by this chapter, within the state.
(c) Neither the state nor any of its political subdivisions may require of a licensee any additional business licenses, registrations, certifications, contributions, donations, or anything else established for the purpose of qualifying a licensee under this chapter to do business in that local jurisdiction, except for contract prequalification procedures required by state agencies, or the payment of any fee for the license, registration, or certification established as a condition to do business in that local jurisdiction.
(2) The division shall issue licenses under this chapter to qualified persons in the following classifications:
(a) general engineering contractor;
(b) general building contractor;
(c) residential and small commercial contractor;
(d) elevator contractor;
(e) specialty contractor;
(f) master plumber;
(g) residential master plumber;
(h) journeyman plumber;
(i) apprentice plumber;
(j) residential journeyman plumber;
(k) master electrician;
(l) residential master electrician;
(m) journeyman electrician;
(n) residential journeyman electrician;
(o) apprentice electrician;
(p) construction trades instructor:
(i) general engineering classification;
(ii) general building classification;
(iii) electrical classification;
(iv) plumbing classification; and
(v) mechanical classification;
(q) alarm company;
(r) alarm company agent; and
(s) elevator mechanic.
(3)

(a) An applicant may apply for a license in one or more classification or specialty contractor subclassification.
(b) A license shall be granted in each classification or subclassification for which the applicant qualifies.
(c) A separate application and fee must be submitted for each license classification or subclassification.

Amended by Chapter 227, 2010 General Session

58-55-302 Qualifications for licensure.
(1) Each applicant for a license under this chapter shall:
(a) submit an application prescribed by the division;
(b) pay a fee as determined by the department under Section 63J-1-504;
(c)
(i) meet the examination requirements established by rule by the commission with the concurrence of the director, except for the classifications of apprentice plumber and apprentice electrician for whom no examination is required; or
(ii) if required in Section 58-55-304, the individual qualifier must pass the required examination if the applicant is a business entity;
(d) if an apprentice, identify the proposed supervisor of the apprenticeship;
(e) if an applicant for a contractor's license:
(i) produce satisfactory evidence of financial responsibility, except for a construction trades instructor for whom evidence of financial responsibility is not required;
(ii) produce satisfactory evidence of:
(A) except as provided in Subsection (2)(a), two years full-time paid employment experience in the construction industry, which experience, unless more specifically described in this section, may be related to any contracting classification; and
(B) knowledge of the principles of the conduct of business as a contractor, reasonably necessary for the protection of the public health, safety, and welfare;
(iii) except as otherwise provided by rule by the commission with the concurrence of the director, complete a 20-hour course established by rule by the commission with the concurrence of the director, which course may include:
(A) construction business practices;
(B) bookkeeping fundamentals;
(C) mechanics lien fundamentals; and
(D) other aspects of business and construction principles considered important by the commission with the concurrence of the director;
(iv)
(A) be a licensed master electrician if an applicant for an electrical contractor's license or a licensed master residential electrician if an applicant for a residential electrical contractor's license;
(B) be a licensed master plumber if an applicant for a plumbing contractor's license or a licensed master residential plumber if an applicant for a residential plumbing contractor's license; or
(C) be a licensed elevator mechanic and produce satisfactory evidence of three years experience as an elevator mechanic if an applicant for an elevator contractor's license; and

(v) when the applicant is an unincorporated entity, provide a list of the one or more individuals who hold an ownership interest in the applicant as of the day on which the application is filed that includes for each individual:
(A) the individual's name, address, birth date, and social security number; and
(B) whether the individual will engage in a construction trade; and
(f) if an applicant for a construction trades instructor license, satisfy any additional requirements established by rule.
(2)
(a) If the applicant for a contractor's license described in Subsection (1) is a building inspector, the applicant may satisfy Subsection (1)(e)(ii)(A) by producing satisfactory evidence of two years full-time paid employment experience as a building inspector, which shall include at least one year full-time experience as a licensed combination inspector.
(b) After approval of an applicant for a contractor's license by the applicable board and the division, the applicant shall file the following with the division before the division issues the license:
(i) proof of workers' compensation insurance which covers employees of the applicant in accordance with applicable Utah law;
(ii) proof of public liability insurance in coverage amounts and form established by rule except for a construction trades instructor for whom public liability insurance is not required; and
(iii) proof of registration as required by applicable law with the:
(A) Department of Commerce;
(B) Division of Corporations and Commercial Code;
(C) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;
(D) State Tax Commission; and
(E) Internal Revenue Service.
(3) In addition to the general requirements for each applicant in Subsection (1), applicants shall comply with the following requirements to be licensed in the following classifications:
(a)
(i) A master plumber shall produce satisfactory evidence that the applicant:
(A) has been a licensed journeyman plumber for at least two years and had two years of supervisory experience as a licensed journeyman plumber in accordance with division rule;
(B) has received at least an associate of applied science degree or similar degree following the completion of a course of study approved by the division and had one year of supervisory experience as a licensed journeyman plumber in accordance with division rule; or
(C) meets the qualifications determined by the division in collaboration with the board to be equivalent to Subsection (3)(a)(i)(A) or (B).
(ii) An individual holding a valid Utah license as a journeyman plumber, based on at least four years of practical experience as a licensed apprentice under the supervision of a licensed journeyman plumber and four years as a licensed journeyman plumber, in effect immediately prior to May 5, 2008, is on and after May 5, 2008, considered to hold a current master plumber license under this chapter, and satisfies the requirements of this Subsection (3)(a) for the purpose of renewal or reinstatement of that license under Section 58-55-303.
(iii) An individual holding a valid plumbing contractor's license or residential plumbing contractor's license, in effect immediately prior to May 5, 2008, is on or after May 5, 2008:

(A) considered to hold a current master plumber license under this chapter if licensed as a plumbing contractor and a journeyman plumber, and satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section 58-55-303; and

(B) considered to hold a current residential master plumber license under this chapter if licensed as a residential plumbing contractor and a residential journeyman plumber, and satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section 58-55-303.

(b) A master residential plumber applicant shall produce satisfactory evidence that the applicant:

(i) has been a licensed residential journeyman plumber for at least two years and had two years of supervisory experience as a licensed residential journeyman plumber in accordance with division rule; or

(ii) meets the qualifications determined by the division in collaboration with the board to be equivalent to Subsection (3)(b)(i).

(c) A journeyman plumber applicant shall produce satisfactory evidence of:

(i) successful completion of the equivalent of at least four years of full-time training and instruction as a licensed apprentice plumber under supervision of a licensed master plumber or journeyman plumber and in accordance with a planned program of training approved by the division;

(ii) at least eight years of full-time experience approved by the division in collaboration with the Plumbers Licensing Board; or

(iii) satisfactory evidence of meeting the qualifications determined by the board to be equivalent to Subsection (3)(c)(i) or (c)(ii).

(d) A residential journeyman plumber shall produce satisfactory evidence of:

(i) completion of the equivalent of at least three years of full-time training and instruction as a licensed apprentice plumber under the supervision of a licensed residential master plumber, licensed residential journeyman plumber, or licensed journeyman plumber in accordance with a planned program of training approved by the division;

(ii) completion of at least six years of full-time experience in a maintenance or repair trade involving substantial plumbing work; or

(iii) meeting the qualifications determined by the board to be equivalent to Subsection (3)(d)(i) or (d)(ii).

(e) The conduct of licensed apprentice plumbers and their licensed supervisors shall be in accordance with the following:

(i) while engaging in the trade of plumbing, a licensed apprentice plumber shall be under the immediate supervision of a licensed master plumber, licensed residential master plumber, licensed journeyman plumber, or a licensed residential journeyman plumber; and

(ii) a licensed apprentice plumber in the fourth through tenth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period, but if the apprentice does not become a licensed journeyman plumber or licensed residential journeyman plumber by the end of the tenth year of apprenticeship, this nonsupervision provision no longer applies.

(f) A master electrician applicant shall produce satisfactory evidence that the applicant:

(i) is a graduate electrical engineer of an accredited college or university approved by the division and has one year of practical electrical experience as a licensed apprentice electrician;

(ii) is a graduate of an electrical trade school, having received an associate of applied sciences degree following successful completion of a course of study approved by the division, and has two years of practical experience as a licensed journeyman electrician;
(iii) has four years of practical experience as a journeyman electrician; or
(iv) meets the qualifications determined by the board to be equivalent to Subsection (3)(f)(i), (ii), or (iii).
(g) A master residential electrician applicant shall produce satisfactory evidence that the applicant:
(i) has at least two years of practical experience as a residential journeyman electrician; or
(ii) meets the qualifications determined by the board to be equivalent to this practical experience.
(h) A journeyman electrician applicant shall produce satisfactory evidence that the applicant:
(i) has successfully completed at least four years of full-time training and instruction as a licensed apprentice electrician under the supervision of a master electrician or journeyman electrician and in accordance with a planned training program approved by the division;
(ii) has at least eight years of full-time experience approved by the division in collaboration with the Electricians Licensing Board; or
(iii) meets the qualifications determined by the board to be equivalent to Subsection (3)(h)(i) or (ii).
(i) A residential journeyman electrician applicant shall produce satisfactory evidence that the applicant:
(i) has successfully completed two years of training in an electrical training program approved by the division;
(ii) has four years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master, journeyman, residential master, or residential journeyman electrician; or
(iii) meets the qualifications determined by the division and applicable board to be equivalent to Subsection (3)(i)(i) or (ii).
(j) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with the following:
(i) A licensed apprentice electrician shall be under the immediate supervision of a licensed master, journeyman, residential master, or residential journeyman electrician. An apprentice in the fourth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period.
(ii) A licensed master, journeyman, residential master, or residential journeyman electrician may have under immediate supervision on a residential project up to three licensed apprentice electricians.
(iii) A licensed master or journeyman electrician may have under immediate supervision on nonresidential projects only one licensed apprentice electrician.
(k) An alarm company applicant shall:
(i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of the applicant who:
(A) demonstrates 6,000 hours of experience in the alarm company business;
(B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm company business or in a construction business; and
(C) passes an examination component established by rule by the commission with the concurrence of the director;
(ii) if a corporation, provide:

(A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all corporate officers, directors, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all shareholders owning 5% or more of the outstanding shares of the corporation, except this shall not be required if the stock is publicly listed and traded;

(iii) if a limited liability company, provide:

(A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all company officers, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all individuals owning 5% or more of the equity of the company;

(iv) if a partnership, provide the names, addresses, dates of birth, social security numbers, and fingerprint cards of all general partners, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(v) if a proprietorship, provide the names, addresses, dates of birth, social security numbers, and fingerprint cards of the proprietor, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(vi) if a trust, provide the names, addresses, dates of birth, social security numbers, and fingerprint cards of the trustee, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(vii) be of good moral character in that officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management personnel have not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;

(viii) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management personnel have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(ix) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel are currently suffering from habitual drunkenness or from drug addiction or dependence;

(x) file and maintain with the division evidence of:

(A) comprehensive general liability insurance in form and in amounts to be established by rule by the commission with the concurrence of the director;

(B) workers' compensation insurance that covers employees of the applicant in accordance with applicable Utah law; and

(C) registration as is required by applicable law with the:

(I) Division of Corporations and Commercial Code;

(II) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(III) State Tax Commission; and
(IV) Internal Revenue Service; and
(xi) meet with the division and board.
(l) Each applicant for licensure as an alarm company agent shall:
(i) submit an application in a form prescribed by the division accompanied by fingerprint cards;
(ii) pay a fee determined by the department under Section 63J-1-504;
(iii) be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company agent is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;
(iv) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;
(v) not be currently suffering from habitual drunkenness or from drug addiction or dependence; and
(vi) meet with the division and board if requested by the division or the board.
(m)
(i) Each applicant for licensure as an elevator mechanic shall:
(A) provide documentation of experience and education credits of not less than three years work experience in the elevator industry, in construction, maintenance, or service and repair; and
(B) satisfactorily complete a written examination administered by the division established by rule under Section 58-1-203; or
(C) provide certificates of completion of an apprenticeship program for elevator mechanics, having standards substantially equal to those of this chapter and registered with the United States Department of Labor Bureau Apprenticeship and Training or a state apprenticeship council.
(ii)
(A) If an elevator contractor licensed under this chapter cannot find a licensed elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator, the contractor may:
(I) notify the division of the unavailability of licensed personnel; and
(II) request the division issue a temporary elevator mechanic license to an individual certified by the contractor as having an acceptable combination of documented experience and education to perform the work described in this Subsection (3)(m)(ii)(A).
(B)
(I) The division may issue a temporary elevator mechanic license to an individual certified under Subsection (3)(m)(ii)(A)(II) upon application by the individual, accompanied by the appropriate fee as determined by the department under Section 63J-1-504.
(II) The division shall specify the time period for which the license is valid and may renew the license for an additional time period upon its determination that a shortage of licensed elevator mechanics continues to exist.
(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules establishing when Federal Bureau of Investigation records shall be checked for applicants as an alarm company or alarm company agent.
(5) To determine if an applicant meets the qualifications of Subsections (3)(k)(vii) and (3)(l)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the Department of Public Safety with the division's request to:

(a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure as an alarm company or alarm company agent and each applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel; and
(b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant requiring a check of records of the Federal Bureau of Investigation for criminal history information under this section.
(6) The Department of Public Safety shall send to the division:
(a) a written record of criminal history, or certification of no criminal history record, as contained in the records of the Department of Public Safety in a timely manner after receipt of a fingerprint card from the division and a request for review of Department of Public Safety records; and
(b) the results of the Federal Bureau of Investigation review concerning an applicant in a timely manner after receipt of information from the Federal Bureau of Investigation.
(7)
(a) The division shall charge each applicant for licensure as an alarm company or alarm company agent a fee, in accordance with Section 63J-1-504, equal to the cost of performing the records reviews under this section.
(b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the Federal Bureau of Investigation the costs of records reviews under this section.
(8) Information obtained by the division from the reviews of criminal history records of the Department of Public Safety and the Federal Bureau of Investigation shall be used or disseminated by the division only for the purpose of determining if an applicant for licensure as an alarm company or alarm company agent is qualified for licensure.
(9)
(a) An application for licensure under this chapter shall be denied if:
(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked within two years before the date of the applicant's application;
(ii)
(A) the applicant is a partnership, corporation, or limited liability company; and
(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked within two years before the date of the applicant's application;
(iii)
(A) the applicant is an individual or sole proprietorship; and
(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked within two years before the date of the applicant's application; or
(iv)
(A) the applicant includes an individual who was an owner, director, or officer of an unincorporated entity at the time the entity's license under this chapter was revoked; and
(B) the application for licensure is filed within 60 months after the revocation of the unincorporated entity's license.

(b) An application for licensure under this chapter shall be reviewed by the appropriate licensing board prior to approval if:
(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked more than two years before the date of the applicant's application;
(ii)
(A) the applicant is a partnership, corporation, or limited liability company; and
(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked more than two years before the date of the applicant's application; or
(iii)
(A) the applicant is an individual or sole proprietorship; and
(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked more than two years before the date of the applicant's application.
(10)
(a)
(i) A licensee that is an unincorporated entity shall file an ownership status report with the division every 30 days after the day on which the license is issued if the licensee has more than five owners who are individuals who:
(A) own an interest in the contractor that is an unincorporated entity;
(B) own, directly or indirectly, less than an 8% interest, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in the unincorporated entity; and
(C) engage, or will engage, in a construction trade in the state as owners of the contractor described in Subsection (10)(a)(i)(A).
(ii) If the licensee has five or fewer owners described in Subsection (10)(a)(i), the licensee shall provide the ownership status report with an application for renewal of licensure.
(b) An ownership status report required under this Subsection (10) shall:
(i) specify each addition or deletion of an owner:
(A) for the first ownership status report, after the day on which the unincorporated entity is licensed under this chapter; and
(B) for a subsequent ownership status report, after the day on which the previous ownership status report is filed;
(ii) be in a format prescribed by the division that includes for each owner, regardless of the owner's percentage ownership in the unincorporated entity, the information described in Subsection(1)(e)(v);
(iii) list the name of:
(A) each officer or manager of the unincorporated entity; and
(B) each other individual involved in the operation, supervision, or management of the unincorporated entity; and
(iv) be accompanied by a fee set by the division in accordance with Section 63J-1-504 if the ownership status report indicates there is a change described in Subsection (10)(b)(i).
(c) The division may, at any time, audit an ownership status report under this Subsection (10):

(i) to determine if financial responsibility has been demonstrated or maintained as required under Section 58-55-306; and
(ii) to determine compliance with Subsection 58-55-501(24), (25), or (27) or Subsection 58-55-502(8) or (9).

(11)
(a) An unincorporated entity that provides labor to an entity licensed under this chapter by providing an individual who owns an interest in the unincorporated entity to engage in a construction trade in Utah shall file with the division:
(i) before the individual who owns an interest in the unincorporated entity engages in a construction trade in Utah, a current list of the one or more individuals who hold an ownership interest in the unincorporated entity that includes for each individual:
(A) the individual's name, address, birth date, and social security number; and
(B) whether the individual will engage in a construction trade; and
(ii) every 30 days after the day on which the unincorporated entity provides the list described in Subsection (11)(a)(i), an ownership status report containing the information that would be required under Subsection (10) if the unincorporated entity were a licensed contractor.
(b) When filing an ownership list described in Subsection (11)(a)(i) or an ownership status report described in Subsection (11)(a)(ii), an unincorporated entity shall pay a fee set by the division in accordance with Section 63J-1-504.

(12) This chapter may not be interpreted to create or support an express or implied independent contractor relationship between an unincorporated entity described in Subsection (10) or (11) and the owners of the unincorporated entity for any purpose, including income tax withholding.

(13) A social security number provided under Subsection (1)(e)(v) is a private record under Subsection 63G-2-302(1)(i).

Amended by Chapter 238, 2016 General Session
Amended by Chapter 268, 2016 General Session

58-55-302.5 Continuing education requirements for contractor licensees -- Continuing education courses.

(1) Each contractor licensee under a license issued under this chapter shall complete six hours of approved continuing education during each two-year renewal cycle established by rule under Subsection 58-55-303(1).

(2)
(a) The commission shall, with the concurrence of the division, establish by rule a program of approved continuing education for contractor licensees.
(b) Except as provided in Subsection (2)(e), beginning on or after June 1, 2015, only courses offered by any of the following may be included in the program of approved continuing education for contractor licensees:
(i) the Associated General Contractors of Utah;
(ii) Associated Builders and Contractors, Utah Chapter;
(iii) the Home Builders Association of Utah;
(iv) the National Electrical Contractors Association Intermountain Chapter;
(v) the Utah Plumbing & Heating Contractors Association;
(vi) the Independent Electrical Contractors of Utah;
(vii) the Rocky Mountain Gas Association;
(viii) the Utah Mechanical Contractors Association;
(ix) the Sheet Metal Contractors Association;

(x) the Intermountain Electrical Association;
(xi) the Builders Bid Service of Utah; or
(xii) Utah Roofing Contractors Association.
(c) An approved continuing education program for a contractor licensee may include a course approved by an entity described in Subsections (2)(b)(i) through (2)(b)(iii).
(d)
(i) Except as provided in Subsections (2)(d)(ii) and (iii), an entity listed in Subsections (2)(b)(iv) through (2)(b)(xii) may only offer and market continuing education courses to a licensee who is a member of the entity.
(ii) An entity described in Subsection (2)(b)(iv), (vi), or (x) may offer and market a continuing education course that the entity offers to satisfy the continuing education requirement described in Subsection 58-55-302.7(2)(a) to a contractor in the electrical trade.
(iii) An entity described in Subsection (2)(b)(v) or (viii) may offer and market a continuing education course that the entity offers to satisfy the continuing education requirement described in Subsection 58-55-302.7(2)(b) to a contractor in the plumbing trade.
(e) On or after June 1, 2015, an approved continuing education program for a contractor licensee may include a course offered and taught by:
(i) a state executive branch agency;
(ii) the Workers' Compensation Fund created in Section 31A-33-102; or
(iii) a nationally or regionally accredited college or university that has a physical campus in the state.
(3) The division may contract with a person to establish and maintain a continuing education registry to include:
(a) a list of courses that the division has approved for inclusion in the program of approved continuing education; and
(b) a list of courses that:
(i) a contractor licensee has completed under the program of approved continuing education; and
(ii) the licensee may access to monitor the licensee's compliance with the continuing education requirement established under Subsection (1).
(4) The division may charge a fee, as established by the division under Section 63J-1-504, to administer the requirements of this section.

Amended by Chapter 260, 2016 General Session

58-55-302.7 Continuing education requirements for electricians, elevator mechanics, and plumbers.
(1) As used in this section:
(a) "Licensed electrician" means an individual licensed under this chapter as an apprentice electrician, journeyman electrician, master electrician, residential journeyman electrician, or residential master electrician.
(b) "Licensed elevator mechanic" means an individual licensed under this chapter as an elevator mechanic.
(c) "Licensed plumber" means an individual licensed under this chapter as an apprentice plumber, journeyman plumber, master plumber, residential journeyman plumber, or residential master plumber.
(2) Beginning December 1, 2010, during each two-year renewal cycle established by rule under Subsection 58-55-303(1):

(a) a licensed electrician shall complete 16 hours of continuing education under the continuing education program established under this section;
(b) a licensed plumber shall complete 12 hours of continuing education under the continuing education program established under this section; and
(c) a licensed elevator mechanic shall complete eight hours of continuing education under the continuing education program established under this section.
(3) The commission shall, with the concurrence of the division, establish by rule:
(a) a continuing education program for licensed electricians;
(b) a continuing education program for licensed elevator mechanics; and
(c) a continuing education program for licensed plumbers.
(4) The division may contract with a person to establish and maintain a continuing education registry to include:
(a) an online application for a continuing education course provider to apply to the division for approval of the course for inclusion in the continuing education program;
(b) a list of courses that the division has approved for inclusion in the continuing education program; and
(c) a list of courses that:
(i) a licensed electrician, licensed elevator mechanic, or licensed plumber has completed under the continuing education program; and
(ii) the licensed electrician, licensed elevator mechanic, or licensed plumber may access to monitor compliance with the continuing education requirement under Subsection (2).
(5) The division may charge a fee, established by the division under Section 63J-1-504, to administer the requirements of this section.

Amended by Chapter 367, 2011 General Session

58-55-303 Term of license -- Expiration -- Renewal.
(1)
(a) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule.
(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycle it administers.
(c)
(i) Notwithstanding a renewal cycle under Subsection (1)(a) or (b), notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, and subject to Subsection (1)(c)(ii), a license is automatically suspended 60 days after the licensee:
(A) becomes, after the time of licensing, an unincorporated entity that is subject to the ownership status report filing requirements of Subsection 58-55-302(10)(a)(i); or
(B) transfers its license to an unincorporated entity that is subject to the ownership status report filing requirements of Subsection 58-55-302(10)(a)(i).
(ii) An automatic suspension does not occur under Subsection (1)(c)(i) if, before the expiration of the 60-day period in Subsection (1)(c)(i):
(A) the licensee submits an application for renewal of the license; and
(B) the division renews the licensee's license pursuant to the licensee's application for renewal.
(iii) Within 30 days after the effective date of a suspension under Subsection (1)(c)(i), the commission shall, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, make a final determination concerning the suspension.

(2) At the time of renewal, the licensee shall show satisfactory evidence of:
(a) continuing financial responsibility as required under Section 58-55-306;
(b) for a contractor licensee, completion of six hours of approved continuing education, as required in Section 58-55-302.5; and
(c) if the licensee is an apprentice electrician or plumber, journeyman electrician or plumber, master electrician or plumber, residential journeyman electrician or plumber, or residential master electrician or plumber, completion of the number of hours of continuing education specified under Section 58-55-302.7.
(3) Each license automatically expires on the expiration date shown on the license unless the licensee renews the license in accordance with Section 58-1-308.
(4) The requirements of Subsection 58-55-302(9) shall also apply to applicants seeking to renew or reinstate a license.
(5) In addition to any other requirements imposed by law, if a license has been suspended or revoked for any reason, the applicant:
(a) shall pay in full all fines imposed by the division;
(b) resolve any outstanding citations or disciplinary actions with the division;
(c) satisfy any Section 58-55-503 judgment and sentence or nontrial resolution;
(d) complete a new financial responsibility review as required under Section 58-55-306, using only titled assets; and
(e) pay in full any reimbursement amount as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

Amended by Chapter 57, 2013 General Session

58-55-304 Licensee names -- License number use -- License qualifier.
(1) No license may be issued by the division in a name that is identical to or so resembles the name of another licensee that the division determines that it may result in confusion or mistake.
(2) The contractor's license number shall be made a part of all permit applications, contracts, agreements, or bids when a license is required.
(3) The division may issue a license in the name of an individual or the name of a business entity for which the individual acts as a qualifier, in accordance with the following:
(a) An individual shall:
(i) submit an application in the individual's name;
(ii) demonstrate the individual's own financial responsibility; and
(iii) pass the required examination and meet all other requirements of this chapter.
(b) A business entity shall:
(i) submit the application in the name of and on behalf of the business entity;
(ii) list the individual as the qualifier;
(iii) demonstrate financial responsibility of the business entity if applying for a contractor's license;
(iv) provide evidence that the individual qualifier has passed the required examination; and
(v) meet all other requirements of this chapter.
(4) A person acting as a qualifier for a business entity licensee must demonstrate to the division that the individual is an owner, officer, or manager within that business entity who exercises material authority in the conduct of that business entity's contracting business by:
(a) making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter;

(b) hiring, promoting, transferring, laying off, disciplining, directing, or discharging employees of the licensee either by himself or through others; and
(c) not being involved in any other employment or activity which conflicts with the individual's duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.
(5)
(a) Except as provided in Subsections (5)(b) and (c), it is the duty and responsibility of the licensee and the qualifier to comply with the provisions of this section. Failure to comply with the requirements of this section may be considered unprofessional conduct by the licensee, the qualifier, or both.
(b) If a licensee business entity has maintained its license and has not violated the requirements of this chapter or Sections 58-55-101 through 58-55-604 for a period of 10 consecutive years, the business entity may maintain its license under this chapter by recording an active employee name and registration/license number from the applicable trade on the renewal application in order to comply with the individual qualifier requirements of this section. However, this Subsection (5)(b) shall not apply if more than 50% of the ownership of the business entity has been transferred at any time during the ten-year period.
(c) If a plumbing or electrical business entity has maintained its license and has not violated the requirements of this chapter or Sections 58-55-101 through 58-55-604 for a period of five consecutive years, the business entity may maintain its license under this chapter by recording an active employee name and registration/license number from the applicable trade on the renewal application in order to comply with the individual qualifier requirements of this section. However, this Subsection (5)(c) shall not apply if more than 50% of the ownership of the business entity has been transferred at any time during the five-year period.
(6) If an individual qualifying on behalf of a business entity issued a license under this chapter ceases association with that entity as required in Subsection (4), the licensee shall notify the division in writing within 10 days after cessation of association or employment. If notice is given, the license shall remain in force for 60 days after the date of cessation of association or employment. The licensee shall replace the original qualifier with another individual qualifier within the 60-day period or the license shall be automatically suspended.
(7) Failure to notify the division of cessation of association or employment of a qualifier as required in Subsection (6) may result in immediate suspension of the license upon a finding of good cause.

Amended by Chapter 14, 2004 General Session

58-55-305 Exemptions from licensure.
(1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts or practices included within the practice of construction trades, subject to the stated circumstances and limitations, without being licensed under this chapter:
(a) an authorized representative of the United States government or an authorized employee of the state or any of its political subdivisions when working on construction work of the state or the subdivision, and when acting within the terms of the person's trust, office, or employment;
(b) a person engaged in construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, and drainage districts or construction and repair relating to farming, dairying, agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel excavations, well drilling, as defined in Section 73-3-25, hauling to and from construction sites, and lumbering;

(c) public utilities operating under the rules of the Public Service Commission on work incidental to their own business;
(d) sole owners of property engaged in building:
(i) no more than one residential structure per year and no more than three residential structures per five years on their property for their own noncommercial, nonpublic use; except, a person other than the property owner or individuals described in Subsection (1)(e), who engages in building the structure must be licensed under this chapter if the person is otherwise required to be licensed under this chapter; or
(ii) structures on their property for their own noncommercial, nonpublic use which are incidental to a residential structure on the property, including sheds, carports, or detached garages;
(e)
(i) a person engaged in construction or renovation of a residential building for noncommercial, nonpublic use if that person:
(A) works without compensation other than token compensation that is not considered salary or wages; and
(B) works under the direction of the property owner who engages in building the structure; and
(ii) as used in this Subsection (1)(e), "token compensation" means compensation paid by a sole owner of property exempted from licensure under Subsection (1)(d) to a person exempted from licensure under this Subsection (1)(e), that is:
(A) minimal in value when compared with the fair market value of the services provided by the person;
(B) not related to the fair market value of the services provided by the person; and
(C) is incidental to the providing of services by the person including paying for or providing meals or refreshment while services are being provided, or paying reasonable transportation costs incurred by the person in travel to the site of construction;
(f) a person engaged in the sale or merchandising of personal property that by its design or manufacture may be attached, installed, or otherwise affixed to real property who has contracted with a person, firm, or corporation licensed under this chapter to install, affix, or attach that property;
(g) a contractor submitting a bid on a federal aid highway project, if, before undertaking construction under that bid, the contractor is licensed under this chapter;
(h)
(i) a person engaged in the alteration, repair, remodeling, or addition to or improvement of a building with a contracted or agreed value of less than $3,000, including both labor and materials, and including all changes or additions to the contracted or agreed upon work; and
(ii) notwithstanding Subsection (1)(h)(i) and except as otherwise provided in this section:
(A) work in the plumbing and electrical trades on a Subsection (1)(h)(i) project within any six month period of time:
(I) must be performed by a licensed electrical or plumbing contractor, if the project involves an electrical or plumbing system; and
(II) may be performed by a licensed journeyman electrician or plumber or an individual referred to in Subsection (1)(h)(ii)(A)(I), if the project involves a component of the system such as a faucet, toilet, fixture, device, outlet, or electrical switch;
(B) installation, repair, or replacement of a residential or commercial gas appliance or a combustion system on a Subsection (1)(h)(i) project must be performed by a person who has received certification under Subsection 58-55-308(2) except as otherwise provided in Subsection 58-55-308(2)(d) or 58-55-308(3);

(C) installation, repair, or replacement of water-based fire protection systems on a Subsection (1)(h)(i) project must be performed by a licensed fire suppression systems contractor or a licensed journeyman plumber;
(D) work as an alarm business or company or as an alarm company agent shall be performed by a licensed alarm business or company or a licensed alarm company agent, except as otherwise provided in this chapter;
(E) installation, repair, or replacement of an alarm system on a Subsection (1)(h)(i) project must be performed by a licensed alarm business or company or a licensed alarm company agent;
(F) installation, repair, or replacement of a heating, ventilation, or air conditioning system (HVAC) on a Subsection (1)(h)(i) project must be performed by an HVAC contractor licensed by the division;
(G) installation, repair, or replacement of a radon mitigation system or a soil depressurization system must be performed by a licensed contractor; and
(H) if the total value of the project is greater than $1,000, the person shall file with the division a one-time affirmation, subject to periodic reaffirmation as established by division rule, that the person has:
(I) public liability insurance in coverage amounts and form established by division rule; and
(II) if applicable, workers compensation insurance which would cover an employee of the person if that employee worked on the construction project;

(i) a person practicing a specialty contractor classification or construction trade which the director does not classify by administrative rule as significantly impacting the public's health, safety, and welfare;

(j) owners and lessees of property and persons regularly employed for wages by owners or lessees of property or their agents for the purpose of maintaining the property, are exempt from this chapter when doing work upon the property;

(k)
(i) a person engaged in minor plumbing work that is incidental, as defined by the division by rule, to the replacement or repair of a fixture or an appliance in a residential or small commercial building, or structure used for agricultural use, as defined in Section 15A-1-202, provided that no modification is made to:
(A) existing culinary water, soil, waste, or vent piping; or
(B) a gas appliance or combustion system; and
(ii) except as provided in Subsection (1)(e), installation for the first time of a fixture or an appliance is not included in the exemption provided under Subsection (1)(k)(i);

(l) a person who ordinarily would be subject to the plumber licensure requirements under this chapter when installing or repairing a water conditioner or other water treatment apparatus if the conditioner or apparatus:
(i) meets the appropriate state construction codes or local plumbing standards; and
(ii) is installed or repaired under the direction of a person authorized to do the work under an appropriate specialty contractor license;

(m) a person who ordinarily would be subject to the electrician licensure requirements under this chapter when employed by:
(i) railroad corporations, telephone corporations or their corporate affiliates, elevator contractors or constructors, or street railway systems; or
(ii) public service corporations, rural electrification associations, or municipal utilities who generate, distribute, or sell electrical energy for light, heat, or power;

(n) a person involved in minor electrical work incidental to a mechanical or service installation, including the outdoor installation of an above-ground, prebuilt hot tub;
(o) a person who ordinarily would be subject to the electrician licensure requirements under this chapter but who during calendar years 2009, 2010, or 2011 was issued a specialty contractor license for the electrical work associated with the installation, repair, or maintenance of solar energy panels, may continue the limited electrical work for solar energy panels under a specialty contractor license;
(p) a student participating in construction trade education and training programs approved by the commission with the concurrence of the director under the condition that:
(i) all work intended as a part of a finished product on which there would normally be an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed building inspector; and
(ii) a licensed contractor obtains the necessary building permits;
(q) a delivery person when replacing any of the following existing equipment with a new gas appliance, provided there is an existing gas shutoff valve at the appliance:
(i) gas range;
(ii) gas dryer;
(iii) outdoor gas barbeque; or
(iv) outdoor gas patio heater;
(r) a person performing maintenance on an elevator as defined in Subsection 58-55-102(14), if the maintenance is not related to the operating integrity of the elevator; and
(s) an apprentice or helper of an elevator mechanic licensed under this chapter when working under the general direction of the licensed elevator mechanic.
(2) A compliance agency as defined in Section 15A-1-202 that issues a building permit to a person requesting a permit as a sole owner of property referred to in Subsection (1)(d) shall notify the division, in writing or through electronic transmission, of the issuance of the permit.

Amended by Chapter 430, 2013 General Session
Amended by Chapter 449, 2013 General Session

58-55-306 Financial responsibility.
(1) An applicant for licensure as a contractor, and a licensee applying for renewal or reinstatement of a contractor's license shall demonstrate to the division and the commission the applicant's or licensee's financial responsibility before the issuance of or the renewal or reinstatement of a license by:
(a)
(i) completing a questionnaire developed by the division; and
(ii) signing the questionnaire, certifying that the information provided is true and accurate; or
(b) submitting a bond in an amount and form determined by the commission with the concurrence of the director.
(2) A licensee, including an individual who holds an ownership interest in an unincorporated entity licensee, shall maintain financial responsibility throughout the period of licensure.
(3) The division may audit the financial responsibility of an applicant or licensee on a random basis or upon finding of a reasonable need.
(4) The burden to demonstrate financial responsibility is upon the applicant, licensee, or owner of an unincorporated entity licensee, as the case may be.
(5)

(a) In determining the financial responsibility of an applicant or licensee described in Subsection (1) that is an unincorporated entity, the division:
(i) shall consider the personal financial information of each individual who holds an ownership interest in the unincorporated entity; and
(ii) may, at any time:
(A) audit the personal financial information of any individual who holds an ownership interest in the unincorporated entity; or
(B) request and obtain a credit report on the individual.
(b) If, based on the personal financial information of one or more individuals who hold an ownership interest in the unincorporated entity, the division determines that the applicant or licensee lacks financial responsibility to engage successfully in business as a contractor, the division may:
(i) prohibit the individual or individuals from engaging in a construction trade;
(ii) prohibit the applicant or licensee from engaging in a construction trade, unless the individual or individuals dissociate from the applicant or licensee within 10 days after the division makes the determination of a lack of financial responsibility; or
(iii) require the individual or individuals, applicant, or licensee to submit a bond that is in a form determined by the commission with the concurrence of the director and in an amount that is:
(A) determined by the commission with the concurrence of the director; or
(B) 20% of the annual gross distributions from the unincorporated entity to its owners and that includes coverage for unpaid obligations incurred by the licensee contractor and any failure of the licensee contractor owners to pay income taxes and self-employment taxes on the gross distributions from the unincorporated entity to its owners.

Amended by Chapter 57, 2013 General Session

58-55-307 Confidentiality of records and reports.
(1) Credit reports, financial statements, and other information submitted to the division by or at the request and direction of an applicant or licensee for the purpose of supporting a representation of financial responsibility:
(a) constitute protected records under Title 63G, Chapter 2, Government Records Access and Management Act; and
(b) notwithstanding Subsection (1)(a), may be considered by the commission in a public meeting, unless the owner of the information requests that the meeting be closed to the public in accordance with Title 52, Chapter 4, Open and Public Meetings Act.
(2) Notwithstanding the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, the records described in Subsection (1) are not open for public inspection and are not subject to discovery in civil or administrative proceedings.

Amended by Chapter 238, 2016 General Session

58-55-308 Scope of practice -- Installation, repair, maintenance, cleaning, or replacement of gas appliance or combustion system -- Rules.
(1)
(a) The commission, with the concurrence of the director, may adopt reasonable rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to define and limit the scope of practice and operating standards of the classifications and subclassifications licensed under this chapter in a manner consistent with established practice in the relevant industry.

(b) The commission and the director may limit the field and scope of operations of a licensee under this chapter in accordance with the rules and the public health, safety, and welfare, based on the licensee's education, training, experience, knowledge, and financial responsibility.

(2)

(a) The work and scope of practice covered by this Subsection (2) is the installation, repair, maintenance, cleaning, or replacement of a residential or commercial gas appliance or combustion system.

(b) The provisions of this Subsection (2) apply to any:

(i) licensee under this chapter whose license authorizes the licensee to perform the work described in Subsection (2)(a); and

(ii) person exempt from licensure under Subsection 58-55-305(1)(h).

(c) Any person described in Subsection (2)(b) that performs work described in Subsection (2)(a):

(i) must first receive training and certification as specified in rules adopted by the division; and

(ii) shall ensure that any employee authorized under other provisions of this chapter to perform work described in Subsection (2)(a) has first received training and certification as specified in rules adopted by the division.

(d) The division may exempt from the training requirements adopted under Subsection (2)(c) a person that has adequate experience, as determined by the division.

(3) The division may exempt the following individuals from the certification requirements adopted under Subsection (2)(c):

(a) a person who has passed a test equivalent to the level of testing required by the division for certification, or has completed an apprenticeship program that teaches the installation of gas line appliances and is approved by the Federal Bureau of Apprenticeship Training; and

(b) a person working under the immediate one-to-one supervision of a certified natural gas technician or a person exempt from certification.

(4) This section does not prohibit a licensed specialty contractor from accepting and entering into a contract involving the use of two or more crafts or trades if the performance of the work in the crafts or trades, other than that in which the contractor is licensed, is incidental and supplemental to the work for which the contractor is licensed.

Amended by Chapter 382, 2008 General Session

58-55-308.1 Definitions -- Installation of natural gas facilities -- Scope of practice.

(1) As used in this section:

(a) "Gas corporation" is as defined in Section 54-2-1.

(b) "Minimum system" means the minimum natural gas facilities necessary to serve each intended consumer, as determined by a gas corporation.

(c)

(i) "Natural gas facilities" means:

(A) one or more natural gas mains;

(B) one or more natural gas service lines; or

(C) a combination of Subsections (1)(c)(i)(A) and (B); and

(ii) "Natural gas facilities" includes any necessary appurtenant facilities.

(d)

(i) "Natural gas main" means a natural gas distribution pipeline that delivers natural gas to another natural gas distribution supply line or to a natural gas service line.

(ii) "Natural gas main" does not include a natural gas service line.

(e) "Natural gas service line" means a natural gas pipeline that carries natural gas from a natural gas main to a meter for use by the ultimate consumer.
(f) "Natural gas tariff specifications" means the standards and specifications:
(i) for the construction of natural gas facilities; and
(ii) that are:
(A) established by a gas corporation; and
(B) included in the gas corporation's tariff that is approved by the Public Service Commission.
(g) "Qualifying installer" means a person who:
(i) a gas corporation approves to install natural gas facilities; and
(ii) is:
(A) licensed under this chapter; and
(B) authorized to install natural gas facilities within the person's scope of practice as established by statute or administrative rule.
(2) A qualifying installer may install natural gas facilities.
(3)
(a) Except as provided in Subsections (3)(b) and (c), a qualifying installer shall pay the costs to install natural gas facilities.
(b) A gas corporation shall pay the costs of the following services related to natural gas facilities installed by a qualifying installer:
(i) engineering;
(ii) inspection;
(iii) mapping; and
(iv) locating.
(c) If a gas corporation requires a qualifying installer to install natural gas facilities that are greater than the minimum system, the gas corporation shall pay any difference in cost between the required natural gas facilities and the minimum system.
(4) A gas corporation shall inspect and test natural gas facilities that a qualifying installer installs to verify that the natural gas facilities comply with applicable federal, state, and local law and natural gas tariff specifications.
(5) A gas corporation is not required to supply natural gas to or accept ownership of natural gas facilities until the gas corporation completes all necessary inspections and testing to verify that the natural gas facilities have been installed and tested in compliance with applicable federal, state, and local law and natural gas tariff specifications.

Enacted by Chapter 326, 2014 General Session

58-55-310 Requirements when working for political subdivision or state agency.

Each political subdivision and agency of the state and each board of education which requires the issuance of a permit or license as a precondition to the construction, alteration, improvement, demolition, or other repairs for which a contractor's license is also required under this chapter shall:
(1) require that each applicant for a permit or license file a signed statement that the applicant has a current contractor's license with the license number included in the application;
(2) require that any representation of exemption from the contractor's licensing law be included in the signed statement and that if that exempt person, firm, corporation, association, or other organization intends to hire a contractor to perform any work under the permit or license, that the license number of that contractor be included in the application, but if a contractor has not been selected at the time of the application for a permit or license, the permit or license shall be issued only on the condition that a currently licensed contractor will be selected and that the

license number of the contractor will be given to the issuing public body and displayed on the permit or license;
(3) require that, upon issuance of a permit or license, the contractor affix the contractor's license number to that permit or license for public display; and
(4) require the contractor to provide proof that the contractor provides workers' compensation insurance, pays into the unemployment insurance fund, provides health insurance as required under federal or state law, and withholds applicable taxes from worker pay.

Amended by Chapter 57, 2013 General Session

58-55-311 Evidence of licensure.

An individual licensed as an alarm company agent shall:
(1) carry a copy of the individual's license on the individual's person at all times while acting as a licensee;
(2) display the license upon the request of a peace officer, a representative of the division, or a representative of a customer of the alarm company.

Renumbered and Amended by Chapter 317, 2000 General Session

58-55-312 Interim and temporary permits for alarm company agents.

(1) Upon receipt of a complete application for licensure in accordance with Section 58-55-302, an applicant for licensure as an alarm company agent may be issued:
  (a) an interim permit; or
  (b) subject to Subsection (3), a temporary permit.
(2)
  (a) Each interim permit shall expire 90 days after it is issued or on the date on which the applicant is issued a license, whichever is earlier.
  (b) The division may reissue an interim permit if the delay in approving a license is beyond the control or influence of the interim permit holder.
(3)
  (a) The division may issue a temporary permit to an applicant for a license as an alarm company agent if:
    (i) the division has received a background check on the applicant from the Bureau of Criminal Identification;
    (ii)
      (A) the applicant is or will be employed at a call center, office, or administrative facility of an alarm company; and
      (B) the applicant's only contact with a customer or potential customer of the alarm company is:
        (I) from the call center, office, or administrative facility; and
        (II) by telephone or other remote communication method; and
    (iii) the alarm company by which the applicant is or will be employed affirms in writing to the division that the applicant, if issued a temporary license, will act only within the scope of the temporary license, as provided in Subsection (3)(a)(ii).
  (b) A temporary license under this section expires the earliest of:
    (i) 90 days after it is issued;

(ii) the date on which the individual to whom the temporary license is issued leaves the employment of the alarm company that employs the individual at the time the temporary license is issued; and
(iii) the date on which the division issues a regular license to the applicant or denies the applicant's application.
(4) An interim permit holder may engage in the scope of an alarm company agent.

Amended by Chapter 387, 2010 General Session

Part 4
License Denial and Discipline

58-55-401 Grounds for denial of license and disciplinary proceedings.
(1) In accordance with Section 58-1-401, the division may:
(a) refuse to issue a license to an applicant;
(b) refuse to renew the license of a licensee;
(c) revoke the right of a licensee to recover from the Residence Lien Recovery Fund created by Section 38-11-201;
(d) revoke, suspend, restrict, or place on probation the license of a licensee;
(e) issue a public or private reprimand to a licensee; and
(f) issue a cease and desist order.
(2) In addition to an action taken under Subsection (1), the division may take an action described in Subsection 58-1-401(2) in relation to a license as a contractor, if:
(a) the applicant or licensee is an unincorporated entity; and
(b) an individual who holds an ownership interest in the applicant or licensee engages in:
(i) unlawful conduct as described in Section 58-55-501; or
(ii) unprofessional conduct as described in Section 58-55-502.

Amended by Chapter 413, 2011 General Session

58-55-402 Investigation of regulated activity.
(1) The division shall be responsible for the investigation of persons and activities in violation of the provisions of this chapter.
(2)
(a) Investigation by the division shall include investigations of:
(i) licensees engaged in unlawful or unprofessional conduct; and
(ii) unlicensed persons engaged in the conduct of activity or work regulated under this chapter and for which a license is required.
(b)
(i) As used in this Subsection (2)(b), "sign contractor":
(A) means a sign installation contractor or nonelectrical outdoor advertising sign contractor, as classified and defined in division rules; and
(B) does not include a sign installation contractor or nonelectrical outdoor advertising sign contractor, as classified and defined in division rules, that is subject to Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.

(ii) The division shall maintain a record of the number of unlicensed persons found to have engaged each year in the conduct of activity or work regulated under this chapter for which a license as a sign contractor is required, including the location where a violation occurred.

(3) The division shall decline to proceed with investigation of the violation of any provisions of this chapter if the division finds there is no apparent material jeopardy to the public health, safety, and welfare.

(4) The division shall have no responsibility for the inspection of construction work performed in the state to determine compliance with applicable codes, or industry and workmanship standards, except as provided in Subsections 58-1-501(2)(g), 58-55-502(2), (3), and (4), and 58-55-501(16).

(5) Authorized representatives of the division shall be permitted to enter upon the premises or site of work regulated under this chapter for the purpose of determining compliance with the provisions of this chapter.

Amended by Chapter 195, 2011 General Session

58-55-403 Minimum time for division action.

The division has at least five working days after receiving an application for licensure to determine whether to issue a license under this chapter.

Amended by Chapter 233, 2000 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-55-501 Unlawful conduct.

Unlawful conduct includes:

(1) engaging in a construction trade, acting as a contractor, an alarm business or company, or an alarm company agent, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;

(2) acting in a construction trade, as an alarm business or company, or as an alarm company agent beyond the scope of the license held;

(3) hiring or employing a person who is not licensed under this chapter to perform work on a project, unless the person:

(a) is an employee of a person licensed under this chapter for wages; and

(b) is not required to be licensed under this chapter;

(4) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter;

(5) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;

(6) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;

(7) failing to obtain a building permit when required by law or rule;

(8) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;
(9) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;
(10) allowing one's license to be used by another except as provided by statute or rule;
(11) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;
(12) if licensed as a specialty contractor in the electrical trade or plumbing trade, journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician, or residential electrician, failing to directly supervise an apprentice under one's supervision or exceeding the number of apprentices one is allowed to have under the speciality contractor's supervision;
(13) if licensed as a contractor or representing oneself to be a contractor, receiving any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and after receiving the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;
(14) employing an unlicensed alarm business or company or an unlicensed individual as an alarm company agent, except as permitted under the exemption from licensure provisions under Section 58-1-307;
(15) if licensed as an alarm company or alarm company agent, filing with the division fingerprint cards for an applicant which are not those of the applicant, or are in any other way false or fraudulent and intended to mislead the division in its consideration of the applicant for licensure;
(16) if licensed under this chapter, willfully or deliberately disregarding or violating:
(a) the building or construction laws of this state or any political subdivision;
(b) the safety and labor laws applicable to a project;
(c) any provision of the health laws applicable to a project;
(d) the workers' compensation insurance laws of the state applicable to a project;
(e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, Social Security payroll taxes, or other required withholdings; or
(f) reporting, notification, and filing laws of this state or the federal government;
(17) aiding or abetting any person in evading the provisions of this chapter or rules established under the authority of the division to govern this chapter;
(18) engaging in the construction trade or as a contractor for the construction of residences of up to two units when not currently registered or exempt from registration as a qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;
(19) failing, as an original contractor, as defined in Section 38-11-102, to include in a written contract the notification required in Section 38-11-108;
(20) wrongfully filing a preconstruction or construction lien in violation of Section 38-1a-308;
(21) if licensed as a contractor, not completing the approved continuing education required under Section 58-55-302.5;
(22) an alarm company allowing an employee with a temporary license under Section 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary license, as provided in Subsection 58-55-312(3)(a)(ii);
(23) an alarm company agent under a temporary license under Section 58-55-312 engaging in conduct outside the scope of the temporary license, as provided in Subsection 58-55-312(3)(a)(ii);

(24)
(a) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in Utah while not lawfully present in the United States; or
(b) an unincorporated entity providing labor to an entity licensed under this chapter by providing an individual who owns an interest in the unincorporated entity to engage in a construction trade in Utah while not lawfully present in the United States;
(25) an unincorporated entity failing to provide the following for an individual who engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an individual who engages, or will engage, in a construction trade in Utah for a separate entity for which the unincorporated entity provides the individual as labor:
(a) workers' compensation coverage:
(i) to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; or
(ii) that would be required under the chapters listed in Subsection (25)(a)(i) if the unincorporated entity were licensed under this chapter; and
(b) unemployment compensation in accordance with Title 35A, Chapter 4, Employment Security Act, for an individual who owns, directly or indirectly, less than an 8% interest in the unincorporated entity, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(26) the failure of a sign installation contractor or nonelectrical outdoor advertising sign contractor, as classified and defined in division rules, to:
(a) display the contractor's license number prominently on a vehicle that:
(i) the contractor uses; and
(ii) displays the contractor's business name; or
(b) carry a copy of the contractor's license in any other vehicle that the contractor uses at a job site, whether or not the vehicle is owned by the contractor;
(27)
(a) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in the state while the individual is using a Social Security number that does not belong to that individual; or
(b) an unincorporated entity providing labor to an entity licensed under this chapter by providing an individual, who owns an interest in the unincorporated entity, to engage in a construction trade in the state while the individual is using a Social Security number that does not belong to that individual;
(28) a contractor failing to comply with a requirement imposed by a political subdivision, state agency, or board of education under Section 58-55-310; or
(29) failing to timely comply with the requirements described in Section 58-55-605.

Amended by Chapter 188, 2014 General Session

58-55-502 Unprofessional conduct.

Unprofessional conduct includes:
(1) failing to establish, maintain, or demonstrate financial responsibility while licensed as a contractor under this chapter;
(2) disregarding or violating through gross negligence or a pattern of negligence:
(a) the building or construction laws of this state or any political subdivision;
(b) the safety and labor laws applicable to a project;

(c) any provision of the health laws applicable to a project;
(d) the workers' compensation insurance laws of this state applicable to a project;
(e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, Social Security payroll taxes, or other required withholdings; or
(f) any reporting, notification, and filing laws of this state or the federal government;
(3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a licensee's direction which causes material injury to another;
(4) contract violations that pose a threat or potential threat to the public health, safety, and welfare including:
(a) willful, deliberate, or grossly negligent departure from or disregard for plans or specifications, or abandonment or failure to complete a project without the consent of the owner or the owner's duly authorized representative or the consent of any other person entitled to have the particular project completed in accordance with the plans, specifications, and contract terms;
(b) failure to deposit funds to the benefit of an employee as required under any written contractual obligation the licensee has to the employee;
(c) failure to maintain in full force and effect any health insurance benefit to an employee that was extended as a part of any written contractual obligation or representation by the licensee, unless the employee is given written notice of the licensee's intent to cancel or reduce the insurance benefit at least 45 days before the effective date of the cancellation or reduction;
(d) failure to reimburse the Residence Lien Recovery Fund as required by Section 38-11-207;
(e) failure to provide, when applicable, the information required by Section 38-11-108; and
(f) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to claim recovery from the Residence Lien Recovery Fund under Section 38-11-204;
(5) failing as an alarm company to notify the division of the cessation of performance of its qualifying agent, or failing to replace its qualifying agent as required under Section 58-55-304;
(6) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section 58-55-311;
(7) failing to comply with operating standards established by rule in accordance with Section 58-55-308;
(8) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in Utah while not lawfully present in the United States;
(9) an unincorporated entity failing to provide the following for an individual who engages, or will engage, in a construction trade in Utah for the unincorporated entity:
(a) workers' compensation coverage to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; and
(b) unemployment compensation in accordance with Title 35A, Chapter 4, Employment Security Act, for an individual who owns, directly or indirectly, less than an 8% interest in the unincorporated entity, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
(10) the failure of an alarm company or alarm company agent to inform a potential customer, before the customer's purchase of an alarm system or alarm service from the alarm company, of the policy of the county, city, or town within which the customer resides relating to priority levels for responding to an alarm signal transmitted by the alarm system that the alarm company provides the customer.

Amended by Chapter 170, 2011 General Session

Amended by Chapter 413, 2011 General Session

58-55-503 Penalty for unlawful conduct -- Citations.

(1)

(a)

(i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor.

(ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an individual and does not include a sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

(b) A person who violates the provisions of Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance of the work.

(2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.

(3) Grounds for immediate suspension of a licensee's license by the division and the commission include:

(a) the issuance of a citation for violation of Subsection 58-55-308(2), Section 58-55-501, or Subsection 58-55-504(2); and

(b) the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including:

(i) applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure;

(ii) filing a current financial statement with the division; and

(iii) notifying the division concerning loss of insurance coverage or change in qualifier.

(4)

(a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), (28), or (29), Subsection 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who is in violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2).

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-401 may not be assessed through a citation.

(b)

(i) A citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated.
(ii) A citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.
(iii) A citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.
(c) A citation issued under this section, or a copy of a citation, may be served upon a person upon whom a summons may be served:
(i) in accordance with the Utah Rules of Civil Procedure;
(ii) personally or upon the person's agent by a division investigator or by a person specially designated by the director; or
(iii) by mail.
(d)
(i) If within 20 calendar days after the day on which a citation is served, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.
(ii) The period to contest a citation may be extended by the division for cause.
(e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.
(f) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
(g) A citation may not be issued under this section after the expiration of six months following the occurrence of a violation.
(h) The director or the director's designee shall assess a fine in accordance with the following:
(i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to $1,000;
(ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to $2,000; and
(iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to $2,000 for each day of continued offense.
(i)
(i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:
(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2); or
(B)
(I) the division initiated an action for a first or second offense;
(II) a final order has not been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);
(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2); and
(IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.

(j) In addition to any other licensure sanction or fine imposed under this section, the division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25) two or more times within a 12-month period, unless, with respect to a violation of Subsection 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal legal working status of the individual who was the subject of the violation using a status verification system, as defined in Section 13-47-102.

(k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25) for each individual is considered a separate violation.

(5)

(a) A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Commerce Service Account created by Section 13-1-2.

(b) A penalty that is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(c) A county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty.

(d) In an action brought to enforce the provisions of this section, the court shall award reasonable attorney fees and costs to the prevailing party.

Amended by Chapter 188, 2014 General Session

58-55-504 Crane operators -- Required certification -- Penalty for violation.

(1) As used in this section:

(a) "Commercial construction projects" means construction, alteration, repair, demolition, or excavation projects that do not involve:

(i) single family detached housing;

(ii) multifamily attached housing up to and including a fourplex; or

(iii) commercial construction of not more than two stories above ground.

(b)

(i) "Crane operator" means an individual engaged in operating a crane, which for purposes of this section is a power-operated hoisting machine used in construction, demolition, or excavation work that has a power-operated winch, load-line, and boom moving laterally by the rotation of the machine on a carrier.

(ii) It does not include operating a fork lift, digger derrick truck, aircraft, bucket truck, knuckle boom, side boom, mechanic's truck, or a vehicle or machine not using a power-operated winch and load-line.

(2)

(a) In order to operate a crane on commercial construction projects, an individual shall be certified as a crane operator by the National Commission for the Certification of Crane Operators or any other organization determined by the division to offer an equivalent testing and certification program that meets the requirements of the American Society of Mechanical Engineers ASME B 30.5 and the accreditation requirements of the National Commission for Certifying Agencies.

(b) An individual who violates Subsection (2)(a) is guilty of a class A misdemeanor.

(3) An individual engaged in construction or operation incidental to petroleum refining or electrical utility construction or maintenance is exempt from the crane operator certification requirement of Subsection (2)(a).

Amended by Chapter 98, 2007 General Session

Part 6
Payment Provisions

58-55-601 Payment -- Account designated.

When making any payment to a materialman, supplier, contractor, or subcontractor with whom he has a running account, or with whom he has more than one contract, or to whom he is otherwise indebted, the contractor shall designate the contract under which the payment is made or the items of account to which it is to be applied. When a payment for materials or labor is made to a subcontractor or materialman, the subcontractor or materialman shall demand of the person making the payment a designation of the account and the items of account to which the payment is to apply. In cases where a lien is claimed for materials furnished or labor performed by a subcontractor or materialman, it is a defense to the claim that a payment was made by the owner to the contractor for the materials and was so designated and paid over to the subcontractor or materialman, if when the payment was received by the subcontractor or materialman, he did not demand a designation of the account and of the items of account to which the payment was to be applied.

Renumbered and Amended by Chapter 181, 1994 General Session

58-55-602 Payment of construction funds -- Interest.

(1) All unpaid construction funds are payable to the contractor as provided in Section 13-8-5.
(2) On projects involving multiple buildings, each building shall be considered individually in determining the amount to be paid the contractor.
(3) Partial occupancy of a building requires payment in direct proportion to the value of the part of the building occupied.
(4) If any payment is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

Amended by Chapter 365, 1999 General Session

58-55-603 Payment to subcontractors and suppliers.

(1) When a contractor receives any construction funds from an owner or another contractor for work performed and billed, he shall pay each of his subcontractors and suppliers in proportion to the percentage of the work they performed under that billing, unless otherwise agreed by contract.
(2) If, under this section and without reasonable cause, or unless otherwise agreed by contract, the contractor fails to pay for work performed by his subcontractors or suppliers within 30 consecutive days after receiving construction funds from the owner or another contractor for work performed and billed, or after the last day payment is due under the terms of the billing, whichever is later, he shall pay to the subcontractor or supplier, in addition to the payment,

interest in the amount of 1% per month of the amount due, beginning on the day after payment is due, and reasonable costs of any collection and attorney's fees.

(3) When a subcontractor receives any construction payment under this section, Subsections (1) and (2) apply to that subcontractor.

Renumbered and Amended by Chapter 181, 1994 General Session

58-55-604 Proof of licensure to maintain or commence action.

A contractor or alarm business or company may not act as agent or commence or maintain any action in any court of the state for collection of compensation for performing any act for which a license is required by this chapter without alleging and proving that the licensed contractor or alarm business or company was appropriately licensed when the contract sued upon was entered into, and when the alleged cause of action arose.

Amended by Chapter 377, 2008 General Session

58-55-605 Pay statement required.

(1) On the day on which a person licensed under this chapter pays an individual for work that the individual performed, the person shall give the individual a written or electronic pay statement that states:
  (a) the individual's name;
  (b) the individual's base rate of pay;
  (c) the dates of the pay period for which the individual is being paid;
  (d) if paid hourly, the number of hours the individual worked during the pay period;
  (e) the amount of and reason for any money withheld in accordance with state or federal law, including:
    (i) state and federal income tax;
    (ii) Social Security tax;
    (iii) Medicare tax; and
    (iv) court-ordered withholdings; and
  (f) the total amount paid to the individual for that pay period.

(2) A person licensed under this chapter shall:
  (a) comply with the requirements described in Subsection (1) regardless of whether the licensee pays the individual by check, cash, or other means;
  (b) retain a copy of each pay statement described in Subsection (1) for at least three years after the day on which the person gives a copy of the pay statement to the individual; and
  (c) upon request, make the pay statement records described in this section available to the division for inspection.

Enacted by Chapter 188, 2014 General Session

Chapter 56
Building Inspector and Factory Built Housing Licensing Act

58-56-1 Title.

This chapter is known as the "Building Inspector and Factory Built Housing Licensing Act."

Amended by Chapter 14, 2011 General Session

58-56-2 Chapter administration.

The provisions of this chapter shall be administered by the Division of Occupational and Professional Licensing.

Enacted by Chapter 269, 1989 General Session

58-56-3 Definitions.

In addition to the definitions in Section 58-1-102, definitions in the following sections apply to this chapter:

(1) Section 15A-1-102;
(2) Section 15A-1-202; and
(3) Section 15A-1-302.

Amended by Chapter 14, 2011 General Session

58-56-8.5 Building Inspector Licensing Board.

(1) There is created a Building Inspector Licensing Board consisting of four building inspectors and one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 through 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
  (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
  (b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation is disqualified from participating with the board when the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Enacted by Chapter 262, 1995 General Session

58-56-9 Qualifications of inspectors -- Contract for inspection services.

(1) An inspector employed by a local regulator, state regulator, or compliance agency to enforce the codes shall:
  (a)
    (i) meet minimum qualifications as established by the division in collaboration with the commission;
    (ii) be certified by a nationally recognized organization which promulgates construction codes; or
    (iii) pass an examination developed by the division in collaboration with the commission;
  (b) be currently licensed by the division as meeting those minimum qualifications; and
  (c) be subject to revocation or suspension of the inspector's license or being placed on probation if found guilty of unlawful or unprofessional conduct.

(2) A local regulator, state regulator, or compliance agency may contract for the services of a licensed inspector not regularly employed by the regulator or agency.

Amended by Chapter 14, 2011 General Session

58-56-9.1 Unlawful conduct.

Unlawful conduct is as defined in Subsection 58-1-501(1) and includes:

(1) engaging in the sale of factory built housing without being registered with the division as a dealer, unless the sale is exempt under Section 58-56-16;
(2) selling factory built housing within the state as a dealer without collecting and remitting to the division the fee required by Section 58-56-17;
(3) acting as a building inspector or representing oneself to be acting as a building inspector, unless licensed or exempted from licensure under this chapter or using the title building inspector or any other description, words, letters, or abbreviation indicating that the person is a building inspector if the person has not been licensed under this chapter;
(4) acting as a building inspector beyond the scope of the license held under this chapter; and
(5) hiring or employing in any manner an unlicensed person as a building inspector, unless exempted from licensure under this chapter.

Enacted by Chapter 145, 2007 General Session

58-56-9.3 Unprofessional conduct.

Unprofessional conduct is as defined in Subsection 58-1-501(2) and includes:

(1) knowingly failing to inspect or issue correction notices for code violations which when left uncorrected would constitute a hazard to the public health and safety and knowingly failing to require that correction notices are complied with as a building inspector;
(2) the use of alcohol or the illegal use of drugs while performing duties as a building inspector or at any time to the extent that the inspector is physically or mentally impaired and unable to effectively perform the duties of an inspector;
(3) gross negligence in the performance of official duties as a building inspector;
(4) the personal use of information or knowingly revealing information to unauthorized persons when that information has been obtained by a building inspector as a result of the inspector's employment, work, or position as an inspector;
(5) unlawful acts or practices which are clearly unethical under generally recognized standards of conduct of a building inspector;
(6) engaging in fraud or knowingly misrepresenting a fact relating to the performance of duties and responsibilities as a building inspector;
(7) a building inspector knowingly failing to require that all plans, specifications, drawings, documents, and reports be stamped by architects, professional engineers, or both as established by law;
(8) a building inspector knowingly failing to report to the division an act or omission of a licensee under Title 58, Chapter 55, Utah Construction Trades Licensing Act, which when left uncorrected constitutes a hazard to public health and safety;
(9) a building inspector knowingly failing to report to the division unlicensed practice persons who are required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act;
(10) a building inspector's approval of work which materially varies from approved documents that have been stamped by an architect, professional engineer, or both unless authorized by the licensed architect, professional engineer, or both;

(11) a building inspector failing to produce verification of current licensure and current certifications for the codes upon request of the division, a compliance agency, or a contractor or property owner whose work is being inspected;
(12) nondelivery of goods or services by a registered dealer which constitutes a breach of contract by the dealer;
(13) the failure of a registered dealer to pay a subcontractor or supplier any amounts to which that subcontractor or supplier is legally entitled; and
(14) any other activity which is defined as unprofessional conduct by division rule in accordance with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 310, 2010 General Session

58-56-9.5 Penalty for unlawful conduct -- Citations.
(1) A person who violates a provision of Section 58-56-9.1 or who fails to comply with a citation issued under this section after it is final is guilty of a class A misdemeanor.
(2) Grounds for immediate suspension of a licensee's license by the division under this chapter include:
  (a) the issuance of a citation for violation of a provision of Section 58-56-9.1; and
  (b) failure by a licensee to make application to, report to, or notify the division with respect to a matter for which application, notification, or reporting is required under this chapter or rules made under this chapter by the division.
(3)
  (a) If upon inspection or investigation, the division concludes that a person has violated a provision of Section 58-56-9.1, or a rule or order issued with respect to that section, and that disciplinary action is appropriate, the director or the director's designee from within the division shall:
    (i) promptly issue a citation to the person according to this chapter and any pertinent rules;
    (ii) attempt to negotiate a stipulated settlement; or
    (iii) notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
  (b)
    (i) A person who violates a provision of Section 58-56-9.1, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine under this Subsection (3)(b) and may, in addition to or instead of the fine, be ordered by the division to cease from violating the provision.
    (ii) Except as otherwise provided in Subsection (2)(a), the division may not assess licensure sanctions referred to in Subsection 58-56-9(1)(c) through a citation.
  (c)
    (i) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated.
    (ii) The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.
    (iii) The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served:
(i) in accordance with the Utah Rules of Civil Procedure;
(ii) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or
(iii) by mail.
(e)
(i) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.
(ii) The period to contest a citation may be extended by the division for cause.
(f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.
(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of a license.
(h) No citation may be issued under this section after the expiration of six months following the occurrence of the violation.
(i) The director or the director's designee may assess fines for violations of Section 58-56-9.1 as follows:
(i) for a first offense determined under this Subsection (3), a fine of up to $1,000;
(ii) for a second offense, a fine of up to $2,000; and
(iii) for any subsequent offense, a fine of up to $2,000 for each day of continued offense.
(j) For the purposes of issuing a final order under this section and assessing a fine under Subsection (3)(i), an offense constitutes a second or subsequent offense if:
(i) the division previously issued a final order determining that a person committed a first or second offense in violation of a provision of Section 58-56-9.1; or
(ii)
(A) the division initiated an action for a first or second offense;
(B) no final order has been issued by the division in the action initiated under Subsection (3)(j)(ii)(A);
(C) the division determines during an investigation that occurred after the initiation of the action under Subsection (3)(j)(ii)(A) that the person committed a second or subsequent violation of a provision of Section 58-56-9.1; and
(D) after determining that the person committed a second or subsequent offense under Subsection (3)(j)(ii)(C), the division issues a final order on the action initiated under Subsection (3)(j)(ii)(A).
(k) In issuing a final order for a second or subsequent offense under Subsection (3)(j), the division shall comply with the requirements of this section.
(4)
(a) Proceeds from a fine imposed under Subsection (3)(i) shall be deposited in the Commerce Service Account created by Section 13-1-2.
(b) The director may collect an unpaid fine by:
(i) referring the matter to a collection agency; or
(ii) bringing an action in the district court of the county in which the person resides or in the county where the director's office is located.
(c)
(i) The state's attorney general or a county attorney shall provide legal assistance and advice to the director in an action brought under Subsection (4)(b).

(ii) Reasonable attorney fees and costs shall be awarded in an action brought to enforce the provisions of this section.

Amended by Chapter 278, 2010 General Session

58-56-15.1 Factory built housing set-up contractor license.

(1) The scope of the work included under a factory built housing set-up contractor license includes:
(a) the placement or securing, or both placement and securing, of the factory built housing on a permanent or temporary foundation;
(b) securing units together, if required; and
(c) connection of the utilities to a factory built housing unit.
(2) The scope of work included under a factory built housing set-up contractor license does not include:
(a) site preparation;
(b) construction of a permanent foundation; and
(c) construction of utility services to the near proximity of the factory built housing unit.
(3) If a dealer is not licensed as a factory built housing set-up contractor, that individual must subcontract the connection services to an individual who is licensed by the division to perform those specific functions under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

Enacted by Chapter 14, 2011 General Session

58-56-16 Registration of dealers -- Bonding requirements -- Renewal -- Exemptions -- Discipline.

(1) Each person engaged in the sale of factory built housing in the state, except as provided in Subsection (4), shall register with the division as a dealer.
(2) Each applicant for registration under this section shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504; and
(c) provide the division with a registration bond in accordance with rules established by the division.
(3)
(a) The division shall issue each registration under this section in accordance with a two-year renewal cycle established by rule.
(b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
(c) Each registration under this section automatically expires on the expiration date on the certificate of registration unless the registrant renews it in accordance with Section 58-1-308.
(4) Subsection (1) does not apply to:
(a) a person not regularly engaged in the sale of factory built housing who is selling a unit the person owns for the person's own account;
(b) a principal broker licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act; or
(c) a sales agent or associate broker licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, who sells factory built housing as an agent for, and under the supervision of, the principal broker with whom the sales agent or associate broker is affiliated.
(5) Grounds for refusing to issue a registration, for refusing to renew a registration, for revoking, suspending, restricting, or placing on probation a registration, for issuing a public or private

reprimand to a registrant, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Amended by Chapter 379, 2010 General Session

58-56-17 Fees on sale -- Escrow agents -- Sales tax.

(1) A dealer shall collect and remit a fee of $25 to the division for each factory built home the dealer sells that, as of the date of the sale, has not been permanently affixed to real property and converted to real property as provided in Section 70D-2-401. The fee shall be payable within 30 days following the close of each calendar quarter for all units sold during that calendar quarter. The fee shall be deposited in a restricted account as provided in Section 58-56-17.5.

(2) A principal real estate broker, associate broker, or sales agent exempt from registration as a dealer under Section 58-56-16 who sells a factory built home that has not been permanently affixed to real property shall close the sale only through a qualified escrow agent in this state registered with the Insurance Department or the Department of Financial Institutions.

(3) An escrow agent through which a sale is closed under Subsection (2) shall remit all required sales tax to the state.

Amended by Chapter 262, 2013 General Session

58-56-17.5 Factory Built Housing Fees Restricted Account.

(1) There is created within the General Fund a restricted account known as "Factory Built Housing Fees Account."

(2)

(a) The restricted account shall be funded from the fees the dealer collects and remits to the division for each factory built home the dealer sells as provided in Subsection 58-56-17(1).

(b) The division shall deposit all money collected under Subsection 58-56-17(1) in the restricted account.

(c) The restricted account shall be used to pay for education and enforcement of this chapter and Title 15A, Chapter 1, Part 3, Factory Built Housing and Modular Units Administration Act, including investigations and administrative actions and the funding of additional employees to the amount of the legislative appropriation.

(d) The restricted account may accrue interest which shall be deposited into the restricted account.

Amended by Chapter 14, 2011 General Session

Chapter 57
Respiratory Care Practices Act

58-57-1 Short title.

This chapter is known as the "Respiratory Care Practices Act."

Enacted by Chapter 208, 1990 General Session

58-57-2 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Respiratory Care Licensing Board created in Section 58-57-3.

(2) "Health care facility" means any facility or institution in which health care services are performed or furnished and includes a hospital, clinic, or emergency care center.

(3) "Practice of respiratory care":

(a) means the treatment, operation of equipment, management, diagnostic testing, and care of any human disease, deficiency, pain, injury, or other physical condition associated with the cardiopulmonary system under the qualified medical direction or supervision of a practitioner who has training and knowledge in the diagnosis, treatment, and assessment of respiratory problems;

(b) includes:

(i) accepting and carrying out a practitioner's written, verbal, or telephonic prescription or order specifically relating to respiratory care in a hospital or other health care setting and includes consultation with licensed nurses, as appropriate;

(ii) administering respiratory care during transportation of a patient and under other circumstances where an emergency requires immediate respiratory care;

(iii) serving as a resource to other health care professionals and hospital administrators in relation to the technical aspects of, and the safe and effective methods for, administering respiratory care;

(iv) functioning in situations of patient contact requiring individual judgment in administering respiratory care under the general supervision of a qualified practitioner; and

(v) supervising, directing, or teaching personnel in the performance of respiratory care modalities as part of a respiratory care education program; and

(c) does not include a person who delivers, installs, or maintains respiratory related durable medical equipment and who gives instructions regarding the use of that equipment as long as that person does not perform clinical evaluation or treatment of the patient.

(4) "Practitioner" means an individual currently licensed, registered, or otherwise authorized by the appropriate jurisdiction to prescribe and administer drugs and order respiratory care in the course of professional practice.

(5) "Respiratory care practitioner" means any person licensed to practice respiratory care under this chapter.

(6) "Respiratory related durable medical equipment" means:

(a) medical grade oxygen;

(b) equipment and supplies related to medical gases;

(c) apnea monitors;

(d) oximeters;

(e) noninvasive positive pressure generators, except those with back-up respiratory rate or when used invasively;

(f) bilirubin lights;

(g) suctioning equipment;

(h) large volume nebulizers with compressors, except when used invasively in conjunction with an artificial airway;

(i) medication nebulizers;

(j) enteral nutrition equipment; and

(k) other respiratory related equipment intended for use in the home as defined by the division by rule.

(7) "Unlawful conduct" is defined in Sections 58-1-501 and 58-57-14.

(8) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:
(a) acting contrary to the instructions of the practitioner responsible for supervising the licensee;
(b) knowingly operating any respiratory care equipment that is unsafe or not in compliance with standards of condition or operation consistent with the patient's safety;
(c) permitting any person to operate respiratory care equipment who is not competent or not allowed to operate the equipment;
(d) revealing to any unauthorized person confidential or privileged information about a patient;
(e) using any controlled substance, unless the controlled substance is prescribed by a practitioner and used in accordance with the practitioner's instructions; and
(f) making any statement that is incorrect due to negligence, willfulness, or intent to provide false information or entry on any patient record or other record that is used for payment of respiratory care services.

Amended by Chapter 106, 2006 General Session

58-57-3 Board created -- Membership -- Duties.
(1) There is created a five-member Respiratory Care Licensing Board consisting of the following persons:
(a) one physician who is a member of either the American Society of Anesthesiologists, the American College of Chest Physicians, the American Thoracic Society, or the American Academy of Pediatrics;
(b) three licensed respiratory care practitioners who have practiced respiratory care for a period of not less than three years immediately preceding their appointment to the board; and
(c) one member from the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Amended by Chapter 297, 1993 General Session

58-57-4 Qualifications for a license.
(1) The division shall issue a respiratory care practitioner license to an applicant who meets the requirements specified in this section.
(2) An applicant seeking licensure as a respiratory care practitioner shall:
(a) submit an application on a form prescribed by the division;
(b) pay a fee as determined by the department pursuant to Section 63J-1-504;
(c) show evidence of good moral character;
(d) possess a high school education or its equivalent, as determined by the division in collaboration with the board;
(e) have completed a respiratory care practitioner educational program that is accredited by a nationally accredited organization acceptable to the division as defined by rule; and
(f) pass an examination approved by the division in collaboration with the board.

Amended by Chapter 183, 2009 General Session

58-57-5 Licensure by endorsement.

If an applicant has completed a respiratory care practitioner education program that is approved by the board and accredited by a nationally accredited organization acceptable to the division, as defined by rule, the board may recommend that the division issue a license without examination to any applicant currently licensed by another state as a respiratory care practitioner or its equivalent, if the requirements for licensing in that state are at least as stringent as the requirements under this chapter.

Amended by Chapter 106, 2006 General Session

58-57-6 Term of license -- Expiration -- Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-57-7 Exemptions from licensure.

(1)
  (a) For purposes of Subsection (2)(b), "qualified" means an individual who is a registered polysomnographic technologist or a Diplomate certified by the American Board of Sleep Medicine.
  (b) For purposes of Subsections (2)(f) and (g), "supervision" means one of the following will be immediately available for consultation in person or by phone:
    (i) a practitioner;
    (ii) a respiratory therapist;
    (iii) a Diplomate of the American Board of Sleep Medicine; or
    (iv) a registered polysomnographic technologist.
(2) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of respiratory therapy subject to the stated circumstances and limitations without being licensed under this chapter:
  (a) any person who provides gratuitous care for a member of his immediate family without representing himself as a licensed respiratory care practitioner;
  (b) any person who is a licensed or qualified member of another health care profession, if this practice is consistent with the accepted standards of the profession and if the person does not represent himself as a respiratory care practitioner;
  (c) any person who serves in the Armed Forces of the United States or any other agency of the federal government and is engaged in the performance of his official duties;
  (d) any person who acts under a certification issued pursuant to Title 26, Chapter 8a, Utah Emergency Medical Services System Act, while providing emergency medical services;
  (e) any person who delivers, installs, or maintains respiratory related durable medical equipment and who gives instructions regarding the use of that equipment in accordance with Subsections 58-57-2(3) and (6), except that this exemption does not include any clinical evaluation or treatment of the patient;
  (f) any person who is working in a practitioner's office, acting under supervision; and
  (g) a polysomnographic technician or trainee, acting under supervision, as long as the technician or trainee administers the following only in a sleep lab, sleep center, or sleep facility:

(i) oxygen titration; and
(ii) positive airway pressure that does not include mechanical ventilation.
(3) Nothing in this chapter permits a respiratory care practitioner to engage in the unauthorized practice of other health disciplines.

Amended by Chapter 340, 2011 General Session

58-57-8 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-57-10 Use of title or designation.

(1) Only a respiratory care practitioner may use the following titles or designations in this state:
(a) respiratory care practitioner;
(b) respiratory therapist; or
(c) respiratory technician.
(2) Any person who violates this section is guilty of a class A misdemeanor.

Amended by Chapter 106, 2006 General Session

58-57-11 Provision for current practitioners.

Any person who is engaged in the practice of respiratory care as defined in Section 58-57-2 and who is not licensed under this chapter as a respiratory care practitioner, shall by January 1, 2007, obtain a license under this chapter unless exempt from licensure under the provisions of Section 58-1-307 or 58-57-7.

Amended by Chapter 106, 2006 General Session

58-57-12 Independent practice prohibited.

A respiratory care practitioner may not:
(1) practice independently of a practitioner or of a health care facility while under the supervision of a practitioner; or
(2) charge a fee for his services independently of a practitioner or health care facility.

Amended by Chapter 106, 2006 General Session

58-57-14 Unlawful conduct -- Penalty.

(1) Beginning January 1, 2007, "unlawful conduct" includes:
(a) using the following titles, names, or initials, if the user is not properly licensed under this chapter:
(i) respiratory care practitioner;
(ii) respiratory therapist; and
(iii) respiratory technician; and

(b) using any other name, title, or initials that would cause a reasonable person to believe the user is licensed under this chapter if the user is not properly licensed under this chapter.
(2) Any person who violates the unlawful conduct provision specifically defined in Subsection 58-1-501(1)(a) is guilty of a third degree felony.
(3) Any person who violates any of the unlawful conduct provisions specifically defined in Subsections 58-1-501(1)(b) through (f) and Subsection (1) of this section is guilty of a class A misdemeanor.
(4) After a proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the division may assess administrative penalties for acts of unprofessional or unlawful conduct or any other appropriate administrative action.

Amended by Chapter 382, 2008 General Session

Chapter 60
Mental Health Professional Practice Act

Part 1
General Provisions

58-60-101 Title.
This chapter is known as the "Mental Health Professional Practice Act."

Enacted by Chapter 32, 1994 General Session

58-60-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Client" or "patient" means an individual who consults or is examined or interviewed by an individual licensed under this chapter who is acting in the individual's professional capacity.
(2) "Confidential communication" means information obtained by an individual licensed under this chapter, including information obtained by the individual's examination of the client or patient, which is:
(a)
(i) transmitted between the client or patient and an individual licensed under this chapter in the course of that relationship; or
(ii) transmitted among the client or patient, an individual licensed under this chapter, and individuals who are participating in the diagnosis or treatment under the direction of an individual licensed under this chapter, including members of the client's or patient's family; and
(b) made in confidence, for the diagnosis or treatment of the client or patient by the individual licensed under this chapter, and by a means not intended to be disclosed to third persons other than those individuals:
(i) present to further the interest of the client or patient in the consultation, examination, or interview;
(ii) reasonably necessary for the transmission of the communications; or

(iii) participating in the diagnosis and treatment of the client or patient under the direction of the mental health therapist.

(3) "Hypnosis" means, when referring to individuals exempted from licensure under this chapter, a process by which an individual induces or assists another individual into a hypnotic state without the use of drugs or other substances and for the purpose of increasing motivation or to assist the individual to alter lifestyles or habits.

(4) "Individual" means a natural person.

(5) "Mental health therapist" means an individual who is practicing within the scope of practice defined in the individual's respective licensing act and is licensed under this title as:

(a) a physician and surgeon, or osteopathic physician engaged in the practice of mental health therapy;

(b) an advanced practice registered nurse, specializing in psychiatric mental health nursing;

(c) an advanced practice registered nurse intern, specializing in psychiatric mental health nursing;

(d) a psychologist qualified to engage in the practice of mental health therapy;

(e) a certified psychology resident qualifying to engage in the practice of mental health therapy;

(f) a clinical social worker;

(g) a certified social worker;

(h) a marriage and family therapist;

(i) an associate marriage and family therapist;

(j) a clinical mental health counselor; or

(k) an associate clinical mental health counselor.

(6) "Mental illness" means a mental or emotional condition defined in an approved diagnostic and statistical manual for mental disorders generally recognized in the professions of mental health therapy listed under Subsection (5).

(7) "Practice of mental health therapy" means treatment or prevention of mental illness, whether in person or remotely, including:

(a) conducting a professional evaluation of an individual's condition of mental health, mental illness, or emotional disorder consistent with standards generally recognized in the professions of mental health therapy listed under Subsection (5);

(b) establishing a diagnosis in accordance with established written standards generally recognized in the professions of mental health therapy listed under Subsection (5);

(c) prescribing a plan for the prevention or treatment of a condition of mental illness or emotional disorder; and

(d) engaging in the conduct of professional intervention, including psychotherapy by the application of established methods and procedures generally recognized in the professions of mental health therapy listed under Subsection (5).

(8) "Remotely" means communicating via Internet, telephone, or other electronic means that facilitate real-time audio or visual interaction between individuals when they are not physically present in the same room at the same time.

(9) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-60-109.

(10) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-60-110, and may be further defined by division rule.

Amended by Chapter 16, 2013 General Session
Amended by Chapter 123, 2013 General Session

58-60-103 Licensure required.

(1) An individual shall be licensed under this chapter; Chapter 67, Utah Medical Practice Act; Chapter 68, Utah Osteopathic Medical Practice Act; Chapter 31b, Nurse Practice Act; Chapter 61, Psychologist Licensing Act; or exempted from licensure under this chapter in order to:
  (a) engage in, or represent that the individual will engage in, the practice of mental health therapy, clinical social work, certified social work, marriage and family therapy, or clinical mental health counseling; or
  (b) practice as, or represent that the individual is, a mental health therapist, clinical social worker, certified social worker, marriage and family therapist, clinical mental health counselor, psychiatrist, psychologist, registered psychiatric mental health nurse specialist, certified psychology resident, associate marriage and family therapist, or associate clinical mental health counselor.
(2) An individual shall be licensed under this chapter or exempted from licensure under this chapter in order to:
  (a) engage in, or represent that the individual is engaged in, practice as a social service worker; or
  (b) represent that the individual is, or use the title of, a social service worker.
(3) An individual shall be licensed under this chapter or exempted from licensure under this chapter in order to:
  (a) engage in, or represent that the individual is engaged in, practice as a substance use disorder counselor; or
  (b) represent that the individual is, or use the title of, a substance use disorder counselor.
(4) Notwithstanding the provisions of Subsection 58-1-307(1)(c), an individual shall be certified under this chapter, or otherwise exempted from licensure under this chapter, in order to engage in an internship or residency program of supervised clinical training necessary to meet the requirements for licensure as:
  (a) a marriage and family therapist under Part 3, Marriage and Family Therapist Licensing Act; or
  (b) a clinical mental health counselor under Part 4, Clinical Mental Health Counselor Licensing Act.

Amended by Chapter 258, 2015 General Session

58-60-104 Term of license -- Expiration -- Renewal.

(1)
  (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.
  (b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
(2) At the time of renewal the licensee shall show satisfactory evidence of renewal requirements as required under this chapter.
(3) Each license expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Enacted by Chapter 32, 1994 General Session

58-60-105 Continuing education.

(1) By rule made under Section 58-1-203, the division may establish a continuing education requirement as a condition for renewal of any license classification under this chapter upon

finding continuing education for that profession is necessary to reasonably protect the public health, safety, or welfare.
(2) If a renewal cycle is extended or shortened under Section 58-60-104, the continuing education hours required for license renewal under this section shall be increased or decreased proportionally.
(3) The division shall, in addition to a continuing education requirement the division establishes under Subsection (1), require an individual licensed under this chapter, as a condition of renewing the individual's license, to complete a minimum of two hours of training in suicide prevention via a course that the division designates as approved.

Amended by Chapter 77, 2015 General Session

58-60-106 Status of licenses held on the effective date of this chapter.

An individual holding a valid Utah license as a clinical social worker, certified social worker, social service worker, or marriage and family therapist under any licensing or practice acts in this title in effect immediately prior to July 1, 1994, is on and after July 1, 1994, considered to hold a current license under this chapter in the comparable classification as a clinical social worker, certified social worker, social service worker, or marriage and family therapist.

Enacted by Chapter 32, 1994 General Session

58-60-107 Exemptions from licensure.

(1) Except as modified in Section 58-60-103, the exemptions from licensure in Section 58-1-307 apply to this chapter.
(2) In addition to the exemptions from licensure in Section 58-1-307, the following may engage in acts included within the definition of practice as a mental health therapist, subject to the stated circumstances and limitations, without being licensed under this chapter:
  (a) the following when practicing within the scope of the license held:
    (i) a physician and surgeon or osteopathic physician and surgeon licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;
    (ii) an advanced practice registered nurse, specializing in psychiatric mental health nursing, licensed under Chapter 31b, Nurse Practice Act; and
    (iii) a psychologist licensed under Chapter 61, Psychologist Licensing Act;
  (b) a recognized member of the clergy while functioning in a ministerial capacity as long as the member of the clergy does not represent that the member of the clergy is, or use the title of, a license classification in Subsection 58-60-102(5);
  (c) an individual who is offering expert testimony in a proceeding before a court, administrative hearing, deposition upon the order of a court or other body having power to order the deposition, or a proceeding before a master, referee, or alternative dispute resolution provider;
  (d) an individual engaged in performing hypnosis who is not licensed under this title in a profession which includes hypnosis in its scope of practice, and who:
    (i)
      (A) induces a hypnotic state in a client for the purpose of increasing motivation or altering lifestyles or habits, such as eating or smoking, through hypnosis;
      (B) consults with a client to determine current motivation and behavior patterns;
      (C) prepares the client to enter hypnotic states by explaining how hypnosis works and what the client will experience;

(D) tests clients to determine degrees of suggestibility;
(E) applies hypnotic techniques based on interpretation of consultation results and analysis of client's motivation and behavior patterns; and
(F) trains clients in self-hypnosis conditioning;
(ii) may not:
(A) engage in the practice of mental health therapy;
(B) use the title of a license classification in Subsection 58-60-102(5); or
(C) use hypnosis with or treat a medical, psychological, or dental condition defined in generally recognized diagnostic and statistical manuals of medical, psychological, or dental disorders;
(e) an individual's exemption from licensure under Subsection 58-1-307(1)(b) terminates when the student's training is no longer supervised by qualified faculty or staff and the activities are no longer a defined part of the degree program;
(f) an individual holding an earned doctoral degree or master's degree in social work, marriage and family therapy, or clinical mental health counseling, who is employed by an accredited institution of higher education and who conducts research and teaches in that individual's professional field, but only if the individual does not engage in providing or supervising professional services regulated under this chapter to individuals or groups regardless of whether there is compensation for the services;
(g) an individual in an on-the-job training program approved by the division while under the supervision of qualified persons;
(h) an individual providing general education in the subjects of alcohol, drug use, or substance use disorders, including prevention;
(i) an individual providing advice or counsel to another individual in a setting of their association as friends or relatives and in a nonprofessional and noncommercial relationship, if there is no compensation paid for the advice or counsel; and
(j) an individual who is licensed, in good standing, to practice mental health therapy or substance use disorder counseling in a state or territory of the United States outside of Utah may provide short term transitional mental health therapy remotely or short term transitional substance use disorder counseling remotely to a client in Utah only if:
(i) the individual is present in the state or territory where the individual is licensed to practice mental health therapy or substance use disorder counseling;
(ii) the client relocates to Utah;
(iii) the client is a client of the individual immediately before the client relocates to Utah;
(iv) the individual provides the short term transitional mental health therapy or short term transitional substance use disorder counseling remotely to the client only during the 45 day period beginning on the day on which the client relocates to Utah;
(v) within 10 days after the day on which the client relocates to Utah, the individual provides written notice to the division of the individual's intent to provide short term transitional mental health therapy or short term transitional substance use disorder counseling remotely to the client; and
(vi) the individual does not engage in unlawful conduct or unprofessional conduct.

Amended by Chapter 16, 2013 General Session

58-60-108 Grounds for action regarding license -- Disciplinary proceedings.

The division's grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a

licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order are under Section 58-1-401.

Enacted by Chapter 32, 1994 General Session

58-60-109 Unlawful conduct.

As used in this chapter, "unlawful conduct" includes:

(1) practice of the following unless licensed in the appropriate classification or exempted from licensure under this title:
  (a) mental health therapy;
  (b) clinical social work;
  (c) certified social work;
  (d) marriage and family therapy;
  (e) clinical mental health counselor;
  (f) practice as a social service worker; or
  (g) substance use disorder counselor;
(2) practice of mental health therapy by a licensed psychologist who has not acceptably documented to the division the licensed psychologist's completion of the supervised training in mental health therapy required under Subsection 58-61-304(1)(f); or
(3) representing oneself as, or using the title of, the following:
  (a) unless currently licensed in a license classification under this title:
    (i) psychiatrist;
    (ii) psychologist;
    (iii) registered psychiatric mental health nurse specialist;
    (iv) mental health therapist;
    (v) clinical social worker;
    (vi) certified social worker;
    (vii) marriage and family therapist;
    (viii) clinical mental health counselor;
    (ix) social service worker;
    (x) substance use disorder counselor;
    (xi) associate clinical mental health counselor; or
    (xii) associate marriage and family therapist; or
  (b) unless currently in possession of the credentials described in Subsection (4), social worker.
(4) An individual may represent oneself as a, or use the title of, social worker if the individual possesses certified transcripts from an accredited institution of higher education, recognized by the division in collaboration with the Social Work Licensing Board, verifying satisfactory completion of an education and an earned degree as follows:
  (a) a bachelor's or master's degree in a social work program accredited by the Council on Social Work Education or by the Canadian Association of Schools of Social Work; or
  (b) a doctoral degree that contains a clinical social work concentration and practicum approved by the division, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that is consistent with Section 58-1-203.

Amended by Chapter 323, 2015 General Session

58-60-110 Unprofessional conduct.

(1) As used in this chapter, "unprofessional conduct" includes:

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession for which the individual is licensed, or the laws of the state;
(b) failure to confine practice conduct to those acts or practices:
(i) in which the individual is competent by education, training, and experience within limits of education, training, and experience; and
(ii) which are within applicable scope of practice laws of this chapter; and
(c) disclosing or refusing to disclose any confidential communication under Section 58-60-114 or 58-60-509.
(2) "Unprofessional conduct" under this chapter may be further defined by division rule.

Amended by Chapter 281, 2001 General Session

58-60-111 Penalty for unlawful conduct.

An individual who commits any act of unlawful conduct as defined in:
(1) Subsection 58-60-109(1) or (2) is guilty of a third degree felony; or
(2) Subsection 58-60-109(3) is guilty of a class A misdemeanor.

Enacted by Chapter 32, 1994 General Session

58-60-112 Reporting of unprofessional or unlawful conduct -- Immunity from liability.

(1) Upon learning of an act of unlawful or unprofessional conduct as defined in Section 58-60-102 by a person licensed under this chapter or an individual not licensed under this chapter and engaged in acts or practices regulated under this chapter, that results in disciplinary action by a licensed health care facility, professional practice group, or professional society, or that results in a significant adverse impact upon the public health, safety, or welfare, the following shall report the conduct in writing to the division within 10 days after learning of the disciplinary action or the conduct unless the individual or person knows it has been reported:
(a) a licensed health care facility or organization in which an individual licensed under this chapter engages in practice;
(b) an individual licensed under this chapter; and
(c) a professional society or organization whose membership is individuals licensed under this chapter and which has the authority to discipline or expel a member for acts of unprofessional or unlawful conduct.
(2) Any individual reporting acts of unprofessional or unlawful conduct by an individual licensed under this chapter is immune from liability arising out of the disclosure to the extent the individual furnishes the information in good faith and without malice.

Enacted by Chapter 32, 1994 General Session

58-60-113 Evidentiary privilege.

Evidentiary privilege for mental health therapists regarding admissibility of any confidential communication in administrative, civil, or criminal proceedings is in accordance with Rule 506 of the Utah Rules of Evidence.

Enacted by Chapter 32, 1994 General Session

58-60-114 Confidentiality -- Exemptions.

(1) A mental health therapist under this chapter may not disclose any confidential communication with a client or patient without the express consent of:
  (a) the client or patient;
  (b) the parent or legal guardian of a minor client or patient; or
  (c) the authorized agent of a client or patient.
(2) A mental health therapist under this chapter is not subject to Subsection (1) if:
  (a) the mental health therapist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:
    (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult;
    (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;
    (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or
    (iv) reporting of a communicable disease as required under Section 26-6-6;
  (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or
  (c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Amended by Chapter 366, 2011 General Session

58-60-115 License by endorsement.

The division shall issue a license by endorsement under this chapter to a person who:
(1) submits an application on a form provided by the division;
(2) pays a fee determined by the department under Section 63J-1-504;
(3) provides documentation of current licensure in good standing in a state, district, or territory of the United States to practice in the profession for which licensure is being sought;
(4) except as provided in Subsection (5), provides documentation that the person has engaged in the lawful practice of the profession for which licensure is sought for at least 4,000 hours, of which 1,000 hours are in mental health therapy;
(5) if applying for a license to practice as a licensed substance use disorder counselor, provides documentation that the person:
  (a) has engaged in the lawful practice of the profession for at least 4,000 hours; and
  (b) has passed an examination approved by the division, by rule, to establish proficiency in the profession;
(6) has passed the profession specific jurisprudence examination if required of a new applicant; and
(7) is of good moral character and professional standing, and has no disciplinary action pending or in effect against the applicant's license in any jurisdiction.

Amended by Chapter 179, 2012 General Session

58-60-115.2 Pre-existing license by endorsement.

A person who, on May 11, 2010, has a valid license by endorsement under Section 58-60-115 that was granted before May 11, 2010, is considered to have met the requirements of Subsection 58-60-115(4) if the person provides documentation that the person has engaged in:

(1) the lawful practice of the person's profession, including mental health therapy, for not less than 4,000 hours during the three years immediately preceding the date of application for licensure in Utah; or
(2) the lawful practice of the profession for which licensure is sought for not less than 4,000 hours, of which 1,000 hours are in mental health therapy.

Enacted by Chapter 214, 2010 General Session

58-60-117 Externship licenses.
(1) The division shall issue a temporary license under Part 2, Social Worker Licensing Act, Part 3, Marriage and Family Therapist Licensing Act, or Part 4, Clinical Mental Health Counselor Licensing Act, of this chapter to a person who:
  (a) submits an application for licensure under Part 2, Social Worker Licensing Act, Part 3, Marriage and Family Therapist Licensing Act, or Part 4, Clinical Mental Health Counselor Licensing Act;
  (b) pays a fee determined by the department under Section 63J-1-504;
  (c) holds an earned doctoral degree or master's degree in a discipline that is a prerequisite for practice as a mental health therapist;
  (d) has a deficiency, as defined by division rule, in course work;
  (e) provides mental health therapy as an employee of a public or private organization, which provides mental health therapy, while under the supervision of a person licensed under this chapter; and
  (f) is of good moral character and has no disciplinary action pending or in effect against the applicant in connection with the practice of mental health therapy, in any jurisdiction.
(2) A temporary license issued under this section shall expire upon the earlier of:
  (a) issuance of the license applied for; or
  (b) three years from the date the temporary license was issued.
(3) The temporary license issued under this section is an externship license.

Amended by Chapter 197, 2015 General Session

Part 2
Social Worker Licensing Act

58-60-201 Title.
This part is known as the "Social Worker Licensing Act."

Enacted by Chapter 32, 1994 General Session

58-60-202 Definitions.
In addition to the definitions in Sections 58-1-102 and 58-60-102, as used in this part:
(1) "Board" means the Social Worker Licensing Board created in Section 58-60-203.
(2)
  (a) "Practice as a social service worker" means performance of general entry level services under general supervision of a mental health therapist through the application of social work

theory, methods, and ethics in order to enhance the social or psychosocial functioning of an individual, a couple, a family, a group, or a community, including:
(i) conducting:
(A) a non-clinical psychosocial assessment; or
(B) a home study;
(ii) collaborative planning and goal setting;
(iii) ongoing case management;
(iv) progress monitoring;
(v) supportive counseling;
(vi) information gathering;
(vii) making referrals; and
(viii) engaging in advocacy.
(b) "Practice as a social service worker" does not include:
(i) diagnosing or treating mental illness; or
(ii) providing psychotherapeutic services to an individual, couple, family, group, or community.
(3) "Practice of clinical social work" includes:
(a) the practice of mental health therapy by observation, description, evaluation, interpretation, intervention, and treatment to effect modification of behavior by the application of generally recognized professional social work principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunction, the symptoms of any of these, or maladaptive behavior;
(b) the application of generally recognized psychotherapeutic and social work principles and practices requiring the education, training, and clinical experience of a clinical social worker; and
(c) supervision of the practice of a certified social worker or social service worker as the supervision is required under this chapter and as further defined by division rule.
(4) "Practice of certified social work" includes:
(a) the supervised practice of mental health therapy by a clinical social worker by observation, description, evaluation, interpretation, intervention, and treatment to effect modification of behavior by the application of generally recognized professional social work principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunctions, the symptoms of any of these, or maladaptive behavior;
(b) the supervised or independent and unsupervised application of generally recognized professional social work principles and practices requiring the education, training, and experience of a certified social worker; and
(c) supervision of the practice of a social service worker as the supervision is required under this chapter and as further defined by division rule.
(5) "Program accredited by the Council on Social Work Education" means a program that:
(a) was accredited by the Council on Social Work Education on the day on which the applicant for licensure satisfactorily completed the program; or
(b) was in candidacy for accreditation by the Council on Social Work Education on the day on which the applicant for licensure satisfactorily completed the program.
(6) "Supervision of a social service worker" means supervision conducted by an individual licensed as a mental health therapist under this title in accordance with division rules made in collaboration with the board.

Amended by Chapter 78, 2010 General Session
Amended by Chapter 214, 2010 General Session

58-60-203 Board.

(1) There is created the Social Worker Licensing Board consisting of one certified social worker, three clinical social workers, two social service workers, and one member from the general public.
(2) The board shall be appointed, serve terms, and be compensated in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board are under Sections 58-1-202 and 58-1-203. In addition, the board shall:
  (a) designate one of its members on a permanent or rotating basis to assist the division in review of complaints concerning unlawful or unprofessional practice by a licensee in any profession regulated by the board and to advise the division regarding the conduct of investigations of the complaints; and
  (b) disqualify any member from acting as presiding officer in any administrative procedure in which that member has previously reviewed the complaint or advised the division.

Amended by Chapter 214, 2010 General Session

58-60-204 License classifications.

The division shall issue licenses and certifications to individuals qualified under this part in the classifications:
(1) clinical social worker;
(2) certified social worker;
(3) certified social worker intern; and
(4) social service worker.

Amended by Chapter 201, 2003 General Session

58-60-205 Qualifications for licensure or certification as a clinical social worker, certified social worker, and social service worker.

(1) An applicant for licensure as a clinical social worker shall:
  (a) submit an application on a form provided by the division;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) be of good moral character;
  (d) produce certified transcripts from an accredited institution of higher education recognized by the division in collaboration with the board verifying satisfactory completion of an education and an earned degree as follows:
    (i) a master's degree in a social work program accredited by the Council on Social Work Education or by the Canadian Association of Schools of Social Work; or
    (ii) a doctoral degree that contains a clinical social work concentration and practicum approved by the division, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that is consistent with Section 58-1-203;
  (e) have completed a minimum of 4,000 hours of clinical social work training as defined by division rule under Section 58-1-203:
    (i) in not less than two years;
    (ii) under the supervision of a clinical social worker supervisor approved by the division in collaboration with the board; and

(iii) including a minimum of two hours of training in suicide prevention via a course that the division designates as approved;

(f) document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of the education requirement in Subsection (1)(d), which training may be included as part of the 4,000 hours of training in Subsection (1)(e), and of which documented evidence demonstrates not less than 100 of the hours were obtained under the direct supervision of a clinical social worker, as defined by rule;

(g) have completed a case work, group work, or family treatment course sequence with a clinical practicum in content as defined by rule under Section 58-1-203; and

(h) pass the examination requirement established by rule under Section 58-1-203.

(2) An applicant for licensure as a certified social worker shall:

(a) submit an application on a form provided by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) produce certified transcripts from an accredited institution of higher education recognized by the division in collaboration with the board verifying satisfactory completion of an education and an earned degree as follows:

(i) a master's degree in a social work program accredited by the Council on Social Work Education or by the Canadian Association of Schools of Social Work; or

(ii) a doctoral degree that contains a clinical social work concentration and practicum approved by the division, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that is consistent with Section 58-1-203; and

(e) pass the examination requirement established by rule under Section 58-1-203.

(3)

(a) An applicant for certification as a certified social worker intern shall meet the requirements of Subsections (2)(a), (b), (c), and (d).

(b) Certification under Subsection (3)(a) is limited to the time necessary to pass the examination required under Subsection (2)(e) or six months, whichever occurs first.

(c) A certified social worker intern may provide mental health therapy under the general supervision of a clinical social worker.

(4) An applicant for licensure as a social service worker shall:

(a) submit an application on a form provided by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) produce certified transcripts from an accredited institution of higher education recognized by the division in collaboration with the board verifying satisfactory completion of an education and an earned degree as follows:

(i) a bachelor's degree in a social work program accredited by the Council on Social Work Education or by the Canadian Association of Schools of Social Work;

(ii) a master's degree in a field approved by the division in collaboration with the board;

(iii) a bachelor's degree in any field if the applicant:

(A) has completed at least three semester hours, or the equivalent, in each of the following areas:

(I) social welfare policy;

(II) human growth and development; and

(III) social work practice methods, as defined by rule; and

(B) provides documentation that the applicant has completed at least 2,000 hours of qualifying experience under the supervision of a mental health therapist, which experience

is approved by the division in collaboration with the board, and which is performed after completion of the requirements to obtain the bachelor's degree required under this Subsection (4); or

(iv) successful completion of the first academic year of a Council on Social Work Education approved master's of social work curriculum and practicum; and

(e) pass the examination requirement established by rule under Section 58-1-203.

(5) The division shall ensure that the rules for an examination described under Subsections (1)(h), (2)(e), and (4)(e) allow additional time to complete the examination if requested by an applicant who is:

(a) a foreign born legal resident of the United States for whom English is a second language; or

(b) an enrolled member of a federally recognized Native American tribe.

Amended by Chapter 77, 2015 General Session
Amended by Chapter 323, 2015 General Session

58-60-205.5 Continuing education.

As a condition for renewal of a license under this part, a social service worker licensee shall, during each two-year licensure cycle, complete qualified continuing professional education, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 214, 2010 General Session

58-60-206 Qualifications for admission to examination.

All applicants for admission to an examination qualifying an individual for licensure under this part shall, before taking the examination:

(1) submit an application for examination on a form provided by the division;

(2) pay the fee established for the examination; and

(3) certify under penalty of perjury as evidenced by notarized signature on the application for examination that the applicant:

(a) has completed the education requirement and been awarded the earned degree required for licensure; or

(b) has only one semester, or the equivalent, remaining before the applicant completes the education requirement for earning the degree that is required for licensure.

Amended by Chapter 262, 2013 General Session

58-60-207 Scope of practice -- Limitations.

(1) A clinical social worker may engage in all acts and practices defined as the practice of clinical social work without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's education, training, and competence.

(2) To the extent an individual is professionally prepared by the education and training track completed while earning a master's or doctor of social work degree, a licensed certified social worker may engage in all acts and practices defined as the practice of certified social work consistent with the licensee's education, clinical training, experience, and competence:

(a) under supervision of a clinical social worker and as an employee of another person when engaged in the practice of mental health therapy;

(b) without supervision and in private and independent practice or as an employee of another person, if not engaged in the practice of mental health therapy;
(c) including engaging in the private, independent, unsupervised practice of social work as a self-employed individual, in partnership with other licensed clinical or certified social workers, as a professional corporation, or in any other capacity or business entity, so long as he does not practice unsupervised psychotherapy; and
(d) supervising social service workers as provided by division rule.

Enacted by Chapter 32, 1994 General Session

Part 3
Marriage and Family Therapist Licensing Act

58-60-301 Title.
This part is known as the "Marriage and Family Therapist Licensing Act."

Enacted by Chapter 32, 1994 General Session

58-60-302 Definitions.
In addition to the definitions in Sections 58-1-102 and 58-60-102, as used in this part:
(1) "Assess" means the use of diagnostic procedures, tests, and interview techniques generally accepted as standard in mental health therapy to diagnose any condition related to mental, emotional, behavioral, and social disorders or dysfunctions.
(2) "Board" means the Marriage and Family Therapist Licensing Board created in Section 58-60-303.
(3) "Practice of marriage and family therapy" includes:
(a) the process of providing professional mental health therapy including psychotherapy to individuals, couples, families, or groups;
(b) utilizing established principles that recognize the interrelated nature of individual problems and dysfunctions in family members to assess, diagnose, and treat mental, emotional, and behavioral disorders;
(c) individual, premarital, relationship, marital, divorce, and family therapy;
(d) specialized modes of treatment for the purpose of diagnosing and treating mental, emotional, and behavioral disorders, modifying interpersonal and intrapersonal dysfunction, and promoting mental health; and
(e) assessment utilized to develop, recommend, and implement appropriate plans of treatment, dispositions, and placement related to the functioning of the individual, couple, family, or group.

Enacted by Chapter 32, 1994 General Session

58-60-303 Board -- Powers.
(1) There is created the Marriage and Family Therapist Licensing Board consisting of four marriage and family therapists and one member from the general public.
(2) The board shall be appointed, serve terms, and be compensated in accordance with Section 58-1-201.

(3) The board shall:
(a) comply with the provisions of Sections 58-1-202 and 58-1-203;
(b) designate one of its members on a permanent or rotating basis to assist the division in review of complaints concerning unlawful or unprofessional practice by a licensee in the respective profession regulated by the board, and to advise the division with respect to the conduct of investigations of the complaints; and
(c) disqualify any member from acting as presiding officer in any administrative procedure in which that member has previously reviewed the complaint or advised the division.

Amended by Chapter 159, 2000 General Session

58-60-304 License classifications.

The division shall issue licenses to individuals qualified under this part in the classification of:
(1) marriage and family therapist; or
(2) associate marriage and family therapist.

Amended by Chapter 214, 2010 General Session

58-60-305 Qualifications for licensure.

(1) All applicants for licensure as marriage and family therapists shall:
(a) submit an application on a form provided by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) produce certified transcripts evidencing completion of a masters or doctorate degree in marriage and family therapy from:
(i) a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education; or
(ii) an accredited institution meeting criteria for approval established by rule under Section 58-1-203;
(e) have completed a minimum of 4,000 hours of marriage and family therapy training as defined by division rule under Section 58-1-203:
(i) in not less than two years;
(ii) under the supervision of a marriage and family therapist supervisor who meets the requirements of Section 58-60-307;
(iii) obtained after completion of the education requirement in Subsection (1)(d); and
(iv) including a minimum of two hours of training in suicide prevention via a course that the division designates as approved;
(f) document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of the education requirement described in Subsection (1)(d)(i) or (1)(d)(ii), which training may be included as part of the 4,000 hours of training described in Subsection (1)(e), and of which documented evidence demonstrates not less than 100 of the supervised hours were obtained during direct, personal supervision by a marriage and family therapist supervisor qualified under Section 58-60-307, as defined by rule; and
(g) pass the examination requirement established by division rule under Section 58-1-203.
(2)
(a) All applicants for licensure as an associate marriage and family therapist shall comply with the provisions of Subsections (1)(a), (b), (c), and (d).

(b) An individual's license as an associate marriage and family therapist is limited to the period of time necessary to complete clinical training as described in Subsections (1)(e) and (f) and extends not more than one year from the date the minimum requirement for training is completed, unless the individual presents satisfactory evidence to the division and the appropriate board that the individual is making reasonable progress toward passing of the qualifying examination for that profession or is otherwise on a course reasonably expected to lead to licensure, but the period of time under this Subsection (2)(b) may not exceed two years past the date the minimum supervised clinical training requirement has been completed.

Amended by Chapter 77, 2015 General Session

58-60-305.5 Qualification for licensure before May 1, 2000.

(1) A person who was licensed under this chapter as of May 1, 2000, may apply for renewal of licensure without being required to fulfill the educational requirements described in Subsection 58-60-305(1)(d).
(2) A person who seeks licensure under this chapter before July 1, 2002, need comply only with the licensure requirements in effect before May 1, 2000.

Amended by Chapter 183, 2009 General Session

58-60-306 Qualifications for admission to examination.

All applicants for admission to any examination qualifying an individual for licensure under this part shall:
(1) submit an application on a form provided by the division;
(2) pay the fee established for the examination; and
(3) certify under penalty of perjury as evidenced by notarized signature on the application for admission to the examination that the applicant has completed the education requirement and been awarded the earned degree required for licensure.

Enacted by Chapter 32, 1994 General Session

58-60-307 Marriage and family therapist supervisors -- Qualifications.

(1) Each person acting as a marriage and family therapist supervisor shall:
  (a) have at least two years of clinical experience as a marriage and family therapist since the date of first licensure as a marriage and family therapist; and
  (b) either:
    (i) be approved as a supervisor by a national marriage and family therapist professional organization; or
    (ii) meet the criteria established by rule.
(2) Persons who act as a supervisor without meeting the requirements of this section are subject to discipline for unprofessional conduct.

Amended by Chapter 40, 2001 General Session

58-60-308 Scope of practice -- Limitations.

(1) A licensed marriage and family therapist may engage in all acts and practices defined as the practice of marriage and family therapy without supervision, in private and independent

practice, or as an employee of another person, limited only by the licensee's education, training, and competence.

(2)

(a) To the extent an individual has completed the educational requirements of Subsection 58-60-305(1)(d), a licensed associate marriage and family therapist may engage in all acts and practices defined as the practice of marriage and family therapy if the practice is:

(i) within the scope of employment as a licensed associate marriage and family therapist with a public agency or a private clinic as defined by division rule; and

(ii) under the supervision of a licensed marriage and family therapist who is qualified as a supervisor under Section 58-60-307.

(b) A licensed associate marriage and family therapist may not engage in the independent practice of marriage and family therapy.

Amended by Chapter 214, 2010 General Session

Part 4
Clinical Mental Health Counselor Licensing Act

58-60-401 Title.

This part is known as the "Clinical Mental Health Counselor Licensing Act."

Amended by Chapter 179, 2012 General Session

58-60-402 Definitions.

In addition to the definitions in Sections 58-1-102 and 58-60-102, as used in this part:

(1) "Board" means the Clinical Mental Health Counselor Licensing Board created in Section 58-60-403.

(2) "Practice of clinical mental health counseling" means the practice of mental health therapy by means of observation, description, evaluation, interpretation, intervention, and treatment to effect modification of human behavior by the application of generally recognized clinical mental health counseling principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunction, symptoms of any of these, or maladaptive behavior.

Amended by Chapter 179, 2012 General Session

58-60-403 Board.

(1) There is created the Clinical Mental Health Counselor Licensing Board consisting of four clinical mental health counselors and one member from the general public.

(2) The board shall be appointed, serve terms, and be compensated in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall:

(a) designate one of its members on a permanent or rotating basis to assist the division in review of complaints concerning unlawful or unprofessional practice by a licensee in the profession

regulated by the board and to advise the division with respect to the conduct of investigations of the complaints; and

(b) disqualify any member from acting as presiding officer in any administrative procedure in which that member has previously reviewed the complaint or advised the division.

Amended by Chapter 179, 2012 General Session

58-60-404 License classifications.

The division shall issue licenses to individuals qualified under the provisions of this part in the classification of:

(1) a clinical mental health counselor; or

(2) an associate clinical mental health counselor.

Amended by Chapter 179, 2012 General Session

58-60-405 Qualifications for licensure.

(1) An applicant for licensure as a clinical mental health counselor shall:

(a) submit an application on a form provided by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) produce certified transcripts from an accredited institution of higher education recognized by the division in collaboration with the board verifying satisfactory completion of:

(i) an education and degree in an education program in counseling with a core curriculum defined by division rule under Section 58-1-203 preparing one to competently engage in mental health therapy; and

(ii) an earned doctoral or master's degree resulting from that education program;

(e) have completed a minimum of 4,000 hours of clinical mental health counselor training as defined by division rule under Section 58-1-203:

(i) in not less than two years;

(ii) under the supervision of a clinical mental health counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist supervisor approved by the division in collaboration with the board;

(iii) obtained after completion of the education requirement in Subsection (1)(d); and

(iv) including a minimum of two hours of training in suicide prevention via a course that the division designates as approved;

(f) document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of the education requirement in Subsection (1)(d), which training may be included as part of the 4,000 hours of training in Subsection (1)(e), and of which documented evidence demonstrates not less than 100 of the hours were obtained under the direct supervision of a mental health therapist, as defined by rule; and

(g) pass the examination requirement established by division rule under Section 58-1-203.

(2)

(a) An applicant for licensure as an associate clinical mental health counselor shall comply with the provisions of Subsections (1)(a), (b), (c), and (d).

(b) Except as provided under Subsection (2)(c), an individual's licensure as an associate clinical mental health counselor is limited to the period of time necessary to complete clinical training as described in Subsections (1)(e) and (f) and extends not more than one year from the date the minimum requirement for training is completed.

(c) The time period under Subsection (2)(b) may be extended to a maximum of two years past the date the minimum supervised clinical training requirement has been completed, if the applicant presents satisfactory evidence to the division and the appropriate board that the individual is:
(i) making reasonable progress toward passing of the qualifying examination for that profession; or
(ii) otherwise on a course reasonably expected to lead to licensure.

Amended by Chapter 77, 2015 General Session

58-60-406 Qualifications for admission to examination.
All applicants for admission to any examination qualifying an individual for licensure under this part shall:
(1) submit an application on a form provided by the division;
(2) pay the fee established by division rule for the examination; and
(3) certify under penalty of perjury as evidenced by notarized signature on the application for admission to the examination that the applicant has completed the education requirement and been awarded the earned degree required for licensure.

Enacted by Chapter 32, 1994 General Session

58-60-407 Scope of practice -- Limitations.
(1) A licensed clinical mental health counselor may engage in all acts and practices defined as the practice of clinical mental health counseling without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's education, training, and competence.
(2)
(a) To the extent an individual has completed the educational requirements of Subsection 58-60-305(1)(d), a licensed associate clinical mental health counselor may engage in all acts and practices defined as the practice of clinical mental health counseling if the practice is:
(i) within the scope of employment as a licensed clinical mental health counselor with a public agency or private clinic as defined by division rule; and
(ii) under supervision of a qualified licensed mental health therapist as defined in Section 58-60-102.
(b) A licensed associate clinical mental health counselor may not engage in the independent practice of clinical mental health counseling.

Amended by Chapter 179, 2012 General Session

Part 5
Substance Use Disorder Counselor Act

58-60-501 Title.
This part is known as the "Substance Use Disorder Counselor Act."

Amended by Chapter 179, 2012 General Session

58-60-502 Definitions.

In addition to the definitions in Sections 58-1-102 and 58-60-102, as used in this part:

(1) "Board" means the Substance Use Disorder Counselor Licensing Board created in Section 58-60-503.

(2)

(a) "Counseling" means a collaborative process that facilitates the client's progress toward mutually determined treatment goals and objectives.

(b) "Counseling" includes:

(i) methods that are sensitive to an individual client's characteristics, to the influence of significant others, and to the client's cultural and social context; and

(ii) an understanding, appreciation, and ability to appropriately use the contributions of various addiction counseling models as the counseling models apply to modalities of care for individuals, groups, families, couples, and significant others.

(3) "Direct supervision" means:

(a) a minimum of one hour of supervision by a supervisor of the substance use disorder counselor for every 40 hours of client care provided by the substance use disorder counselor, which supervision may include group supervision;

(b) the supervision is conducted in a face-to-face manner, unless otherwise approved on a case-by-case basis by the division in collaboration with the board; and

(c) a supervisor is available for consultation with the counselor at all times.

(4) "General supervision" shall be defined by division rule.

(5) "Group supervision" means more than one counselor licensed under this part meets with the supervisor at the same time.

(6) "Individual supervision" means only one counselor licensed under this part meets with the supervisor at a given time.

(7) "Practice as a certified advanced substance use disorder counselor" and "practice as a certified advanced substance use disorder counselor intern" means providing services described in Subsection (9) under the direct supervision of a mental health therapist or licensed advanced substance use disorder counselor.

(8) "Practice as a certified substance use disorder counselor" and "practice as a certified substance use disorder counselor intern" means providing the services described in Subsections (10)(a) and (b) under the direct supervision of a mental health therapist or licensed advanced substance use disorder counselor.

(9) "Practice as a licensed advanced substance use disorder counselor" means:

(a) providing the services described in Subsections (10)(a) and (b);

(b) screening and assessing of individuals, including identifying substance use disorder symptoms and behaviors and co-occurring mental health issues; and

(c) treatment planning for substance use disorders, including initial planning, ongoing intervention, continuity of care, discharge planning, planning for relapse prevention, and long term recovery support.

(10)

(a) "Practice as a substance use disorder counselor" means providing services as an employee of a substance use disorder agency under the general supervision of a licensed mental health therapist to individuals or groups of persons, whether in person or remotely, for conditions of substance use disorders consistent with the education and training of a substance use disorder counselor required under this part, and the standards and ethics of the profession as approved by the division in collaboration with the board.

(b) "Practice as a substance use disorder counselor" includes:
(i) administering the screening process by which a client is determined to need substance use disorder services, which may include screening, brief intervention, and treatment referral;
(ii) conducting the administrative intake procedures for admission to a program;
(iii) conducting orientation of a client, including:
(A) describing the general nature and goals of the program;
(B) explaining rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program;
(C) explaining hours during which services are available in a nonresidential program;
(D) treatment costs to be borne by the client, if any; and
(E) describing the client's rights as a program participant;
(iv) conducting assessment procedures by which a substance use disorder counselor gathers information related to an individual's strengths, weaknesses, needs, and substance use disorder symptoms for the development of the treatment plan;
(v) participating in the process of treatment planning, including recommending specific interventions to support existing treatment goals and objectives developed by the substance use disorder counselor, the mental health therapist, and the client to:
(A) identify and rank problems needing resolution;
(B) establish agreed upon immediate and long term goals; and
(C) decide on a treatment process and the resources to be utilized;
(vi) monitoring compliance with treatment plan progress;
(vii) providing substance use disorder counseling services to alcohol and drug use disorder clients and significant people in the client's life as part of a comprehensive treatment plan, including:
(A) leading specific task-oriented groups, didactic groups, and group discussions;
(B) cofacilitating group therapy with a licensed mental health therapist; and
(C) engaging in one-on-one interventions and interactions coordinated by a mental health therapist;
(viii) performing case management activities that bring services, agencies, resources, or people together within a planned framework of action toward the achievement of established goals, including, when appropriate, liaison activities and collateral contacts;
(ix) providing substance use disorder crisis intervention services;
(x) providing client education to individuals and groups concerning alcohol and other substance use disorders, including identification and description of available treatment services and resources;
(xi) identifying the needs of the client that cannot be met by the substance use disorder counselor or substance use disorder agency and referring the client to appropriate services and community resources;
(xii) developing and providing effective reporting and recordkeeping procedures and services, which include charting the results of the assessment and treatment plan, writing reports, progress notes, discharge summaries, and other client-related data; and
(xiii) consulting with other professionals in regard to client treatment and services to assure comprehensive quality care for the client.
(c) "Practice as a substance use disorder counselor" does not include:
(i) the diagnosing of mental illness, including substance use disorders, as defined in Section 58-60-102;
(ii) engaging in the practice of mental health therapy as defined in Section 58-60-102; or

(iii) the performance of a substance use disorder diagnosis, other mental illness diagnosis, or psychological testing.
(11) "Program" means a substance use disorder agency that provides substance use disorder services, including recovery support services.
(12) "Recovery support services" means services provided to an individual who is identified as having need of substance use disorder preventive or treatment services, either before, during, or after an episode of care that meets the level of care standards established by division rule.
(13) "Substance use disorder agency" means a public or private agency, health care facility, or health care practice that:
(a) provides substance use disorder services, recovery support services, primary health care services, or substance use disorder preventive services; and
(b) employs qualified mental health therapists in sufficient number to:
(i) evaluate the condition of clients being treated by each counselor licensed under this part and employed by the substance use disorder agency; and
(ii) ensure that appropriate substance use disorder services are being given.
(14) "Substance use disorder education program" means a formal program of substance use disorder education offered by an accredited institution of higher education that meets standards established by division rule.

Amended by Chapter 16, 2013 General Session

58-60-503 Board.
(1) There is created the Substance Use Disorder Counselor Licensing Board consisting of:
(a) three substance use disorder counselors;
(b) three mental health therapists qualified by education or experience to treat substance use disorder and who are currently practicing in the substance use disorder field; and
(c) one public member.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
(b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in the investigation of a complaint may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Amended by Chapter 179, 2012 General Session

58-60-504 License classification.
The division shall issue substance use disorder counselor licenses to individuals qualified under this part in the classification of:
(1) licensed advanced substance use disorder counselor;
(2) certified advanced substance use disorder counselor;
(3) certified advanced substance use disorder counselor intern;
(4) licensed substance use disorder counselor;
(5) certified substance use disorder counselor; and

(6) certified substance use disorder counselor intern.

Amended by Chapter 179, 2012 General Session

58-60-506 Qualifications for licensure.

(1) An applicant for licensure under this part on and after July 1, 2012, must meet the following qualifications:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) be of good moral character;
  (d) satisfy the requirements of Subsection (2), (3), (4), (5), (6), or (7) respectively; and
  (e) except for licensure as a certified substance use disorder counselor intern and a certified advanced substance use disorder counselor intern, satisfy the examination requirement established by division rule under Section 58-1-203.
(2) In accordance with division rules, an applicant for licensure as an advanced substance use disorder counselor shall produce:
  (a) certified transcripts from an accredited institution of higher education that:
    (i) meet division standards;
    (ii) verify the satisfactory completion of a baccalaureate or graduate degree; and
    (iii) verify the completion of prerequisite courses established by division rules;
  (b) documentation of the applicant's completion of a substance use disorder education program that includes:
    (i) at least 300 hours of substance use disorder related education, of which 200 hours may have been obtained while qualifying for a substance use disorder counselor license; and
    (ii) a supervised practicum of at least 350 hours, of which 200 hours may have been obtained while qualifying for a substance use disorder counselor license; and
  (c) documentation of the applicant's completion of at least 4,000 hours of supervised experience in substance use disorder treatment, of which 2,000 hours may have been obtained while qualifying for a substance use disorder counselor license, that:
    (i) meets division standards; and
    (ii) is performed within a four-year period after the applicant's completion of the substance use disorder education program described in Subsection (2)(b), unless, as determined by the division after consultation with the board, the time for performance is extended due to an extenuating circumstance.
(3) An applicant for licensure as a certified advanced substance use disorder counselor shall meet the requirements in Subsections (2)(a) and (b).
(4)
  (a) An applicant for licensure as a certified advanced substance use disorder counselor intern shall meet the requirements in Subsections (2)(a) and (b).
  (b) A certified advanced substance use disorder counselor intern license expires at the earlier of:
    (i) the licensee passing the examination required for licensure as a certified advanced substance use disorder counselor; or
    (ii) six months after the certified advanced substance use disorder counselor intern license is issued.
(5) In accordance with division rules, an applicant for licensure as a substance use disorder counselor shall produce:
  (a) certified transcripts from an accredited institution that:
    (i) meet division standards;

(ii) verify satisfactory completion of an associate's degree or equivalent as defined by the division in rule; and
(iii) verify the completion of prerequisite courses established by division rules;
(b) documentation of the applicant's completion of a substance use disorder education program that includes:
(i) completion of at least 200 hours of substance use disorder related education;
(ii) included in the 200 hours described in Subsection (5)(b)(i), a minimum of two hours of training in suicide prevention via a course that the division designates as approved; and
(iii) completion of a supervised practicum of at least 200 hours; and
(c) documentation of the applicant's completion of at least 2,000 hours of supervised experience in substance use disorder treatment that:
(i) meets division standards; and
(ii) is performed within a two-year period after the applicant's completion of the substance use disorder education program described in Subsection (5)(b), unless, as determined by the division after consultation with the board, the time for performance is extended due to an extenuating circumstance.
(6) An applicant for licensure as a certified substance use disorder counselor shall meet the requirements of Subsections (5)(a) and (b).
(7)
(a) An applicant for licensure as a certified substance use disorder counselor intern shall meet the requirements of Subsections (5)(a) and (b).
(b) A certified substance use disorder counselor intern license expires at the earlier of:
(i) the licensee passing the examination required for licensure as a certified substance use disorder counselor; or
(ii) six months after the certified substance use disorder counselor intern license is issued.

Amended by Chapter 77, 2015 General Session

58-60-507 Qualifications for admission to examination.

All applicants for admission to any examination qualifying an individual for licensure under this part shall:
(1) submit an application on a form provided by the division; and
(2) pay the fee established for the examination.

Amended by Chapter 283, 2007 General Session

58-60-508 Substance use disorder counselor supervisor's qualifications -- Functions.

(1) A mental health therapist supervisor of a substance use disorder counselor shall:
(a) be qualified by education or experience to treat substance use disorders;
(b) be currently working in the substance use disorder treatment field;
(c) review substance use disorder counselor assessment procedures and recommendations;
(d) provide substance use disorder diagnosis and other mental health diagnoses in accordance with Subsection 58-60-102(7);
(e) supervise the development of a treatment plan;
(f) approve the treatment plan; and
(g) provide direct supervision for not more than five persons, unless granted an exception in writing from the board and the division.

(2) A supervisor of a certified substance use disorder counselor, certified substance use disorder counselor intern, certified advanced substance use disorder counselor, certified advanced substance use disorder counselor intern, or licensed substance use disorder counselor shall:
(a) be a licensed advanced substance use disorder counselor;
(b) have at least two years of experience as a licensed advanced substance use disorder counselor;
(c) be currently working in the substance use disorder field; and
(d) provide direct supervision for no more than three persons, unless granted an exception in writing from the board and the division.

Amended by Chapter 238, 2016 General Session

58-60-509 Confidentiality -- Exemptions.
(1) A licensee under this part may not disclose any confidential communication with a client or patient without the express consent of:
(a) the client or patient;
(b) the parent or legal guardian of a minor client or patient; or
(c) the authorized agent of a client or patient.
(2) A licensee under this part is not subject to Subsection (1) if:
(a) the licensee is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:
(i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult;
(ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;
(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or
(iv) reporting of a communicable disease as required under Section 26-6-6;
(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or
(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Amended by Chapter 366, 2011 General Session

58-60-510 Evidentiary privilege.
Evidentiary privilege for a licensee under this part concerning admissibility of any confidential communication in administrative, civil, or criminal proceedings is in accordance with Rule 506, Utah Rules of Evidence.

Amended by Chapter 283, 2007 General Session

58-60-511 Experience requirement -- Transition of licensing and experience.
(1) Except as otherwise approved in writing by the board and the division, an individual currently licensed as a substance abuse counselor may transition to the substance use disorder counselor license as follows:
(a) an individual who documents practice as a substance abuse counselor for six years or longer, by July 1, 2013, may apply for an advanced substance use disorder license;

(b) if an individual who has practiced as a substance abuse counselor for less than six years of experience meets the education requirements under Subsection 58-60-506(2)(a) by July 1, 2013, the individual may apply to the division for an advanced substance use disorder license;
(c) the division shall convert the license of an individual who has practiced for less than six years, and who is licensed as a substance abuse counselor, to a substance use disorder counselor license; or
(d) the division shall convert the license of an individual who is a certified substance abuse counselor, or a certified substance abuse counselor intern, to a certified substance use disorder counselor.
(2) An applicant working toward licensure under division rules in effect before July 1, 2012, who is enrolled in an approved education program, and has completed at least 100 hours of addiction-specific training before July 1, 2012, may be licensed in accordance with division rules.

Amended by Chapter 179, 2012 General Session

Chapter 61
Psychologist Licensing Act

Part 1
General Provisions

58-61-101 Title.
This chapter is known as the "Psychologist Licensing Act."

Enacted by Chapter 32, 1994 General Session

58-61-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Psychologist Licensing Board created in Section 58-61-201.
(2) "Client" or "patient" means an individual who consults or is examined or interviewed by a psychologist acting in his professional capacity.
(3) "Confidential communication" means information, including information obtained by the psychologist's examination of the client or patient, which is:
(a)
(i) transmitted between the client or patient and a psychologist in the course of that relationship; or
(ii) transmitted among the client or patient, the psychologist, and individuals who are participating in the diagnosis or treatment under the direction of the psychologist, including members of the client's or patient's family; and
(b) made in confidence, for the diagnosis or treatment of the client or patient by the psychologist, and by a means not intended to be disclosed to third persons other than those individuals:
(i) present to further the interest of the client or patient in the consultation, examination, or interview;
(ii) reasonably necessary for the transmission of the communications; or

(iii) participating in the diagnosis and treatment of the client or patient under the direction of the psychologist.

(4) "Hypnosis" means, regarding individuals exempted from licensure under this chapter, a process by which one individual induces or assists another individual into a hypnotic state without the use of drugs or other substances and for the purpose of increasing motivation or to assist the individual to alter lifestyles or habits.

(5) "Individual" means a natural person.

(6) "Mental health therapist" means an individual licensed under this title as a:

(a) physician and surgeon, or osteopathic physician engaged in the practice of mental health therapy;

(b) an advanced practice registered nurse, specializing in psychiatric mental health nursing;

(c) an advanced practice registered nurse intern, specializing in psychiatric mental health nursing;

(d) psychologist qualified to engage in the practice of mental health therapy;

(e) a certified psychology resident qualifying to engage in the practice of mental health therapy;

(f) clinical social worker;

(g) certified social worker;

(h) marriage and family therapist;

(i) an associate marriage and family therapist;

(j) a clinical mental health counselor; or

(k) an associate clinical mental health counselor.

(7) "Mental illness" means a mental or emotional condition defined in an approved diagnostic and statistical manual for mental disorders generally recognized in the professions of mental health therapy listed under Subsection (6).

(8) "Practice of mental health therapy" means the treatment or prevention of mental illness, whether in person or remotely, including:

(a) conducting a professional evaluation of an individual's condition of mental health, mental illness, or emotional disorder;

(b) establishing a diagnosis in accordance with established written standards generally recognized in the professions of mental health therapy listed under Subsection (6);

(c) prescribing a plan for the prevention or treatment of a condition of mental illness or emotional disorder; and

(d) engaging in the conduct of professional intervention, including psychotherapy by the application of established methods and procedures generally recognized in the professions of mental health therapy listed under Subsection (6).

(9)

(a) "Practice of psychology" includes:

(i) the practice of mental health therapy by means of observation, description, evaluation, interpretation, intervention, and treatment to effect modification of human behavior by the application of generally recognized professional psychological principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunction, the symptoms of any of these, or maladaptive behavior;

(ii) the observation, description, evaluation, interpretation, or modification of human behavior by the application of generally recognized professional principles, methods, or procedures requiring the education, training, and clinical experience of a psychologist, for the purpose of assessing, diagnosing, preventing, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health;

(iii) psychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning;
(iv) counseling, marriage and family therapy, psychoanalysis, psychotherapy, hypnosis, and behavior analysis and therapy;
(v) diagnosis and treatment of mental and emotional disorders of disability, alcoholism and substance abuse, disorders of habit or conduct, and the psychological aspects of physical illness, accident, injury, or disability; and
(vi) psychoeducational evaluation, therapy, remediation, and consultation.
(b) An individual practicing psychology may provide services to individuals, couples, families, groups of individuals, members of the public, and individuals or groups within organizations or institutions.
(10) "Remotely" means communicating via Internet, telephone, or other electronic means that facilitate real-time audio or visual interaction between individuals when they are not physically present in the same room at the same time.
(11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-61-501.
(12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-61-502, and may be further defined by division rule.

Amended by Chapter 16, 2013 General Session
Amended by Chapter 123, 2013 General Session

Part 2
Board

58-61-201 Board.
(1)
(a) There is created the Psychologist Licensing Board consisting of four licensed psychologists , one licensed behavior analyst, and one member from the general public.
(b) The licensed behavior analyst shall participate as a member of the board only for issues relevant to Part 7, Behavior Analyst Licensing Act.
(2) The board shall be appointed, serve terms, and be compensated in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall:
(a) designate one of its members on a permanent or rotating basis to assist the division in review of complaints concerning unlawful or unprofessional practice by a licensee in the profession regulated by the board and to advise the division regarding the conduct of investigations of the complaints; and
(b) disqualify a member from acting as presiding officer in an administrative procedure in which that member has previously reviewed the complaint or advised the division.

Amended by Chapter 367, 2015 General Session

Part 3
Licensing

58-61-301 Licensure required.

(1)
(a) A license is required to engage in the practice of psychology, except as specifically provided in Section 58-1-307.
(b) Notwithstanding the provisions of Subsection 58-1-307(1)(c) an individual shall be certified under this chapter as a psychology resident in order to engage in a residency program of supervised clinical training necessary to meet licensing requirements as a psychologist under this chapter.
(2) The division shall issue to a person who qualifies under this chapter a license in the classification of:
(a) psychologist; or
(b) certified psychology resident.

Amended by Chapter 281, 2001 General Session

58-61-302 Term of license.

(1)
(a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.
(b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
(2) At the time of renewal the licensee shall show satisfactory evidence of renewal requirements as required under this chapter.
(3) Each license expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Enacted by Chapter 32, 1994 General Session

58-61-304 Qualifications for licensure by examination or endorsement.

(1) An applicant for licensure as a psychologist based upon education, clinical training, and examination shall:
(a) submit an application on a form provided by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) produce certified transcripts of credit verifying satisfactory completion of a doctoral degree in psychology that includes specific core course work established by division rule under Section 58-1-203, from an institution of higher education whose doctoral program, at the time the applicant received the doctoral degree, met approval criteria established by division rule made in consultation with the board;
(e) have completed a minimum of 4,000 hours of psychology training as defined by division rule under Section 58-1-203 in not less than two years and under the supervision of a psychologist supervisor approved by the division in collaboration with the board;
(f) to be qualified to engage in mental health therapy, document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of a master's level of education in psychology, which training may be included as part of the 4,000 hours of training required in Subsection (1)(e), and for which documented evidence

demonstrates not less than one hour of supervision for each 40 hours of supervised training was obtained under the direct supervision of a psychologist, as defined by rule;

(g) pass the examination requirement established by division rule under Section 58-1-203; and

(h) meet with the board, upon request for good cause, for the purpose of evaluating the applicant's qualifications for licensure.

(2) An applicant for licensure as a psychologist by endorsement based upon licensure in another jurisdiction shall:

(a) submit an application on a form provided by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character and professional standing, and not have any disciplinary action pending or in effect against the applicant's psychologist license in any jurisdiction;

(d) have passed the Utah Psychologist Law and Ethics Examination established by division rule;

(e) provide satisfactory evidence the applicant is currently licensed in another state, district, or territory of the United States, or in any other jurisdiction approved by the division in collaboration with the board;

(f) provide satisfactory evidence the applicant has actively practiced psychology in that jurisdiction for not less than 2,000 hours or one year, whichever is greater;

(g) provide satisfactory evidence that:

(i) the education, supervised experience, examination, and all other requirements for licensure in that jurisdiction at the time the applicant obtained licensure were substantially equivalent to the licensure requirements for a psychologist in Utah at the time the applicant obtained licensure in the other jurisdiction; or

(ii) the applicant is:

(A) a current holder of Board Certified Specialist status in good standing from the American Board of Professional Psychology;

(B) currently credentialed as a health service provider in psychology by the National Register of Health Service Providers in Psychology; or

(C) currently holds a Certificate of Professional Qualification (CPQ) granted by the Association of State and Provincial Psychology Boards; and

(h) meet with the board, upon request for good cause, for the purpose of evaluating the applicant's qualifications for licensure.

(3)

(a) An applicant for certification as a psychology resident shall comply with the provisions of Subsections (1)(a), (b), (c), (d), and (h).

(b)

(i) An individual's certification as a psychology resident is limited to the period of time necessary to complete clinical training as described in Subsections (1)(e) and (f) and extends not more than one year from the date the minimum requirement for training is completed, unless the individual presents satisfactory evidence to the division and the Psychologist Licensing Board that the individual is making reasonable progress toward passing the qualifying examination or is otherwise on a course reasonably expected to lead to licensure as a psychologist.

(ii) The period of time under Subsection (3)(b)(i) may not exceed two years past the date the minimum supervised clinical training requirement has been completed.

Amended by Chapter 16, 2013 General Session
Amended by Chapter 262, 2013 General Session

58-61-305 Qualifications for admission to examination.

All applicants for admission to any examination qualifying an individual for licensure under this chapter shall:

(1) submit an application on a form provided by the division;

(2) pay the fee established for the examination; and

(3) certify under penalty of perjury as evidenced by notarized signature on the application for admission to the examination that the applicant:

(a) has completed the education requirement under this chapter and been awarded the earned degree required for licensure; and

(b) has successfully completed the supervised training required under this chapter for licensure.

Enacted by Chapter 32, 1994 General Session

58-61-306 Continuing education.

By rule made under Section 58-1-203, the division may establish a continuing education requirement as a condition for renewal of a license under this chapter upon finding continuing education is necessary to reasonably protect the public health, safety, or welfare.

Enacted by Chapter 32, 1994 General Session

58-61-307 Exemptions from licensure.

(1) Except as modified in Section 58-61-301, the exemptions from licensure in Section 58-1-307 apply to this chapter.

(2) In addition to the exemptions from licensure in Section 58-1-307, the following when practicing within the scope of the license held, may engage in acts included within the definition of practice as a psychologist, subject to the stated circumstances and limitations, without being licensed under this chapter:

(a) a physician and surgeon or osteopathic physician licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;

(b) a registered psychiatric mental health nurse specialist licensed under Chapter 31b, Nurse Practice Act;

(c) a recognized member of the clergy while functioning in his ministerial capacity as long as he does not represent himself as or use the title of psychologist;

(d) an individual who is offering expert testimony in any proceeding before a court, administrative hearing, deposition upon the order of any court or other body having power to order the deposition, or proceedings before any master, referee, or alternative dispute resolution provider;

(e) an individual engaged in performing hypnosis who is not licensed under this title in a profession which includes hypnosis in its scope of practice, and who:

(i)

(A) induces a hypnotic state in a client for the purpose of increasing motivation or altering lifestyles or habits, such as eating or smoking, through hypnosis;

(B) consults with a client to determine current motivation and behavior patterns;

(C) prepares the client to enter hypnotic states by explaining how hypnosis works and what the client will experience;

(D) tests clients to determine degrees of suggestibility;

(E) applies hypnotic techniques based on interpretation of consultation results and analysis of client's motivation and behavior patterns; and

(F) trains clients in self-hypnosis conditioning;
(ii) may not:
(A) engage in the practice of mental health therapy;
(B) represent himself using the title of a license classification in Subsection 58-60-102(5); or
(C) use hypnosis with or treat a medical, psychological, or dental condition defined in generally recognized diagnostic and statistical manuals of medical, psychological, or dental disorders;
(f) an individual's exemption from licensure under Subsection 58-1-307(1)(b) terminates when the student's training is no longer supervised by qualified faculty or staff and the activities are no longer a defined part of the degree program;
(g) an individual holding an earned doctoral degree in psychology who is employed by an accredited institution of higher education and who conducts research and teaches in that individual's professional field, but only if the individual does not engage in providing delivery or supervision of professional services regulated under this chapter to individuals or groups regardless of whether there is compensation for the services;
(h) any individual who was employed as a psychologist by a state, county, or municipal agency or other political subdivision of the state prior to July 1, 1981, and who subsequently has maintained employment as a psychologist in the same state, county, or municipal agency or other political subdivision while engaged in the performance of his official duties for that agency or political subdivision;
(i) an individual licensed as a school psychologist under Section 53A-6-104:
(i) may represent himself as and use the terms "school psychologist" or "licensed school psychologist"; and
(ii) is restricted in his practice to employment within settings authorized by the State Board of Education;
(j) an individual providing advice or counsel to another individual in a setting of their association as friends or relatives and in a nonprofessional and noncommercial relationship, if there is no compensation paid for the advice or counsel; and
(k) an individual who is licensed, in good standing, to practice mental health therapy in a state or territory of the United States outside of Utah may provide short term transitional mental health therapy remotely to a client in Utah only if:
(i) the individual is present in the state or territory where the individual is licensed to practice mental health therapy;
(ii) the client relocates to Utah;
(iii) the client is a client of the individual immediately before the client relocates to Utah;
(iv) the individual provides the short term transitional mental health therapy to the client only during the 45 day period beginning on the day on which the client relocates to Utah;
(v) within 10 days after the day on which the client relocates to Utah, the individual provides written notice to the division of the individual's intent to provide short term transitional mental health therapy remotely to the client; and
(vi) the individual does not engage in unlawful conduct or unprofessional conduct.

Amended by Chapter 16, 2013 General Session

58-61-308 Scope of practice -- Limitations.

(1) A psychologist may engage in all acts and practices defined as the practice of psychology without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's education, training, and competence.

(2) An individual certified as a psychology resident may engage in all acts and practices defined as the practice of psychology only under conditions of employment as a psychology resident and under the supervision of a licensed psychologist who is an approved psychology training supervisor as defined by division rule. A certified psychology resident shall not engage in the independent practice of psychology.

Enacted by Chapter 281, 2001 General Session

Part 4
License Denial and Discipline

58-61-401 Grounds for action regarding license -- Disciplinary proceedings.

The division's grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order are under Section 58-1-401.

Enacted by Chapter 32, 1994 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-61-501 Unlawful conduct.

As used in this chapter, "unlawful conduct" includes:

(1) practice of psychology unless licensed as a psychologist or certified psychology resident under this chapter or exempted from licensure under this title;

(2) practice of mental health therapy by a licensed psychologist who has not acceptably documented to the division his completion of the supervised training in psychotherapy required under Subsection 58-61-304(1)(f); or

(3) representing oneself as or using the title of psychologist, or certified psychology resident unless currently licensed under this chapter.

Amended by Chapter 281, 2001 General Session

58-61-502 Unprofessional conduct.

(1) As used in this chapter, "unprofessional conduct" includes:

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession for which the individual is licensed, or the laws of the state;

(b) failure to confine practice conduct to those acts or practices:

(i) in which the individual is competent by education, training, and experience within limits of education, training, and experience; and

(ii) which are within applicable scope of practice laws of this chapter; and

(c) disclosing or refusing to disclose any confidential communication under Section 58-61-602.

(2) "Unprofessional conduct" under this chapter may be further defined by division rule.

Amended by Chapter 281, 2001 General Session

58-61-503 Penalty for unlawful conduct.

An individual who commits any act of unlawful conduct as defined in:
(1) Subsection 58-61-501(1) or (2) is guilty of a third degree felony; or
(2) Subsection 58-61-501(3) is guilty of a class A misdemeanor.

Enacted by Chapter 32, 1994 General Session

58-61-504 Reporting of unprofessional or unlawful conduct -- Immunity from liability.

(1) Upon learning of an act of unlawful or unprofessional conduct as defined in Section 58-61-102 by a person licensed under this chapter or an individual not licensed under this chapter and engaged in acts or practices regulated under this chapter, that results in disciplinary action by a licensed health care facility, professional practice group, or professional society, or that results in a significant adverse impact upon the public health, safety, or welfare, the following shall report the conduct in writing to the division within 10 days after learning of the disciplinary action or the conduct unless the individual or person knows it has been reported:
  (a) a licensed health care facility or organization in which an individual licensed under this chapter engages in practice;
  (b) an individual licensed under this chapter; and
  (c) a professional society or organization whose membership is comprised of individuals licensed under this chapter and which has the authority to discipline or expel a member for acts of unprofessional or unlawful conduct.
(2) Any individual reporting acts of unprofessional or unlawful conduct by an individual licensed under this chapter is immune from liability arising out of the disclosure to the extent the individual furnishes the information in good faith and without malice.

Enacted by Chapter 32, 1994 General Session

Part 6
Evidentiary Privilege and Confidentiality

58-61-601 Evidentiary privilege.

Evidentiary privilege for psychologists regarding admissibility of any confidential communication in administrative, civil, or criminal proceedings is in accordance with Rule 506 of the Utah Rules of Evidence.

Enacted by Chapter 32, 1994 General Session

58-61-602 Confidentiality -- Exemptions.

(1) A psychologist under this chapter may not disclose any confidential communication with a client or patient without the express consent of:
  (a) the client or patient;
  (b) the parent or legal guardian of a minor client or patient; or
  (c) the authorized agent of a client or patient.

(2) A psychologist under this chapter is not subject to Subsection (1) if:
(a) the psychologist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:
(i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult;
(ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;
(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or
(iv) reporting of a communicable disease as required under Section 26-6-6;
(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or
(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Amended by Chapter 366, 2011 General Session

Part 7
Behavior Analyst Licensing Act

58-61-701 Title.
This part is known as the "Behavior Analyst Licensing Act."

Enacted by Chapter 367, 2015 General Session

58-61-702 Definitions.
In addition to the definitions in Section 58-61-102, as used in this part:
(1) "Confidential communication" means information obtained by an individual licensed or registered under this part, including information obtained by the individual's observation of or interview with the client, patient, or authorized agent, which is:
(a)
(i) transmitted between the client, patient, or authorized agent and an individual licensed or registered under this part in the course of that relationship; or
(ii) transmitted among the client, patient, or authorized agent, an individual licensed or registered under this part, and individuals who are participating in the assessment or treatment in conjunction with an individual licensed or registered under this part, including the authorized agent or members of the client's or patient's family; and
(b) made in confidence, for the assessment or treatment of the client or patient by the individual who is licensed or registered under this part, and by a means not intended to be disclosed to a third party other than an individual:
(i) present to further the interest of the client or patient in the consultation, assessment or interview;
(ii) reasonably necessary for the transmission of the communications; or
(iii) participating in the assessment and treatment of the client or patient in conjunction with the behavior analyst or behavior specialist.

(2) "Licensed assistant behavior analyst" means an individual licensed under this part to engage in the practice of behavior analysis under the supervision of a qualified supervisor, as defined by the division by administrative rule.
(3) "Licensed behavior analyst" means an individual licensed under this part to engage in the practice of behavior analysis.
(4)
(a) "Practice of behavior analysis" means the design and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior and includes the following:
(i) the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis;
(ii) interventions based on scientific research and the direct observation and measurement of behavior and environment; and
(iii) utilization of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.
(b) "Practice of behavior analysis" does not include:
(i) diagnosis of a mental or physical disorder;
(ii) psychological testing;
(iii) educational testing;
(iv) neuropsychology;
(v) neuropsychological testing;
(vi) mental health therapy;
(vii) psychotherapy;
(viii) counseling;
(ix) biofeedback;
(x) neurofeedback;
(xi) cognitive therapy;
(xii) sex therapy;
(xiii) psychoanalysis; or
(xiv) hypnotherapy.
(5) "Registered assistant behavior specialist" means an individual who:
(a) is employed:
(i) as a professional engaging in the practice of behavior analysis within an organization contracted under a division of the Utah Department of Human Services;
(ii) to provide behavior analysis; and
(iii) on or before May 15, 2015;
(b) limits the practice of behavior analysis to the contract described in Subsection (5)(a)(i); and
(c) is registered under this part with the division to engage in the practice of behavior analysis under the supervision of a qualified supervisor, as defined by the division by administrative rule.
(6) "Registered behavior specialist" means an individual who:
(a) is employed:
(i) as a professional engaging in the practice of behavior analysis within an organization contracted under a division of the Utah Department of Human Services to provide behavior analysis; and
(ii) on or before May 15, 2015;
(b) limits the practice of behavior analysis to the contract described in Subsection (6)(a)(i); and

(c) is registered under this part with the division to engage in the practice of behavior analysis.

Enacted by Chapter 367, 2015 General Session

58-61-703 License or registration required.

(1) A license or registration is required to engage in the practice of behavior analysis, except as specifically provided in Section 58-1-307.
(2) The division shall issue to a person who qualifies under this part a license in the classification of:
  (a) behavior analyst; or
  (b) assistant behavior analyst.
(3) The division shall issue to a person who qualifies under this part a registration in the classification of:
  (a) behavior specialist; or
  (b) assistant behavior specialist.
(4) An individual shall be licensed or registered under this part or exempted from licensure under this part in order to engage in, or represent that the individual is engaged in, the practice of behavior analysis.

Enacted by Chapter 367, 2015 General Session

58-61-704 Term of license or registration.

(1)
  (a) The division shall issue each license under this part with a two-year renewal cycle established by division rule.
  (b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
(2) At the time of renewal, the licensed individual shall show satisfactory evidence of renewal requirements as required under this part.
(3) Each license or registration expires on the expiration date shown on the license unless renewed by the licensed individual in accordance with Section 58-1-308.
(4)
  (a) A registration as a registered behavior specialist or a registered assistant behavior specialist:
    (i) expires on the day the individual is no longer employed in accordance with Subsection 58-61-705(5)(e) or (6)(e); and
    (ii) may not be renewed.
  (b) The Department of Human Services, or an organization contracted with a division of the Department of Human Services, shall notify the Division of Occupational and Professional Licensing when a person registered under this part is no longer employed as a registered behavior specialist or a registered assistant behavior specialist.

Enacted by Chapter 367, 2015 General Session

58-61-705 Qualifications for licensure -- By examination -- By certification.

(1) An applicant for licensure as a behavior analyst based upon education, supervised experience, and national examination shall:
  (a) submit an application on a form provided by the division;
  (b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;
(d) produce certified transcripts of credit verifying satisfactory completion of a master's or doctoral degree in applied behavior analysis from an accredited institution of higher education or an equivalent master or doctorate degree as determined by the division by administrative rule;
(e) as defined by the division by administrative rule, have completed at least 1,500 hours of experiential behavior analysis training within a five year period of time with a qualified supervisor; and
(f) pass the examination requirement established by division rule under Section 58-1-203.
(2) An applicant for licensure as a behavior analyst based upon certification shall:
(a) without exception, on or before November 15, 2015, submit to the division an application on a form provided by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character; and
(d) provide official verification of current certification as a board certified behavior analyst from the Behavior Analyst Certification Board.
(3) An applicant for licensure as an assistant behavior analyst based upon education, supervised experience and national examination shall:
(a) submit an application on a form provided by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) produce certified transcripts of credit verifying satisfactory completion of a bachelor's degree from an accredited institution of higher education and satisfactory completion of specific core course work in behavior analysis established under Section 58-1-203 from an accredited institution of higher education;
(e) as defined by the division by administrative rule, have completed at least 1,000 hours of experiential behavior analysis training within a five-year period of time with a qualified supervisor; and
(f) pass the examination requirement established by division rule under Section 58-1-203.
(4) An applicant for licensure as an assistant behavior analyst based upon certification shall:
(a) without exception, on or before November 15, 2015, submit to the division an application on a form provided by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character; and
(d) provide official verification of current certification as a board certified assistant behavior analyst from the Behavior Analyst Certification Board.
(5) An applicant for registration as a behavior specialist based upon professional experience in behavior analysis shall:
(a) without exception, on or before November 15, 2015, submit to the division, an application on a form provided by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) have at least five years of experience as a professional engaged in the practice of behavior analysis on or before May 15, 2015; and
(e) be employed as a professional engaging in the practice of behavior analysis within an organization contracted with a division of the Utah Department of Human Services to provide behavior analysis on or before July 1, 2015.
(6) An applicant for registration as an assistant behavior specialist based upon professional experience in behavior analysis shall:

(a) without exception, on or before November 15, 2015, submit to the division, an application on a form provided by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) have at least one year of experience as a professional engaging in the practice of behavior analysis prior to July 1, 2015; and
(e) be employed as a professional engaging in the practice of behavior analysis within an organization contracted with a division of the Utah Department of Human Services to provide behavior analysis on or before July 1, 2015.

Enacted by Chapter 367, 2015 General Session

58-61-706 Continuing education.
(1) The division may establish administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring continuing education as a condition for renewal of any license classification or maintaining a registration classification under this part if the division finds that continuing education is necessary to reasonably protect the public health, safety, or welfare.
(2) If a renewal cycle is extended or shortened under Section 58-61-704, the continuing education hours required for license renewal or maintaining a registration under this part shall be increased or decreased proportionally.

Enacted by Chapter 367, 2015 General Session

58-61-707 Exemptions from licensure.
In addition to the exemptions from licensure in Section 58-1-307, the following when practicing within the scope of the license held, may engage in acts included in the definition of the practice of behavior analysis, subject to the stated circumstances and limitations, without being licensed under this chapter:
(1) a psychologist licensed under this chapter, and those acting under the psychologist's authority and direction;
(2) a registered behavior specialist under this part;
(3) a registered assistant behavior specialist under this part;
(4) a mental health therapist licensed under Chapter 60, Mental Health Professional Practice Act;
(5) a behavior analyst who practices with non-human or non-patient clients or consumers, including applied animal behaviorists;
(6) an individual who provides general behavior analysis services to an organization, if the practice of behavior analysis is for the benefit of the organization and does not involve the practice of behavior analysis on an individual;
(7) an individual who teaches behavior analysis or conducts behavior analysis research, provided that the individual does not practice behavior analysis on an individual as part of the teaching or research;
(8) an employee of a school district, private school, or charter school who:
(a) practices behavior analysis as part of the employee's job description with the school district, private school, or charter school; and
(b) limits the employee's practice to the employment settings authorized by the:
(i) State Board of Education, if the employee is employed by a public school or charter school; or

(ii) private school employer, if the employee is employed by a private school;
(9) a matriculated graduate student in:
(a) a mental health field whose activities are part of a defined program of study or professional training; or
(b) education or applied behavior analysis whose activities are part of a defined program of study or professional training;
(10) a person:
(a) who is enrolled in a behavior analysis course sequence approved by the Behavior Analyst Certification Board at an accredited institution of higher education;
(b) whose activities are part of a defined program of study or professional training; and
(c) who is actively accruing supervision hours as defined by division rule under Section 58-1-203 and under the supervision of a licensed behavior analyst;
(11) a person who:
(a) has completed and passed a course sequence approved by the Behavior Analyst Certification Board; and
(b) is completing the supervision hours as defined by division rule under Section 58-1-203 and under the supervision of a licensed behavior analyst or other supervisor as permitted by rule adopted by the division;
(12) a person who:
(a) has completed and passed the course sequence approved by the Behavior Analyst Certification Board;
(b) has completed the supervision hours as defined by division rule under Section 58-1-203;
(c) continues working under the supervision of a behavior analyst; and
(d) is preparing to take the licensing examination or awaiting results of the licensing examination, provided the exemption under this Subsection (12)(d) does not extend beyond six months from the latter of Subsection (12)(b) or (c);
(13) until November 15, 2015, a person who:
(a) has completed and passed the Board Certified Behavior Analyst or Board Certified Assistant Behavior Analyst Examination developed by the Behavior Analyst Certification Board; and
(b) is in the process of applying for a license under this part;
(14) an individual providing advice or counsel to another individual in a setting of the individual's association as friends or relatives and in a nonprofessional and noncommercial relationship, if there is no compensation paid for the advice or counsel; or
(15) an individual exempt under Subsection 58-1-307(1)(b) only if the individual is supervised by qualified faculty or staff and the activities are a defined part of the degree program.

Enacted by Chapter 367, 2015 General Session

58-61-708 License and registration denial and discipline.

The division's grounds for refusing to issue a license or registration to an applicant, for refusing to renew the license of a licensed individual or registration of a registered individual, for revoking, suspending, restricting, or placing on probation the license of a licensed individual or registration of a registered individual, for issuing a public or private reprimand to a licensed individual or registered individual, and for issuance of a cease and desist order are under Section 58-1-401.

Enacted by Chapter 367, 2015 General Session

58-61-709 Unlawful conduct.

As used in this part, "unlawful conduct" includes:
(1) practice of behavior analysis unless licensed as a behavior analyst or assistant behavior analyst under this part, registered as a behavior specialist or assistant behavior specialist, or exempted from licensure or registration under this title; or
(2) representing oneself as or using the title of licensed behavior analyst or licensed assistant behavior analyst unless currently licensed under this part.

Enacted by Chapter 367, 2015 General Session

58-61-710 Unprofessional conduct.

As used in this part, "unprofessional conduct" includes:
(1) using or employing the services of any individual to assist a licensed behavior analyst, licensed assistant behavior analyst, registered behavior specialist, or registered assistant behavior specialist in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession for which the individual is licensed or the laws of the state, including:
(a) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring compliance with the requirements of administrative rule adopted by the division;
(b) engaging in and aiding or abetting conduct or practices that are false, dishonest, deceptive, or fraudulent;
(c) engaging in or aiding or abetting deceptive or fraudulent billing practices;
(d) failing to establish and maintain appropriate professional boundaries with a client or former client;
(e) engaging in or promising a personal, scientific, professional, financial, or other relationship with a client if it appears likely that such a relationship reasonably might impair the behavior analyst's or registered behavior specialist's objectivity or might harm or exploit the client;
(f) engaging in sexual activities or sexual contact with a client with or without client consent;
(g) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;
(h) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition that could reasonably be expected to place the client at a disadvantage, recognizing the power imbalance that exists or may exist between the behavior analyst or registered behavior specialist and the client;
(i) engaging in or aiding or abetting sexual harassment or any conduct that is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;
(j) exploiting a client for personal gain;
(k) using a professional client relationship to exploit a client or other person for personal gain;
(l) failing to maintain appropriate client records for a period of not less than seven years from the documented termination of services to the client;
(m) failing to obtain informed consent from the client or legal guardian before taping, recording, or permitting third party observations of client care or records;
(n) failing to cooperate with the division during an investigation;
(o) using the abbreviated title of LBA unless licensed in the state as a behavior analyst;
(p) using the abbreviated title of LaBA unless licensed in the state as an assistant behavior analyst;

(q) failing to make reasonable efforts to notify a client and seek the transfer or referral of services, according to the client's needs or preferences, when a behavior analyst anticipates the interruption or termination of services to a client;
(r) failing to provide for orderly and appropriate resolution of responsibility for client care in the event that the employment or contractual relationship ends, according to the client's needs and preferences;
(s) failing to make reasonable steps to avoid abandoning a client who is still in need of services;
(t) failing to report conviction of a felony or misdemeanor directly relating to the practice of behavior analysis or public health and safety;
(u) failing to report revocation or suspension of certification from the Behavior Analyst Certification Board; and
(v) failure to confine practice conduct to those acts or practices in which the individual is competent by education, training, and experience within limits of education, training, and experience; and
(2) other conduct as further defined by administrative rule adopted by the division.

Enacted by Chapter 367, 2015 General Session

58-61-711 Penalty for unlawful conduct.

An individual who commits any act of unlawful conduct as defined in:
(1) Subsection 58-61-501(1) is guilty of a third degree felony; or
(2) Subsection 58-61-501(2) is guilty of a class A misdemeanor.

Enacted by Chapter 367, 2015 General Session

58-61-712 Reporting of unprofessional or unlawful conduct -- Immunity from liability.

(1) Upon learning of an act of unlawful or unprofessional conduct as defined in Section 58-61-102 by a person licensed or registered under this chapter or an individual not licensed or registered under this chapter who engaged in acts or practices regulated under this chapter, which results in disciplinary action by a licensed health care facility, professional practice group, or professional society, or which results in a significant adverse impact upon the public health, safety, or welfare, the following shall report the conduct in writing to the division within 10 days after learning of the disciplinary action or the conduct, unless the individual or person knows it has been reported:
(a) a licensed health care facility or an organization in which an individual licensed or registered under this chapter engaged in practice;
(b) an individual licensed or registered under this chapter; or
(c) a professional society or organization whose membership individuals licensed or registered under this chapter and that has the authority to discipline or expel a member for acts of unprofessional conduct or unlawful conduct.
(2) Any individual who reports acts of unprofessional or unlawful conduct by an individual licensed or registered under this chapter is immune from liability arising out of the disclosure to the extent the individual furnishes the information in good faith and without malice.

Enacted by Chapter 367, 2015 General Session

58-61-713 Confidentiality -- Exemptions.

(1) A behavior analyst or behavior specialist under this chapter may not disclose any confidential communication with a client or patient without the express consent of:
(a) the client or patient;
(b) the parent or legal guardian of a minor client or patient; or
(c) the authorized agent of a client or patient.
(2) A behavior analyst or behavior specialist is not subject to Subsection (1) if:
(a) the behavior analyst or behavior specialist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:
(i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult;
(ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;
(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or
(iv) reporting of a communicable disease as required under Section 26-6-6;
(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Utah Rules of Evidence, Rule 506; or
(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Enacted by Chapter 367, 2015 General Session

58-61-714 Third party payment for licensed behavior analyst.
Notwithstanding the provisions of Section 31A-22-618, payment from third party payers for behavior analysis may be limited to:
(1) a licensed behavior analyst as defined in 58-61-701; and
(2) the following, working within the scope of their practice:
(a) a physician licensed under Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act;
(b) an advanced practice registered nurse licensed under Chapter 31b, Nurse Practice Act;
(c) a psychologist licensed under this chapter;
(d) a clinical social worker licensed under Chapter 60, Part 2, Social Worker Licensing Act;
(e) a marriage and family therapist licensed under Chapter 60, Part 3, Marriage and Family Therapist Licensing Act; and
(f) a clinical mental health counselor licensed under Chapter 60, Part 4, Clinical Mental Health Counselor Licensing Act.

Enacted by Chapter 367, 2015 General Session

Chapter 63
Security Personnel Licensing Act

Part 1
General Provisions

58-63-101 Title.

This chapter is known as the "Security Personnel Licensing Act."

Amended by Chapter 79, 1996 General Session

58-63-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Armed courier service" means a person engaged in business as a contract security company who transports or offers to transport tangible personal property from one place or point to another under the control of an armed security officer employed by that service.

(2) "Armed private security officer" means an individual:
- (a) employed by a contract security company;
- (b) whose primary duty is:
  - (i) guarding personal or real property; or
  - (ii) providing protection or security to the life and well being of humans or animals; and
- (c) who wears, carries, possesses, or has immediate access to a firearm in the performance of the individual's duties.

(3) "Armored car company" means a person engaged in business under contract to others who transports or offers to transport tangible personal property, currency, valuables, jewelry, SNAP benefits as defined in Section 35A-1-102, or any other high value items, that require secured delivery from one place to another under the control of an armored car security officer employed by the company using a specially equipped motor vehicle offering a high degree of security.

(4) "Armored car security officer" means an individual:
- (a) employed by an armored car company;
- (b) whose primary duty is to guard the tangible property, currency, valuables, jewelry, SNAP benefits as defined in Section 35A-1-102, or other high value items that require secured delivery from one place to another; and
- (c) who wears, carries, possesses, or has immediate access to a firearm in the performance of the individual's duties.

(5) "Board" means the Security Services Licensing Board created in Section 58-63-201.

(6) "Contract security company" means a person engaged in business to provide security or guard services to another person on a contractual basis by assignment of an armed or unarmed private security officer.

(7) "Identification card" means a personal pocket or wallet size card issued by the division to each armored car and armed or unarmed private security officer licensed under this chapter.

(8) "Officer" means a president, vice president, secretary, treasurer, or other officer of a corporation or limited liability company listed as an officer in the files with the Division of Corporations and Commercial Code.

(9) "Owner" means a proprietor or general partner of a proprietorship or partnership, a lessee or assignee of the owner, the manager of the facility, or the event operator.

(10) "Peace officer" means a person who:
- (a) is a certified peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications; and
- (b) derives total or special law enforcement powers from, and is an employee of, the federal government, the state, or a political subdivision, agency, department, branch, or service of either, of a municipality, or a unit of local government.

(11) "Regular basis" means at least 20 hours per month.

(12)

(a) "Security officer" means an individual who is licensed as an armed or unarmed private security officer under this chapter and who:
(i) is employed by a contract security company securing, guarding, or otherwise protecting tangible personal property, real property, or the life and well being of human or animal life against:
(A) trespass or other unlawful intrusion or entry;
(B) larceny;
(C) vandalism or other abuse;
(D) arson or other criminal activity; or
(E) personal injury caused by another person or as a result of an act or omission by another person;
(ii) is controlling, regulating, or directing the flow of movements of an individual or vehicle; or
(iii) providing street patrol service.
(b) "Security officer" does not include an individual whose duties are limited to custodial or other services even though the presence of that individual may act to provide a service set forth under Subsection (12)(a).
(c)
(i) "Security officer" does not include an individual whose duties include taking admission tickets, checking credentials, ushering, or checking bags, purses, backpacks, or other materials going into a facility as described in Subsection (12)(c)(ii) if:
(A) the individual carries out these duties without the use of specialized equipment;
(B) the authority of the individual is limited to denying entry or passage of a person into or within the facility; and
(C) the individual is not authorized to use physical force in the performance of the individual's duties under this Subsection (12)(c).
(ii) As used in this Subsection (12)(c), "facility" means a sports, concert, or theatrical venue, or a convention center, fairgrounds, public assembly facility, or mass gathering location.
(13) "Security system" means equipment, a device, or an instrument installed for:
(a) detecting and signaling entry or intrusion by an individual into or onto, or exit from the premises protected by the system; or
(b) signaling the commission of criminal activity at the election of an individual having control of the features of the security system.
(14) "Specialized resource, motor vehicle, or equipment" means an item of tangible personal property specifically designed for use in law enforcement or in providing security or guard services, or that is specially equipped with a device or feature designed for use in providing law enforcement, security, or guard services, but does not include:
(a) standardized clothing, whether or not bearing a company name or logo, if the clothing does not bear the words "security" or "guard"; or
(b) an item of tangible personal property, other than a firearm or nonlethal weapon, that may be used without modification in providing security or guard services.
(15) "Street patrol service" means a contract security company that provides patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of the company's duties and responsibilities.
(16) "Unarmed private security officer" means an individual:
(a) employed by a contract security company;
(b) whose primary duty is guarding personal or real property or providing protection or security to the life and well being of humans or animals;

(c) who does not wear, carry, possess, or have immediate access to a firearm in the performance of the individual's duties; and
(d) who wears clothing of distinctive design or fashion bearing a symbol, badge, emblem, insignia, or other device that identifies the individual as a security officer.
(17) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-63-501.
(18) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-63-502 and as may be further defined by rule.

Amended by Chapter 41, 2012 General Session

58-63-103 Use of money for education, training, and enforcement.
The director may, with the concurrence of the board, use the money collected under Section 58-63-503 for the following purposes:
(1) educating and training licensees under this chapter;
(2) educating and training the general public or other interested persons in matters concerning the laws that govern the practices licensed under this chapter; and
(3) enforcing this chapter by:
(a) investigating unprofessional or unlawful conduct; and
(b) providing legal representation to the division when it takes legal action against a person charged with unprofessional or unlawful conduct.

Amended by Chapter 303, 2011 General Session
Amended by Chapter 342, 2011 General Session

Part 2
Board

58-63-201 Board -- Duties.
(1) There is created the Security Services Licensing Board consisting of:
(a) two individuals who are officers or owners of a licensed contract security company;
(b) one individual who is an officer or owner of a licensed armored car company;
(c) one individual from among nominees of the Utah Sheriffs' Association;
(d) one individual from among nominees of the Utah Chiefs of Police Association; and
(e) two individuals representing the general public.
(2)
(a) The executive director shall appoint board members in accordance with Section 58-1-201.
(b) A board member serves in accordance with Section 58-1-201.
(3)
(a) The board shall carry out its duties and responsibilities in accordance with Sections 58-1-202 and 58-1-203.
(b) The board shall designate one of its members on a permanent or rotating basis to:
(i) assist the division in reviewing a complaint concerning the unlawful or unprofessional conduct of a person licensed under this chapter; and
(ii) advise the division in its investigation of the complaint.

(4) A board member who, under Subsection (3), has reviewed a complaint or advised in its investigation is disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Amended by Chapter 436, 2013 General Session

Part 3
Licensing

58-63-301 Licensure required -- License classifications.

(1) A license is required to engage in the practice of a contract security company, an armored car company, an armored car security officer, armed private security officer, or unarmed private security officer, except as otherwise provided in Section 58-1-307, 58-63-304, or 58-63-310.

(2) The division shall issue to a person who qualifies under this chapter a license in the following classifications:
  (a) contract security company;
  (b) armored car company;
  (c) armored car security officer;
  (d) armed private security officer; or
  (e) unarmed private security officer.

Amended by Chapter 246, 2008 General Session

58-63-302 Qualifications for licensure.

(1) Each applicant for licensure as an armored car company or a contract security company shall:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) have a qualifying agent who:
    (i) is a resident of the state and an officer, director, partner, proprietor, or manager of the applicant;
    (ii) passes an examination component established by rule by the division in collaboration with the board; and
    (iii)
      (A) demonstrates 6,000 hours of compensated experience as a manager, supervisor, or administrator of an armored car company or a contract security company; or
      (B) demonstrates 6,000 hours of supervisory experience acceptable to the division in collaboration with the board with a federal, United States military, state, county, or municipal law enforcement agency;
  (d) if a corporation, provide:
    (i) the names, addresses, dates of birth, and social security numbers of all corporate officers, directors, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and
    (ii) the names, addresses, dates of birth, and social security numbers, of all shareholders owning 5% or more of the outstanding shares of the corporation, unless waived by the division if the stock is publicly listed and traded;
  (e) if a limited liability company, provide:

(i) the names, addresses, dates of birth, and social security numbers of all company officers, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and
(ii) the names, addresses, dates of birth, and social security numbers of all individuals owning 5% or more of the equity of the company;
(f) if a partnership, provide the names, addresses, dates of birth, and social security numbers of all general partners, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;
(g) if a proprietorship, provide the names, addresses, dates of birth, and social security numbers of the proprietor, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;
(h) have good moral character in that officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel have not been convicted of:
(i) a felony;
(ii) a misdemeanor involving moral turpitude; or
(iii) a crime that when considered with the duties and responsibilities of a contract security company or an armored car company by the division and the board indicates that the best interests of the public are not served by granting the applicant a license;
(i) document that none of the applicant's officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel:
(i) have been declared by a court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored; and
(ii) currently suffer from habitual drunkenness or from drug addiction or dependence;
(j) file and maintain with the division evidence of:
(i) comprehensive general liability insurance in a form and in amounts established by rule by the division in collaboration with the board;
(ii) workers' compensation insurance that covers employees of the applicant in accordance with applicable Utah law;
(iii) registration with the Division of Corporations and Commercial Code; and
(iv) registration as required by applicable law with the:
(A) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;
(B) State Tax Commission; and
(C) Internal Revenue Service; and
(k) meet with the division and board if requested by the division or board.
(2) Each applicant for licensure as an armed private security officer shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) have good moral character in that the applicant has not been convicted of:
(i) a felony;
(ii) a misdemeanor involving moral turpitude; or
(iii) a crime that when considered with the duties and responsibilities of an armed private security officer by the division and the board indicates that the best interests of the public are not served by granting the applicant a license;
(d) not be prohibited from possession of a firearm or ammunition under 18 U.S.C. Sec. 922(g);
(e) not have been declared incompetent by a court of competent jurisdiction by reason of mental defect or disease and not been restored;

(f) not be currently suffering from habitual drunkenness or from drug addiction or dependence;
(g) successfully complete basic education and training requirements established by rule by the division in collaboration with the board;
(h) successfully complete firearms training requirements established by rule by the division in collaboration with the board;
(i) pass the examination requirement established by rule by the division in collaboration with the board; and
(j) meet with the division and board if requested by the division or the board.
(3) Each applicant for licensure as an unarmed private security officer shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) have good moral character in that the applicant has not been convicted of:
(i) a felony;
(ii) a misdemeanor involving moral turpitude; or
(iii) a crime that when considered with the duties and responsibilities of an unarmed private security officer by the division and the board indicates that the best interests of the public are not served by granting the applicant a license;
(d) not have been declared incompetent by a court of competent jurisdiction by reason of mental defect or disease and not been restored;
(e) not be currently suffering from habitual drunkenness or from drug addiction or dependence;
(f) successfully complete basic education and training requirements established by rule by the division in collaboration with the board;
(g) pass the examination requirement established by rule by the division in collaboration with the board; and
(h) meet with the division and board if requested by the division or board.
(4) Each applicant for licensure as an armored car security officer shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) have good moral character in that the applicant has not been convicted of:
(i) a felony;
(ii) a misdemeanor involving moral turpitude; or
(iii) a crime that when considered with the duties and responsibilities of an armored car security officer by the division and the board indicates that the best interests of the public are not served by granting the applicant a license;
(d) not be prohibited from possession of a firearm or ammunition under 18 U.S.C. Sec. 922(g);
(e) not have been declared incompetent by a court of competent jurisdiction by reason of mental defect or disease and not been restored;
(f) not be currently suffering from habitual drunkenness or from drug addiction or dependence;
(g) successfully complete basic education and training requirements established by rule by the division in collaboration with the board;
(h) successfully complete firearms training requirements established by rule by the division in collaboration with the board;
(i) pass the examination requirements established by rule by the division in collaboration with the board; and
(j) meet with the division and board if requested by the division or the board.
(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make a rule establishing when the division shall request a Federal Bureau of Investigation records' review for an applicant.

(6) To determine if an applicant meets the qualifications of Subsections (1)(h), (2)(c), (3)(c), and (4)(c), the division shall provide an appropriate number of copies of fingerprint cards to the Department of Public Safety with the division's request to:
  (a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure under this chapter and each applicant's officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel; and
  (b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant requiring a check of records of the FBI for criminal history information under this section.
(7) The Department of Public Safety shall send the division:
  (a) a written record of criminal history, or certification of no criminal history record, as contained in the records of the Department of Public Safety in a timely manner after receipt of a fingerprint card from the division and a request for review of Department of Public Safety records; and
  (b) the results of the FBI review concerning an applicant in a timely manner after receipt of information from the FBI.
(8)
  (a) The division shall charge each applicant a fee, in accordance with Section 63J-1-504, equal to the cost of performing the records reviews under this section.
  (b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the FBI the costs of records reviews under this chapter.
(9) The division shall use or disseminate the information it obtains from the reviews of criminal history records of the Department of Public Safety and the FBI only to determine if an applicant for licensure under this chapter is qualified for licensure.

Amended by Chapter 238, 2016 General Session

58-63-303 Term of license -- Expiration -- Renewal.
(1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Enacted by Chapter 215, 1995 General Session

58-63-304 Exemptions from licensure.
(1) In addition to the exemptions from licensure in Section 58-1-307, an individual may engage in acts regulated under this chapter without being licensed under this chapter if the individual is:
  (a) a peace officer employed by, or licensed as, a contract security company, as provided in Subsection (2); or
  (b) employed by a contract security company for the sole purpose of operating or staffing security apparatus, including a magnetometer, magnetometer wand, x-ray viewing device, or other device approved by rule of the division.
(2) A peace officer may only engage in off-duty employment as a security officer if:

(a) the law enforcement agency employing the peace officer has a written policy regarding peace officer employees working while off duty as a security officer and the written policy addresses the issue of financial responsibility;
(b) the agency's chief administrative officer, or that officer's designee, provides written authorization for an off-duty peace officer to work as a security officer; and
(c) the business or entity employing the off-duty peace officer to work as a security officer complies with state and federal income reporting and withholding requirements regarding the off-duty officer's wages.
(3) In addition to the exemptions from licensure in Section 58-1-307, an individual holding a valid license as an armed private security officer under this chapter may also function as an unarmed private security officer without the additional license.
(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules approving security apparatus under Subsection (1)(b).

Amended by Chapter 436, 2013 General Session

58-63-305 Status of licenses held on the effective date of this chapter.

An individual holding a valid Utah license as a contract security company, armed private security officer, or unarmed private security officer under Title 53, Chapter 5, Part 4, Security Personnel Licensing and Regulation Act, on July 1, 1995, is:
(1) on or after July 1, 1995, considered to hold a current license under this chapter in the comparable classification of contract security company, armed private security officer, or unarmed private security officer; and
(2) subject to this chapter.

Amended by Chapter 271, 2001 General Session

58-63-306 Replacement of qualifying agent.

If the qualifying agent of an armored car company or a contract security company ceases to perform the agent's duties on a regular basis, the licensee shall:
(1) notify the division within 15 days by registered or certified mail; and
(2) replace the qualifying agent within 60 days after the time required for notification to the division.

Amended by Chapter 246, 2008 General Session

58-63-307 Use of firearms.

(1) An individual licensed as an armored car security officer or an armed private security officer may carry a firearm only while acting as an armored car security officer or an armed private security officer in accordance with this chapter and rules made under this chapter.
(2) An individual licensed as an armored car security officer or an armed private security officer is exempt from the provisions of Section 76-10-505 and Title 53, Chapter 5, Part 7, Concealed Firearm Act, while acting as an armored car security officer or an armed private security officer in accordance with this chapter and rules made under this chapter.

Amended by Chapter 246, 2008 General Session

58-63-308 Evidence of licensure.

An individual licensed as an armed private security officer, armored car security officer, or unarmed private security officer shall:
(1) carry a copy of the individual's license on the individual's person at all times while acting as a licensee; and
(2) display the license upon the request of a peace officer, a representative of the division, or a member of the public.

Amended by Chapter 246, 2008 General Session

58-63-309 Operating standards -- Rulemaking.
The division in collaboration with the board shall establish by rule operating standards that shall apply to the conduct of licensees under this chapter, including rules relating to use of uniforms, badges, insignia, designations, and representations used by or associated with a licensees practice under this chapter.

Enacted by Chapter 215, 1995 General Session

58-63-310 Interim permits.
(1) The division may issue an interim permit to an applicant for licensure as an armed private security officer, armored car security officer, or unarmed private security officer upon receipt of a complete application for licensure in accordance with Section 58-63-302.
(2)
(a) Each interim permit expires 90 days after it is issued or on the date on which the applicant is issued a license, whichever is earlier.
(b) The division may reissue an interim permit if the delay in approving a license is beyond the control or influence of the interim permit holder.
(3) An interim permit holder may engage in the scope of practice defined for the license classification that the interim permit holder is seeking.

Amended by Chapter 246, 2008 General Session

Part 4
License Denial and Discipline

58-63-401 Grounds for denial of license -- Disciplinary proceedings.
Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 215, 1995 General Session

Part 5
Unlawful Conduct - Unprofessional Conduct - Penalties

58-63-501 Unlawful conduct.

"Unlawful conduct" includes:

(1) a contract security company employing the services of an unlicensed armed private security officer or unarmed private security officer, except as provided under Section 58-63-304 or 58-63-310;

(2) an armored car company employing the services of an unlicensed armored car security officer, except as provided under Section 58-63-304 or 58-63-310;

(3) filing with the division fingerprint cards for an applicant that are not those of the applicant, or are in any other way false or fraudulent and intended to mislead the division in its consideration of the qualifications of the applicant for licensure;

(4) practicing or engaging in, or attempting to practice or engage in, activity for which a license is required under this chapter, unless the individual:

(a) holds the appropriate license under this chapter; or

(b) is exempted from licensure as provided under Section 58-63-304 or 58-63-310; and

(5) knowingly employing another person to engage in or practice or attempt to engage in or practice an occupation or profession licensed under this chapter, if the employee:

(a) is not licensed to do so under this chapter; or

(b) is not exempt from licensure.

Amended by Chapter 246, 2008 General Session

58-63-502 Unprofessional conduct.

"Unprofessional conduct" includes:

(1) failing as an armored car company or a contract security company to notify the division of the cessation of performance of its qualifying agent or failing to replace its qualifying agent, as required under Section 58-63-306;

(2) failing as an armed private security officer, armored car security officer, or unarmed private security officer, to carry or display a copy of the licensee's license as required under Section 58-63-308;

(3) employment by an armored car company or a contract security company of a qualifying agent, armed private security officer, armored car security officer, or unarmed private security officer knowing that the individual has engaged in conduct that is inconsistent with the duties and responsibilities of a licensee under this chapter; and

(4) failing to comply with operating standards established by rule.

Amended by Chapter 246, 2008 General Session

58-63-503 Penalties.

(1) Unless Subsection (2) applies, an individual who commits an act of unlawful conduct under Section 58-63-501 or who fails to comply with a citation issued under this section after it becomes final is guilty of a class A misdemeanor.

(2) The division may immediately suspend a license issued under this chapter of a person who is given a citation for violating Subsection 58-63-501(1), (2), (4), or (5).

(3)

(a) If upon inspection or investigation, the division determines that a person has violated Subsection 58-63-501(1), (2), (4), or (5) or any rule made or order issued under those subsections, and that disciplinary action is warranted, the director or the director's designee within the division shall promptly issue a citation to the person and:

(i) attempt to negotiate a stipulated settlement; or
(ii) notify the person to appear for an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
(b)
(i) The division may fine a person who violates Subsection 58-63-501(1), (2), (4), or (5), as evidenced by an uncontested citation, a stipulated settlement, or a finding of a violation in an adjudicative proceeding held under Subsection (3)(a)(ii), or order the person to cease and desist from the violation, or do both.
(ii) Except for a cease and desist order, the division may not impose the licensure sanctions listed in Section 58-63-401 through the issuance of a citation under this section.
(c) The written citation shall:
(i) describe the nature of the violation, including a reference to the allegedly violated statute, rule, or order;
(ii) state the recipient must notify the division in writing within 20 calendar days of issuance of the citation if the recipient wants to contest the citation at the adjudicative proceeding referred to in Subsection (3)(a)(ii); and
(iii) explain the consequences of failure to timely contest the citation or to make payment of a fine assessed under the citation with the time specified in the citation.
(d)
(i) The division may serve a citation issued under this section, or a copy of the citation, upon an individual who is subject to service of a summons under the Utah Rules of Civil Procedure.
(ii)
(A) The division may serve the individual personally or serve the individual's agent.
(B) The division may serve the summons by a division investigator, by a person designated by the director, or by mail.
(e)
(i) If within 20 days from the service of a citation the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.
(ii) The division may grant an extension of the 20-day period for cause.
(f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.
(g) The division may not issue a citation for an alleged violation under this section after the expiration of six months following the occurrence of the alleged violation.
(h) The director or the director's designee may assess fines under this section as follows:
(i) for a first offense under Subsection (3)(a), a fine of up to $1,000;
(ii) for a second offense under Subsection (3)(a), a fine of up to $2,000; and
(iii) for a subsequent offense under Subsection (3)(a), a fine of up to $2,000 for each day of continued violation.
(i)
(i) For purposes of issuing a final order under this section and assessing a fine under Subsection (3)(h), an offense is a second or subsequent offense if:
(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-63-501(1) or (4); or
(B)
(I) the division initiated an action for a first or second offense;
(II) no final order has been issued by the division in an action initiated under Subsection (3)(i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (3)(i)(i)(B)(I) that the person committed a second or subsequent violation of Subsection 58-63-501(1) or (4); and

(IV) after determining that the person committed a second or subsequent offense under Subsection (3)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (3)(i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (3)(i)(i), the division shall comply with the requirements of this section.

(4)

(a) The division shall deposit a fine imposed by the director under Subsection (3)(h) in the General Fund as a dedicated credit for use by the division for the purposes listed in Section 58-63-103.

(b) The director may collect a Subsection (3)(h) fine which is not paid by:

(i) referring the matter to the Office of State Debt Collection or a collection agency; or

(ii) bringing an action in the district court of the county in which the person resides or in the county where the office of the director is located.

(c) The director may seek legal assistance from the attorney general or the county or district attorney of the district in which the action is brought to collect the fine.

(d) The court shall award reasonable attorney fees and costs to the division for successful actions under Subsection (4)(b)(ii).

Amended by Chapter 246, 2008 General Session
Amended by Chapter 382, 2008 General Session

Part 6
Regulatory Jurisdiction

58-63-601 State preemption of local regulation.

(1) A political subdivision of this state may not enact any legislation, code, or ordinance, or make any rules relating to the licensing, training, or regulation of contract security companies or persons functioning as armed or unarmed private security officers.

(2) Any legislation, code, ordinance, or rules made by any political subdivision of this state, relating to the licensing, training, or regulation of contract security companies or individuals functioning as an armed or unarmed private security officers are superseded by this chapter.

Enacted by Chapter 215, 1995 General Session

Chapter 64
Deception Detection Examiners Licensing Act

Part 1
General Provisions

58-64-101 Title.

This chapter is known as the "Deception Detection Examiners Licensing Act."

Enacted by Chapter 215, 1995 General Session

58-64-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Deception Detection Examiners Board created in Section 58-64-201.

(2) "Deception detection examination" means the use of an instrument, or software application designed for detecting deception, on an individual for the purpose of detecting whether that individual is engaged in deception.

(3) "Deception detection examination administrator" means an individual who engages in or represents that the individual is engaged in:

(a) conducting or administering a deception detection examination using a software application designed for detecting deception without intervention from the examination administrator; or

(b) the interpretation of deception detection examination results derived from a software application designed for detecting deception.

(4) "Deception detection examiner" means an individual who engages in or represents that the individual is engaged in conducting or performing deception detection examinations or in the interpretation of deception detection examinations.

(5) "Deception detection intern" means an individual who engages in deception detection examinations under the supervision and control of a deception detection examiner for the purpose of training and qualification as a deception detection examiner.

(6) "Instrument" means a polygraph, voice stress analyzer, ocular-motor test, or any other device or software application that records the examinee's cardiovascular patterns, respiratory patterns, galvanic skin response, cognitive response, eye behavior, memory recall, or other physiologic characteristics of the examinee for the purpose of monitoring factors relating to whether the examinee is truthful or engaged in deception.

(7) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-64-501.

(8) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-64-502 and as may be further defined by rule.

Amended by Chapter 201, 2016 General Session

Part 2
Board

58-64-201 Board.

(1) There is created the Deception Detection Examiners Board consisting of:

(a) three individuals who are licensed as deception detection examiners;

(b) one individual from among nominees of the Commissioner of Public Safety;

(c) one individual from among nominees of the Utah Peace Officers Association;

(d) one individual from among nominees of the Utah State Bar; and

(e) one individual representing the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
  (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
  (b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation is disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Enacted by Chapter 215, 1995 General Session

Part 3
Licensing

58-64-301 Licensure required -- License classifications.
(1) A license is required to engage in the practice of deception detection, except as specifically provided in Section 58-64-304 or 58-1-307.
(2) The division shall issue to an individual who qualifies under this chapter a license in the classifications of:
  (a) deception detection examiner;
  (b) deception detection intern; or
  (c) deception detection examination administrator.

Amended by Chapter 201, 2016 General Session

58-64-302 Qualifications for licensure.
(1) Each applicant for licensure as a deception detection examiner:
  (a) shall submit an application in a form prescribed by the division;
  (b) shall pay a fee determined by the department under Section 63J-1-504;
  (c) shall be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime which when considered with the duties and responsibilities of a deception detection examiner is considered by the division and the board to indicate that the best interests of the public will not be served by granting the applicant a license;
  (d) may not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;
  (e) may not be currently suffering from habitual drunkenness or from drug addiction or dependence;
  (f) shall have completed one of the following:
    (i) have earned a bachelor's degree from a four year university or college meeting standards established by the division by rule in collaboration with the board;
    (ii) have completed not less than 8,000 hours of investigation experience approved by the division in collaboration with the board; or

(iii) have completed a combination of university or college education and investigation experience, as defined by rule by the division in collaboration with the board as being equivalent to the requirements under Subsection (1)(f)(i) or (1)(f)(ii);

(g) shall have successfully completed a training program in detection deception meeting criteria established by rule by the division in collaboration with the board; and

(h) shall have performed satisfactorily as a licensed deception detection intern for a period of not less than one year and shall have satisfactorily conducted not less than 100 deception detection examinations under the supervision of a licensed deception detection examiner.

(2) Each applicant for licensure as a deception detection intern:

(a) shall submit an application in a form prescribed by the division;

(b) shall pay a fee determined by the department under Section 63J-1-504;

(c) shall be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime which when considered with the duties and responsibilities of a deception detection intern is considered by the division and the board to indicate that the best interests of the public will not be served by granting the applicant a license;

(d) may not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(e) may not be currently suffering from habitual drunkenness or from drug addiction or dependence;

(f) shall have completed one of the following:

(i) have earned a bachelor's degree from a four year university or college meeting standards established by the division by rule in collaboration with the board;

(ii) have completed not less than 8,000 hours of investigation experience approved by the division in collaboration with the board; or

(iii) have completed a combination of university or college education and investigation experience, as defined by rule by the division in collaboration with the board as being equivalent to the requirements under Subsection (2)(f)(i) or (2)(f)(ii);

(g) shall have successfully completed a training program in detection deception meeting criteria established by rule by the division in collaboration with the board; and

(h) shall provide the division with an intern supervision agreement in a form prescribed by the division under which:

(i) a licensed deception detection examiner agrees to supervise the intern; and

(ii) the applicant agrees to be supervised by that licensed deception detection examiner.

(3) Each applicant for licensure as a deception detection examination administrator:

(a) shall submit an application in a form prescribed by the division;

(b) shall pay a fee determined by the department under Section 63J-1-504;

(c) shall be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of a deception detection examination administrator is considered by the division and the board to indicate that the best interests of the public will not be served by granting the applicant a license;

(d) may not have been declared by a court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(e) may not be currently suffering from habitual drunkenness or from drug addiction or dependence;

(f) shall have earned an associate degree from a state-accredited university or college or have an equivalent number of years' work experience; and

(g) shall have successfully completed a training program and have obtained certification in deception detection examination administration provided by the manufacturer of a scientific or technology-based software application solution that is approved by the director.

(4) To determine if an applicant meets the qualifications of Subsection (1)(c), (2)(c), or (3)(c) the division shall provide an appropriate number of copies of fingerprint cards to the Department of Public Safety with the division's request to:

(a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure under this chapter; and

(b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant requiring a check of records of the F.B.I. for criminal history information under this section.

(5) The Department of Public Safety shall send to the division:

(a) a written record of criminal history, or certification of no criminal history record, as contained in the records of the Department of Public Safety in a timely manner after receipt of a fingerprint card from the division and a request for review of Department of Public Safety records; and

(b) the results of the F.B.I. review concerning an applicant in a timely manner after receipt of information from the F.B.I.

(6)

(a) The division shall charge each applicant a fee, in accordance with Section 63J-1-504, equal to the cost of performing the records reviews under this section.

(b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the F.B.I. the costs of records reviews under this chapter.

(7) Information obtained by the division from the reviews of criminal history records of the Department of Public Safety and the F.B.I. shall be used or disseminated by the division only for the purpose of determining if an applicant for licensure under this chapter is qualified for licensure.

Amended by Chapter 201, 2016 General Session

58-64-303 Term of license -- Expiration -- Renewal.

(1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show satisfactory evidence of:

(a) having performed not less than 25 deception detection examinations during the two years immediately preceding the date of the renewal notice; and

(b) obtaining recertification within the past two years from the manufacturer of a scientific or technology-based software solution, if the licensee is renewing a deception detection examination administrator license.

(3) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Amended by Chapter 201, 2016 General Session

58-64-304 Exemptions from licensure.

In addition to the exemptions from licensure described in Section 58-1-307, a law enforcement officer, as defined under Section 53-13-103, who is not licensed under this chapter, may operate a

voice stress analyzer or software application designed for detecting deception in the course of the officer's employment with a federal, state, or local law enforcement agency, if the officer:
(1) has completed the manufacturer's training course and is certified by the manufacturer to operate the voice stress analyzer or software application designed for detecting deception; and
(2) is operating the voice stress analyzer or software application designed for detecting deception in accordance with Section 58-64-601, regarding deception detection instruments.

Amended by Chapter 238, 2016 General Session
Amended by Chapter 238, 2016 General Session, (Coordination Clause)

58-64-305 Status of licenses held on the effective date of this chapter.
An individual holding a valid Utah license as a deception detection examiner or detection examiner intern under Title 53, Chapter 5, Part 3, Deception Detection Examiners Act, on July 1, 1995, is:
(1) on or after July 1, 1995, considered to hold a current license under this chapter in the comparable classification of deception detection examiner or deception detection intern; and
(2) subject to this chapter.

Amended by Chapter 79, 1996 General Session

Part 4
License Denial and Discipline

58-64-401 Grounds for denial of license -- Disciplinary proceedings.
Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 215, 1995 General Session

Part 5
Unlawful and Unprofessional Conduct

58-64-501 Unlawful conduct.
"Unlawful conduct" includes:
(1) a licensee conducting a deception detection examination:
  (a) outside of the physical presence of the subject of the examination;
  (b) on the subject of the examination by use of any electronic means, including the telephone; and
  (c) through any surreptitious means when the subject of the examination is not aware of the examination; and
(2) conducting a deception detection examination if the individual performing the deception detection examinations is located outside of the state and performs a deception detection examination by any electronic means upon a person located within the state.

Enacted by Chapter 215, 1995 General Session

58-64-502 Unprofessional conduct.

"Unprofessional conduct" includes:

(1) using any deception detection instrument that does not meet criteria and standards established by rule by the division in collaboration with the board; and

(2) using any deception detection instrument that does not make a permanent recording as required under Section 58-64-601.

Enacted by Chapter 215, 1995 General Session

Part 6
Operating Standards

58-64-601 Deception detection instruments.

(1) Instruments or software applications used in performing deception detection examinations shall be those that are generally recognized in the profession or, if approved by the director, those with results published in peer-reviewed, scientific journals generally recognized by the scientific community.

(2) An instrument or software application used for deception detection shall have a permanent recording or written report produced by the instrument or software application for objective analysis by the examiner, the division, or the board.

(3) A written interpretation by an examiner while conducting a deception detection examination does not satisfy the requirements of a permanent recording.

Amended by Chapter 201, 2016 General Session

Part 7
Regulatory Jurisdiction

58-64-701 State preemption of local regulation.

(1) A political subdivision of the state may not enact legislation, ordinances, or rules relating to the licensing, training, or regulation of deception detection examiners, deception detection interns, or deception detection examination administrators.

(2) Any legislation, ordinances, or rules made by a political subdivision of the state relating to the licensing, training, or regulation of deception detection examiners, deception detection interns, or deception detection examination administrators is superseded by this chapter.

Amended by Chapter 201, 2016 General Session

Chapter 67
Utah Medical Practice Act

Part 1
General Provisions

58-67-101 Title.

This chapter is known as the "Utah Medical Practice Act."

Enacted by Chapter 248, 1996 General Session

58-67-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Ablative procedure" means a procedure that is expected to excise, vaporize, disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium: YAG lasers, and excluding hair removal.

(2) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.

(3) "Administrative penalty" means a monetary fine or citation imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, in accordance with a fine schedule established by the division in collaboration with the board, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(4) "Board" means the Physicians Licensing Board created in Section 58-67-201.

(5)

(a) "Cosmetic medical device" means tissue altering energy based devices that have the potential for altering living tissue and that are used to perform ablative or nonablative procedures, such as American National Standards Institute (ANSI) designated Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices, and excludes ANSI designated Class IIIa and lower powered devices.

(b) Notwithstanding Subsection (5)(a), if an ANSI designated Class IIIa and lower powered device is being used to perform an ablative procedure, the device is included in the definition of cosmetic medical device under Subsection (5)(a).

(6) "Cosmetic medical procedure":

(a) includes the use of cosmetic medical devices to perform ablative or nonablative procedures; and

(b) does not include a treatment of the ocular globe such as refractive surgery.

(7) "Diagnose" means:

(a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;

(b) to attempt to conduct an examination or determination described under Subsection (7)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (7)(a); or

(d) to make an examination or determination as described in Subsection (7)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

(8) "LCME" means the Liaison Committee on Medical Education of the American Medical Association.
(9) "Medical assistant" means an unlicensed individual working under the indirect supervision of a licensed physician and surgeon and engaged in specific tasks assigned by the licensed physician and surgeon in accordance with the standards and ethics of the profession.
(10)
(a)
(i) "Nonablative procedure" means a procedure that is expected or intended to alter living tissue, but is not intended or expected to excise, vaporize, disintegrate, or remove living tissue.
(ii) Notwithstanding Subsection (10)(a)(i), nonablative procedure includes hair removal.
(b) "Nonablative procedure" does not include:
(i) a superficial procedure as defined in Section 58-1-102;
(ii) the application of permanent make-up; or
(iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are performed by an individual licensed under this title who is acting within the individual's scope of practice.
(11) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.
(12)
(a) "Practice of medicine" means:
(i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the state upon or for any human within the state;
(ii) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered;
(iii) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (12)(a) whether or not for compensation; or
(iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine," "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed physician and surgeon, and if the party using the designation is not a licensed physician and surgeon, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an individual who has received an earned degree of doctor of medicine degree but is not a licensed physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.
(b) The practice of medicine does not include:
(i) except for an ablative medical procedure as provided in Subsection (12)(b)(ii), the conduct described in Subsection (12)(a)(i) that is performed in accordance with a license issued under another chapter of this title;

(ii) an ablative cosmetic medical procedure if the scope of practice for the person performing the ablative cosmetic medical procedure includes the authority to operate or perform a surgical procedure; or
(iii) conduct under Subsection 58-67-501(2).
(13) "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.
(14) "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.
(15) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.
(16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.
(17) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

Amended by Chapter 262, 2013 General Session

Part 2
Board

58-67-201 Board.
(1) There is created the Physicians Licensing Board consisting of nine physicians and surgeons and two members of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3)
(a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
(b) The board may also designate one of its members on a permanent or rotating basis to:
(i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
(ii) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning that complaint.

Amended by Chapter 10, 1997 General Session

Part 3
Licensing

58-67-301 Licensure required -- License classifications.
(1) A license is required to engage in the practice of medicine, on or for any person in Utah, as a physician and surgeon, except as specifically provided in Section 58-1-307 or 58-67-305.

(2) The division shall issue to a person who qualifies under this chapter a license in the classification of physician and surgeon.

Enacted by Chapter 248, 1996 General Session

58-67-302 Qualifications for licensure.

(1) An applicant for licensure as a physician and surgeon, except as set forth in Subsection (2), shall:
  (a) submit an application in a form prescribed by the division, which may include:
    (i) submissions by the applicant of information maintained by practitioner data banks, as designated by division rule, with respect to the applicant;
    (ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and
    (iii) authorization to use a record coordination and verification service approved by the division in collaboration with the board;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) be of good moral character;
  (d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as a physician and surgeon, as evidenced by:
    (i) having received an earned degree of doctor of medicine from an LCME accredited medical school or college; or
    (ii) if the applicant graduated from a medical school or college located outside the United States or its territories, submitting a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board;
  (e) satisfy the division and board that the applicant:
    (i) has successfully completed 24 months of progressive resident training in a program approved by the ACGME, the Royal College of Physicians and Surgeons, the College of Family Physicians of Canada, or any similar body in the United States or Canada approved by the division in collaboration with the board; or
    (ii)
      (A) has successfully completed 12 months of resident training in an ACGME approved program after receiving a degree of doctor of medicine as required under Subsection (1)(d);
      (B) has been accepted in and is successfully participating in progressive resident training in an ACGME approved program within Utah, in the applicant's second or third year of postgraduate training; and
      (C) has agreed to surrender to the division the applicant's license as a physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as a physician and surgeon will be automatically revoked by the division if the applicant fails to continue in good standing in an ACGME approved progressive resident training program within the state;
  (f) pass the licensing examination sequence required by division rule made in collaboration with the board;
  (g) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board;
  (h) meet with the board and representatives of the division, if requested, for the purpose of evaluating the applicant's qualifications for licensure;

(i) designate:
(i) a contact person for access to medical records in accordance with the federal Health Insurance Portability and Accountability Act; and
(ii) an alternate contact person for access to medical records, in the event the original contact person is unable or unwilling to serve as the contact person for access to medical records; and
(j) establish a method for notifying patients of the identity and location of the contact person and alternate contact person, if the applicant will practice in a location with no other persons licensed under this chapter.
(2) An applicant for licensure as a physician and surgeon by endorsement who is currently licensed to practice medicine in any state other than Utah, a district or territory of the United States, or Canada shall:
(a) be currently licensed with a full unrestricted license in good standing in any state, district, or territory of the United States, or Canada;
(b) have been actively engaged in the legal practice of medicine in any state, district, or territory of the United States, or Canada for not less than 6,000 hours during the five years immediately preceding the date of application for licensure in Utah;
(c) comply with the requirements for licensure under Subsections (1)(a) through (d), (1)(e)(i), and (1)(g) through (j);
(d) have passed the licensing examination sequence required in Subsection (1)(f) or another medical licensing examination sequence in another state, district or territory of the United States, or Canada that the division in collaboration with the board by rulemaking determines is equivalent to its own required examination;
(e) not have any investigation or action pending against any health care license of the applicant, not have a health care license that was suspended or revoked in any state, district or territory of the United States, or Canada, and not have surrendered a health care license in lieu of a disciplinary action, unless:
(i) the license was subsequently reinstated as a full unrestricted license in good standing; or
(ii) the division in collaboration with the board determines to its satisfaction, after full disclosure by the applicant, that:
(A) the conduct has been corrected, monitored, and resolved; or
(B) a mitigating circumstance exists that prevents its resolution, and the division in collaboration with the board is satisfied that, but for the mitigating circumstance, the license would be reinstated;
(f) submit to a records review, a practice history review, and comprehensive assessments, if requested by the division in collaboration with the board; and
(g) produce satisfactory evidence that the applicant meets the requirements of this Subsection (2) to the satisfaction of the division in collaboration with the board.
(3) An applicant for licensure by endorsement may engage in the practice of medicine under a temporary license while the applicant's application for licensure is being processed by the division, provided:
(a) the applicant submits a complete application required for temporary licensure to the division;
(b) the applicant submits a written document to the division from:
(i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, stating that the applicant is practicing under the:
(A) invitation of the health care facility; and
(B) the general supervision of a physician practicing at the facility; or

(ii) two individuals licensed under this chapter, whose license is in good standing and who practice in the same clinical location, both stating that:
(A) the applicant is practicing under the invitation and general supervision of the individual; and
(B) the applicant will practice at the same clinical location as the individual;
(c) the applicant submits a signed certification to the division that the applicant meets the requirements of Subsection (2);
(d) the applicant does not engage in the practice of medicine until the division has issued a temporary license;
(e) the temporary license is only issued for and may not be extended or renewed beyond the duration of one year from issuance; and
(f) the temporary license expires immediately and prior to the expiration of one year from issuance, upon notification from the division that the applicant's application for licensure by endorsement is denied.
(4) The division shall issue a temporary license under Subsection (3) within 15 business days after the applicant satisfies the requirements of Subsection (3).
(5) The division may not require a post-residency board certification as a requirement for licensure.

Amended by Chapter 162, 2012 General Session
Amended by Chapter 225, 2012 General Session

58-67-302.5 Licensing of graduates of foreign medical schools.
(1) Notwithstanding any other provision of law to the contrary, an individual enrolled in a medical school outside the United States, its territories, the District of Columbia, or Canada is eligible for licensure as a physician and surgeon in this state if the individual has satisfied the following requirements:
(a) meets all the requirements of Subsection 58-67-302(1), except for Subsection 58-67-302(1)(d);
(b) has studied medicine in a medical school located outside the United States which is recognized by an organization approved by the division;
(c) has completed all of the formal requirements of the foreign medical school except internship or social service;
(d) has attained a passing score on the educational commission for foreign medical graduates examination or other qualifying examinations such as the United States Medical Licensing Exam parts I and II, which are approved by the division or a medical school approved by the division;
(e) has satisfactorily completed one calendar year of supervised clinical training under the direction of a United States medical education setting accredited by the liaison committee for graduate medical education and approved by the division;
(f) has completed the postgraduate hospital training required by Subsection 58-67-302(1)(e)(i); and
(g) has passed the examination required by the division of all applicants for licensure.
(2) Satisfaction of the requirements of Subsection (1) is in lieu of:
(a) the completion of any foreign internship or social service requirements; and
(b) the certification required by Subsection 58-67-302(1)(d).
(3) Individuals who satisfy the requirements of Subsections (1)(a) through (f) shall be eligible for admission to graduate medical education programs within the state, including internships and residencies, which are accredited by the liaison committee for graduate medical education.

(4) A document issued by a medical school located outside the United States shall be considered the equivalent of a degree of doctor of medicine for the purpose of licensure as a physician and surgeon in this state if:
(a) the foreign medical school is recognized by an organization approved by the division;
(b) the document granted by the foreign medical school is issued after the completion of all formal requirements of the medical school except internship or social service; and
(c) the foreign medical school certifies that the person to whom the document was issued has satisfactorily completed the requirements of Subsection (1)(c).
(5) The provisions for licensure under this section shall be known as the "fifth pathway program."

Amended by Chapter 214, 2011 General Session

58-67-302.7 Licensing of physician-educators.
(1) As used in this section:
(a) "Foreign country" means a country other than the United States, its territories, or Canada.
(b) "Foreign medical school" means a medical school that is outside the United States, its territories, and Canada.
(2) Notwithstanding any provision of law to the contrary, an individual may receive a type I foreign teaching license if the individual:
(a) submits an application in a form prescribed by the division, which may include:
(i) submission by the applicant of information maintained in a practitioner data bank, as designated by division rule, with respect to the applicant;
(ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and
(iii) the applicant's curriculum vitae;
(b) is a graduate of a foreign medical school that is accepted for certification by the Educational Commission for Foreign Medical Graduates;
(c) is licensed in good standing in a foreign country, the United States, its territories, or Canada;
(d) does not have an investigation or action pending against the physician's healthcare license, does not have a healthcare license that was suspended or revoked, and has not surrendered a healthcare license in lieu of disciplinary action, unless:
(i) the license was subsequently reinstated in good standing; or
(ii) the division in collaboration with the board determines to its satisfaction, after full disclosure by the applicant and full consideration by the division in collaboration with the board, that:
(A) the conduct has been corrected, monitored, and resolved; or
(B) a mitigating circumstance exists that prevents resolution, and the division in collaboration with the board is satisfied that but for the mitigating circumstance, the license would be reinstated;
(e) submits documentation of legal status to work in the United States;
(f) meets at least three of the following qualifications:
(i)
(A) published original results of clinical research, within 10 years before the day on which the application is submitted, in a medical journal listed in the Index Medicus or an equivalent scholarly publication; and
(B) submits the publication to the Board in English or in a foreign language with a verifiable, certified English translation;

(ii) held an appointment at a medical school approved by the LCME or at any medical school listed in the World Health Organization directory at the level of associate or full professor, or its equivalent, for at least five years;

(iii)

(A) developed a treatment modality, surgical technique, or other verified original contribution to the field of medicine within 10 years before the day on which the application is submitted; and

(B) has the treatment modality, surgical technique, or other verified original contribution attested to by the dean of an LCME accredited school of medicine in Utah;

(iv) actively practiced medicine cumulatively for 10 years; or

(v) is board certified in good standing of a board of the American Board of Medical Specialities or equivalent specialty board;

(g) is of good moral character;

(h) is able to read, write, speak, understand, and be understood in the English language and demonstrates proficiency to the satisfaction of the division in collaboration with the board, if requested;

(i) is invited by an LCME accredited medical school in Utah to serve as a full-time member of the medical school's academic faculty, as evidenced by written certification from:

(i) the dean of the medical school, stating that the applicant has been appointed to a full-time faculty position, that because the applicant has unique expertise in a specific field of medicine the medical school considers the applicant to be a valuable member of the faculty, and that the applicant is qualified by knowledge, skill, and ability to practice medicine in the state; and

(ii) the head of the department to which the applicant is to be appointed, stating that the applicant will be under the direction of the head of the department and will be permitted to practice medicine only as a necessary part of the applicant's duties, providing detailed evidence of the applicant's qualifications and competence, including the nature and location of the applicant's proposed responsibilities, reasons for any limitations of the applicant's practice responsibilities, and the degree of supervision, if any, under which the applicant will function;

(j) pays a licensing fee set by the division under Section 63J-1-504; and

(k) has practiced medicine for at least 10 years as an attending physician.

(3) Notwithstanding any provision of law to the contrary, an individual may receive a type II foreign teaching license if the individual:

(a) satisfies the requirements of Subsections (2)(a) through (e) and (g) through (j);

(b) has delivered clinical care to patients cumulatively for five years after graduation from medical school; and

(c)

(i) will be completing a clinical fellowship while employed at the medical school described in Subsection (2)(i); or

(ii) has already completed a medical residency accredited by the Royal College of Physicians and Surgeons of Canada, the United Kingdom, Australia, or New Zealand, or a comparable accreditation organization as determined by the division in collaboration with the board.

(4) After an initial term of one year, a type I license may be renewed for periods of two years if the licensee continues to satisfy the requirements described in Subsection (2) and completes the division's continuing education renewal requirements established under Section 58-67-303.

(5) A type II license may be renewed on an annual basis, up to four times, if the licensee continues to satisfy the requirements described in Subsection (3) and completes the division's continuing education renewal requirements established under Section 58-67-303.
(6) A license issued under this section:
(a) authorizes the licensee to practice medicine:
(i) within the scope of the licensee's employment at the medical school described in Subsection (2)(i) and the licensee's academic position; and
(ii) at a hospital or clinic affiliated with the medical school described in Subsection (2)(i) for the purpose of teaching, clinical care, or pursuing research;
(b) shall list the limitations described in Subsection (6)(a); and
(c) shall expire on the earlier of:
(i) one year after the day on which the type I or type II license is initially issued, unless the license is renewed;
(ii) for a type I license, two years after the day on which the license is renewed;
(iii) for a type II license, one year after the day on which the license is renewed; or
(iv) the day on which employment at the medical school described in Subsection (2)(i) ends.
(7) A person who holds a type I license for five consecutive years may apply for licensure as a physician and surgeon in this state and shall be licensed if the individual satisfies the requirements described in Subsection (8). If the person fails to obtain licensure as a physician and surgeon in this state, the person may apply for a renewal of the type I license under Subsection (2).
(8) An individual who holds a type I or type II license for five consecutive years is eligible for licensure as a physician and surgeon in this state if the individual:
(a) worked an average of at least 40 hours per month at the level of an attending physician during the time the individual held the type I or type II license;
(b) holds the rank of associate professor or higher at the medical school described in Subsection (2)(i);
(c) obtains certification from the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board;
(d) spent a cumulative 20 hours per year while holding a type I or type II license:
(i) teaching or lecturing to medical students or house staff;
(ii) participating in educational department meetings or conferences that are not certified to meet the continuing medical education license renewal requirement; or
(iii) attending continuing medical education classes in addition to the requirements for continuing education described in Subsections (4) and (5);
(e) obtains a passing score on the final step of the licensing examination sequence required by division rule made in collaboration with the board; and
(f) satisfies the requirements described in Subsections 58-67-302(1)(a) through (c), (h), and (i).
(9) If a person who holds a type II license fails to obtain licensure as a physician and surgeon in this state after applying under the procedures described in Subsection (8), the person may not:
(a) reapply for or renew a type II license; or
(b) apply for a type I license.
(10) The division or the board may require an applicant for licensure under this section to meet with the board and representatives of the division for the purpose of evaluating the applicant's qualifications for licensure.
(11) The division in collaboration with the board may withdraw a license under this section at any time for material misrepresentation or unlawful or unprofessional conduct.

Amended by Chapter 258, 2015 General Session

58-67-303 Term of license -- Expiration -- Renewal.

(1)
(a) Except as provided in Section 58-67-302.7, the division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.
(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show compliance with:
(a) continuing education renewal requirements; and
(b) the requirement for designation of a contact person and alternate contact person for access to medical records and notice to patients as required by Subsections 58-67-304(1)(b) and (c).

(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Amended by Chapter 206, 2011 General Session

58-67-304 License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:
(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board;
(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-67-302(1)(i); and
(c) if the licensee practices medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for the licensee.

(2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) An application to renew a license under this chapter shall:
(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and
(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health in writing:
(a) of the name and business address of the physician; and
(b) that the physician responded positively to the question described in Subsection (3)(a).

Amended by Chapter 161, 2011 General Session
Amended by Chapter 214, 2011 General Session

58-67-305 Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the described acts or practices without being licensed under this chapter:

(1) an individual rendering aid in an emergency, when no fee or other consideration of value for the service is charged, received, expected, or contemplated;

(2) an individual administering a domestic or family remedy;

(3)

(a)

(i) a person engaged in the sale of vitamins, health foods, dietary supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited by state or federal law; and

(ii) a person acting in good faith for religious reasons, as a matter of conscience, or based on a personal belief, when obtaining or providing any information regarding health care and the use of any product under Subsection (3)(a)(i); and

(b) Subsection (3)(a) does not:

(i) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity, pain, or other condition; or

(ii) prohibit providing truthful and non-misleading information regarding any of the products under Subsection (3)(a)(i);

(4) a person engaged in good faith in the practice of the religious tenets of any church or religious belief, without the use of prescription drugs;

(5) an individual authorized by the Department of Health under Section 26-1-30, to draw blood pursuant to Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), or 72-10-502(5)(a)(vi);

(6) a medical assistant while working under the indirect supervision of a licensed physician and surgeon, to the extent the medical assistant:

(a) is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of medicine;

(b) does not perform surgical procedures;

(c) does not prescribe prescription medications;

(d) does not administer anesthesia, anesthesia does not mean a local anesthetic for minor procedural use; and

(e) does not engage in other medical practices or procedures as defined by division rule in collaboration with the board;

(7) an individual engaging in the practice of medicine when:

(a) the individual is licensed in good standing as a physician in another state with no licensing action pending and no less than 10 years of professional experience;

(b) the services are rendered as a public service and for a noncommercial purpose;

(c) no fee or other consideration of value is charged, received, expected, or contemplated for the services rendered beyond an amount necessary to cover the proportionate cost of malpractice insurance; and

(d) the individual does not otherwise engage in unlawful or unprofessional conduct;

(8) an individual providing expert testimony in a legal proceeding; and

(9) an individual who is invited by a school, association, society, or other body approved by the division to conduct a clinic or demonstration of the practice of medicine in which patients are treated, if:

(a) the individual does not establish a place of business in this state;

(b) the individual does not regularly engage in the practice of medicine in this state;

(c) the individual holds a current license in good standing to practice medicine issued by another state, district or territory of the United States, or Canada;
(d) the primary purpose of the event is the training of others in the practice of medicine; and
(e) neither the patient nor an insurer is billed for the services performed.

Amended by Chapter 262, 2013 General Session

58-67-306 Status of licenses held on the effective date of this chapter.
An individual holding a current license as a physician and surgeon that was issued under any prior state law is considered to hold a current license in the same classification under this chapter.

Enacted by Chapter 248, 1996 General Session

Part 4
License Denial and Discipline

58-67-401 Grounds for denial of license -- Disciplinary proceedings.
Grounds for division action are set forth in Sections 58-1-401 and 58-67-503.

Amended by Chapter 214, 2011 General Session

58-67-402 Authority to assess penalty.
The division in collaboration with the board may assess penalties as described in Section 58-67-503.

Repealed and Re-enacted by Chapter 214, 2011 General Session

58-67-403 Revocation of license -- Nondisciplinary.
Revocation by the division of a license under Subsection 58-67-302(1)(e) for failure to continue on a resident training program for reasons other than unprofessional or unlawful conduct is a nondisciplinary action and may not be reported by the division as a disciplinary action against the licensee.

Amended by Chapter 214, 2011 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-67-501 Unlawful conduct.
(1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:
(a) buying, selling, or fraudulently obtaining, any medical diploma, license, certificate, or registration;
(b) aiding or abetting the buying, selling, or fraudulently obtaining of any medical diploma, license, certificate, or registration;

(c) substantially interfering with a licensee's lawful and competent practice of medicine in accordance with this chapter by:
(i) any person or entity that manages, owns, operates, or conducts a business having a direct or indirect financial interest in the licensee's professional practice; or
(ii) anyone other than another physician licensed under this title, who is engaged in direct clinical care or consultation with the licensee in accordance with the standards and ethics of the profession of medicine; or
(d) entering into a contract that limits a licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients.
(2) "Unlawful conduct" does not include:
(a) establishing, administering, or enforcing the provisions of a policy of accident and health insurance by an insurer doing business in this state in accordance with Title 31A, Insurance Code;
(b) adopting, implementing, or enforcing utilization management standards related to payment for a licensee's services, provided that:
(i) utilization management standards adopted, implemented, and enforced by the payer have been approved by a physician or by a committee that contains one or more physicians; and
(ii) the utilization management standards does not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;
(c) developing and implementing clinical practice standards that are intended to reduce morbidity and mortality or developing and implementing other medical or surgical practice standards related to the standardization of effective health care practices, provided that:
(i) the practice standards and recommendations have been approved by a physician or by a committee that contains one or more physicians; and
(ii) the practice standards do not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;
(d) requesting or recommending that a patient obtain a second opinion from a licensee;
(e) conducting peer review, quality evaluation, quality improvement, risk management, or similar activities designed to identify and address practice deficiencies with health care providers, health care facilities, or the delivery of health care;
(f) providing employment supervision or adopting employment requirements that do not interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients, provided that employment requirements that may not be considered to interfere with an employed licensee's exercise of independent professional judgment include:
(i) an employment requirement that restricts the licensee's access to patients with whom the licensee's employer does not have a contractual relationship, either directly or through contracts with one or more third-party payers; or
(ii) providing compensation incentives that are not related to the treatment of any particular patient;
(g) providing benefit coverage information, giving advice, or expressing opinions to a patient or to a family member of a patient to assist the patient or family member in making a decision about health care that has been recommended by a licensee;
(h) in compliance with Section 58-85-103:
(i) obtaining an investigational drug or investigational device;
(ii) administering the investigational drug to an eligible patient; or
(iii) treating an eligible patient with the investigational drug or investigational device; or

(i) any otherwise lawful conduct that does not substantially interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients and that does not constitute the practice of medicine as defined in this chapter.

Amended by Chapter 110, 2015 General Session

58-67-502 Unprofessional conduct.

(1) "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:
(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule;
(b) making a material misrepresentation regarding the qualifications for licensure under Section 58-67-302.7; or
(c) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable.
(2) "Unprofessional conduct" does not include, in compliance with Section 58-85-103:
(a) obtaining an investigational drug or investigational device;
(b) administering the investigational drug to an eligible patient; or
(c) treating an eligible patient with the investigational drug or investigational device.

Amended by Chapter 110, 2015 General Session
Amended by Chapter 206, 2015 General Session

58-67-503 Penalties and administrative actions for unlawful and unprofessional conduct.

(1) Any person who violates the unlawful conduct provisions of Section 58-67-501 or Section 58-1-501 is guilty of a third degree felony.
(2)
(a) Subject to Subsection (4), the division may punish unprofessional or unlawful conduct by:
(i) assessing administrative penalties; or
(ii) taking other appropriate administrative action.
(b) A monetary administrative penalty imposed under this section shall be deposited in the Physician Education Fund created in Section 58-67a-1.
(3) If a licensee has been convicted of unlawful conduct, described in Section 58-67-501, before an administrative proceeding regarding the same conduct, the division may not assess an additional administrative fine under this chapter for the same conduct.
(4)
(a) If the division concludes that an individual has violated provisions of Section 58-67-501, Section 58-67-502, Chapter 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and disciplinary action is appropriate, the director or director's designee shall:
(i) issue a citation to the individual;
(ii) attempt to negotiate a stipulated settlement; or
(iii) notify the individual that an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to appear.
(b) The division may take the following action against an individual who is in violation of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding:

(i) assess a fine of up to $10,000 per single violation or up to $2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; or
(ii) order to cease and desist from the behavior that constitutes a violation of the provisions described in Subsection (4)(a).
(c) An individual's license may not be suspended or revoked through a citation.
(d) Each citation issued under this section shall:
(i) be in writing;
(ii) clearly describe or explain:
(A) the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;
(B) that the recipient must notify the division in writing within 20 calendar days from the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
(C) the consequences of failure to timely contest the citation or pay the fine assessed by the citation within the time specified in the citation; and
(iii) be served in accordance with the Utah Rules of Civil Procedure.
(e) If the individual to whom the citation is issued fails to request a hearing to contest the citation within 20 calendar days from the day on which the citation is served, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.
(f) The division may refuse to issue or renew or suspend, revoke, or place on probation the license of an individual who fails to comply with a citation after the citation becomes final.
(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
(h) No citation may be issued under this section after six months from the day on which the violation last occurred.

Amended by Chapter 369, 2012 General Session

Part 6
Impaired Physician

58-67-601 Mentally incompetent or incapacitated physician.
(1) As used in this section:
(a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.
(b) "Mental illness" is as defined in Section 62A-15-602.
(2) If a court of competent jurisdiction determines a physician is an incapacitated person or that the physician has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the physician upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the physician, in writing, of the suspension.
(3)
(a) If the division and a majority of the board find reasonable cause to believe a physician, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing medicine with reasonable skill regarding the safety of patients,

because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the physician with a notice of hearing on the sole issue of the capacity of the physician to competently and safely engage in the practice of medicine.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

(4)

(a) Every physician who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the physician's own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the physician has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the physician's patients or the general public.

(c)

(i) Failure of a physician to submit to the examination ordered under this section is a ground for the division's immediate suspension of the physician's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the physician and was not related directly to the illness or incapacity of the physician.

(5)

(a) A physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the physician's patients or the general public.

(6) A physician whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the physician, under procedures established by division rule, regarding any change in the physician's condition, to determine whether:

(a) the physician is or is not able to safely and competently engage in the practice of medicine; and

(b) the physician is qualified to have the physician's license to practice under this chapter restored completely or in part.

Amended by Chapter 364, 2013 General Session

Part 7

Immunity Provisions

58-67-701 Immunity provisions apply.

Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, applies to licensees under this chapter.

Enacted by Chapter 248, 1996 General Session

58-67-702 Opiate antagonist -- Exclusion from unlawful or unprofessional conduct.

(1) As used in this section:
  (a) "Dispense" means the same as that term is defined in Section 58-17b-102.
  (b) "Increased risk" means the same as that term is defined in Section 26-55-102.
  (c) "Opiate antagonist" means the same as that term is defined in Section 26-55-102.
  (d) "Opiate-related drug overdose event" means the same as that term is defined in Section 26-55-102.
  (e) "Prescribe" means the same as that term is defined in Section 58-17b-102.
(2) The prescribing or dispensing of an opiate antagonist by a licensee under this chapter is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:
  (a) in a good faith effort to assist:
    (i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or
    (ii) a family member of, friend of, or other person, including a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or
  (b) to an overdose outreach provider pursuant to Subsection 26-55-104(2)(a)(iii).
(3) The provisions of this section and Title 26, Chapter 55, Opiate Overdose Response Act, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.

Amended by Chapter 202, 2016 General Session
Amended by Chapter 202, 2016 General Session, (Coordination Clause)
Amended by Chapter 207, 2016 General Session
Amended by Chapter 208, 2016 General Session

Part 8
Practice Standards

58-67-801 Disclosure of financial interest by licensee.

(1) Licensees under this chapter may not refer patients, clients, or customers to any clinical laboratory, ambulatory or surgical care facilities, or other treatment or rehabilitation services such as physical therapy, cardiac rehabilitation, radiology services, dispensing optical lens facility, or lithotripsy, in which the licensee or a member of the licensee's immediate family has any financial relationship as that term is described in 42 U.S.C. 1395nn, unless the licensee at the time of making the referral discloses that relationship, in writing, to the patient, client, or customer.

(2) The written disclosure under Subsection (1) shall also state the patient may choose any facility or service center for purpose of having the laboratory work or treatment service performed.

Enacted by Chapter 248, 1996 General Session

58-67-802 Form of practice.

(1) A physician and surgeon licensed under this chapter may engage in practice as a physician and surgeon, or in the practice of medicine only as an individual licensee; but as an individual licensee, he may be:
  (a) an individual operating as a business proprietor;
  (b) an employee of another person;
  (c) a partner in a lawfully organized partnership;
  (d) a lawfully formed professional corporation;
  (e) a lawfully organized limited liability company;
  (f) a lawfully organized business corporation; or
  (g) any other form of organization recognized by the state which is not prohibited by division rule made in collaboration with the board.
(2) Regardless of the form in which a licensee engages in the practice of medicine, the licensee may only permit the practice of medicine in that form of practice to be conducted by an individual:
  (a) licensed in Utah as a physician and surgeon under Section 58-67-301 or as an osteopathic physician and surgeon under Section 58-68-301; and
  (b) who is able to lawfully and competently engage in the practice of medicine.

Enacted by Chapter 248, 1996 General Session

58-67-803 Medical records -- Electronic records.

(1) Medical records maintained by a licensee shall:
  (a) meet the standards and ethics of the profession; and
  (b) be maintained in accordance with division rules made in collaboration with the board.
(2) Medical records under this section may be maintained by an electronic means if the records comply with Subsection (1).

Enacted by Chapter 248, 1996 General Session

58-67-804 Consumer access to provider charges.

Beginning January 1, 2011, a physician licensed under this chapter shall, when requested by a consumer:
(1) make a list of prices charged by the physician available for the consumer which includes the physician's 25 most frequently performed:
  (a) clinic procedures or clinic services;
  (b) out-patient procedures; and
  (c) in-patient procedures; and
(2) provide the consumer with information regarding any discount available for:
  (a) services not covered by insurance; or
  (b) prompt payment of billed charges.

Enacted by Chapter 68, 2010 General Session

58-67-805 Supervision of cosmetic medical procedures.

(1) Except as provided in Subsection (2), a physician may not delegate the performance of an ablative cosmetic medical procedure to an individual who is not licensed under this chapter or Chapter 68, Utah Osteopathic Medical Practice Act.

(2) A physician may delegate to an advanced practice registered nurse with an unrestricted license under Chapter 31b, Nurse Practice Act, the performance of an erbium full ablation resurfacing procedure or a CO2 fractionated resurfacing procedure, if the physician:

(a) prescribes that specific procedure for the patient who is to receive the procedure;

(b) ensures that the advanced practice registered nurse performs the procedure under the indirect supervision of the physician; and

(c) verifies that the advanced practice registered nurse is qualified to perform the procedure by having received at least 50 hours of training specific to the procedure to be performed and the laser to be used.

Enacted by Chapter 362, 2012 General Session

58-67-806 Representation of medical specialization.

(1) A physician may not represent to another person that the physician is certified in a medical specialty or certified by a particular board unless:

(a) the physician includes in the representation the name of:

(i) the certification board or entity; and

(ii) the medical specialty for which the physician is certified; and

(b) the board or certification entity meets the requirements of Subsection (2).

(2) A certification entity or board under Subsection (1) shall meet the following qualifications:

(a) be included in the American Board of Medical Specialties or an American Osteopathic Association Certifying Board; or

(b)

(i) require an Accreditation Council for Graduate Medical Education or American Osteopathic Association approved postgraduate training program that provides complete training in the specialty or subspeciality; and

(ii) be certified or had prior certification by the member board of the American Board of Medical Specialties or an American Osteopathic Certifying Board.

Amended by Chapter 262, 2013 General Session

Chapter 67a
Physicians Education Fund

58-67a-1 Physicians Education Fund.

(1) There is created an expendable special revenue fund known as the "Physicians Education Fund" to receive and account for revenue and expenditures for making education available to physicians and surgeons, osteopathic physicians and surgeons, and naturopathic physicians, concerning the requirements of Title 58, Occupations and Professions, division rules, and

requirements under Title 58, Chapter 37, Utah Controlled Substances Act, and division rules made under that chapter.
(2) Administrative penalties ordered and collected pursuant to this section shall be deposited in the account.
(3) The fund shall earn interest and all interest earned on account money shall be deposited into the account.
(4) The director, with the concurrence of the board, may make distributions from the fund to make available education and training for physicians and surgeons, osteopathic physicians and surgeons, and naturopathic physicians.
(5) If the balance in the fund exceeds $100,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.
(6) The division shall report on the fund annually to the appropriate appropriations subcommittee of the Legislature.

Amended by Chapter 400, 2013 General Session

Chapter 67b
Interstate Medical Licensure Compact

58-67b-101 Title.
This chapter is known as the "Interstate Medical Licensure Compact."

Enacted by Chapter 24, 2015 General Session

58-67b-102 Section 1 -- Purpose.
In order to strengthen access to health care, and in recognition of the advances in the delivery of health care, the member states of the Interstate Medical Licensure Compact have allied in common purpose to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards and provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. The Compact creates another pathway for licensure and does not otherwise change a state's existing medical practice act. The Compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located. State medical boards that participate in the Compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the Compact.

Enacted by Chapter 24, 2015 General Session

58-67b-103 Section 2 -- Definitions.
In this compact:
(1) "Bylaws" means those bylaws established by the Interstate Commission pursuant to Section 58-67b-112 for its governance, or for directing and controlling its actions and conduct.

(2) "Commissioner" means the voting representative appointed by each member board pursuant to Section 58-67b-112.
(3) "Conviction" means a finding by a court that an individual is guilty of a criminal offense through adjudication, or entry of a plea of guilt or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the court shall be considered final for purposes of disciplinary action by a member board.
(4) "Expedited license" means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the Compact.
(5) "Interstate Commission" means the interstate commission created pursuant to Section 58-67b-112.
(6) "License" means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization.
(7) "Medical practice act" means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state.
(8) "Member board" means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government.
(9) "Member state" means a state that has enacted the Compact.
(10) "Offense" means a felony, gross misdemeanor, or crime of moral turpitude.
(11) "Physician" means any person who:
(a) is a graduate of a medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent;
(b) passed each component of the United States Medical Licensing Examination (USMLE) or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA) within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;
(c) successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;
(d) holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists;
(e) possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;
(f) has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;
(g) has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to non-payment of fees related to a license;
(h) has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and
(i) is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.
(12) "Practice of medicine" means the clinical prevention, diagnosis, or treatment of human disease, injury, or condition requiring a physician to obtain and maintain a license in compliance with the medical practice act of a member state.
(13) "Rule" means a written statement by the Interstate Commission promulgated pursuant to Section 58-67b-113 that is of general applicability, implements, interprets, or prescribes a policy

or provision of the Compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.
(14) "State" means any state, commonwealth, district, or territory of the United States.
(15) "State of principal license" means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the Compact.

Enacted by Chapter 24, 2015 General Session

58-67b-104 Section 3 -- Eligibility.
(1) A physician must meet the eligibility requirements as defined in Subsection 58-67b-103(11) to receive an expedited license under the terms and provisions of the Compact.
(2) A physician who does not meet the requirements of Subsection 58-67b-103(11) may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the Compact, relating to the issuance of a license to practice medicine in that state.

Enacted by Chapter 24, 2015 General Session

58-67b-105 Section 4 -- Designation of state of principal license.
(1) A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the Compact if the physician possesses a full and unrestricted license to practice medicine in that state, and the state is:
  (a) the state of primary residence for the physician;
  (b) the state where at least 25% of the practice of medicine occurs;
  (c) the location of the physician's employer; or
  (d) if no state qualifies under Subsection (1)(a), Subsection (1)(b), or Subsection (1)(c), the state designated as state of residence for purpose of federal income tax.
(2) A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in Subsection (1).
(3) The Interstate Commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.

Enacted by Chapter 24, 2015 General Session

58-67b-106 Section 5 -- Application and issuance of expedited licensure.
(1) A physician seeking licensure through the Compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.
(2) Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician's eligibility, to the Interstate Commission, including:
  (a) static qualifications, which include verification of medical education, graduate medical education, results of any medical or licensing examination, and other qualifications as determined by the Interstate Commission through rule, shall not be subject to additional

primary source verification where the primary source has already been verified by the state of principal license;

(b)

(i) the member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, with the exception of federal employees who have suitability determination in accordance with U.S. C.F.R. Sec. 731.202; and

(ii) if the state selected as the state of principal license is Utah:

(A) the member board in Utah shall submit the applicant's fingerprints and any other personal identification information necessary for the performance of the background check to the Bureau of Criminal Identification within the Utah Department of Public Safety; and

(B) the Bureau of Criminal Identification shall perform the background check, including submitting the personal identification information to the Federal Bureau of Investigation, and inform the member board of the results; and

(c) appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the law of that state.

(3) Upon verification in Subsection (2), physicians eligible for an expedited license shall complete the registration process established by the Interstate Commission to receive a license in a member state selected pursuant to Subsection (1), including the payment of any applicable fees.

(4) After receiving verification of eligibility under Subsection (2) and any fees under Subsection (3), a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the medical practice act and all applicable laws and regulations of the issuing member board and member state.

(5) An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

(6) An expedited license obtained though the Compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a non-disciplinary reason, without redesignation of a new state of principal licensure.

(7) The Interstate Commission is authorized to develop rules regarding the application process, including payment of any applicable fees, and the issuance of an expedited license.

Enacted by Chapter 24, 2015 General Session

58-67b-107 Section 6 -- Fees for expedited licensure.

(1) A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the Compact.

(2) The Interstate Commission is authorized to develop rules regarding fees for expedited licenses.

Enacted by Chapter 24, 2015 General Session

58-67b-108 Section 7 -- Renewal and continued participation.

(1) A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the Interstate Commission if the physician:

(a) maintains a full and unrestricted license in a state of principal license;

(b) has not been convicted or received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;
(c) has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to non-payment of fees related to a license; and
(d) has not had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration.
(2) Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.
(3) The Interstate Commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.
(4) Upon receipt of any renewal fees collected in Subsection (3), a member board shall renew the physician's license.
(5) Physician information collected by the Interstate Commission during the renewal process will be distributed to all member boards.
(6) The Interstate Commission is authorized to develop rules to address renewal of licenses obtained through the Compact.

Enacted by Chapter 24, 2015 General Session

58-67b-109 Section 8 -- Coordinated information system.
(1) The Interstate Commission shall establish a database of all physicians licensed, or who have applied for licensure, under Section 58-67b-106.
(2) Notwithstanding any other provision of law, member boards shall report to the Interstate Commission any public action or complaints against a licensed physician who has applied or received an expedited license through the Compact.
(3) Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the Interstate Commission.
(4) Member boards may report any non-public complaint, disciplinary, or investigatory information not required by Subsection (3) to the Interstate Commission.
(5) Member boards shall share complaint or disciplinary information about a physician upon request of another member board.
(6) All information provided to the Interstate Commission or distributed by member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.
(7) The Interstate Commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.

Enacted by Chapter 24, 2015 General Session

58-67b-110 Section 9 -- Joint investigations.
(1) Licensure and disciplinary records of physicians are deemed investigative.
(2) In addition to the authority granted to a member board by its respective medical practice act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.
(3) A subpoena issued by a member state shall be enforceable in other member states.
(4) Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

(5) Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.

Enacted by Chapter 24, 2015 General Session

58-67b-111 Section 10 -- Disciplinary actions.

(1) Any disciplinary action taken by any member board against a physician licensed through the Compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the medical practice act or regulations in that state.
(2) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the medical practice act of that state.
(3) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:
  (a) impose the same or lesser sanctions against the physician so long as such sanctions are consistent with the medical practice act of that state; or
  (b) pursue separate disciplinary action against the physician under its respective medical practice act, regardless of the action taken in other member states.
(4) If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline, or suspended, then any licenses issued to the physician by any other member boards shall be suspended, automatically and immediately without further action necessary by the other member boards, for 90 days upon entry of the order by the disciplining board, to permit the member boards to investigate the basis for the action under the medical practice act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the 90-day suspension period in a manner consistent with the medical practice act of that state.

Enacted by Chapter 24, 2015 General Session

58-67b-112 Section 11 -- Interstate Medical Licensure Compact Commission.

(1) The member states hereby create the "Interstate Medical Licensure Compact Commission."
(2) The purpose of the Interstate Commission is the administration of the Interstate Medical Licensure Compact, which is a discretionary state function.
(3) The Interstate Commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth in the Compact, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the Compact.
(4) The Interstate Commission shall consist of two voting representatives appointed by each member state who shall serve as commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary

authority is split between multiple member boards within a member state, the member state shall appoint one representative from each member board. A commissioner shall be:
(a) an allopathic or osteopathic physician appointed to a member board;
(b) an executive director, executive secretary, or similar executive of a member board; or
(c) a member of the public appointed to a member board.
(5) The Interstate Commission shall meet at least once each calendar year. A portion of this meeting shall be a business meeting to address such matters as may properly come before the commission, including the election of officers. The chairperson may call additional meetings and shall call for a meeting upon the request of a majority of the member states.
(6) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.
(7) Each commissioner participating at a meeting of the Interstate Commission is entitled to one vote. A majority of commissioners shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission. A commissioner shall not delegate a vote to another commissioner. In the absence of its commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who shall meet the requirements of Subsection (4).
(8) The Interstate Commission shall provide public notice of all meetings and all meetings shall be open to the public. The Interstate Commission may close a meeting, in full or in portion, where it determines by a two-thirds vote of the commissioners present that an open meeting would be likely to:
(a) relate solely to the internal personnel practices and procedures of the Interstate Commission;
(b) discuss matters specifically exempted from disclosure by federal statute;
(c) discuss trade secrets, commercial, or financial information that is privileged or confidential;
(d) involve accusing a person of a crime, or formally censuring a person;
(e) discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
(f) discuss investigative records compiled for law enforcement purposes; or
(g) specifically relate to the participation in a civil action or other legal proceeding.
(9) The Interstate Commission shall keep minutes which shall fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any roll call votes.
(10) The Interstate Commission shall make its information and official records, to the extent not otherwise designated in the Compact or by its rules, available to the public for inspection.
(11) The Interstate Commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. When acting on behalf of the Interstate Commission, the executive committee shall oversee the administration of the Compact including enforcement and compliance with the provisions of the Compact, its bylaws and rules, and other such duties as necessary.
(12) The Interstate Commission may establish other committees for governance and administration of the Compact.

Enacted by Chapter 24, 2015 General Session

58-67b-113 Section 12 -- Powers and duties of the Interstate Commission.

The Interstate Commission shall have the duty and power to:

(1) oversee and maintain the administration of the Compact;
(2) promulgate rules which shall be binding to the extent and in the manner provided for in the Compact;
(3) issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the Compact, its bylaws, rules, and actions;
(4) enforce compliance with Compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;
(5) establish and appoint committees including, but not limited to, an executive committee as required by Section 58-67b-112, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties;
(6) pay, or provide for the payment of the expenses related to the establishment, organization, and ongoing activities of the Interstate Commission;
(7) establish and maintain one or more offices;
(8) borrow, accept, hire, or contract for services of personnel;
(9) purchase and maintain insurance and bonds;
(10) employ an executive director who shall have the power to employ, select, or appoint employees, agents, or consultants, and to determine their qualifications, define their duties, and fix their compensation;
(11) establish personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;
(12) accept donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it in a manner consistent with the conflict of interest policies established by the Interstate Commission;
(13) lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use, any property, real, personal, or mixed;
(14) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
(15) establish a budget and make expenditures;
(16) adopt a seal and bylaws governing the management and operation of the Interstate Commission;
(17) report annually to the legislatures and governors of the member states concerning the activities of the Interstate Commission during the preceding year, which shall include reports of financial audits and any recommendations that may have been adopted by the Interstate Commission;
(18) coordinate education, training, and public awareness regarding the Compact, its implementation, and its operation;
(19) maintain records in accordance with the bylaws;
(20) seek and obtain trademarks, copyrights, and patents; and
(21) perform such functions as may be necessary or appropriate to achieve the purposes of the Compact.

Enacted by Chapter 24, 2015 General Session

58-67b-114 Section 13 -- Finance powers.

(1) The Interstate Commission may levy and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for

which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

(2) The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same.

(3) The Interstate Commission shall not pledge the credit of any of the member states, except by, and with the authority of, the member state.

(4) The Interstate Commission shall be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit shall be included in the annual report of the Interstate Commission.

Enacted by Chapter 24, 2015 General Session

58-67b-115 Section 14 -- Organization and operation of the Interstate Commission.

(1) The Interstate Commission shall, by a majority of commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact within 12 months of the first Interstate Commission meeting.

(2) The Interstate Commission shall elect or appoint annually from among its commissioners a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission.

(3) Officers selected in Subsection (2) shall serve without remuneration from the Interstate Commission.

(4)

(a) The officers and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of, or relating to, an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities, provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(b) The liability of the executive director and employees of the Interstate Commission or representatives of the Interstate Commission, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this Subsection (4)(b) shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(c) The Interstate Commission shall defend the executive director, its employees, and subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an Interstate Commission representative, such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided

that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(d) To the extent not covered by the state involved, the member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

Enacted by Chapter 24, 2015 General Session

58-67b-116 Section 15 -- Rulemaking functions of the Interstate Commission.

(1) The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

(2) Rules deemed appropriate for the operations of the Interstate Commission shall be made pursuant to a rulemaking process that substantially conforms to the "Revised Model State Administrative Procedure Act" of 2010, and subsequent amendments thereto.

(3) Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices, provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the Interstate Commission.

Enacted by Chapter 24, 2015 General Session

58-67b-117 Section 16 -- Oversight of Interstate Compact.

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce the Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of the Compact and the rules promulgated hereunder shall have standing as statutory law but shall not override existing state authority to regulate the practice of medicine.

(2) All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the Compact which may affect the powers, responsibilities, or actions of the Interstate Commission.

(3) The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, the Compact, or promulgated rules.

Enacted by Chapter 24, 2015 General Session

58-67b-118 Section 17 -- Enforcement of Interstate Compact.

(1) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Compact.
(2) The Interstate Commission may, by majority vote of the commissioners, initiate legal action in the United States District Court for the District of Columbia, or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the Compact, and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney fees.
(3) The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

Enacted by Chapter 24, 2015 General Session

58-67b-119 Section 18 -- Default procedures.

(1) The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the Compact, or the rules and bylaws of the Interstate Commission promulgated under the Compact.
(2) If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the Compact, or the bylaws or promulgated rules, the Interstate Commission shall:
  (a) provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default; and
  (b) provide remedial training and specific technical assistance regarding the default.
(3) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the Compact upon an affirmative vote of a majority of the commissioners and all rights, privileges, and benefits conferred by the Compact shall terminate on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.
(4) Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the Interstate Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.
(5) The Interstate Commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state, or the withdrawal of a member state.
(6) The member state which has been terminated is responsible for all dues, obligations, and liabilities incurred through the effective date of termination including obligations, the performance of which extends beyond the effective date of termination.
(7) The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been terminated from the Compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(8) The defaulting state may appeal the action of the Interstate Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney fees.

Enacted by Chapter 24, 2015 General Session

58-67b-120 Section 19 -- Dispute resolution.

(1) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the Compact and which may arise among member states or member boards.
(2) The Interstate Commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

Enacted by Chapter 24, 2015 General Session

58-67b-121 Section 20 -- Member states, effective date and amendment.

(1) Any state is eligible to become a member state of the Compact.
(2) The Compact shall become effective and binding upon legislative enactment of the Compact into law by no less than seven states. Thereafter, it shall become effective and binding on a state upon enactment of the Compact into law by that state.
(3) The governors of non-member states, or their designees, shall be invited to participate in the activities of the Interstate Commission on a non-voting basis prior to adoption of the Compact by all states.
(4) The Interstate Commission may propose amendments to the Compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

Enacted by Chapter 24, 2015 General Session

58-67b-122 Section 21 -- Withdrawal.

(1) Once effective, the Compact shall continue in force and remain binding upon each and every member state, provided that a member state may withdraw from the Compact by specifically repealing the statute that enacted the Compact into law.
(2) Withdrawal from the Compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.
(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing the Compact in the withdrawing state.
(4) The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt of notice provided under Subsection (3).
(5) The withdrawing state is responsible for all dues, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.
(6) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the Compact or upon such later date as determined by the Interstate Commission.

(7) The Interstate Commission is authorized to develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

Enacted by Chapter 24, 2015 General Session

58-67b-123 Section 22 -- Dissolution.

(1) The Compact shall dissolve effective upon the date of the withdrawal or default of the member state that reduces the membership in the Compact to one member state.
(2) Upon the dissolution of the Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

Enacted by Chapter 24, 2015 General Session

58-67b-124 Section 23 -- Severability and construction.

(1) The provisions of the Compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.
(2) The provisions of the Compact shall be liberally construed to effectuate its purposes.
(3) Nothing in the Compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

Enacted by Chapter 24, 2015 General Session

58-67b-125 Section 24 -- Binding effect of Compact and other laws.

(1) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the Compact.
(2) All laws in a member state, including Title 63G, Chapter 4, Administrative Procedures Act, in conflict with the Compact are superseded to the extent of the conflict.
(3) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Commission, are binding upon the member states.
(4) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.
(5) In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Enacted by Chapter 24, 2015 General Session

Chapter 68
Utah Osteopathic Medical Practice Act

Part 1
General Provisions

58-68-101 Title.

This chapter is the "Utah Osteopathic Medical Practice Act."

Enacted by Chapter 248, 1996 General Session

58-68-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Ablative procedure" means a procedure that is expected to excise, vaporize, disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium: YAG lasers, and excluding hair removal.

(2) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.

(3) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(4) "AOA" means the American Osteopathic Association.

(5) "Board" means the Osteopathic Physician and Surgeon's Licensing Board created in Section 58-68-201.

(6)

(a) "Cosmetic medical device" means tissue altering energy based devices that have the potential for altering living tissue and that are used to perform ablative or nonablative procedures, such as American National Standards Institute (ANSI) designated Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices and excludes ANSI designated Class IIIa and lower powered devices.

(b) Notwithstanding Subsection (6)(a), if an ANSI designated Class IIIa and lower powered device is being used to perform an ablative procedure, the device is included in the definition of cosmetic medical device under Subsection (6)(a).

(7) "Cosmetic medical procedure":

(a) includes the use of cosmetic medical devices to perform ablative or nonablative procedures; and

(b) does not include a treatment of the ocular globe such as refractive surgery.

(8) "Diagnose" means:

(a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;

(b) to attempt to conduct an examination or determination described under Subsection (8)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (8)(a); or

(d) to make an examination or determination as described in Subsection (8)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

(9) "Medical assistant" means an unlicensed individual working under the indirect supervision of a licensed osteopathic physician and surgeon and engaged in specific tasks assigned by the licensed osteopathic physician and surgeon in accordance with the standards and ethics of the profession.

(10)

(a)

(i) "Nonablative procedure" means a procedure that is expected or intended to alter living tissue, but is not expected or intended to excise, vaporize, disintegrate, or remove living tissue.
(ii) Notwithstanding Subsection (10)(a)(i), nonablative procedure includes hair removal.
(b) "Nonablative procedure" does not include:
(i) a superficial procedure as defined in Section 58-1-102;
(ii) the application of permanent make-up; or
(iii) the use of photo therapy lasers for neuromusculoskeletal treatments that are preformed by an individual licensed under this title who is acting within the individual's scope of practice.
(11) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.
(12)
(a) "Practice of osteopathic medicine" means:
(i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part is based upon emphasis of the importance of the musculoskeletal system and manipulative therapy in the maintenance and restoration of health, by an individual in Utah or outside of the state upon or for any human within the state;
(ii) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered;
(iii) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (12)(a) whether or not for compensation; or
(iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions, in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine," "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.," "D.O.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed osteopathic physician, and if the party using the designation is not a licensed osteopathic physician, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an individual who has received an earned degree of doctor of osteopathic medicine but is not a licensed osteopathic physician and surgeon in Utah may use the designation "D.O." if it is followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.
(b) The practice of osteopathic medicine does not include:
(i) except for an ablative medical procedure as provided in Subsection (12)(b)(ii), the conduct described in Subsection (12)(a)(i) that is performed in accordance with a license issued under another chapter of this title;
(ii) an ablative cosmetic medical procedure if the scope of practice for the person performing the ablative cosmetic medical procedure includes the authority to operate or perform a surgical procedure; or
(iii) conduct under Subsection 58-68-501(2).
(13) "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and

dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.
(14) "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.
(15) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.
(16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.
(17) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502 and as may be further defined by division rule.

Amended by Chapter 262, 2013 General Session

Part 2
Board

58-68-201 Board.
(1) There is created the Osteopathic Physician and Surgeon's Licensing Board consisting of four osteopathic physicians and surgeons and one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3)
(a) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203.
(b) The board may also designate one of its members on a permanent or rotating basis to:
(i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
(ii) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning that complaint.

Enacted by Chapter 248, 1996 General Session

Part 3
Licensing

58-68-301 Licensure required -- License classifications.
(1) A license is required to engage in the practice of osteopathic medicine on or for any person in Utah, as an osteopathic physician and surgeon, except as specifically provided in Section 58-1-307 or 58-68-305.
(2) The division shall issue to a person who qualifies under this chapter a license in the classification of osteopathic physician and surgeon.

Enacted by Chapter 248, 1996 General Session

58-68-302 Qualifications for licensure.

(1) An applicant for licensure as an osteopathic physician and surgeon, except as set forth in Subsection (2), shall:
(a) submit an application in a form prescribed by the division, which may include:
(i) submissions by the applicant of information maintained by practitioner data banks, as designated by division rule, with respect to the applicant;
(ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and
(iii) authorization to use a record coordination and verification service approved by the division in collaboration with the board;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as an osteopathic physician and surgeon, as evidenced by:
(i) having received an earned degree of doctor of osteopathic medicine from an AOA approved medical school or college; or
(ii) submitting a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board, if the applicant is graduated from an osteopathic medical school or college located outside of the United States or its territories which at the time of the applicant's graduation, met criteria for accreditation by the AOA;
(e) satisfy the division and board that the applicant:
(i) has successfully completed 24 months of progressive resident training in an ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine required under Subsection (1)(d); or
(ii)
(A) has successfully completed 12 months of resident training in an ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine as required under Subsection (1)(d);
(B) has been accepted in and is successfully participating in progressive resident training in an ACGME or AOA approved program within Utah, in the applicant's second or third year of postgraduate training; and
(C) has agreed to surrender to the division the applicant's license as an osteopathic physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as an osteopathic physician and surgeon will be automatically revoked by the division if the applicant fails to continue in good standing in an ACGME or AOA approved progressive resident training program within the state;
(f) pass the licensing examination sequence required by division rule, as made in collaboration with the board;
(g) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board, if requested by the board;
(h) meet with the board and representatives of the division, if requested for the purpose of evaluating the applicant's qualifications for licensure;
(i) designate:
(i) a contact person for access to medical records in accordance with the federal Health Insurance Portability and Accountability Act; and

(ii) an alternate contact person for access to medical records, in the event the original contact person is unable or unwilling to serve as the contact person for access to medical records; and

(j) establish a method for notifying patients of the identity and location of the contact person and alternate contact person, if the applicant will practice in a location with no other persons licensed under this chapter.

(2) An applicant for licensure as an osteopathic physician and surgeon by endorsement who is currently licensed to practice osteopathic medicine in any state other than Utah, a district or territory of the United States, or Canada shall:

(a) be currently licensed with a full unrestricted license in good standing in any state, district or territory of the United States, or Canada;

(b) have been actively engaged in the legal practice of osteopathic medicine in any state, district or territory of the United States, or Canada for not less than 6,000 hours during the five years immediately preceding the day on which the applicant applied for licensure in Utah;

(c) comply with the requirements for licensure under Subsections (1)(a) through (d), (1)(e)(i), and (1)(g) through (j);

(d) have passed the licensing examination sequence required in Subsection (1)(f) or another medical licensing examination sequence in another state, district or territory of the United States, or Canada that the division in collaboration with the board by rulemaking determines is equivalent to its own required examination;

(e) not have any investigation or action pending against any health care license of the applicant, not have a health care license that was suspended or revoked in any state, district or territory of the United States, or Canada, and not have surrendered a health care license in lieu of a disciplinary action, unless:

(i) the license was subsequently reinstated as a full unrestricted license in good standing; or

(ii) the division in collaboration with the board determines, after full disclosure by the applicant, that:

(A) the conduct has been corrected, monitored, and resolved; or

(B) a mitigating circumstance exists that prevents its resolution, and the division in collaboration with the board is satisfied that, but for the mitigating circumstance, the license would be reinstated;

(f) submit to a records review, a practice review history, and physical and psychological assessments, if requested by the division in collaboration with the board; and

(g) produce evidence that the applicant meets the requirements of this Subsection (2) to the satisfaction of the division in collaboration with the board.

(3) An applicant for licensure by endorsement may engage in the practice of medicine under a temporary license while the applicant's application for licensure is being processed by the division, provided:

(a) the applicant submits a complete application required for temporary licensure to the division;

(b) the applicant submits a written document to the division from:

(i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, stating that the applicant is practicing under the:

(A) invitation of the health care facility; and

(B) the general supervision of a physician practicing at the health care facility; or

(ii) two individuals licensed under this chapter, whose license is in good standing and who practice in the same clinical location, both stating that:

(A) the applicant is practicing under the invitation and general supervision of the individual; and

(B) the applicant will practice at the same clinical location as the individual;
(c) the applicant submits a signed certification to the division that the applicant meets the requirements of Subsection (2);
(d) the applicant does not engage in the practice of medicine until the division has issued a temporary license;
(e) the temporary license is only issued for and may not be extended or renewed beyond the duration of one year from issuance; and
(f) the temporary license expires immediately and prior to the expiration of one year from issuance, upon notification from the division that the applicant's application for licensure by endorsement is denied.
(4) The division shall issue a temporary license under Subsection (3) within 15 business days after the applicant satisfies the requirements of Subsection (3).
(5) The division may not require a post-residency board certification as a requirement for licensure.

Amended by Chapter 162, 2012 General Session
Amended by Chapter 225, 2012 General Session

58-68-303 Term of license -- Expiration -- Renewal.
(1)
(a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.
(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) At the time of renewal, the licensee shall show compliance with:
(a) continuing education renewal requirements; and
(b) the requirement for designation of a contact person and alternate contact person for access to medical records and notice to patients as required by Subsections 58-68-304(1)(b) and (c).
(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Amended by Chapter 94, 2005 General Session

58-68-304 License renewal requirements.
(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:
(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule in collaboration with the board;
(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-68-302(1)(i); and
(c) if the licensee practices osteopathic medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for access to medical records for the licensee in accordance with Subsection 58-68-302(1)(j).
(2) If a renewal period is extended or shortened under Section 58-68-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.
(3) An application to renew a license under this chapter shall:
(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection (3)(a).

Amended by Chapter 161, 2011 General Session
Amended by Chapter 214, 2011 General Session

58-68-305 Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the described acts or practices without being licensed under this chapter:

(1) an individual rendering aid in an emergency, when no fee or other consideration of value for the service is charged, received, expected, or contemplated;

(2) an individual administering a domestic or family remedy;

(3)

(a)

(i) a person engaged in the lawful sale of vitamins, health foods, dietary supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited by state or federal law; and

(ii) a person acting in good faith for religious reasons, as a matter of conscience, or based on a personal belief, when obtaining or providing any information regarding health care and the use of any product under Subsection (3)(a)(i); and

(b) Subsection (3)(a) does not:

(i) permit a person to diagnose any human disease, ailment, injury, infirmity, deformity, pain, or other condition; or

(ii) prohibit providing truthful and non-misleading information regarding any of the products under Subsection (3)(a)(i);

(4) a person engaged in good faith in the practice of the religious tenets of any church or religious belief without the use of prescription drugs;

(5) an individual authorized by the Department of Health under Section 26-1-30, to draw blood pursuant to Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), or 72-10-502(5)(a)(vi);

(6) a medical assistant while working under the indirect supervision of a licensed osteopathic physician, to the extent the medical assistant:

(a) is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of medicine;

(b) does not perform surgical procedures;

(c) does not prescribe prescription medications;

(d) does not administer anesthesia, anesthesia does not mean a local anesthetic for minor procedural use; and

(e) does not engage in other medical practices or procedures as defined by division rule in collaboration with the board;
(7) an individual engaging in the practice of osteopathic medicine when:
(a) the individual is licensed in good standing as an osteopathic physician in another state with no licensing action pending and no less than 10 years of professional experience;
(b) the services are rendered as a public service and for a noncommercial purpose;
(c) no fee or other consideration of value is charged, received, expected, or contemplated for the services rendered beyond an amount necessary to cover the proportionate cost of malpractice insurance; and
(d) the individual does not otherwise engage in unlawful or unprofessional conduct;
(8) an individual providing expert testimony in a legal proceeding; and
(9) an individual who is invited by a school, association, society, or other body approved by the division in collaboration with the board to conduct a clinic or demonstration of the practice of medicine in which patients are treated, if:
(a) the individual does not establish a place of business in this state;
(b) the individual does not regularly engage in the practice of medicine in this state;
(c) the individual holds a current license in good standing to practice medicine issued by another state, district or territory of the United States, or Canada;
(d) the primary purpose of the event is the training of others in the practice of medicine; and
(e) neither the patient nor an insurer is billed for the services performed.

Amended by Chapter 262, 2013 General Session

58-68-306 Status of licenses held on the effective date of this chapter.
An individual holding a current license as an osteopathic physician that was issued under any prior state law is considered to hold a current license in the same classification under this chapter.

Enacted by Chapter 248, 1996 General Session

Part 4
License Denial and Discipline

58-68-401 Grounds for denial of license -- Disciplinary proceedings.
Grounds for division action are set forth in Sections 58-1-401 and 58-68-503.

Amended by Chapter 214, 2011 General Session

58-68-402 Authority to assess penalties.
The division in collaboration with the board may assess penalties as described in Section 58-68-503.

Amended by Chapter 369, 2012 General Session

58-68-403 Revocation of license -- Nondisciplinary.
Revocation by the division of a license under Subsection 58-68-302(1)(e) for failure to continue on a resident training program for reasons other than unprofessional or unlawful conduct is a

nondisciplinary action and may not be reported by the division as a disciplinary action against the licensee.

Amended by Chapter 214, 2011 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-68-501 Unlawful conduct.

(1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:
- (a) buying, selling, or fraudulently obtaining any osteopathic medical diploma, license, certificate, or registration; and
- (b) aiding or abetting the buying, selling, or fraudulently obtaining of any osteopathic medical diploma, license, certificate, or registration;
- (c) substantially interfering with a licensee's lawful and competent practice of medicine in accordance with this chapter by:
  - (i) any person or entity that manages, owns, operates, or conducts a business having a direct or indirect financial interest in the licensee's professional practice; or
  - (ii) anyone other than another physician licensed under this title, who is engaged in direct clinical care or consultation with the licensee in accordance with the standards and ethics of the profession of medicine; or
- (d) entering into a contract that limits a licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients.

(2) "Unlawful conduct" does not include:
- (a) establishing, administering, or enforcing the provisions of a policy of accident and health insurance by an insurer doing business in this state in accordance with Title 31A, Insurance Code;
- (b) adopting, implementing, or enforcing utilization management standards related to payment for a licensee's services, provided that:
  - (i) utilization management standards adopted, implemented, and enforced by the payer have been approved by a physician or by a committee that contains one or more physicians; and
  - (ii) the utilization management standards does not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;
- (c) developing and implementing clinical practice standards that are intended to reduce morbidity and mortality or developing and implementing other medical or surgical practice standards related to the standardization of effective health care practices, provided that:
  - (i) the practice standards and recommendations have been approved by a physician or by a committee that contains one or more physicians; and
  - (ii) the practice standards do not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;
- (d) requesting or recommending that a patient obtain a second opinion from a licensee;
- (e) conducting peer review, quality evaluation, quality improvement, risk management, or similar activities designed to identify and address practice deficiencies with health care providers, health care facilities, or the delivery of health care;

(f) providing employment supervision or adopting employment requirements that do not interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients, provided that employment requirements that may not be considered to interfere with an employed licensee's exercise of independent professional judgment include:
(i) an employment requirement that restricts the licensee's access to patients with whom the licensee's employer does not have a contractual relationship, either directly or through contracts with one or more third-party payers; or
(ii) providing compensation incentives that are not related to the treatment of any particular patient;
(g) providing benefit coverage information, giving advice, or expressing opinions to a patient or to a family member of a patient to assist the patient or family member in making a decision about health care that has been recommended by a licensee;
(h) in compliance with Section 58-85-103:
(i) obtaining an investigational drug or investigational device;
(ii) administering the investigational drug to an eligible patient; or
(iii) treating an eligible patient with the investigational drug or investigational device; or
(i) any otherwise lawful conduct that does not substantially interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients and that does not constitute the practice of medicine as defined in this chapter.

Amended by Chapter 110, 2015 General Session

58-68-502 Unprofessional conduct.
(1) "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:
(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule; or
(b) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable.
(2) "Unprofessional conduct" does not include, in compliance with Section 58-85-103:
(a) obtaining an investigational drug or investigational device;
(b) administering the investigational drug to an eligible patient; or
(c) treating an eligible patient with the investigational drug or investigational device.

Amended by Chapter 110, 2015 General Session
Amended by Chapter 206, 2015 General Session

58-68-503 Penalties and administrative actions for unlawful and unprofessional conduct.
(1) Any person who violates the unlawful conduct provisions of Section 58-68-501 or Section 58-1-501 is guilty of a third degree felony.
(2)
(a) Subject to Subsection (4), the division may punish unprofessional or unlawful conduct by:
(i) assessing administrative penalties; or
(ii) taking any other appropriate administrative action.
(b) A monetary administrative penalty imposed under this section shall be deposited in the Physician Education Fund described in Section 58-67a-1.

(3) If a licensee is convicted of unlawful conduct, described in Section 58-68-501, before an administrative proceeding regarding the same conduct, the licensee may not be assessed an administrative fine under this chapter for the same conduct.

(4)

(a) If the division concludes that an individual has violated the provisions of Section 58-68-501, Section 58-68-502, Chapter 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and disciplinary action is appropriate, the director or director's designee shall:

(i) issue a citation to the individual;

(ii) attempt to negotiate a stipulated settlement; or

(iii) notify the individual that an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to appear.

(b) The division may take the following action against an individual who is in violation of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding:

(i) assess a fine of up to $10,000 per single violation or $2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; or

(ii) order to cease and desist from the behavior that constitutes a violation of provisions described in Subsection (4)(a).

(c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-1-401 may not be assessed through a citation.

(d) Each citation issued under this section shall:

(i) be in writing;

(ii) clearly describe or explain:

(A) the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(B) that the recipient must notify the division in writing within 20 calendar days from the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(C) the consequences of failure to timely contest the citation or pay the fine assessed by the citation within the time specified in the citation; and

(iii) be served in accordance with the requirements of the Utah Rules of Civil Procedure.

(e) If the individual to whom the citation is issued fails to request a hearing to contest the citation within 20 calendar days from the day on which the citation is served, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.

(f) The division may refuse to issue or renew or suspend, revoke, or place on probation the license of an individual who fails to comply with a citation after the citation becomes final.

(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of a license.

(h) No citation may be issued under this section after six months from the day on which the last violation occurred.

Amended by Chapter 369, 2012 General Session

Part 6

Impaired Osteopathic Physician

58-68-601 Mentally incompetent or incapacitated osteopathic physician.

(1) As used in this section:

(a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.

(b) "Mental illness" is as defined in Section 62A-15-602.

(2) If a court of competent jurisdiction determines an osteopathic physician and surgeon is an incapacitated person or that the physician or surgeon has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the osteopathic physician and surgeon upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the osteopathic physician and surgeon, in writing, of the suspension.

(3)

(a) If the division and a majority of the board find reasonable cause to believe an osteopathic physician and surgeon, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing osteopathic medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the osteopathic physician and surgeon with a notice of hearing on the sole issue of the capacity of the osteopathic physician and surgeon to competently and safety engage in the practice of medicine.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

(4)

(a) Every osteopathic physician and surgeon who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the physician's or surgeon's own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the osteopathic physician and surgeon has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the osteopathic physician and surgeon's patients or the general public.

(c)

(i) Failure of an osteopathic physician and surgeon to submit to the examination ordered under this section is a ground for the division's immediate suspension of the osteopathic physician and surgeon's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the osteopathic physician and surgeon and was not related directly to the illness or incapacity of the osteopathic physician and surgeon.

(5)
(a) An osteopathic physician and surgeon whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.
(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the osteopathic physician and surgeon's patients or the general public.
(6) An osteopathic physician and surgeon whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the osteopathic physician and surgeon, under procedures established by division rule, regarding any change in the osteopathic physician and surgeon's condition, to determine whether:
(a) the physician or surgeon is or is not able to safely and competently engage in the practice of medicine; and
(b) the physician or surgeon is qualified to have the physician's or surgeon's license to practice under this chapter restored completely or in part.

Amended by Chapter 364, 2013 General Session

Part 7
Immunity Provisions

58-68-701 Immunity provisions apply.
Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, applies to licensees under this chapter.

Enacted by Chapter 248, 1996 General Session

58-68-702 Opiate antagonist -- Exclusion from unlawful or unprofessional conduct.
(1) As used in this section:
(a) "Dispense" means the same as that term is defined in Section 58-17b-102.
(b) "Increased risk" means the same as that term is defined in Section 26-55-102.
(c) "Opiate antagonist" means the same as that term is defined in Section 26-55-102.
(d) "Opiate-related drug overdose event" means the same as that term is defined in Section 26-55-102.
(e) "Prescribe" means the same as that term is defined in Section 58-17b-102.
(2) The prescribing or dispensing of an opiate antagonist by a licensee under this chapter is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:
(a) in a good faith effort to assist:
(i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or
(ii) a family member of, friend of, or other person, including a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(b) to an overdose outreach provider pursuant to Subsection 26-55-104(2)(a)(iii).
(3) The provisions of this section and Title 26, Chapter 55, Opiate Overdose Response Act, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.

Amended by Chapter 202, 2016 General Session, (Coordination Clause)
Amended by Chapter 202, 2016 General Session
Amended by Chapter 207, 2016 General Session
Amended by Chapter 208, 2016 General Session

Part 8
Practice Standards

58-68-801 Disclosure of financial interest by licensee.
(1) Licensees under this chapter may not refer patients, clients, or customers to any clinical laboratory, ambulatory or surgical care facilities, or other treatment or rehabilitation services such as physical therapy, cardiac rehabilitation, radiology services, dispensing optical lens facility, or lithotripsy, in which the licensee or a member of the licensee's immediate family has any financial relationship as that term is described in 42 U.S.C. 1395nn, unless the licensee at the time of making the referral discloses that relationship, in writing, to the patient, client, or customer.
(2) The written disclosure under Subsection (1) shall also state the patient may choose any facility or service center for purpose of having the laboratory work or treatment service performed.

Enacted by Chapter 248, 1996 General Session

58-68-802 Form of practice.
(1) An osteopathic physician and surgeon licensed under this chapter may engage in practice as an osteopathic physician and surgeon or in the practice of osteopathic medicine only as an individual licensee, but as an individual licensee, he may be:
(a) an individual operating as a business proprietor;
(b) an employee of another person;
(c) a partner in a lawfully organized partnership;
(d) a lawfully formed professional corporation;
(e) a lawfully organized limited liability company;
(f) a lawfully organized business corporation; or
(g) any other form of organization recognized by the state and not prohibited by division rule made in collaboration with the board.
(2) Regardless of the form in which a licensee engages in the practice of osteopathic medicine, the licensee may only permit the practice of medicine in that form of business practice to be conducted by an individual:
(a) licensed in Utah as an osteopathic physician and surgeon under Section 58-68-301 or as a physician and surgeon under Section 58-67-301; and
(b) who is able to lawfully and competently engage in the practice of medicine to direct or interfere in the licensee's practice of medicine.

Enacted by Chapter 248, 1996 General Session

58-68-803 Medical records -- Electronic records.

(1) Medical records maintained by a licensee shall:
  (a) meet the standards and ethics of the profession; and
  (b) be maintained in accordance with division rules made in collaboration with the board.
(2) Medical records under this section may be maintained by an electronic means if the records comply with Subsection (1).

Enacted by Chapter 248, 1996 General Session

58-68-804 Consumer access to provider charges.

Beginning January 1, 2011, an osteopathic physician licensed under this chapter shall, when requested by a consumer:
(1) make a list of prices charged by the osteopathic physician available for the consumer which includes the osteopathic physician's 25 most frequently performed:
  (a) clinic procedures or clinic services;
  (b) out-patient procedures; and
  (c) in-patient procedures; and
(2) provide the consumer with information regarding any discount available for:
  (a) services not covered by insurance; or
  (b) prompt payment of billed charges.

Enacted by Chapter 68, 2010 General Session

58-68-805 Supervision of cosmetic medical procedures.

(1) Except as provided in Subsection (2), an osteopathic physician and surgeon may not delegate the performance of an ablative cosmetic medical procedure to an individual who is not licensed under this chapter or Chapter 67, Utah Medical Practice Act.
(2) A physician may delegate to an advanced practice registered nurse with an unrestricted license under Chapter 31b, Nurse Practice Act, the performance of an erbium full ablation resurfacing procedure or a CO2 fractionated resurfacing procedure, if the physician:
  (a) prescribes that specific procedure for the patient who is to receive the procedure;
  (b) ensures that the advanced practice registered nurse performs the procedure under the indirect supervision of the physician; and
  (c) verifies that the advanced practice registered nurse is qualified to perform the procedure by having received at least 50 hours of training specific to the procedure to be performed and the laser to be used.

Enacted by Chapter 362, 2012 General Session

58-68-806 Representation of medical specialization.

(1) A physician may not represent to another person that the physician is certified in a medical specialty or certified by a particular board unless:
  (a) the physician includes in the representation the name of:
    (i) the certification board or entity; and
    (ii) the medical specialty or procedure for which the physician is certified; and
  (b) the board or certification entity meets the requirements of Subsection (2).

(2) A certification entity or board under Subsection (1) shall meet the following qualifications:
(a) be included in the American Board of Medical Specialties or an American Osteopathic Association Certifying Board; or
(b)
(i) require an Accreditation Council for Graduate Medical Education or American Osteopathic Association approved post-graduate training program that provides complete training in the specialty or sub-specialty; and
(ii) be certified or had prior certification by the member board of the American Board of Medical Specialties or an American Osteopathic Association Certifying Board.

Enacted by Chapter 162, 2012 General Session

Chapter 69
Dentist and Dental Hygienist Practice Act

Part 1
General Provisions

58-69-101 Title.
This chapter is the "Dentist and Dental Hygienist Practice Act."

Enacted by Chapter 116, 1996 General Session

58-69-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Dentist and Dental Hygienist Licensing Board created in Section 58-69-201.
(2) "Dental assistant" means an unlicensed individual who engages in, directly or indirectly, supervised acts and duties as defined by division rule made in collaboration with the board.
(3) "Direct supervision" means the supervising dentist is present and available for face-to-face communication with the person being supervised when and where professional services are being provided.
(4) "General supervision" means that the supervising dentist is available for consultation regarding work the supervising dentist has authorized, without regard as to whether the supervising dentist is located on the same premises as the person being supervised.
(5) "Indirect supervision" means that the supervising dentist is present within the facility in which the person being supervised is providing services and is available to provide immediate face-to-face communication with the person being supervised.
(6) "Practice of dental hygiene" means, regarding humans:
(a) under the general supervision of a dentist, or under a written agreement with a dentist licensed under this chapter, as provided in Section 58-69-801, to:
(i) perform preliminary clinical examination of human teeth and gums;
(ii) make preliminary instrumental examination of patients' teeth;
(iii) expose dental radiographs;
(iv) assess dental hygiene status and collaborate with the supervising dentist regarding a dental hygiene treatment plan for a patient;

(v) remove deposits, accumulations, calculus, and concretions from the surfaces of human teeth;
(vi) remove toxins and debris from subgingival surfaces;
(vii) provide dental hygiene care in accordance with a dentist's treatment plan for a patient;
(viii) take impressions of teeth or jaws except for impressions or registrations to supply artificial teeth as substitutes for natural teeth; or
(ix) engage in other practices of dental hygiene as defined by division rule;
(b) under the indirect supervision of a dentist to administer in accordance with standards and ethics of the professions of dentistry and dental hygiene:
(i) local anesthesia; or
(ii) nitrous oxide analgesia;
(c) to represent oneself by any title, degree, or in any other way as being a dental hygienist; or
(d) to direct a dental assistant when the supervising dentist is not on the premises.
(7) "Practice of dentistry" means the following, regarding humans:
(a) to offer, undertake, or represent that a person will undertake by any means or method to:
(i) examine, evaluate, diagnose, treat, operate, or prescribe therapy for any disease, pain, injury, deficiency, deformity, or any other condition of the human teeth, alveolar process, gums, jaws, or adjacent hard and soft tissues and structures in the maxillofacial region;
(ii) take an appropriate history and physical consistent with the level of professional service to be provided and the available resources in the facility in which the service is to be provided;
(iii) take impressions or registrations;
(iv) supply artificial teeth as substitutes for natural teeth;
(v) remove deposits, accumulations, calculus, and concretions from the surfaces of teeth; and
(vi) correct or attempt to correct malposition of teeth;
(b) to administer anesthetics necessary or proper in the practice of dentistry only as allowed by an anesthesia permit obtained from the division;
(c) to administer and prescribe drugs related to and appropriate in the practice of dentistry;
(d) to supervise the practice of a dental hygienist or dental assistant as established by division rule made in collaboration with the board; or
(e) to represent oneself by any title, degree, or in any other way that one is a dentist.
(8) "Public health setting" means:
(a) an individual's residence, if the individual is unable to leave the residence;
(b) a school, as part of a school-based program;
(c) a nursing home;
(d) an assisted living or long-term care facility;
(e) a community health center;
(f) a federally-qualified health center; or
(g) a mobile dental health program that employs a dentist who is licensed under this chapter.
(9) "Supervising dentist" means a licensed dentist who has agreed to provide supervision of a dental hygienist or unlicensed individual in accordance with the provisions of this chapter.
(10) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-69-501.
(11) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-69-502 and as may be further defined by rule.

Amended by Chapter 343, 2015 General Session

Part 2
Board

58-69-201 Board.
(1) There is created the Dentist and Dental Hygienist Licensing Board, consisting of six licensed dentists, two licensed dental hygienists, and one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3)
  (a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
  (b) In addition, the board shall designate one of its members on a permanent or rotating basis to:
    (i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
    (ii) advise the division with respect to the conduct of investigations of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.
(5) Board members may serve as examiners for licensing examinations established under Section 58-69-302 when requested by the examining body.
(6) Board members serving as examiners shall be compensated in accordance with Subsection 58-1-201(4), but may not be compensated for per diem or allowable expenses if they are eligible to receive compensation from the examining body.

Amended by Chapter 10, 1997 General Session

Part 3
Licensing

58-69-301 License required -- License classifications -- Anesthesia and analgesia permits.
(1) A license is required to engage in the practice of dentistry or dental hygiene except as specifically provided in Section 58-69-306 or 58-1-307.
(2) The division shall issue to individuals qualified under the provisions of this chapter a license in the classification:
  (a) dentist; or
  (b) dental hygienist.
(3) A permit is required to engage in administration of anesthesia or analgesia in the practice of dentistry or dental hygiene.
(4) The division in collaboration with the board shall establish by rule:
  (a) the classifications of anesthesia and analgesia permits and the scope of practice permitted under each permit; and
  (b) the qualifications for each classification of anesthesia and analgesia permit.

Amended by Chapter 320, 2015 General Session

58-69-302 Qualifications -- Licensure as a dentist -- Licensure as a dental hygienist.
(1) An applicant for licensure as a dentist, except as provided in Subsection (2), shall:

(a) submit an application in a form as prescribed by the division;
(b) pay a fee as determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as a dentist as evidenced by having received an earned doctor's degree in dentistry from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;
(e) pass the National Board Dental Examinations as administered by the Joint Commission on National Dental Examinations of the American Dental Association;
(f) pass any one of the regional dental clinical licensure examinations unless the division, in collaboration with the board, determines that:
(i) the examination is clearly inferior to the Western Regional Examination Board; and
(ii) reliance upon the examination poses an unjustifiable threat to public health and safety;
(g) pass any other examinations regarding applicable law, rules, or ethics as established by division rule made in collaboration with the board;
(h) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and
(i) meet with the board if requested by the board or division for the purpose of examining the applicant's qualifications for licensure.
(2) An applicant for licensure as a dentist qualifying under the endorsement provision of Section 58-1-302 shall:
(a) be currently licensed in good standing in another jurisdiction set forth in Section 58-1-302;
(b)
(i) document having met all requirements for licensure under Subsection (1) except, an applicant having received licensure in another state or jurisdiction prior to the year when the National Board Dental Examinations were first administered, shall document having passed a state administered examination acceptable to the division in collaboration with the board; or
(ii) document having obtained licensure in another state or jurisdiction upon which licensure by endorsement is based by meeting requirements which were equal to licensure requirements in Utah at the time the applicant obtained licensure in the other state or jurisdiction; and
(c) document having been successfully engaged in practice as a dentist for not less than 6,000 hours in the five years immediately preceding the date of application for licensure.
(3) An applicant for licensure as a dental hygienist, except as set forth in Subsection (4), shall:
(a) submit an application in a form as prescribed by the division;
(b) pay a fee as determined by the department pursuant to Section 63J-1-504;
(c) be of good moral character;
(d) be a graduate holding a certificate or degree in dental hygiene from a school accredited by the Commission on Dental Accreditation of the American Dental Association;
(e) pass the National Board Dental Hygiene Examination as administered by the Joint Commission on National Dental Examinations of the American Dental Association;
(f) pass an examination consisting of practical demonstrations in the practice of dental hygiene and written or oral examination in the theory and practice of dental hygiene as established by division rule made in collaboration with the board;
(g) pass any other examinations regarding applicable law, rules, and ethics as established by rule by division rule made in collaboration with the board;
(h) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and

(i) meet with the board if requested by the board or division for the purpose of examining the applicant's qualifications for licensure.
(4) An applicant for licensure as a dental hygienist qualifying under the endorsement provision of Section 58-1-302 shall:
(a) be currently licensed in another jurisdiction set forth in Section 58-1-302;
(b)
(i) document having met all requirements for licensure under Subsection (3) except, an applicant having received licensure in another state or jurisdiction prior to 1962, the year when the National Board Dental Hygiene Examinations were first administered, shall document having passed a state administered examination acceptable to the division in collaboration with the board; or
(ii) document having obtained licensure in another state or jurisdiction upon which licensure by endorsement is based by meeting requirements which were equal to licensure requirements in Utah at the time the applicant obtained licensure in the other state or jurisdiction; and
(c) document having been successfully engaged in practice as a dental hygienist for not less than 2,000 hours in the two years immediately preceding the date of application for licensure.

Amended by Chapter 320, 2015 General Session

58-69-303 Term of license -- Expiration -- Renewal.
(1)
(a) The division shall issue each license and permit under this chapter in accordance with a two-year renewal cycle established by division rule.
(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) At the time of renewal, the licensee shall show compliance with continuing education renewal requirements.
(3) Each license expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Amended by Chapter 268, 2001 General Session

58-69-304 Continuing education.
During each two-year licensure cycle or other cycle defined by rule, a licensee under this chapter shall complete qualified continuing professional education requirements established by division rule made in collaboration with the board.

Enacted by Chapter 116, 1996 General Session

58-69-306 Exemptions from licensure.
In addition to the exemptions from licensure in Section 58-1-307:
(1) an individual performing mechanical work on inert matter in a laboratory pursuant to a written prescription from a licensed dentist may engage in acts and practices included in the practice of dentistry or dental hygiene without being licensed under this chapter;
(2) an individual licensed in good standing as a dentist in another state, with no licensing action pending and no less than two years of professional experience, may engage in the practice of dentistry without being licensed under this chapter if:
(a) the services are rendered as a public service and for a noncommercial purpose;

(b) no fee or other consideration of value is charged, received, expected, or contemplated for the services rendered beyond an amount necessary to cover the proportionate cost of malpractice insurance; and
(c) the individual does not otherwise engage in unlawful or unprofessional conduct; and
(3) an individual who is appointed to a faculty position at an accredited dental school may practice dentistry within the scope of the individual's employment at the accredited dental school or at a hospital or clinic affiliated with the accredited dental school if the individual:
(a) holds a license to practice dentistry in another jurisdiction;
(b) is permitted to the work in the United States under federal immigration law; and
(c)
(i)
(A) successfully completes Part I and Part II of the National Board Dental Examination; and
(B) holds a degree in a dental specialty area, as defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(ii)
(A) holds a certificate, master's degree, or doctorate degree from an accredited higher education or dental education institution in an area that supports dental education; and
(B) practices only under the supervision of an individual licensed as a dentist under this chapter; or
(iii)
(A) has established expertise in an area of dentistry that is recognized by a United States higher education or dental education institution or by a national professional board or association; and
(B) practices only under the supervision of an individual licensed as a dentist under this chapter.

Amended by Chapter 320, 2015 General Session

58-69-307 Status of licenses held on the effective date of this chapter.

An individual holding a current license or permit as a dentist or dental hygienist that was issued under any prior state law is considered to hold a current license or permit in the same classification under this chapter.

Enacted by Chapter 116, 1996 General Session

Part 4
License Denial and Discipline

58-69-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for division action regarding the following are under Section 58-1-401:
(1) refusing to issue a license to an applicant or refusing to renew the license of a licensee;
(2) revoking, suspending, restricting, or placing on probation the license of a licensee;
(3) issuing a public or private reprimand to a licensee; and
(4) issuing a cease and desist order.

Enacted by Chapter 116, 1996 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-69-501 Unlawful conduct.

"Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

(1) administering anesthesia or analgesia in the practice of dentistry or dental hygiene if the individual does not hold a current permit issued by the division authorizing that individual to administer the type of anesthesia or analgesia used;

(2) practice of dental hygiene by a licensed dental hygienist when not under the supervision of a dentist, or under a written agreement with a dentist who is licensed under this chapter and who is a Utah resident, in accordance with the provisions of this chapter; or

(3) directing or interfering with a licensed dentist's judgment and competent practice of dentistry.

Amended by Chapter 343, 2015 General Session

58-69-502 Unprofessional conduct.

(1) "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:

(a) sharing professional fees with an unlicensed person or paying any person for sending or referring a patient;

(b) making an unsubstantiated claim of superiority in training or skill as a dentist or dental hygienist or in the performance of professional services;

(c) refusing authorized agents of the division or state or local health authorities access to the facilities related to the practice of dentistry or dental hygiene during normal business hours for the purpose of inspection; and

(d) failing to maintain facilities, instruments, equipment, supplies, appliances, or other property or conditions related to the practice of dentistry in a sanitary condition consistent with the standards and ethics of the professions of dentistry or dental hygiene.

(2) For purposes of Subsection (1)(b), an unsubstantiated claim of superiority:

(a) includes for the practice of dentistry:

(i) advertising or otherwise holding oneself out to the public as practicing a dental specialty in which the dentist has not successfully completed the education specified for the dental specialty as defined by the American Dental Association; and

(ii) using the following words in advertising "Endodontist," "Orthodontist," "Oral and Maxillofacial Surgeon," "Specialist," "Board Certified," "Diplomat," "Practice Limited to," "Pediatric Dentist," "Periodontist," or "Limited to Specialty of" when the dentist has not successfully completed the education specified for the dental specialty as defined by the American Dental Association; and

(b) does not include a dentist who advertises as being qualified in a recognized specialty area of dental practice so long as each such advertisement, regardless of form, contains a prominent disclaimer that the dentist is licensed as a general dentist or that the specialty services will be provided by a general dentist.

Amended by Chapter 158, 2006 General Session

58-69-503 Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provisions of Subsection 58-1-501(1)(a) and Section 58-69-501 with regard to the practice of dentistry is guilty of a third degree felony.
(2) Any person who violates the unlawful conduct provisions of Subsection 58-1-501(1)(a) with regard to the practice of dental hygiene is guilty of a class A misdemeanor.

Enacted by Chapter 116, 1996 General Session

Part 6
Impaired Licensee

58-69-601 Mentally incompetent or incapacitated dentist or dental hygienist.
(1) As used in this section:
(a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.
(b) "Mental illness" is as defined in Section 62A-15-602.
(2) If a court of competent jurisdiction determines a dentist or dental hygienist is an incapacitated person or that the dentist or hygienist has a mental illness and is unable to safely engage in the practice of dentistry or dental hygiene, the director shall immediately suspend the license of the dentist or dental hygienist upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the dentist or dental hygienist, in writing, of the suspension.
(3)
(a) If the division and a majority of the board find reasonable cause to believe a dentist or dental hygienist, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing dentistry or dental hygiene with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the dentist or dental hygienist with a notice of hearing on the sole issue of the capacity of the dentist or dental hygienist to competently and safely engage in the practice of dentistry or dental hygiene.
(b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).
(4)
(a) Every dentist or dental hygienist who accepts the privilege of being licensed under this chapter gives consent to:
(i) submitting at the dentist or dental hygienist's own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and
(ii) the admissibility of the reports of the examining practitioner's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.
(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:
(i) the dentist or dental hygienist has a mental illness, is incapacitated, or otherwise unable to practice dentistry or dental hygiene with reasonable skill and safety; and
(ii) immediate action by the division and the board is necessary to prevent harm to the dentist's or dental hygienist's patients or the general public.

(c)
(i) Failure of a dentist or dental hygienist to submit to the examination ordered under this section is a ground for the division's immediate suspension of the dentist's or dental hygienist's license by written order of the director.
(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the dentist or dental hygienist and was not related directly to the illness or incapacity of the dentist or dental hygienist.
(5)
(a) A dentist or dental hygienist whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.
(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the dentist's or dental hygienist's patients or the general public.
(6) A dentist or dental hygienist whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the dentist or dental hygienist, under procedures established by division rule, regarding any change in the dentist's or dental hygienist's condition, to determine whether:
(a) the dentist or dental hygienist is or is not able to safely and competently engage in the practice of dentistry or dental hygiene; and
(b) the dentist or dental hygienist is qualified to have the dentist or dental hygienist's licensure to practice under this chapter restored completely or in part.

Amended by Chapter 364, 2013 General Session

Part 7
Immunity Provisions

58-69-701 Immunity provisions apply.
The provisions of Chapter 13, Health Care Providers Immunity from Liability Act, apply to licensees under this chapter.

Enacted by Chapter 116, 1996 General Session

58-69-702 Opiate antagonist -- Exclusion from unlawful or unprofessional conduct.
(1) As used in this section:
(a) "Dispense" means the same as that term is defined in Section 58-17b-102.
(b) "Increased risk" means the same as that term is defined in Section 26-55-102.
(c) "Opiate antagonist" means the same as that term is defined in Section 26-55-102.
(d) "Opiate-related drug overdose event" means the same as that term is defined in Section 26-55-102.
(e) "Prescribe" means the same as that term is defined in Section 58-17b-102.

(2) The prescribing or dispensing of an opiate antagonist by an individual licensed under this chapter to engage in the practice of dentistry is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:
(a) in a good faith effort to assist:
(i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or
(ii) a family member of, friend of, or other person, including a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or
(b) to an overdose outreach provider pursuant to Subsection 26-55-104(2)(a)(iii).
(3) The provisions of this section and Title 26, Chapter 55, Opiate Overdose Response Act, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.

Enacted by Chapter 207, 2016 General Session
Amended by Chapter 207, 2016 General Session, (Coordination Clause)

Part 8
Practice Standards

58-69-801 Dental hygienist -- Limitations on practice.
A dental hygienist licensed under this chapter may only practice dental hygiene:
(1) in an accredited dental or dental hygienist school to teach and demonstrate the practice of dental hygiene;
(2) for a public health agency;
(3) under the supervision of a dentist, for an employee leasing company or temporary personnel service company providing employees to a dentist or other person lawfully providing dental services:
(a) under the indirect supervision of a dentist licensed under this chapter at any time the dental hygienist is administering an anesthetic or analgesia as permitted under this chapter or division rules made under this chapter;
(b) under the general supervision of a dentist licensed under this chapter within the office of the supervising dentist and upon patients of record of the supervising dentist; and
(c) under the general supervision of a dentist licensed under this chapter, and the practice is conducted outside of the office of the supervising dentist, if:
(i) the dental hygiene work performed is authorized by the supervising dentist as a part of and in accordance with the supervising dentist's current treatment plan for the patient;
(ii) no anesthetic or analgesia is used;
(iii) the supervising dentist has determined the patient's general health and oral health are so that the dental hygiene work can be performed under general supervision and with an acceptable level of risk or injury as determined by the supervising dentist;
(iv) the supervising dentist accepts responsibility for the dental hygiene work performed under general supervision; and
(v)
(A) the dental hygienist's work is performed on a patient who is homebound or within a hospital, nursing home, or public health agency or institution; and

(B) the patient is the supervising dentist's patient of record and the dentist has examined the patient within six months prior to the patient's receiving treatment from a dental hygienist under this Subsection (3); or

(4) under a written agreement with a dentist who is licensed under this chapter and who is a Utah resident if:
  (a) the dental hygienist practices in a public health setting;
  (b) the dentist is available in person, by phone, or by electronic communication;
  (c) the agreement provides that the dental hygienist shall refer a patient with a dental need beyond the dental hygienist's scope of practice to a licensed dentist; and
  (d) the dental hygienist obtains from each patient an informed consent form that provides that treatment by a dental hygienist is not a substitute for a dental examination by a dentist.

Amended by Chapter 348, 2016 General Session

58-69-802 Practice within limits of law, education, training, experience, and competency.

Each individual licensed under this chapter shall confine his practice to those acts or practices:
(1) permitted by law; and
(2) in which the individual is competent by education, training, and experience.

Enacted by Chapter 116, 1996 General Session

58-69-803 Use of unlicensed individuals.

The standards regulating the use of unlicensed individuals as dental assistants shall be established by division rule made in collaboration with the board.

Enacted by Chapter 116, 1996 General Session

58-69-804 Form of practice.

(1) A dentist licensed under this chapter may engage in practice as a dentist, or in the practice of dentistry only as an individual licensee, but as an individual licensee, he may be:
  (a) an individual operating as a business proprietor;
  (b) an employee of another person;
  (c) a partner in a lawfully organized partnership;
  (d) a lawfully formed professional corporation;
  (e) a lawfully organized limited liability company;
  (f) a lawfully organized business corporation; or
  (g) any other form of organization recognized by the state which is not prohibited by rule adopted by division rules made in collaboration with the board.
(2) Regardless of the form in which a licensee engages in the practice of dentistry, the licensee may not permit another person who is not licensed in Utah as a dentist and is not otherwise competent to engage in the practice of dentistry to direct, or in any other way participate in, or interfere in the licensee's practice of dentistry.

Enacted by Chapter 116, 1996 General Session

58-69-805 Disclosure of financial interest by licensee.

(1) Licensees under this chapter may not refer patients to any clinical laboratory or health care facility in which the licensee or a member of the licensee's immediate family has any financial

relationship as that term is described in 42 U.S.C. 1395nn, unless the licensee at the time of making the referral discloses that relationship, in writing, to the patient.
(2) The written disclosure under Subsection (1) shall also state the patient may choose any facility or laboratory for the work or treatment.

Enacted by Chapter 116, 1996 General Session

58-69-806 Consumer access to provider charges.
Beginning January 1, 2011, a dentist licensed under this chapter shall, when requested by a consumer:
(1) make a list of prices charged by the dentist available for the consumer which includes the dentist's 25 most frequently performed:
(a) clinic procedures or clinic services;
(b) out-patient procedures; and
(c) in-patient procedures; and
(2) provide the consumer with information regarding any discount available for:
(a) services not covered by insurance; or
(b) prompt payment of billed charges.

Enacted by Chapter 68, 2010 General Session

Chapter 70a
Physician Assistant Act

Part 1
General Provisions

58-70a-101 Title.
This chapter is known as the "Physician Assistant Act."

Enacted by Chapter 229, 1997 General Session

58-70a-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Physician Assistant Licensing Board created in Section 58-70a-201.
(2)
(a) "Delegation of services agreement" means written criteria jointly developed by a physician assistant's supervising physician and any substitute supervising physicians and the physician assistant, that permits a physician assistant, working under the direction or review of the supervising physician, to assist in the management of common illnesses and injuries.
(b) The agreement defines the working relationship and delegation of duties between the supervising physician and the physician assistant as specified by division rule and shall include:
(i) the prescribing of controlled substances;
(ii) the degree and means of supervision;

(iii) the frequency and mechanism of chart review;
(iv) procedures addressing situations outside the scope of practice of the physician assistant; and
(v) procedures for providing backup for the physician assistant in emergency situations.
(3) "Direct supervision" means the supervising physician is:
(a) physically present at the point of patient treatment on site where the physician assistant he is supervising is practicing; and
(b) immediately available for consultation with the physician assistant.
(4) "Practice as a physician assistant" means:
(a) the professional activities and conduct of a physician assistant in diagnosing, treating, advising, or prescribing for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, dependent upon and under the supervision of a supervising physician or substitute supervising physician in accordance with a delegation of services agreement; and
(b) the physician assistant acts as the agent of the supervising physician or substitute supervising physician when acting in accordance with a delegation of services agreement.
(5) "Substitute supervising physician" means an individual who meets the requirements of a supervising physician under this chapter and acts as the supervising physician in the absence of the supervising physician.
(6) "Supervising physician" means an individual who:
(a) is currently licensed to practice under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
(b) acts as the primary supervisor of a physician assistant and takes responsibility for the professional practice and conduct of a physician assistant in accordance with this chapter; and
(c) is not an employee of the physician assistant he supervises.
(7) "Supervision" means the supervising physician is available for consultation with the physician assistant, either personally or by other means permitting direct verbal communication between the physician and physician assistant.
(8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-70a-502.
(9) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-70a-503 and as may be further defined by rule.

Enacted by Chapter 229, 1997 General Session

Part 2
Board

58-70a-201 Board.
(1) There is created the Physician Assistant Licensing Board, which consists of seven members:
(a) three licensed physicians, at least two of whom are individuals who are supervising or who have supervised a physician assistant;
(b) three physician assistants, one of whom is involved in the administration of an approved physician assistant education program within the state; and
(c) one person from the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
  (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
  (b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint. The board member may be disqualified:
  (a) on the member's own motion, due to actual or perceived bias or lack of objectivity; or
  (b) upon challenge for cause raised on the record by any party to the adjudicative proceeding.

Amended by Chapter 37, 2010 General Session

Part 3
Licensing

58-70a-301 Licensure required -- License classifications.
(1) A license is required to engage in practice as a physician assistant, except as specifically provided in Section 58-70a-305 or 58-1-307.
(2) The division shall issue to a person who qualifies under this chapter a license in the classification of physician assistant.

Enacted by Chapter 229, 1997 General Session

58-70a-302 Qualifications for licensure.
Each applicant for licensure as a physician assistant shall:
(1) submit an application in a form prescribed by the division;
(2) pay a fee determined by the department under Section 63J-1-504;
(3) be of good moral character;
(4) have successfully completed a physician assistant program accredited by the:
  (a) Accreditation Review Commission on Education for the Physician Assistant; or
  (b) if prior to January 1, 2001, either the:
    (i) Committee on Accreditation of Allied Health Education Programs; or
    (ii) Committee on Allied Health Education and Accreditation;
(5) have passed the licensing examinations required by division rule made in collaboration with the board;
(6) meet with the board and representatives of the division, if requested, for the purpose of evaluating the applicant's qualifications for licensure; and
(7)
  (a) if the applicant desires to practice in Utah, complete a form provided by the division indicating:
    (i) the applicant has completed a delegation of services agreement signed by the physician assistant, supervising physician, and substitute supervising physicians; and
    (ii) the agreement is on file at the Utah practice sites; or

(b) complete a form provided by the division indicating the applicant is not practicing in Utah and, prior to practicing in Utah, the applicant will meet the requirements of Subsection (7)(a).

Amended by Chapter 37, 2010 General Session

58-70a-303 Term of license -- Expiration -- Renewal.

(1)
(a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.
(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) At the time of renewal, the licensee shall show compliance with continuing education renewal requirements.
(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Amended by Chapter 268, 2001 General Session

58-70a-304 License renewal -- Continuing education.

(1) Prior to license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule, complete qualified continuing professional education requirements as defined by division rule made in collaboration with the board.
(2) If a renewal period is extended or shortened under Section 58-70a-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

Amended by Chapter 268, 2001 General Session

58-70a-305 Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts included within the definition of practice as a physician assistant, subject to the stated circumstances and limitations, without being licensed under this chapter:

(1) a student enrolled in an accredited physician assistant education program while engaged in activities as a physician assistant:
(a) that are a part of the education program;
(b) that are conducted under the direct supervision of a:
(i) physician associated with the program; or
(ii) licensed physician assistant, at the request of the supervising physician and on a temporary basis, as defined by rule;
(c) for which the program accepts in writing the responsibility for the student; and
(2) a "medical assistant," as defined in Sections 58-67-102 and 58-68-102, who:
(a) does not diagnose, advise, independently treat, or prescribe to or on behalf of any person; and
(b) for whom the supervising physician accepts responsibility.

Amended by Chapter 238, 2016 General Session

58-70a-306 Temporary license.

(1) An applicant for licensure as a physician assistant who has met all qualifications for licensure except passing an examination component as required in Section 58-70a-302, may apply for and be granted a temporary license to practice under Subsection (2).
(2)
(a) The applicant shall submit to the division evidence of completion of a physician assistant program as defined in Subsection 58-70a-302(4).
(b)
(i) The temporary license shall be issued for a period not to exceed 120 days to allow the applicant to pass the Physician Assistant National Certifying Examination.
(ii) The temporary license may not be renewed or extended.
(c) A physician assistant holding a temporary license may work only under the direct supervision of an approved supervising or substitute supervising physician in accordance with a delegation of services agreement, and all patient charts shall be reviewed and countersigned by the supervising or substitute supervising physician.

Amended by Chapter 37, 2010 General Session

Part 4
License Denial and Discipline

58-70a-401 Grounds for denial of license -- Disciplinary proceedings.
Grounds for the following division actions regarding a licensee are under Section 58-1-401:
(1) refusing to issue a license to an applicant;
(2) refusing to renew the license of a licensee;
(3) revoking, suspending, restricting, or placing on probation the license of a licensee;
(4) issuing a public or private reprimand to a licensee; and
(5) issuing a cease and desist order.

Enacted by Chapter 229, 1997 General Session

Part 5
Scope of Practice - Unlawful and Unprofessional Conduct - Penalties

58-70a-501 Scope of practice.
(1) A physician assistant may provide any medical services that are not specifically prohibited under this chapter or rules adopted under this chapter, and that are:
(a) within the physician assistant's skills and scope of competence;
(b) within the usual scope of practice of the physician assistant's supervising physician; and
(c) provided under the supervision of a supervising physician and in accordance with a delegation of services agreement.
(2) A physician assistant, in accordance with a delegation of services agreement, may prescribe or administer an appropriate controlled substance if:
(a) the physician assistant holds a Utah controlled substance license and a DEA registration;

(b) the prescription or administration of the controlled substance is within the prescriptive practice of the supervising physician and also within the delegated prescribing stated in the delegation of services agreement; and
(c) the supervising physician cosigns any medical chart record of a prescription of a Schedule 2 or Schedule 3 controlled substance made by the physician assistant.
(3) A physician assistant shall, while practicing as a physician assistant, wear an identification badge showing his license classification as a practicing physician assistant.
(4) A physician assistant may not:
(a) independently charge or bill a patient, or others on behalf of the patient, for services rendered;
(b) identify himself to any person in connection with activities allowed under this chapter other than as a physician assistant; or
(c) use the title "doctor" or "physician," or by any knowing act or omission lead or permit anyone to believe he is a physician.

Amended by Chapter 38, 1998 General Session

58-70a-502 Unlawful conduct.

"Unlawful conduct" includes engaging in practice as a licensed physician assistant while not under the supervision of a supervising physician or substitute supervising physician.

Amended by Chapter 72, 2014 General Session

58-70a-503 Unprofessional conduct.

"Unprofessional conduct" includes:
(1) violation of a patient confidence to any person who does not have a legal right and a professional need to know the information concerning the patient;
(2) knowingly prescribing, selling, giving away, or directly or indirectly administering, or offering to prescribe, sell, furnish, give away, or administer any prescription drug except for a legitimate medical purpose upon a proper diagnosis indicating use of that drug in the amounts prescribed or provided;
(3) prescribing prescription drugs for himself or administering prescription drugs to himself, except those that have been legally prescribed for him by a licensed practitioner and that are used in accordance with the prescription order for the condition diagnosed;
(4) failure to maintain at the practice site a delegation of services agreement that accurately reflects current practices;
(5) failure to make the delegation of services agreement available to the division for review upon request;
(6) in a practice that has physician assistant ownership interests, failure to allow the supervising physician the independent final decision making authority on patient treatment decisions, as set forth in the delegation of services agreement or as defined by rule; and
(7) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable.

Amended by Chapter 72, 2014 General Session

58-70a-504 Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provision defined in Subsection 58-1-501(1)(a) is guilty of a third degree felony.

(2) Any person who violates any of the unlawful conduct provisions defined in Subsections 58-1-501(1)(b) through (1)(e) or Section 58-70a-502 is guilty of a class A misdemeanor.

Enacted by Chapter 229, 1997 General Session

58-70a-505 Opiate antagonist -- Exclusion from unlawful or unprofessional conduct.

(1) As used in this section:
  (a) "Dispense" means the same as that term is defined in Section 58-17b-102.
  (b) "Increased risk" means the same as that term is defined in Section 26-55-102.
  (c) "Opiate antagonist" means the same as that term is defined in Section 26-55-102.
  (d) "Opiate-related drug overdose event" means the same as that term is defined in Section 26-55-102.
  (e) "Prescribe" means the same as that term is defined in Section 58-17b-102.
(2) The prescribing or dispensing of an opiate antagonist by a licensee under this chapter is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:
  (a) in a good faith effort to assist:
    (i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or
    (ii) a family member of, friend of, or other person, including a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or
  (b) to an overdose outreach provider pursuant to Subsection 26-55-104(2)(a)(iii).
(3) The provisions of this section and Title 26, Chapter 55, Opiate Overdose Response Act, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.

Amended by Chapter 202, 2016 General Session, (Coordination Clause)
Amended by Chapter 202, 2016 General Session
Amended by Chapter 207, 2016 General Session
Amended by Chapter 208, 2016 General Session

Chapter 71
Naturopathic Physician Practice Act

Part 1
General Provisions

58-71-101 Title.

This chapter is known as the "Naturopathic Physician Practice Act."

Enacted by Chapter 282, 1996 General Session

58-71-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Acupuncture" has the same definition as in Section 58-72-102.
(2) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
(3) "Board" means the Naturopathic Physicians Licensing Board created in Section 58-71-201.
(4) "Diagnose" means:
(a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;
(b) to attempt to conduct an examination or determination described under Subsection (4)(a);
(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (4)(a); or
(d) to make an examination or determination as described in Subsection (4)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.
(5) "Local anesthesia" means an agent, whether a natural medicine or nonscheduled prescription drug, which:
(a) is applied topically or by injection associated with the performance of minor office procedures;
(b) has the ability to produce loss of sensation at the site of minor office procedures; and
(c) does not cause loss of consciousness or produce general sedation.
(6) "Medical naturopathic assistant" means an unlicensed individual working under the direct and immediate supervision of a licensed naturopathic physician and engaged in specific tasks assigned by the licensed naturopathic physician in accordance with the standards and ethics of the profession.
(7)
(a) "Minor office procedures" means:
(i) the use of operative, electrical, or other methods for repair and care of superficial lacerations, abrasions, and benign lesions;
(ii) removal of foreign bodies located in the superficial tissues, excluding the eye or ear;
(iii) the use of antiseptics and local anesthetics in connection with minor office surgical procedures; and
(iv) if approved by the United States Food and Drug Administration, percutaneous injection into skin, tendons, ligaments, muscles, and joints with:
(A) local anesthetics and nonscheduled prescription medications; and
(B) natural substances.
(b) "Minor office procedures" does not include:
(i) general or spinal anesthesia;
(ii) office procedures more complicated or extensive than those set forth in Subsection (7)(a);
(iii) procedures involving the eye; and
(iv) any office procedure involving tendons, nerves, veins, or arteries.
(8) "Natural medicine" means:
(a) food, food extracts, dietary supplements as defined by the federal Food, Drug, and Cosmetics Act, all homeopathic remedies, and plant substances that are not designated as prescription drugs or controlled substances;
(b) over-the-counter medications;
(c) other nonprescription substances, the prescription or administration of which is not otherwise prohibited or restricted under federal or state law;

(d) prescription drugs:
(i) that, except as provided in Subsection (8)(e), are not controlled substances as defined in Section 58-37-2;
(ii) the prescription of which is consistent with the competent practice of naturopathic medicine; and
(iii) the prescription of which is approved by the division in collaboration with the naturopathic formulary advisory peer committee; and
(e) testosterone, if the testosterone is:
(i) bio-identical;
(ii) designed to be:
(A) administered topically, for transdermal absorption; or
(B) absorbed across the mucosal membranes of the mouth; and
(iii) prescribed or administered, in accordance with the requirements of federal and state law, solely for the purpose of treating a patient with a low testosterone level in order to restore the patient to a normal testosterone level.
(9)
(a) "Naturopathic childbirth" means uncomplicated natural childbirth assisted by a naturopathic physician, and includes the use of:
(i) natural medicines; and
(ii) uncomplicated episiotomy.
(b) "Naturopathic childbirth" does not include the use of:
(i) forceps delivery;
(ii) general or spinal anesthesia;
(iii) caesarean section delivery; or
(iv) induced labor or abortion.
(10) "Naturopathic mobilization therapy":
(a) means manually administering mechanical treatment of body structures or tissues for the purpose of restoring normal physiological function to the body by normalizing and balancing the musculoskeletal system of the body;
(b) does not mean manipulation or adjustment of the joints of the human body beyond the elastic barrier; and
(c) does not include manipulation as used in Title 58, Chapter 73, Chiropractic Physician Practice Act.
(11)
(a) "Naturopathic physical medicine" means the use of the physical agents of air, water, heat, cold, sound, light, and electromagnetic nonionizing radiation, and the physical modalities of electrotherapy, acupuncture, diathermy, ultraviolet light, ultrasound, hydrotherapy, naturopathic mobilization therapy, and exercise.
(b) "Naturopathic physical medicine" does not include the practice of physical therapy or physical rehabilitation.
(12) "Practice of naturopathic medicine" means:
(a) a system of primary health care for the prevention, diagnosis, and treatment of human health conditions, injuries, and diseases that uses education, natural medicines, and natural therapies, to support and stimulate the patient's intrinsic self-healing processes:
(i) using naturopathic childbirth, but only if:
(A) the licensee meets standards of the American College of Naturopathic Obstetricians (ACNO) or its successor as determined by the division in collaboration with the board; and

(B) the licensee follows a written plan for naturopathic physicians practicing naturopathic childbirth approved by the division in collaboration with the board, which includes entering into an agreement with a consulting physician and surgeon or osteopathic physician, in cases where the scope of practice of naturopathic childbirth may be exceeded and specialty care and delivery is indicated, detailing the guidelines by which the naturopathic physician will:

(I) refer patients to the consulting physician; and

(II) consult with the consulting physician;

(ii) using naturopathic mobilization therapy;

(iii) using naturopathic physical medicine;

(iv) using minor office procedures;

(v) prescribing or administering natural medicine;

(vi) prescribing medical equipment and devices, diagnosing by the use of medical equipment and devices, and administering therapy or treatment by the use of medical devices necessary and consistent with the competent practice of naturopathic medicine;

(vii) prescribing barrier devices for contraception;

(viii) using dietary therapy;

(ix) taking and using diagnostic x-rays, electrocardiograms, ultrasound, and physiological function tests;

(x) taking of body fluids for clinical laboratory tests and using the results of the tests in diagnosis;

(xi) taking of a history from and conducting of a physical examination upon a human patient; and

(xii) prescribing and administering natural medicines and medical devices, except a naturopathic physician may only administer:

(A) a prescription drug, as defined in Section 58-17b-102, in accordance with Subsection (8)(d); and

(B) local anesthesia that is not a controlled substance, and only in the performance of minor office procedures;

(b) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (12)(a), whether or not for compensation; or

(c) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions, in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "naturopathic physician," "naturopathic doctor," "naturopath," "doctor of naturopathic medicine," "doctor of naturopathy," "naturopathic medical doctor," "naturopathic medicine," "naturopathic health care," "naturopathy," "N.D.," "N.M.D.," or any combination of these designations in any manner that might cause a reasonable person to believe the individual using the designation is a licensed naturopathic physician.

(13) "Prescribe" means to issue a prescription:

(a) orally or in writing; or

(b) by telephone, facsimile transmission, computer, or other electronic means of communication as defined by division rule.

(14) "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.

(15) "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.
(16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-71-501.
(17) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-71-502, and as may be further defined by division rule.

Amended by Chapter 110, 2014 General Session

Part 2
Board

58-71-201 Board.
(1) There is created the Naturopathic Physicians Licensing Board consisting of three licensed naturopathic physicians and two members of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3)
(a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
(b) The board may also designate one of its members on a permanent or rotating basis to:
(i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
(ii) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning that complaint.

Amended by Chapter 10, 1997 General Session

58-71-202 Naturopathic formulary peer committee.
(1) The division shall establish a naturopathic formulary advisory peer committee under Subsection 58-1-203(1)(f) to make recommendations to the board for the naturopathic formulary which shall:
(a) consist of noncontrolled legend medications deemed appropriate for the scope of practice of naturopathic physicians; and
(b) include all homeopathic remedies.
(2) The committee shall consist of five members:
(a) one naturopathic physician who is a member of the board;
(b) two naturopathic physicians who are not members of the board;
(c) one licensed pharmacist who is also a pharmacognosist; and
(d) one physician licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act.
(3) The committee members shall:
(a) be appointed by the director of the division;
(b) be appointed and serve in accordance with Section 58-1-201, except as those provisions are modified by this section; and
(c) serve without compensation, travel costs, or per diem for their services.

(4) The committee and the division may seek input from other licensing boards.

Amended by Chapter 110, 2014 General Session

Part 3
Licensing

58-71-301 Licensure required -- License classifications.

(1) A license is required to engage in the practice of naturopathic medicine, on or for any person in Utah, as a naturopathic physician.
(2) The division shall issue to a person who qualifies under this chapter a license in the classification of naturopathic physician.

Enacted by Chapter 282, 1996 General Session

58-71-302 Qualifications for licensure.

(1) An applicant for licensure as a naturopathic physician, except as set forth in Subsection (2), shall:
  (a) submit an application in a form prescribed by the division, which may include:
    (i) submissions by the applicant of information maintained by practitioner data banks, as designated by division rule, with respect to the applicant; and
    (ii) a record of professional liability claims made against the applicant and settlements paid by or in behalf of the applicant;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) be of good moral character;
  (d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as a naturopathic physician, as evidenced by having received an earned degree of doctor of naturopathic medicine from:
    (i) a naturopathic medical school or college accredited by the Council of Naturopathic Medical Education or its successor organization approved by the division;
    (ii) a naturopathic medical school or college that is a candidate for accreditation by the Council of Naturopathic Medical Education or its successor organization, and is approved by the division in collaboration with the board, upon a finding there is reasonable expectation the school or college will be accredited; or
    (iii) a naturopathic medical school or college which, at the time of the applicant's graduation, met current criteria for accreditation by the Council of Naturopathic Medical Education or its successor organization approved by the division;
  (e) provide satisfactory documentation of having successfully completed, after successful completion of the education requirements set forth in Subsection (1)(d), 12 months of clinical experience in naturopathic medicine in a residency program recognized by the division and associated with an accredited school or college of naturopathic medicine, and under the preceptorship of a licensed naturopathic physician, physician and surgeon, or osteopathic physician;
  (f) pass the licensing examination sequence required by division rule established in collaboration with the board;

(g) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and
(h) meet with the board and representatives of the division, if requested, for the purpose of evaluating the applicant's qualifications for licensure.
(2)
(a) In accordance with Subsection (2)(b), an applicant for licensure as a naturopathic physician under the endorsement provision of Section 58-1-302 shall:
(i) meet the requirements of Section 58-1-302;
(ii) document having met all requirements for licensure under Subsection (1) except the clinical experience requirement of Subsection (1)(e);
(iii) have passed the examination requirements established under Subsection (1)(f) which:
(A) the applicant has not passed in connection with licensure in another state or jurisdiction; and
(B) are available to the applicant to take without requiring additional professional education;
(iv) have been actively engaged in the practice of a naturopathic physician for not less than 6,000 hours during the five years immediately preceding the date of application for licensure in Utah; and
(v) meet with the board and representatives of the division for the purpose of evaluating the applicant's qualifications for licensure.
(b) The division may rely, either wholly or in part, on one or more credentialing associations designated by division rule, made in collaboration with the board, to document and certify in writing to the satisfaction of the division that an applicant has met each of the requirements of this Subsection (2), including the requirements of Section 58-1-302 that:
(i) the applicant holds a current license;
(ii) the education, experience, and examination requirements of the foreign country or the state, district, or territory of the United States that issued the applicant's license are, or were at the time the license was issued, equal to those of this state for licensure as a naturopathic physician; and
(iii) the applicant has produced evidence satisfactory to the division of the applicant's qualifications, identity, and good standing as a naturopathic physician.

Amended by Chapter 183, 2009 General Session

58-71-303 Term of license -- Expiration -- Renewal.
(1)
(a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.
(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) At the time of renewal, the licensee shall show compliance with continuing education renewal requirements.
(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Amended by Chapter 268, 2001 General Session

58-71-304 License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule, complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board.
(2) If a renewal period is extended or shortened under Section 58-71-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

Amended by Chapter 268, 2001 General Session

58-71-304.2 Temporary license.
(1) The division may issue a temporary license to an individual who:
  (a) meets all qualifications for licensure except completion of the 12 month clinical experience required under Section 58-71-302; and
  (b) presents a plan acceptable to the division and the board under which the applicant will practice under the direct supervision of a licensed naturopathic physician, physician and surgeon, or osteopathic physician, who supervises not more than three naturopathic physicians in an approved clinical experience program.
(2) A temporary license issued under this section expires on the date the licensee completes the clinical experience program, but not more than 18 months from the original date of issue.
(3) A temporary license under this section may be issued only once to an individual.

Enacted by Chapter 282, 1996 General Session

58-71-305 Exemptions from licensure.
In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the described acts or practices without being licensed under this chapter:
(1) an individual rendering aid in an emergency, when no fee or other consideration of value for the service is charged, received, expected, or contemplated;
(2) an individual administering a domestic or family remedy;
(3) a person engaged in the sale of vitamins, health foods, dietary supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited under state or federal law, but this subsection does not:
  (a) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity, pain, or other condition; or
  (b) prohibit providing truthful and nonmisleading information regarding any of the products under this subsection;
(4) a person engaged in good faith in the practice of the religious tenets of any church or religious belief, without the use of prescription drugs;
(5) a person acting in good faith for religious reasons as a matter of conscience or based on a personal belief when obtaining or providing information regarding health care and the use of any product under Subsection (3);
(6) an individual authorized by the Department of Health under Section 26-1-30, to draw blood pursuant to Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), or 72-10-502(5)(a)(vi);
(7) a naturopathic medical assistant while working under the direct and immediate supervision of a licensed naturopathic physician to the extent the medical assistant is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of naturopathic medicine; and

(8) an individual who has completed all requirements for licensure under this chapter except the clinical experience required under Section 58-71-302, for a period of one year while that individual is completing that clinical experience requirement and who is working under the provisions of a temporary license issued by the division.

Amended by Chapter 267, 2012 General Session

58-71-306 Status of licenses held on the effective date of this chapter.

An individual holding a current license as a naturopathic physician that was issued under prior Utah law is considered to hold a current license and retains the scope of practice authorized under this title prior to the enactment of this chapter.

Enacted by Chapter 282, 1996 General Session

Part 4
License Denial and Discipline

58-71-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for division action regarding the following are under Section 58-1-401:
(1) refusing to issue a license to an applicant or refusing to renew the license of a licensee;
(2) revoking, suspending, restricting, or placing on probation the license of a licensee;
(3) assessing an administrative penalty; and
(4) issuing a public or private reprimand to a licensee or issuing a cease and desist order.

Enacted by Chapter 282, 1996 General Session

58-71-402 Authority to assess penalty.

(1) After proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the division may impose administrative penalties of up to $10,000 for acts of unprofessional conduct or unlawful conduct under this chapter.
(2) Assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.

Amended by Chapter 382, 2008 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-71-501 Unlawful conduct.

(1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:
  (a) buying, selling, or fraudulently obtaining, any medical diploma, license, certificate, or registration related to credentials of a naturopathic physician; and
  (b) aiding or abetting the buying, selling, or fraudulently obtaining of any naturopathic physician diploma, license, certificate, or registration.

(2) "Unlawful conduct" does not include the good faith expression of informed opinions as to available alternatives to the treatment prescribed or advised by the licensee.

Enacted by Chapter 282, 1996 General Session

58-71-502 Unprofessional conduct.

"Unprofessional conduct" includes using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule.

Enacted by Chapter 282, 1996 General Session

58-71-503 Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provisions of Section 58-71-501, Subsection 58-1-501(1)(a), or 58-1-501(1)(c) is guilty of a third degree felony.
(2) The division may assess administrative penalties in accordance with the provisions of Section 58-71-402, for acts of unlawful conduct.

Enacted by Chapter 282, 1996 General Session

Part 6
Impaired Naturopathic Physician

58-71-601 Mentally incompetent or incapacitated naturopathic physician.

(1) As used in this section:
  (a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.
  (b) "Mental illness" is as defined in Section 62A-15-602.
(2) If a court of competent jurisdiction determines a naturopathic physician is an incapacitated person or that the physician has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the naturopathic physician upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the naturopathic physician, in writing, of the suspension.
(3)
  (a) If the division and a majority of the board find reasonable cause to believe a naturopathic physician, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the naturopathic physician with a notice of hearing on the sole issue of the capacity of the naturopathic physician to competently and safely engage in the practice of medicine.
  (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).
(4)

(a) Every naturopathic physician who accepts the privilege of being licensed under this chapter gives consent to:
(i) submitting at the physician's own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and
(ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.
(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:
(i) the naturopathic physician has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and
(ii) immediate action by the division and the board is necessary to prevent harm to the naturopathic physician's patients or the general public.
(c)
(i) Failure of a naturopathic physician to submit to the examination ordered under this section is a ground for the division's immediate suspension of the naturopathic physician's license by written order of the director.
(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the naturopathic physician and was not related directly to the illness or incapacity of the naturopathic physician.
(5)
(a) A naturopathic physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.
(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the naturopathic physician's patients or the general public.
(6) A naturopathic physician whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the naturopathic physician, under procedures established by division rule, regarding any change in the naturopathic physician's condition, to determine whether:
(a) the physician is or is not able to safely and competently engage in the practice of medicine; and
(b) the physician is qualified to have the physician's license to practice under this chapter restored completely or in part.

Amended by Chapter 364, 2013 General Session

Part 7
Immunity Provisions

58-71-701 Immunity provisions apply.

Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, applies to licensees under this chapter.

Enacted by Chapter 282, 1996 General Session

Part 8
Practice Standards

58-71-801 Disclosure of financial interest by licensee.

(1) Except as provided in Subsections (2) and (5), licensees under this chapter may not own, directly or indirectly:
  (a) any pharmacy or pharmaceutical facility as defined in Section 58-17b-102; or
  (b) a retail store, wholesaler, distributor, manufacturer, or facility of any other kind located in this state that is engaged in the sale, dispensing, delivery, distribution, or manufacture of homeopathic remedies, dietary supplements, or natural medicines.
(2) A licensee may own or control less than 5% of the outstanding stock of a corporation whose ownership is prohibited under Subsection (1), if the stock of the corporation is publicly traded.
(3) Licensees under this chapter may not refer patients, clients, or customers to any clinical laboratory, ambulatory or surgical care facilities, or other treatment or rehabilitation services such as physical therapy, cardiac rehabilitation, or radiology services in which the licensee or a member of the licensee's immediate family has any financial relationship as that term is described in 42 U.S.C. 1395nn, unless the licensee at the time of making the referral discloses that relationship, in writing, to the patient, client, or customer.
(4) The written disclosure under Subsection (3) shall also state the patient may choose any facility or service center for purpose of having the laboratory work or treatment service performed.
(5) Licensees under this chapter may sell from their offices homeopathic remedies or dietary supplements as defined in the Federal Food Drug and Cosmetic Act consistent with division rule.

Amended by Chapter 17, 2005 General Session

58-71-802 Form of practice.

(1) A naturopathic physician licensed under this chapter may engage in practice as a naturopathic physician, or in the practice of naturopathic medicine only as an individual licensee; but as an individual licensee, he may be:
  (a) an individual operating as a business proprietor;
  (b) an employee of another person;
  (c) a partner in a lawfully organized partnership;
  (d) a lawfully formed professional corporation;
  (e) a lawfully organized limited liability company;
  (f) a lawfully organized business corporation; or
  (g) any other form of organization recognized by the state which is not prohibited by rule adopted by division rules made in collaboration with the board.
(2) Regardless of the form in which a licensee engages in the practice of medicine, the licensee may only permit the practice of medicine in that form of practice to be conducted by an individual:
  (a) licensed in Utah as a naturopathic physician under Section 58-71-301, a physician and surgeon, or as an osteopathic physician and surgeon; and
  (b) who is able to lawfully and competently engage in the practice of medicine.

Enacted by Chapter 282, 1996 General Session

58-71-803 Medical records -- Electronic records.
(1) Medical records maintained by a licensee shall:
(a) meet the standards and ethics of the profession; and
(b) be maintained in accordance with division rules made in collaboration with the board.
(2) Medical records under this section may be maintained by an electronic means if the records comply with Subsection (1).

Enacted by Chapter 282, 1996 General Session

58-71-804 Insurance coverage not mandated.
(1) This chapter does not mandate health insurance coverage for naturopathic medical services.
(2) This chapter does not establish a class of health care providers for the purposes of Section 31A-22-618.
(3) This chapter does not mandate health insurance coverage for the prescription or administration of testosterone, as described in Subsection 58-71-102(8)(e), by a naturopathic physician.

Amended by Chapter 42, 2009 General Session

Chapter 72
Acupuncture Licensing Act

Part 1
General Provisions

58-72-101 Title.
This chapter shall be known as the "Acupuncture Licensing Act."

Amended by Chapter 26, 1998 General Session

58-72-102 Acupuncture licensing -- Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Acupuncture Licensing Board created in Section 58-72-201.
(2) "Licensed acupuncturist," designated as "L.Ac.," means a person who has been licensed under this chapter to practice acupuncture.
(3) "Moxibustion" means a heat therapy that uses the herb moxa to heat acupuncture points of the body.
(4)
(a) "Practice of acupuncture" means the insertion of acupuncture needles and application of moxibustion to specific areas of the body based on traditional oriental medical diagnosis and modern research as a primary mode of therapy.
(b) Adjunctive therapies within the scope of the practice of acupuncture may include:

(i) manual, mechanical, thermal, electrical, light, and electromagnetic treatments based on traditional oriental medical diagnosis and modern research;
(ii) the recommendation, administration, or provision of dietary guidelines, herbs, supplements, homeopathics, and therapeutic exercise based on traditional oriental medical diagnosis and modern research according to practitioner training; and
(iii) the practice described in Subsections (4)(a) and (b) on an animal to the extent permitted by:
(A) Subsection 58-28-307(12);
(B) the provisions of this chapter; and
(C) division rule.
(c) "Practice of acupuncture" does not include:
(i) the manual manipulation or adjustment of the joints of the body beyond the elastic barrier; or
(ii) the "manipulation of the articulation of the spinal column" as defined in Section 58-73-102.
(5) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-72-503, and as may be further defined by rule.

Amended by Chapter 88, 2012 General Session

58-72-103 Rulemaking.
When exercising rulemaking authority under this chapter, the division shall comply with the requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 88, 2012 General Session

Part 2
Board

58-72-201 Acupuncture Licensing Board.
(1) There is created an Acupuncture Licensing Board consisting of:
(a) four licensed acupuncturists; and
(b) one member from the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3)
(a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
(b) In addition, the board shall designate one of its members on a permanent rotating basis to:
(i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
(ii) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Amended by Chapter 88, 2012 General Session

Part 3

Licensure

58-72-301 License required -- License classification.

(1) A license is required to engage in the practice of acupuncture, except as specifically provided in Section 58-1-307 or 58-72-304.
(2) The division shall issue to a person who qualifies under this chapter a license in the classification of licensed acupuncturist.

Amended by Chapter 250, 2008 General Session

58-72-302 Qualifications for licensure.

Notwithstanding Section 58-1-302, an applicant for licensure as a licensed acupuncturist shall:
(1) submit an application in a form prescribed by the division;
(2) pay a fee determined by the department under Section 63J-1-504;
(3) be of good moral character;
(4) meet the requirements for current active certification in acupuncture under guidelines established by the National Commission for the Certification of Acupuncture and Oriental Medicine (NCCAOM) as demonstrated through a current certificate or other appropriate documentation;
(5) pass the examination required by the division by rule;
(6) establish procedures, as defined by rule, which shall enable patients to give informed consent to treatment; and
(7) meet with the board, if requested, for the purpose of evaluating the applicant's qualifications for licensure.

Amended by Chapter 183, 2009 General Session

58-72-303 Terms of license -- Expiration -- Renewal.

(1)
  (a) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule.
  (b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.
(3) Renewal qualifications shall include:
  (a) either documentation of current and active NCCAOM certification; or
  (b) meeting the same professional development requirements as those licensed under this chapter.

Amended by Chapter 90, 2007 General Session

58-72-304 Exceptions from licensure.

In addition to the exemptions from licensure set forth in Section 58-1-307, the following persons may engage in the practice of acupuncture subject to the stated circumstances and limitations without being licensed under this chapter:

(1) an individual licensed as a physician and surgeon or osteopathic physician and surgeon under Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice Act;
(2) a commissioned physician or surgeon serving in the armed forces of the United States or other federal agency; and
(3) a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act. A chiropractic physician may not claim to be a licensed acupuncturist without acupuncturist licensure.

Amended by Chapter 309, 2004 General Session

Part 4
License Denial and Discipline

58-72-401 Grounds for denial of license -- Disciplinary proceedings -- Resumption of practice.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Amended by Chapter 26, 1998 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-72-501 Acupuncture licensee -- Restriction on titles used.

(1)
(a) A person practicing as a licensed acupuncturist may not display or in any way use any title, words, or insignia in conjunction with the person's name or practice except the words "licensed acupuncturist" or "L.Ac.".
(b) When used in conjunction with the person's practice, the term "licensed acupuncturist" or "L.Ac." shall be displayed next to the name of the licensed acupuncturist.

(2)
(a) A licensed acupuncturist may not use the term "physician," "physician or surgeon," or "doctor" in conjunction with the acupuncturist's name or practice.
(b) "Doctor of acupuncture" or "oriental medical doctor" may be used if the term is commensurate with the degree in acupuncture received by the practitioner.

(3) Medical doctors or chiropractic physicians who choose to practice acupuncture shall represent themselves as medical doctors or chiropractic physicians practicing acupuncture and not as licensed acupuncturists.

Amended by Chapter 250, 2008 General Session

58-72-502 Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provision defined in Subsection 58-1-501(1)(a) is guilty of a third degree felony.
(2) Any person who violates any of the unlawful conduct provisions defined in Subsections 58-1-501(1)(b) through (e) is guilty of a class A misdemeanor.

Renumbered and Amended by Chapter 253, 1996 General Session

58-72-503 Unprofessional conduct.
Unprofessional conduct includes the failure to transmit records in the English language to the division, the patient's practitioner, or a third party insurance payor upon request.

Enacted by Chapter 26, 1998 General Session

Part 6
Acupuncturist Practice - Insurance Payments

58-72-601 Acupuncture license not authorizing medical practice -- Insurance payments.
Nothing in this chapter may be construed to permit the practice of medicine nor require direct payment from third party insurers directly to a person engaged in the practice of acupuncture.

Amended by Chapter 90, 2007 General Session

Chapter 73
Chiropractic Physician Practice Act

Part 1
General Provisions

58-73-101 Title.
This chapter is known as the "Chiropractic Physician Practice Act."

Renumbered and Amended by Chapter 253, 1996 General Session

58-73-102 Definitions.
(1) "Adjustment of the articulation of the spinal column" means performance by a chiropractic physician by the use of passive movements directed toward the goal of restoring joints to their proper physiological relationship of motion and related function, releasing adhesions, or stimulating joint receptors using one or more of the following techniques:
  (a) impulse adjusting or the use of sudden, high velocity, short amplitude thrust of a nature that the patient cannot prevent the motion, commencing where the motion encounters the elastic barrier of resistance and ends at the limit of anatomical integrity;
  (b) instrument adjusting, utilizing instruments specifically designed to deliver sudden, high velocity, short amplitude thrust;

(c) light force adjusting utilizing sustained joint traction or applied directional pressure, or both, which may be combined with passive motion to restore joint mobility; and
(d) long distance lever adjusting utilizing forces delivered at some distance from the dysfunctional site and aimed at transmission through connected structures to accomplish joint mobility.
(2) "Board" means the Chiropractic Physician Licensing Board created in Section 58-73-201.
(3) "Chiropractic assistant" means a person who performs activities related to the practice of chiropractic under the supervision of a licensed chiropractic physician in accordance with division rule established in collaboration with the board.
(4) "Chiropractic physician" means a person who has been licensed under this chapter to practice chiropractic.
(5) "Diagnosis of the articulation of the spinal column" means to examine the articulations of the spinal column of another human to determine the source, nature, kind, or extent of a disease, vertebral sublixation, or other physical condition, and to make a determination of the source, nature, kind, or extent of a disease or other physical condition.
(6) "Elastic barrier" means the point at which the patient cannot move a joint by his own means and through which movement is obtained or caused by a practitioner's skillful treatment using the practitioner's hands in a manipulation of a joint by thrust of sudden, high velocity, short amplitude so the patient cannot prevent the motion.
(7) "Incisive surgery" means any procedure having the power or quality of cutting of a patient for the purpose of treating disease, injury, or deformity, and includes the use of laser.
(8)
(a) "Manipulate the articulation of the spinal column" means use by a practitioner of a skillful treatment using the practitioner's hands in a manipulation of a joint by thrust of sudden, high velocity, short amplitude so the patient cannot prevent the motion. Movement of the joint is by force beyond its active limit of motion.
(b) This manipulation commences where mobilization ends and specifically begins when the elastic barrier of resistance is encountered and ends at the limit of anatomical integrity.
(c) Manipulation as described in this definition is directed to the goal of restoring joints to their proper physiological relationship of motion and related function, releasing adhesions, or stimulating joint receptors.
(9) "Practice of chiropractic" means a practice of a branch of the healing arts:
(a) the purpose of which is to restore or maintain human health, in which patient care or first aid, hygienic, nutritional, or rehabilitative procedures are administered;
(b) which places emphasis upon specific vertebral adjustment, manipulation, and treatment of the articulation and adjacent tissues of the spinal column, musculoskeletal structure of the body, and nervous system;
(c) that involves examining, diagnosing, treating, correcting, or prescribing treatment for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, or the attempt to do so, in accordance with Section 58-73-601;
(d) that involves diagnosing, prescribing treatment, or making a determination of treatment necessity for another person's condition by means of:
(i) a physical examination of the person; or
(ii) a determination based upon or derived from information supplied directly or indirectly by a third person; and
(e) the practice described in this Subsection (9) on an animal to the extent permitted by:
(i) Subsection 58-28-307(12);
(ii) the provisions of this chapter; and
(iii) division rule.

(10) "Therapeutically position the articulation of the spinal column" means to adjust or manipulate the articulation of the spinal column.

Amended by Chapter 109, 2006 General Session

Part 2
Board

58-73-201 Board.
(1) There is created the Chiropractic Physician Licensing Board consisting of four chiropractic physicians and one member from the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
  (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
  (b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation is disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Renumbered and Amended by Chapter 253, 1996 General Session

Part 3
Licensure

58-73-301 Licensure required -- License classifications.
(1) A license is required to engage in the practice of chiropractic, except as specifically provided in Section 58-73-304.
(2) The division shall issue to a person who qualifies under this chapter a license in the classification of chiropractic physician.

Amended by Chapter 284, 1998 General Session

58-73-302 Qualifications for licensure.
(1) Each applicant for licensure as a chiropractic physician, other than those applying for a license based on licensure as a chiropractor or chiropractic physician in another jurisdiction, shall:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) be of good moral character;
  (d) demonstrate satisfactory completion of at least two years of general study in a college or university;
  (e) demonstrate having earned a degree of doctor of chiropractic from a chiropractic college or university that at the time the degree was conferred was accredited by the Council on

Chiropractic Education, Inc., or an equivalent chiropractic accrediting body recognized by the United States Department of Education and by the division rule made in collaboration with the board;

(f) demonstrate successful completion of:

(i) the National Chiropractic Boards:

(A) Parts I and II;

(B) Written Clinical Competency Examination; and

(C) Physical Therapy;

(ii) the Utah Chiropractic Law and Rules Examination; and

(iii) a practical examination approved by the division in collaboration with the board; and

(g) meet with the board, if requested, for the purpose of reviewing the applicant's qualifications for licensure.

(2) Each applicant for licensure as a chiropractic physician based on licensure as a chiropractor or chiropractic physician in another jurisdiction shall:

(a) submit an application in the form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) demonstrate having obtained licensure as a chiropractor or chiropractic physician in another state under education requirements which were equivalent to the education requirements in this state to obtain a chiropractor or chiropractic physician license at the time the applicant obtained the license in the other state;

(e) demonstrate successful completion of:

(i) the Utah Chiropractic Law and Rules Examination; and

(ii) the Special Purposes Examination for Chiropractic (SPEC) of the National Board of Chiropractic Examiners;

(f) have been actively engaged in the practice of chiropractic for not less than two years immediately preceding application for licensure in this state; and

(g) meet with the board, if requested, for the purpose of reviewing the applicant's qualifications for licensure.

Amended by Chapter 183, 2009 General Session

58-73-303 Terms of license -- Expiration -- Renewal.

(1)

(a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show satisfactory evidence of completion of continuing education as defined by rule.

(3) Each license expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Renumbered and Amended by Chapter 253, 1996 General Session

58-73-304 Exemptions from licensure.

(1) Except as provided in Subsection (2), the exemptions from licensure set forth in Section 58-1-307 apply.

(2) With regard to Subsections 58-1-307(1)(b) and (c), the only exemption from licensure permitted is a preceptorship which may permit a student to engage in acts or practices included within the definition of the practice of chiropractic, while:
  (a) performing the duties and activities which are part of the approved program of education and training of a college or university accredited by the Council on Chiropractic Education; and
  (b) under a form of supervision approved by the division.
(3) In addition to the exemptions provided in Subsections (1) and (2), a chiropractic assistant while working under the supervision of a licensed chiropractic physician is exempt from licensure under this chapter to the extent the chiropractic assistant is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of chiropractic and division rule established in collaboration with the board.

Amended by Chapter 284, 1998 General Session

Part 4
License Denial and Discipline

58-73-401 Grounds for denial of license -- Disciplinary proceedings -- Limitation on division actions.

(1) Grounds for the following are in accordance with Section 58-1-401:
  (a) refusing to issue a license to an applicant;
  (b) refusing to renew the license of a licensee;
  (c) revoking, suspending, restricting, or placing on probation the license of a licensee;
  (d) issuing a public or private reprimand to a licensee; and
  (e) issuing a cease and desist order.
(2) If a court of competent jurisdiction determines a chiropractic physician is incompetent, mentally incompetent, incapable, or has a mental illness, the director shall suspend the license of that chiropractic physician, even if an appeal is pending.
(3)
  (a) If it appears to the board there is reasonable cause to believe a chiropractic physician who has not been judicially determined to be incompetent, mentally incompetent, incapable, or to have a mental illness, is unable to practice chiropractic with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other substance, or as a result of any mental or physical condition, a petition shall be served upon that chiropractic physician for a hearing on the sole issue of the capacity of the chiropractic physician to conduct properly the practice of the chiropractic physician.
  (b) Every chiropractic physician licensed by this state is considered to have:
    (i) agreed to submit to a mental or physical examination upon receipt of a written direction given by the division with the approval of the board; and
    (ii) waived all objections to the admissibility of the examining chiropractic physician's or other practitioner's testimony or examination reports on the ground they constitute a privileged communication.
  (c) Failure of a chiropractic physician to submit to an examination under Subsection (3)(b) when directed by the division, unless the failure was due to circumstances beyond his control, constitutes grounds for immediate suspension of the chiropractic physician's license and

an order of suspension of the license may be entered by the division without the taking of testimony or the presentation of evidence.

(d) A chiropractic physician whose license is suspended under this section shall, at reasonable intervals, be afforded the opportunity to demonstrate the chiropractic physician can resume the competent practice of chiropractic with reasonable skill and safety to patients.

(e) Neither the proceedings of the board nor the action taken by it under this section may be used against a chiropractic physician in any other proceedings.

(4) The terms of revocation, suspension, or probation under this chapter may include:

(a) revoking the license to practice either permanently or with a stated date before which the individual may not apply for licensure;

(b) suspending, limiting, or restricting the license to practice chiropractic for up to five years, including limiting the practice of the person to, or excluding from the person's practice, one or more specific branches of medicine, including any limitation on practice within the specified branches;

(c) requiring the license holder to submit to care, counseling, or treatment by physicians approved by or designated by the board, as a condition for licensure;

(d) requiring the license holder to participate in a program of education prescribed by the board;

(e) requiring the license holder to practice under the direction of a physician designated by the board for a specified period of time; or

(f) other appropriate terms and conditions determined by the division in collaboration with the board to be necessary to protect the public health, safety, or welfare.

Amended by Chapter 366, 2011 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-73-501 Unprofessional conduct.

Unprofessional conduct is as defined in Section 58-1-501, as defined by division rule, and also includes:

(1) engaging in practice as a chiropractic physician after electing to place his license on inactive status, without having established with the board that he has initiated or completed continuing education necessary to reinstate active status of his license;

(2) failing to complete required continuing professional education;

(3) violating any of the scope of practice standards set forth in Section 58-73-601;

(4) failing to maintain patient records in sufficient detail to clearly substantiate a diagnosis, all treatment rendered to the patient in accordance with the recognized standard of chiropractic care, and fees charged for professional services;

(5) refusing to divulge to the division on demand the means, methods, device, or instrumentality used in the treatment of a disease, injury, ailment, or infirmity, unless that information is protected by the physician-patient privilege of Utah and the patient has not waived that privilege;

(6) refusing the division or its employees access to his office, instruments, laboratory equipment, appliances, or supplies at reasonable times for purposes of inspection;

(7) fraudulently representing that curable disease, sickness, or injury can be cured in a stated time, or knowingly making any false statement in connection with the practice of chiropractic;

(8) offering, undertaking, or agreeing to cure or treat a disease, injury, ailment, or infirmity by a secret means, method, device, or instrumentality;
(9) willfully and intentionally making any false statement or entry in any chiropractic office records or other chiropractic records or reports;
(10) knowingly engaging in billing practices which are abusive and represent charges which are fraudulent or grossly excessive for services rendered;
(11) performing, procuring, or agreeing to procure or perform, or advising, aiding in or abetting, or offering or attempting to procure or aid or abet in the procuring of a criminal abortion;
(12) willfully betraying or disclosing a professional confidence or violation of a privileged communication, except:
  (a) as required by law; or
  (b) to assist the division by fully and freely exchanging information concerning applicants or licensees with the licensing or disciplinary boards of other states or foreign countries, the Utah chiropractic associations, their component societies, or chiropractic societies of other states, countries, districts, territories, or foreign countries;
(13) directly or indirectly giving or receiving any fee, commission, rebate, or other compensation for professional services not actually rendered or supervised, but this subsection does not preclude the legal relationships within lawful professional partnerships, corporations, or associations; and
(14) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary of them to another physician when requested to do so by the subject patient or his designated representative.

Amended by Chapter 26, 1998 General Session

58-73-502 Unlawful conduct -- Penalties.
(1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:
  (a) buying, selling, or fraudulently obtaining any chiropractic diploma, license, certificate, or registration;
  (b) aiding or abetting the buying, selling, or fraudulently obtaining of any chiropractic diploma, license, certificate, or registration; and
  (c) substantially interfering with a licensee's lawful and competent practice of chiropractic in accordance with this chapter.
(2) Any person who violates any provision of Subsection (1) is guilty of a third degree felony.

Enacted by Chapter 284, 1998 General Session

Part 6
Scope of Practice - Division Regulation

58-73-601 Scope of practice for a chiropractic physician.
(1) A chiropractic physician licensed under this chapter may engage in the practice of chiropractic as defined in Section 58-73-102 in accordance with the following standards.
(2) A chiropractic physician may:
  (a) examine, diagnose, and treat only within the scope of chiropractic as described in this Subsection (2);
  (b) use x-ray for diagnostic purposes only;

(c) administer:
(i) physical agents, including light, heat, cold, water, air, sound, compression, electricity, and electromagnetic radiation except gamma radiation; and
(ii) physical activities and devices, including:
(A) exercise with and without devices;
(B) joint mobilization;
(C) mechanical stimulation;
(D) postural drainage;
(E) traction;
(F) positioning;
(G) wound debridement, cleansing, and dressing changes;
(H) splinting;
(I) training in locomotion and other functional activities with and without assistance devices; and
(J) correction of posture, body mechanics, and gait;
(d) administer the following topically applied medicinal agents, including steroids, anesthetics, coolants, and analgesics for wound care and for musculoskeletal treatment, including their use by iontophoresis or phonophoresis;
(e) treat pain incident to major or minor surgery, cancer, obstetrics, or x-ray therapy;
(f) utilize immobilizing appliances, casts, and supports for support purposes, but may not set displaced bone fractures;
(g) inform the patient of possible side effects of medication and recommend referral to the prescribing practitioner;
(h) provide instruction in the use of physical measures, activities, and devices for preventive and therapeutic purposes;
(i) provide consulting, educational, and other advisory services for the purposes of reducing the incidence and severity of physical disability, movement dysfunctions, bodily malfunction, and pain;
(j) treat a human being to assess, prevent, correct, alleviate, and limit physical disability, movement dysfunction, bodily malfunction, and pain resulting from disorders, congenital and aging conditions, injury, and disease; and
(k) administer, interpret, and evaluate tests.
(3) A chiropractic physician may not:
(a) perform incisive surgery;
(b) administer drugs or medicines for which an authorized prescription is required by law except as provided in Subsection (2)(d);
(c) treat cancer;
(d) practice obstetrics;
(e) prescribe or administer x-ray therapy; or
(f) set displaced fractures.
(4) A chiropractic physician shall assume responsibility for his examinations, diagnoses, and treatment.
(5) Nothing in this section authorizes a chiropractic physician to prescribe, possess for dispensing, dispense, purchase without a prescription written by a licensed and authorized practitioner, or administer, except under Subsection (2)(d), a drug requiring a prescription to dispense, under Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 17b, Pharmacy Practice Act.

(6) Only primary health care providers licensed under this title as osteopathic physicians, physicians and surgeons, naturopaths, and chiropractic physicians, may diagnose, adjust, manipulate, or therapeutically position the articulation of the spinal column to the extent permitted by their scopes of practice.

Amended by Chapter 280, 2004 General Session

58-73-602 Division regulation -- Quality of care -- Complaints.

(1) To enable the division and the board to license applicants for licensure and regulate individuals licensed under this chapter, the division and board shall endeavor to obtain information concerning the quality and adequacy of chiropractic care rendered to patients.
(2) Chiropractic physicians licensed under this chapter shall furnish information requested by the division on recommendation of the board.
(3)
  (a) The board shall designate committees composed of chiropractic physicians licensed by this state to advise the division and the board regarding the quality and adequacy of chiropractic care rendered to patients by chiropractic physicians licensed under this chapter and to recommend the division initiate investigations on chiropractic physicians who may be acting in violation of this chapter.
  (b) If it appears to the committee there is reasonable cause to believe that a chiropractic physician licensed under this chapter has failed to provide adequate chiropractic care to patients, a complaint shall be made to the division outlining the statement of reasonable cause.

Renumbered and Amended by Chapter 253, 1996 General Session

58-73-603 Consumer access to provider charges.

Beginning January 1, 2011, a chiropractic physician licensed under this chapter shall, when requested by a consumer:

(1) make a list of professional charges available for the consumer which includes the chiropractic physician's 25 most frequently performed:
  (a) clinical procedures or clinical services;
  (b) out-patient procedures; and
  (c) in-patient procedures; and
(2) provide the consumer with information regarding any discount available for:
  (a) services not covered by insurance; or
  (b) prompt payment of billed charges.

Enacted by Chapter 68, 2010 General Session

Part 7
Liability Immunity

58-73-701 Persons immune from liability.

(1) Employees of the division, members of the board or its committees, and professional consultants serving the division or the board, are not subject to civil damages, when acting

under the authority of this chapter for any act or omission performed in good faith within the scope of their functions as an employee of the division or member of the board.
(2) Employees, board members, committee members, and professional consultants are indemnified by the state. The state has full responsibility for providing legal and financial protection for employees, board members, committee members, and consultants to the board or division.
(3) Nothing in this section may be construed to adversely limit any provision of Title 63G, Chapter 7, Governmental Immunity Act of Utah.

Amended by Chapter 382, 2008 General Session

Chapter 74
Certified Court Reporters Licensing Act

Part 1
General Provisions

58-74-101 Title.
This chapter is known as the "Certified Court Reporters Licensing Act."

Amended by Chapter 77, 2004 General Session

58-74-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Certified Court Reporters Licensing Board created in Section 58-74-201.
(2) "Certified court reporter" means any person who engages in the practice of court reporting who is:
(a) a shorthand reporter certified by the National Court Reporters Association; or
(b) a voice reporter certified by the National Verbatim Reporters Association.
(3) "Certified voice reporter" means any person licensed under this chapter who engages in the practice of voice reporting.
(4) "Official court reporter" means a certified shorthand reporter employed by the courts.
(5) "Official court transcriber" means a person certified in accordance with rules of the Judicial Council as competent to transcribe into written form an audio or video recording of court proceedings.
(6) "Practice of court reporting" means the making of a verbatim record of any trial, legislative public hearing, state agency public hearing, deposition, examination before trial, hearing or proceeding before any grand jury, referee, board, commission, master or arbitrator, or other sworn testimony given under oath.
(7) "Practice of voice reporting" means the practice of making a verbatim record, using voice writing.
(8) "Voice writing" means the making of a verbatim record of the spoken word by means of repeating the words of the speaker into a device capable of either digital translation into English text or creation of a tape or digital recording.

(9) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-74-501.
(10) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-74-502 and as may be further defined by rule.

Amended by Chapter 238, 2016 General Session

Part 2
Board

58-74-201 Board.
(1) There is created the Certified Court Reporters Licensing Board consisting of four persons licensed in accordance with this chapter and engaged as court reporters within this state continuously for at least five years previous to appointment and one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
  (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
  (b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Amended by Chapter 77, 2004 General Session

Part 3
Licensing

58-74-301 Licensure required.
(1) A license is required to engage in the practice of court reporting.
(2) The division shall issue to any person who qualifies under this chapter a license to practice as a certified court reporter.

Amended by Chapter 77, 2004 General Session

58-74-302 Qualifications for licensure.
(1) Each applicant for licensure as a certified court reporter under this chapter shall:
  (a) be at least 18 years of age;
  (b) be a citizen of the United States;
  (c) submit an application in a form prescribed by the division;
  (d) pay a fee determined by the department under Section 63J-1-504;
  (e) possess a high degree of skill and ability in the art of court reporting;

(f) produce satisfactory evidence of good moral character; and
(g) submit evidence that they have completed and passed the Registered Professional Reporter Examination of the National Court Reporters Association or the Certified Verbatim Reporter Examination of the National Verbatim Reporters Association.
(2) Any person granted a certificate to practice as a certified shorthand reporter may use the abbreviation "C.S.R." as long as the person's certificate is current and valid.
(3) Any person granted a certificate to practice as a certified voice reporter may use the abbreviation "C.V.R." as long as the person's certificate is current and valid.

Amended by Chapter 183, 2009 General Session

58-74-303 Term of license -- Expiration -- Renewal.
(1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
(2) Each licensee shall, at the time of applying for renewal, demonstrate compliance with continuing education requirements established by the division in collaboration with the board.
(3) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Enacted by Chapter 372, 1997 General Session

Part 4
License Denial and Discipline

58-74-401 Grounds for denial of license -- Disciplinary proceedings.
Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Sections 58-1-401 and 78A-2-404.

Amended by Chapter 3, 2008 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-74-501 Unlawful conduct.
(1) It is unlawful for any person not licensed in accordance with this chapter to assume the title or use the abbreviation C.S.R. or C.V.R. or any other similar words, letters, figures, or abbreviation to indicate that the person using that title or abbreviation is a certified court reporter.
(2) Violation of this provision is a class A misdemeanor.

Amended by Chapter 77, 2004 General Session

58-74-502 Unprofessional conduct.

"Unprofessional conduct" includes:

(1) conduct unbecoming a person licensed as a certified court reporter or which is detrimental to the interests of the public;

(2) willful or negligent betrayal or disclosure of confidential information about which the licensee becomes knowledgeable as a result of or incidental to his practice as a licensee;

(3) false or deceptive representation of a licensee's skills, competence, capability, or resources as a certified court reporter;

(4) offering, undertaking, or agreeing to undertake an assignment as a certified court reporter for which the licensee is not qualified, for which the licensee cannot complete the assignment in a timely manner, or for which the licensee does not have the resources to complete the assignment as agreed in a professional manner;

(5) the use of any chemical, drug, or alcohol in any unlawful manner or in any manner which negatively affects the ability of the licensee to competently practice as a certified court reporter;

(6) willfully and intentionally making any false or fraudulent record in the performance of his duties as a certified court reporter;

(7) any conduct contrary to the recognized standards and ethics of the profession of a certified court reporter;

(8) gross incompetence in practice as a certified court reporter;

(9) violation of any provision of this chapter, Section 78A-2-404, or rules promulgated to regulate the practice of court reporters;

(10) conviction of a felony or any other crime which is considered by the board to represent activity detrimental to the public interest as that interest is reflected in the licensee continuing to practice as a certified court reporter; or

(11) attesting to or "signing off" on the transcript of any recorded proceeding unless that proceeding was recorded by that person while physically present at the proceeding or was personally transcribed by that person from an electronically recorded process.

Amended by Chapter 3, 2008 General Session

Chapter 75
Genetic Counselors Licensing Act

Part 1
General Provisions

58-75-101 Title.

This chapter is known as the "Genetic Counselors Licensing Act."

Enacted by Chapter 100, 2001 General Session

58-75-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Genetic Counselors Licensing Board created in Section 58-75-201.

(2) "Genetic counselor" means a person licensed under this chapter to engage in the practice of genetic counseling.
(3) "Practice of genetic counseling" means the communication process which deals with the human problems associated with the occurrence, or the risk of occurrence, of a genetic disorder in a family, including the provision of services to help an individual or family:
  (a) comprehend the medical facts, including the diagnosis, probable cause of the disorder, and the available management;
  (b) appreciate the way heredity contributes to the disorder and the risk of occurrence in specified relatives;
  (c) understand the alternatives for dealing with the risk of occurrence;
  (d) choose the course of action which seems appropriate to them in view of their risk, their family goals, and their ethical and religious standards, and to act in accordance with that decision; and
  (e) make the best possible psychosocial adjustment to the disorder in an affected family member or to the risk of occurrence of that disorder.
(4) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-75-501.
(5) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-75-502 and as may be further defined by rule by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 382, 2008 General Session

Part 2
Board

58-75-201 Board.
(1) There is created the Genetic Counselors Licensing Board consisting of four persons licensed in accordance with this chapter and one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. In addition, the board may designate one of its members on a permanent or rotating basis to:
  (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
  (b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Enacted by Chapter 100, 2001 General Session

Part 3
Licensing

58-75-301 Licensure required -- Issuance of licenses -- Effect on insurers.

(1) Beginning January 1, 2002, and except as provided in Sections 58-1-307 and 58-75-304, a license is required to engage in the practice of genetic counseling.
(2) The division shall issue to any person who qualifies under this chapter a license to practice genetic counseling.
(3) Nothing in this chapter shall be construed to require payment from insurers for genetic counseling services.

Enacted by Chapter 100, 2001 General Session

58-75-302 Qualifications for licensure -- Temporary license.
(1) Except as provided in Subsection (2), each applicant for licensure as a genetic counselor under this chapter shall:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee determined by the department under Section 63J-1-504;
  (c) be of good moral character;
  (d) provide satisfactory documentation of having earned:
    (i) a master's degree from a genetic counseling training program that is accredited by the American Board of Genetic Counseling or an equivalent as determined by the division; or
    (ii) a doctoral degree from a medical genetics training program that is accredited by the American Board of Medical Genetics or an equivalent as determined by the division; and
  (e) meet the examination requirement for certification as:
    (i) a genetic counselor by the American Board of Genetic Counseling or the American Board of Medical Genetics; or
    (ii) a medical geneticist by the American Board of Medical Genetics.
(2) The division may issue a temporary license, in accordance with Section 58-1-303 and any other conditions established by rule, to an applicant who meets all of the requirements for licensure except the examination requirement of Subsection (1)(e).

Amended by Chapter 183, 2009 General Session

58-75-303 Term of license -- Expiration -- Renewal.
(1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
(2) Each licensee shall, at the time of applying for renewal, demonstrate compliance with continuing education requirements established by rule by the division in collaboration with the board.
(3) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Enacted by Chapter 100, 2001 General Session

58-75-304 Exemptions from licensure.
In addition to the exemptions from licensure set forth in Section 58-1-307, the following persons may engage in the practice of genetic counseling subject to the stated circumstances and limitations without being licensed under this chapter:

(1) an individual licensed as a physician and surgeon or osteopathic physician and surgeon under Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice Act; and
(2) a commissioned physician or surgeon serving in the armed forces of the United States or other federal agency.

Enacted by Chapter 100, 2001 General Session

Part 4
License Denial and Discipline

58-75-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 100, 2001 General Session

Part 5
Unlawful and Unprofessional Conduct

58-75-501 Unlawful conduct.

"Unlawful conduct" includes, in addition to the definition in Section 58-1-501, using the title "genetic counselor" or any other title or designation tending to indicate that the person is a genetic counselor unless that person has a current license as a genetic counselor issued under this chapter.

Enacted by Chapter 100, 2001 General Session

58-75-502 Unprofessional conduct.

"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501 and as may be further defined by rule:
(1) engaging in any act or practice in a professional capacity which the licensee is not competent to perform through training or experience;
(2) failing to refer a client to other competent professionals when the licensee is unable or unwilling to adequately support or serve the client;
(3) failing to maintain the confidentiality of any information received from a client, unless released by the client or otherwise authorized or required by law; and
(4) exploiting a client for personal advantage, profit, or interest.

Enacted by Chapter 100, 2001 General Session

Chapter 76
Professional Geologist Licensing Act

Part 1
General Provisions

58-76-101 Title.
This chapter is known as the "Professional Geologist Licensing Act."

Enacted by Chapter 218, 2002 General Session

58-76-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Professional Geologist Licensing Board created in Section 58-76-201.
(2) "Geology" means the science, which treats the study of the earth in general, the earth's processes and history, investigation of the earth's crust and the rocks and other materials of which it is composed, and the applied science of utilizing knowledge of the earth's history, processes, constituent rocks, minerals, liquids, gases, and other materials for the use of mankind.
(3) "Practice of geology before the public" means the performance of geology including but not limited to consultation, investigation, evaluation, planning, geologic mapping, interpretation of geologic data, preparation of geologic reports, geologic cross-sections and geologic maps, inspection of geological work, and the responsible supervision thereof, the performance of which is relevant to public welfare or the safeguarding of life, health, property, and the environment, except as otherwise specifically provided by this chapter.
(4) "Professional geologist" means a person licensed under this chapter to engage in the practice of geology before the public.
(5) "Responsible charge" means the independent control and direction by use of initiative, skill, and independent judgment of geological work or the supervision of the work.
(6) "Subordinate" means any individual who practices geology or assists a professional geologist in the practice of geology before the public without assuming the responsible charge for the work.
(7) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-76-501.
(8) "Unprofessional conduct" is as defined in Section 58-1-501 and as may be further defined by rule by the division in collaboration with the board.

Enacted by Chapter 218, 2002 General Session

58-76-103 Professional Geologist Education and Enforcement Account.
(1) There is created a restricted account within the General Fund known as the "Professional Geologist Education and Enforcement Account."
(2) The restricted account shall consist of money from:
  (a) a surcharge fee established by the department in accordance with Section 63J-1-504, placed on initial, renewal, and reinstatement licensure fees under this chapter not to exceed 50% of the respective initial, renewal, or reinstatement licensure fee;
  (b) administrative penalties collected pursuant to this chapter; and
  (c) interest earned on money in the account.
(3) Money in the account may be appropriated by the Legislature for the following purposes:

(a) education and training of licensees under this chapter;
(b) education and training of the public or other interested persons in matters concerning geology laws and practices;
(c) enforcement of this chapter by:
(i) investigating unprofessional or unlawful conduct;
(ii) providing legal representation to the division when legal action is taken against a person engaging in unprofessional or unlawful conduct; and
(iii) monitoring compliance of renewal requirements; and
(d) education and training of board members.

Amended by Chapter 303, 2011 General Session

Part 2
Board

58-76-201 Board.
(1) There is created the Professional Geologist Licensing Board consisting of five members as follows:
(a) three professional geologists;
(b) the Utah state geologist; and
(c) one member representing the general public.
(2) Except for the Utah state geologist, the board shall be appointed and serve in accordance with Section 58-1-201.
(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203, and the board shall also:
(a) designate one of its members on a permanent or rotating basis to assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of professional geologists; and
(b) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Enacted by Chapter 218, 2002 General Session

Part 3
Licensing

58-76-301 License required -- License classification.
(1) After January 1, 2003, a license is required to engage in the practice of geology before the public except as specifically provided in Sections 58-1-307 and 58-76-304.
(2) The division shall issue to a person who qualifies under the provisions of this chapter a license in the classification of professional geologist.

Enacted by Chapter 218, 2002 General Session

58-76-302 Qualifications for licensure.

Each applicant for licensure as a professional geologist shall:

(1) submit an application in a form as prescribed by the division;

(2) pay a fee as determined by the department under Section 63J-1-504;

(3) be of good moral character;

(4) provide satisfactory evidence of:

(a) a bachelors or graduate degree in the geosciences granted through an institution of higher education that is accredited by a regional or national accrediting agency with a minimum of 30 semester or 45 quarter hours of course work in the geosciences; or

(b) completion of other equivalent educational requirements as determined by the division in collaboration with the board;

(5) provide satisfactory evidence of:

(a) with a bachelors degree, a specific record of five years of active professional practice in geological work of a character satisfactory to the division, indicating the applicant is competent to be placed in a responsible charge of the work;

(b) with a masters degree, a specific record of three years of active professional practice in geological work of a character satisfactory to the division, indicating the applicant is competent to be placed in a responsible charge of the work; or

(c) with a doctorate degree, a specific record of one year of active professional practice in geological work of a character satisfactory to the division, indicating the applicant is competent to be placed in a responsible charge of the work; and

(6) after January 1, 2004, meet the examination requirement established by rule by the division in collaboration with the board.

Amended by Chapter 183, 2009 General Session

58-76-303 Term of license -- Expiration -- Renewal.

(1)

(a) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule.

(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Enacted by Chapter 218, 2002 General Session

58-76-304 Exemption from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following may engage in the practice of geology, subject to the stated circumstances and limitations, without being licensed under this chapter if they do not use the title of professional geologist or are not directly represented or held out to the public to be legally qualified to engage in the practice of geology before the public in this state:

(1) an employee or subordinate of a professional geologist licensed under this chapter, or any employee of an individual exempted from licensure under this Subsection (1) or Subsection (2), provided that the employee's or subordinate's practice does not include responsible charge;

(2) qualified engineers and land surveyors, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, who do not intentionally represent themselves to be professional geologists;
(3) an individual, individual practitioner, or regular full-time employee of a firm, partnership, association, corporation, or other business entity engaged in the exploration for and development of coal, uranium, oil, natural gas, geothermal or other energy resources, precious and nonprecious metals and minerals, and industrial and other minerals, including sand, gravel, and aggregate if the geological work is performed solely for internal use within the company and is not offered directly to the public;
(4) an individual engaged in teaching or research in the physical or natural sciences who is not otherwise engaged in practicing geology before the public;
(5) an individual providing agricultural or agronomic soils analyses, sampling, or laboratory testing; and
(6) an employee of a communications, utility, railroad, mining, petroleum, or manufacturing company, or an affiliate of such a company, if the geological work is performed solely for internal use within the company and is not offered directly to the public.

Enacted by Chapter 218, 2002 General Session

Part 4
License Denial and Discipline

58-76-401 Grounds for denial of license -- Disciplinary proceedings.

Division grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders are in accordance with Section 58-1-401.

Enacted by Chapter 218, 2002 General Session

Part 5
Unlawful Conduct - Penalties

58-76-501 Unlawful conduct.

In addition to the definition in Subsection 58-1-501(1), "unlawful conduct" includes:
(1) using the title "Professional Geologist" or any other words, letters, abbreviations, or designations, which represent recognized professional geological disciplines indicating that the person using them is a professional geologist, unless the person holds a valid license issued under this chapter; or
(2) as a corporation, proprietorship, partnership, or limited liability company, engaging in or representing that the entity is engaging in the practice of geology before the public, unless at least one individual employee of the entity holds a valid license issued under this chapter.

Enacted by Chapter 218, 2002 General Session

58-76-502 Penalty for unlawful conduct.

(1)

(a) If, upon inspection or investigation, the division concludes that a person has violated Section 58-76-501 or any rule or order issued with respect to Section 58-76-501, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-76-501 or any rule or order issued with respect to Section 58-76-501, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section 58-76-501 or any rule or order issued with respect to this section.

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-76-401 may not be assessed through a citation.

(b) A citation shall:

(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the person's agent by a division investigator or by any person specially designated by the director or by mail.

(e) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

(f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(i) The director or the director's designee shall assess fines according to the following:

(i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to $2,000 for each day of continued offense.

(2) An action initiated for a first or second offense which has not yet resulted in a final order of the division shall not preclude initiation of any subsequent action for a second or subsequent

offense during the pendency of any preceding action. The final order on a subsequent action shall be considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

(3) Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state shall provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded to the division.

Amended by Chapter 382, 2008 General Session

Part 6
Practice Standards

58-76-601 Seal -- Design and implementation.

Every professional geologist shall have a seal, the design and implementation of which shall be established by rule by the division in collaboration with the board.

Enacted by Chapter 218, 2002 General Session

58-76-602 Geologic maps, cross-sections, reports, and documents to be sealed.

(1) Any final geologic map, cross-section, or report prepared in this state shall bear the seal of a professional geologist licensed under this chapter, except as provided in Section 58-76-304.

(2) Any final geologic map, cross-section, sketch, drawing, plan, or report prepared by, or under the supervision of, a professional geologist shall bear the seal of the professional geologist when submitted to a client or when filed with public authorities, even if the practice is exempt from licensure under Section 58-76-304.

Enacted by Chapter 218, 2002 General Session

58-76-603 Seal -- Authorized use.

A professional geologist may only affix the licensee's seal to a geologic map, cross-section, sketch, drawing, plan, or report if the geologic map, cross-section, sketch, drawing, plan, or report:

(1) was personally prepared by the licensee;

(2) was prepared by an employee, subordinate, associate, or drafter under the supervision of a licensee, provided the licensee or a principal affixing his seal assumes responsibility;

(3) was prepared by a licensed professional geologist in this state or any other state provided:

(a) the licensee in this state affixing the seal performs a thorough review of all work for compliance with all applicable laws and rules and the standards of the profession; and

(b) makes any necessary corrections before submitting the final plan, specification, or report:

(i) to a public authority; or

(ii) to a client who has contracted with a professional geologist for the geologic map, cross-section, or report to be complete and final;

(4) was prepared in part by a licensed professional geologist in this state or any other state provided:
  (a) the licensee in this state clearly identifies that portion of the geologic map, cross-section, or report for which the licensee is responsible;
  (b) the licensee in this state affixing the seal performs a thorough review of that portion of the geologic map, cross-section, or report for which the licensee is responsible for compliance with the standards of the profession; and
  (c) makes any necessary corrections before submitting the final geologic map, cross-section, or report for which the licensee is responsible:
    (i) to a public authority; or
    (ii) to a client who has contracted with a professional geologist for the geologic map, cross-section, or report to be complete and final;
(5) was prepared by a person exempt from licensure as a professional geologist provided that:
  (a) the licensee in this state affixing the seal performs a thorough review for compliance with all applicable laws and rules and the standards of the profession; and
  (b) makes any necessary corrections before submitting the final geologic map, cross-section, or report:
    (i) to a public authority; or
    (ii) to a client who has contracted with a professional geologist for the geologic map, cross-section, or report to be complete and final; or
(6) meets any additional requirements established by rule by the division in collaboration with the board.

Enacted by Chapter 218, 2002 General Session

Chapter 77
Direct-entry Midwife Act

Part 1
General Provisions

58-77-101 Title.
This chapter is known as the "Direct-entry Midwife Act."

Enacted by Chapter 299, 2005 General Session

58-77-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Licensed Direct-entry Midwife Board created in Section 58-77-201.
(2) "Certified nurse-midwife" means a person licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act.
(3) "Client" means a woman under the care of a direct-entry midwife and her fetus or newborn.
(4) "Direct-entry midwife" means an individual who is engaging in the practice of direct-entry midwifery.
(5) "Licensed direct-entry midwife" means a person licensed under this chapter.

(6) "Low risk" means a labor and delivery and postpartum, newborn and interconceptual care that does not include a condition that requires a mandatory transfer under administrative rules adopted by the division.
(7) "Physician" means an individual licensed as a physician and surgeon, osteopathic physician, or naturopathic physician.
(8) "Practice of direct-entry midwifery" means practice of providing the necessary supervision, care, and advice to a client during essentially normal pregnancy, labor, delivery, postpartum, and newborn periods that is consistent with national professional midwifery standards and that is based upon the acquisition of clinical skills necessary for the care of pregnant women and newborns, including antepartum, intrapartum, postpartum, newborn, and limited interconceptual care and includes:
(a) obtaining an informed consent to provide services;
(b) obtaining a health history, including a physical examination;
(c) developing a plan of care for a client;
(d) evaluating the results of client care;
(e) consulting and collaborating with and referring and transferring care to licensed health care professionals, as is appropriate, regarding the care of a client;
(f) obtaining medications, as specified in this Subsection (8)(f), to administer to clients, including:
(i) prescription vitamins;
(ii) Rho D immunoglobulin;
(iii) sterile water;
(iv) one dose of intramuscular oxytocin after the delivery of the placenta to minimize blood loss;
(v) an additional single dose of oxytocin if a hemorrhage occurs, in which case the licensed direct-entry midwife must initiate transfer if the client's condition does not immediately improve;
(vi) oxygen;
(vii) local anesthetics without epinephrine used in accordance with Subsection (8)(l);
(viii) vitamin K to prevent hemorrhagic disease of the newborn;
(ix) eye prophylaxis to prevent opthalmia neonatorum as required by law; and
(x) any other medication approved by a licensed health care provider with authority to prescribe that medication;
(g) obtaining food, food extracts, dietary supplements, as defined by the Federal Food, Drug, and Cosmetic Act, homeopathic remedies, plant substances that are not designated as prescription drugs or controlled substances, and over-the-counter medications to administer to clients;
(h) obtaining and using appropriate equipment and devices such as Doppler, blood pressure cuff, phlebotomy supplies, instruments, and sutures;
(i) obtaining appropriate screening and testing, including laboratory tests, urinalysis, and ultrasound;
(j) managing the antepartum period;
(k) managing the intrapartum period including:
(i) monitoring and evaluating the condition of mother and fetus;
(ii) performing emergency episiotomy; and
(iii) delivering in any out-of-hospital setting;
(l) managing the postpartum period including suturing of episiotomy or first and second degree natural perineal and labial lacerations, including the administration of a local anesthetic;
(m) managing the newborn period including:
(i) providing care for the newborn, including performing a normal newborn examination; and

(ii) resuscitating a newborn;
(n) providing limited interconceptual services in order to provide continuity of care including:
(i) breastfeeding support and counseling;
(ii) family planning, limited to natural family planning, cervical caps, and diaphragms; and
(iii) pap smears, where all clients with abnormal results are to be referred to an appropriate licensed health care provider; and
(o) executing the orders of a licensed health care professional, only within the education, knowledge, and skill of the direct-entry midwife.
(9) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-77-501.
(10) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-77-502 and as may be further defined by rule.

Amended by Chapter 365, 2008 General Session

Part 2
Board

58-77-201 Board.
(1) There is created the Licensed Direct-entry Midwife Board consisting of:
(a) four licensed direct-entry midwives; and
(b) one member of the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3)
(a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
(b) The board shall designate one of its members on a permanent or rotating basis to:
(i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensed direct-entry midwife; and
(ii) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.
(5) Qualified faculty, board members, and other staff of direct-entry midwifery learning institutions may serve as one or more of the licensed Directed-entry midwives on the board.

Amended by Chapter 167, 2013 General Session

Part 3
Licensure

58-77-301 Licensure.
The division shall issue to a person who qualifies under this chapter a license as a licensed direct-entry midwife.

Enacted by Chapter 299, 2005 General Session

58-77-302 Qualifications for licensure.

Each applicant for licensure as a licensed direct-entry midwife shall:

(1) submit an application in a form prescribed by the division;
(2) pay a fee as determined by the department under Section 63J-1-504;
(3) be of good moral character;
(4) hold a Certified Professional Midwife certificate in good standing with the North American Registry of Midwives or equivalent certification approved by the division in collaboration with the board;
(5) hold current adult and infant CPR and newborn resuscitation certifications through an organization approved by the division in collaboration with the board; and
(6) provide documentation of successful completion of an approved pharmacology course as defined by division rule.

Amended by Chapter 183, 2009 General Session

58-77-303 Term of license -- Expiration -- Renewal.

(1)
  (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule.
  (b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) Each license automatically expires on the expiration date shown on the license unless the individual renews it in accordance with Section 58-1-308.
(3) At the time of renewal, the licensed direct-entry midwife shall be in current compliance with the requirements of Section 58-77-302.

Enacted by Chapter 299, 2005 General Session

58-77-304 Parents' rights.

Nothing in this chapter abridges, limits, or changes in any way the right of parents to deliver their baby where, when, how, and with whom they choose, regardless of licensure under this chapter.

Enacted by Chapter 299, 2005 General Session

Part 4
Licensure Denial and Discipline

58-77-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew a license, for revoking, suspending, restricting, or placing on probation a license, for issuing a public or private reprimand, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 299, 2005 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-77-501 Unlawful conduct.

(1) In addition to the conduct that constitutes unlawful conduct under Subsection 58-1-501(1), it is unlawful conduct for an individual who is not licensed under this chapter to:
  (a) represent or hold out that the individual is a licensed direct-entry midwife;
  (b) administer a prescription medication, except oxygen, in the practice of direct-entry midwifery;
  (c) before engaging in the practice of midwifery with a client, fail to obtain from the client an informed consent statement that includes the following:
    (i) a description of the individual's midwifery education, training, continuing education, and experience;
    (ii) a statement that the individual is not licensed by the state as a direct-entry midwife;
    (iii) a statement that it is unlawful for the individual to administer to the client a prescription medication, except oxygen, in the practice of direct-entry midwifery;
    (iv) a written plan to address medical issues the client may experience during pregnancy, labor, or childbirth, which plan shall address transfer of the client to a licensed health care provider or facility, if necessary;
    (v) the name and signature of the individual;
    (vi) the name and signature of the client;
    (vii) the date the individual signed the statement; and
    (viii) the date the client signed the statement; or
  (d) fail to retain for at least 4 years a signed statement from a client described by Subsection (1)(c).

(2)
  (a) Except for conduct that constitutes unlawful conduct under Subsection (1), it is lawful to practice direct-entry midwifery in the state without being licensed under this chapter.
  (b) The practice of direct-entry midwifery is not considered the practice of medicine, nursing, or nurse-midwifery.

Amended by Chapter 107, 2016 General Session

58-77-502 Unprofessional conduct.

In addition to the definition in Subsection 58-1-501(2), "unprofessional conduct" includes:

(1) failing to obtain informed consent as described in Subsection 58-77-601(1);
(2) disregarding a client's dignity or right to privacy as to her person, condition, possessions, or medical record;
(3) failing to file or record any medical report as required by law, impeding, or obstructing the filing or recording of the report, or inducing another to fail to file or record the report;
(4) breaching a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a client, unless ordered by the court;
(5) inappropriately delegating direct-entry midwifery duties;
(6) using advertising or an identification statement that is false, misleading, or deceptive;
(7) using in combination with the term "midwife" the term "nurse" or another title, initial, or designation that falsely implies that the direct-entry midwife is licensed as a certified nurse midwife, registered nurse, or licensed practical nurse; and

(8) submitting a birth certificate known by the person to be false or fraudulent.

Enacted by Chapter 299, 2005 General Session

58-77-503 Penalty for unlawful conduct.

A person who violates the unlawful conduct provisions defined in this chapter is guilty of a class A misdemeanor.

Enacted by Chapter 299, 2005 General Session

Part 6
Standards of Practice

58-77-601 Standards of practice.

(1)
- (a) Prior to providing any services, a licensed direct-entry midwife must obtain an informed consent from a client.
- (b) The consent must include:
  - (i) the name and license number of the direct-entry midwife;
  - (ii) the client's name, address, telephone number, and primary care provider, if the client has one;
  - (iii) the fact, if true, that the licensed direct-entry midwife is not a certified nurse midwife or a physician;
  - (iv) a description of the licensed direct-entry midwife's education, training, continuing education, and experience in midwifery;
  - (v) a description of the licensed direct-entry midwife's peer review process;
  - (vi) the licensed direct-entry midwife's philosophy of practice;
  - (vii) a promise to provide the client, upon request, separate documents describing the rules governing licensed direct-entry midwifery practice, including a list of conditions indicating the need for consultation, collaboration, referral, transfer or mandatory transfer, and the licensed direct-entry midwife's personal written practice guidelines;
  - (viii) a medical back-up or transfer plan;
  - (ix) a description of the services provided to the client by the licensed direct-entry midwife;
  - (x) the licensed direct-entry midwife's current legal status;
  - (xi) the availability of a grievance process;
  - (xii) client and licensed direct-entry midwife signatures and the date of signing; and
  - (xiii) whether the licensed direct-entry midwife is covered by a professional liability insurance policy.

(2) A licensed direct-entry midwife shall:
- (a)
  - (i) limit the licensed direct-entry midwife's practice to a normal pregnancy, labor, postpartum, newborn and interconceptual care, which for purposes of this section means a normal labor:
    - (A) that is not pharmacologically induced;
    - (B) that is low risk at the start of labor;
    - (C) that remains low risk through out the course of labor and delivery;

(D) in which the infant is born spontaneously in the vertex position between 37 and 43 completed weeks of pregnancy; and
(E) except as provided in Subsection (2)(a)(ii), in which after delivery, the mother and infant remain low risk; and
(ii) the limitation of Subsection (2)(a)(i) does not prohibit a licensed direct-entry midwife from delivering an infant when there is:
(A) intrauterine fetal demise; or
(B) a fetal anomaly incompatible with life; and
(b) appropriately recommend and facilitate consultation with, collaboration with, referral to, or transfer or mandatory transfer of care to a licensed health care professional when the circumstances require that action in accordance with this section and standards established by division rule.
(3) If after a client has been informed that she has or may have a condition indicating the need for medical consultation, collaboration, referral, or transfer and the client chooses to decline, then the licensed direct-entry midwife shall:
(a) terminate care in accordance with procedures established by division rule; or
(b) continue to provide care for the client if the client signs a waiver of medical consultation, collaboration, referral, or transfer.
(4) If after a client has been informed that she has or may have a condition indicating the need for mandatory transfer, the licensed direct-entry midwife shall, in accordance with procedures established by division rule, terminate the care or initiate transfer by:
(a) calling 911 and reporting the need for immediate transfer;
(b) immediately transporting the client by private vehicle to the receiving provider; or
(c) contacting the physician to whom the client will be transferred and following that physician's orders.
(5) The standards for consultation and transfer are the minimum standards that a licensed direct-entry midwife must follow. A licensed direct-entry midwife shall initiate consultation, collaboration, referral, or transfer of a patient sooner than required by administrative rule if in the opinion and experience of the licensed direct-entry midwife, the condition of the client or infant warrant a consultation, collaboration, referral, or transfer.
(6) This chapter does not mandate health insurance coverage for midwifery services.

Amended by Chapter 238, 2016 General Session

58-77-602 Immunity and liability.
(1) If a direct-entry midwife seeks to consult with, refer, or transfer a client to a licensed health care provider or facility, the responsibility of the provider or facility for the client does not begin until the client is physically within the care of the provider or facility.
(2) A licensed health care provider who examines a direct-entry midwife's client is only liable for the actual examination and cannot be held accountable for the client's decision to pursue an out-of-hospital birth or the services of a direct-entry midwife.
(3)
(a) A licensed health care provider may, upon receiving a briefing data from a direct-entry midwife, issue a medical order for the direct-entry midwife's client, without that client being an explicit patient of the provider.
(b) Regardless of the advice given or order issued, the responsibility and liability for caring for the client is that of the direct-entry midwife.

(c) The provider giving the order is responsible and liable only for the appropriateness of the order given the data received.
(d) The issuing of an order for a direct-entry midwife's client does not constitute a delegation of duties from the other provider to the direct-entry midwife.
(4) A licensed health care provider may not be held civilly liable for rendering emergency medical services that arise from prohibited conduct in Section 58-77-603, or from care rendered under a waiver as specified in Subsection 58-77-601(3)(b), unless the emergency medical services constitute gross negligence or reckless disregard for the client.
(5) A licensed direct-entry midwife shall be solely responsible for the use of medications under this chapter.

Enacted by Chapter 299, 2005 General Session

58-77-603 Prohibited practices.
A direct-entry midwife may not:
(1) administer a prescription drug to a client in a manner that violates this chapter;
(2) effect any type of surgical delivery except for the cutting of an emergency episiotomy;
(3) administer any type of epidural, spinal, or caudal anesthetic, or any type of narcotic analgesia;
(4) use forceps or a vacuum extractor;
(5) manually remove the placenta, except in an emergency that presents an immediate threat to the life of the client; or
(6) induce abortion.

Enacted by Chapter 299, 2005 General Session

Chapter 78
Vocational Rehabilitation Counselors Licensing Act

Part 1
General Provisions

58-78-101 Title.
This chapter is known as the "Vocational Rehabilitation Counselors Licensing Act."

Enacted by Chapter 122, 2009 General Session

58-78-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Vocational Rehabilitation Counselors Licensing Board created in Section 58-78-201.
(2) "Licensed vocational rehabilitation counselor" means an individual licensed under this chapter who is engaged in the practice of providing vocational rehabilitation services.
(3) "Practice of providing vocational rehabilitation services" means rendering or offering to an individual, group, organization, or the general public vocational rehabilitation services:
(a) in public or private practice;

(b) for compensation; and
(c) involving the application of principles, methods, or procedures of the vocational rehabilitation counseling profession, which include:
(i) vocational assessment;
(ii) vocational rehabilitation counseling and guidance;
(iii) vocational and other training services;
(iv) self-employment plans;
(v) job analysis; and
(vi) job placement.

Enacted by Chapter 122, 2009 General Session

Part 2
Board

58-78-201 Board.
(1) There is created the Vocational Rehabilitation Counselors Licensing Board consisting of four licensed vocational rehabilitation counselors and one individual representing the general public.
(2) The board shall be appointed and serve in accordance with Section 58-1-201.
(3)
(a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
(b) The board may also designate one of its members on a rotating or permanent basis to:
(i) assist the division in reviewing complaints concerning unlawful or unprofessional conduct of a licensee; and
(ii) advise the division in its investigation of these complaints.
(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning that complaint.

Enacted by Chapter 122, 2009 General Session

Part 3
Licensing

58-78-301 License required.
(1) Beginning January 1, 2010, and except as provided in Sections 58-1-307 and 58-78-304, a license is required to engage in the practice of vocational rehabilitation counseling.
(2) The division shall issue to an individual who qualifies under this chapter a license to practice vocational rehabilitation counseling.

Enacted by Chapter 122, 2009 General Session

58-78-302 Qualifications for licensure -- Licensure by credential.

(1) Except as provided in Subsection (2), an applicant for licensure as a vocational rehabilitation counselor under this chapter shall:
  (a) submit an application in a form as prescribed by the division;
  (b) pay a fee determined by the department under Section 63J-1-504 to recover the costs of administering licensing requirements relating to vocational rehabilitation counselors;
  (c) be of good moral character;
  (d) provide satisfactory evidence of having earned a master's degree in rehabilitation counseling or a related field;
  (e) provide satisfactory evidence of having 4,000 hours of disability related work experience under the supervision of a licensed vocational rehabilitation counselor, except as otherwise provided in Subsection (2); and
  (f) meet the examination requirement established by rule by the division in collaboration with the board.
(2) The division may issue a license under this chapter to an individual who is licensed in another state or jurisdiction to practice vocational rehabilitation counseling if the division finds that the other state or jurisdiction has substantially the same or higher licensure requirements as this state.

Amended by Chapter 367, 2011 General Session

58-78-303 Term of license -- Expiration -- Renewal.
(1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule.
(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.
(3) Each person holding a license under this chapter as a vocational rehabilitation counselor shall complete in each period of licensure a program of qualifying continuing professional education in accordance with standards defined by rule.

Amended by Chapter 367, 2011 General Session

58-78-304 Exemption from licensure.
In addition to the exemptions from licensure in Section 58-1-307, the following may engage in the practice of vocational rehabilitation counseling subject to the stated circumstances and limitations, without being licensed under this chapter if they do not use the title of vocational rehabilitation counselor or are not directly represented or held out to the public to be legally qualified to engage in the practice of vocational rehabilitation counseling before the public in this state:
(1) an individual employed or supervised by a licensed vocational rehabilitation counselor while carrying out specific tasks under the licensee's supervision; and
(2) a priest, rabbi, or minister of the gospel of any religious denomination.

Enacted by Chapter 122, 2009 General Session

Part 4
License Denial and Discipline

58-78-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for the division to refuse to issue a license to an applicant under this chapter, to refuse to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue a cease and desist order to a licensee shall be in accordance with Section 58-1-401.

Enacted by Chapter 122, 2009 General Session

Part 5
Unlawful and Unprofessional Conduct

58-78-501 Unlawful conduct.

In addition to the definition in Section 58-1-501, "unlawful conduct" includes using the title "vocational rehabilitation counselor" or any other title or designation tending to indicate that the individual is a vocational rehabilitation counselor unless the individual has a current license as a vocational rehabilitation counselor issued under this chapter.

Enacted by Chapter 122, 2009 General Session

58-78-502 Unprofessional conduct.

"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501 and as may be further defined by rule, engaging in an act or practice in a professional capacity which the licensee is not competent to perform through training or experience.

Enacted by Chapter 122, 2009 General Session

Chapter 79
Hunting Guides and Outfitters Licensing Act

Part 1
General Provisions

58-79-101 Title.

This chapter is known as the "Hunting Guides and Outfitters Licensing Act."

Enacted by Chapter 52, 2009 General Session

58-79-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Hunting Guides and Outfitters Licensing Board created in Section 58-79-201.

(2) "Compensation" means anything of economic value in excess of $100 that is paid, loaned, granted, given, donated, or transferred to a hunting guide or outfitter for or in consideration of personal services, materials, or property.
(3) "Hunting" means to locate, pursue, chase, catch, capture, trap, or kill wildlife.
(4) "Hunting guide" means an individual who:
(a) offers or provides hunting guide services on public lands for compensation; and
(b) is retained for compensation by an outfitter.
(5) "Hunting guide services" means to guide, lead, or assist an individual in hunting wildlife.
(6) "Outfitter" means an individual who offers or provides outfitting or hunting guide services for compensation to another individual for hunting wildlife on public lands.
(7)
(a) "Outfitting services" means providing, for hunting wildlife on public lands:
(i) transportation of people, equipment, supplies, or wildlife to or from a location;
(ii) packing, protecting, or supervising services; or
(iii) hunting guide services.
(b) "Outfitting services" does not include activities undertaken by the Division of Wildlife Resources or its employees, associates, volunteers, contractors, or agents under authority granted in Title 23, Wildlife Resources Code of Utah.
(8)
(a) "Public lands" means any lands owned by the United States, the state, or a political subdivision or independent entity of the state that are open to the public for purposes of engaging in a wildlife related activity.
(b) "Public lands" does not include lands owned by the United States, the state, or a political subdivision or independent entity of the state that are included in a cooperative wildlife management unit under Subsection 23-23-7(5) so long as the guiding and outfitting services furnished by the cooperative wildlife management unit are limited to hunting species of wildlife specifically authorized by the Division of Wildlife Resources in the unit's management plan.
(9) "Wildlife" means cougar, bear, and big game animals as defined in Subsection 23-13-2(6).

Amended by Chapter 326, 2010 General Session

Part 2
Board

58-79-201 Board.
(1) There is created the Hunting Guides and Outfitters Licensing Board consisting of three persons licensed in accordance with this chapter, one member of the Wildlife Board selected by the Wildlife Board, and one person appointed by the Wildlife Board.
(2) Except for the two members selected by the Wildlife Board, the board shall be appointed and serve in accordance with Section 58-1-201.
(3)
(a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
(b) The board shall also:

(i) designate one of its members on a permanent or rotating basis to assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of hunting guides and outfitters; and
(ii) advise the division in its investigations of these complaints.
(4) A board member who has, under Subsection (3)(b), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Enacted by Chapter 52, 2009 General Session

Part 3
Licensing

58-79-301 Licensure required -- Issuance of licenses.
(1) Beginning January 1, 2010, and except as provided in Sections 58-1-307 and 58-79-304, a license is required to provide the services of a hunting guide or outfitter.
(2) The division shall issue to an individual who qualifies under the provisions of this chapter a license in the classification of:
(a) hunting guide; or
(b) outfitter.

Enacted by Chapter 52, 2009 General Session

58-79-302 Qualifications for licensure.
(1) An applicant for licensure as a hunting guide shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) produce satisfactory evidence of good moral character;
(d) possess a high degree of skill and ability as a hunting guide;
(e) successfully complete basic education and training requirements established by rule by the division in collaboration with the board; and
(f) meet with the division and board if requested by the division or board.
(2) An applicant for licensure as an outfitter shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) produce satisfactory evidence of good moral character;
(d) possess a high degree of skill and ability as an outfitter;
(e) successfully complete basic education and training requirements established by rule by the division in collaboration with the board; and
(f) meet with the division and board if requested by the division or board.

Enacted by Chapter 52, 2009 General Session

58-79-303 Term of license -- Expiration -- renewal.
(1)

(a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule.
(b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycle it administers.
(2) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Enacted by Chapter 52, 2009 General Session

58-79-304 Exemptions from licensure.
The exemptions from licensure under this chapter are limited to:
(1) those set forth in Section 58-1-307; and
(2) an employee or subordinate of a hunting guide or outfitter if:
(a) the employee or subordinate does not use the title of hunting guide or outfitter or is not directly represented to the public to be legally qualified to engage in the practice of being a hunting guide or outfitter before the public in this state; and
(b) the employee's or subordinate's duties do not include responsible charge.

Enacted by Chapter 52, 2009 General Session

Part 4
License Denial and Discipline

58-79-401 Grounds for denial of license -- Disciplinary proceedings.
Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order under this chapter shall be in accordance with Section 58-1-401.

Enacted by Chapter 52, 2009 General Session

Part 5
Unlawful and Unprofessional Conduct

58-79-501 Unlawful conduct.
"Unlawful conduct" includes, in addition to the definition in Section 58-1-501, using the title "hunting guide" or "outfitter" or any other title or designation to indicate that the individual is a hunting guide or outfitter or acting as a hunting guide or outfitter, unless the individual has a current license as a hunting guide or outfitter under this chapter.

Amended by Chapter 326, 2010 General Session

58-79-502 Unprofessional conduct.
"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501, and as may be further defined by rule:

(1) engaging in an activity that would place a licensee's client, prospective client, or third party's safety at risk, recognizing the inherent risks associated with hunting wildlife and the activity engaged in being above and beyond those inherent risks;
(2) using false, deceptive, or misleading advertising related to providing services as a hunting guide or outfitter; and
(3) misrepresenting services, outcomes, facilities, equipment, or fees to a client or prospective client.

Enacted by Chapter 52, 2009 General Session

Chapter 80a
Medical Language Interpreter Act

Part 1
General Provisions

58-80a-101 Title.
This chapter is known as the "Medical Language Interpreter Act."

Renumbered and Amended by Chapter 127, 2010 General Session

58-80a-102 Definitions.
As used in this chapter:
(1) "Certified medical language interpreter" means a medical language interpreter who has received a certificate from the division under this chapter.
(2) "Health care provider" means a person licensed under:
(a)Title 58, Chapter 5a, Podiatric Physician Licensing Act;
(b)Title 58, Chapter 16a, Utah Optometry Practice Act;
(c)Title 58, Chapter 17b, Pharmacy Practice Act;
(d)Title 58, Chapter 24b, Physical Therapy Practice Act;
(e)Title 58, Chapter 31b, Nurse Practice Act;
(f)Title 58, Chapter 31c, Nurse Licensure Compact;
(g)Title 58, Chapter 31d, Advanced Practice Registered Nurse Compact;
(h)Title 58, Chapter 44a, Nurse Midwife Practice Act;
(i)Title 58, Chapter 57, Respiratory Care Practices Act;
(j)Title 58, Chapter 60, Mental Health Professional Practice Act;
(k)Title 58, Chapter 61, Psychologist Licensing Act;
(l)Title 58, Chapter 67, Utah Medical Practice Act;
(m)Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
(n)Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
(o)Title 58, Chapter 70a, Physician Assistant Act;
(p)Title 58, Chapter 71, Naturopathic Physician Practice Act;
(q)Title 58, Chapter 73, Chiropractic Physician Practice Act; or
(r)Title 58, Chapter 77, Direct-entry Midwife Act.

(3) "Medical language interpreter" means a person who, for compensation, performs verbal language interpretation services between a health care provider who speaks English and another person for the purpose of assisting the person in seeking or obtaining medical advice, diagnoses, or treatment.
(4) "National standards of practice" means the National Standards of Practice, published by the National Council on Interpreting in Health Care.

Renumbered and Amended by Chapter 127, 2010 General Session

Part 2
Board

58-80a-201 Certified Medical Language Interpreter Advisory Board.
The division shall notify the Health and Human Services Interim Committee if it determines that there is a need to create, by statute, a Certified Medical Language Interpreter Advisory Board.

Enacted by Chapter 127, 2010 General Session

Part 3
Certification

58-80a-301 Certification.
(1) The division shall issue to a person who qualifies under this chapter a certificate as a certified medical language interpreter.
(2) A certificate described in Subsection (1) shall specify the language that the person is certified for.
(3) This chapter prohibits a person from representing or holding oneself out as a certified medical language interpreter if the person does not have a certificate described in Subsection (1).

Renumbered and Amended by Chapter 127, 2010 General Session

58-80a-302 Certification is voluntary.
(1) The certification provided under this chapter is voluntary.
(2) This chapter does not prohibit a person from acting as a medical language interpreter, if the person does not have a certificate described in Subsection 58-80a-301(1).

Renumbered and Amended by Chapter 127, 2010 General Session

58-80a-303 Qualifications for certification.
A person qualifies as a certified medical language interpreter if the person:
(1) acts as a medical language interpreter between English and at least one of the following languages:
  (a) Spanish;
  (b) Russian;
  (c) Bosnian;

(d) Somali;
(e) Mandarin Chinese;
(f) Cantonese; or
(g) Navajo;
(2) passes an examination administered by, or under contract with, the division, that tests:
(a) the following areas, with respect to the language for which the person applies for certification:
(i) basic language fluency;
(ii) basic medical terminology, including the ability to:
(A) name human body parts;
(B) name internal human organs;
(C) describe basic medical symptoms; and
(D) describe basic medical instructions, including dosage amounts and frequency; and
(iii) basic cultural competency relating to medical care beliefs and practices that are common to people who speak that language;
(b) knowledge and understanding of the national standards of practice; and
(c) a basic understanding of medical confidentiality requirements, including the confidentiality requirements of the federal Health Insurance Portability and Accountability Act;
(3) signs a statement agreeing to abide by the national standards of practice; and
(4) pays the fee described in Section 58-80a-305.

Renumbered and Amended by Chapter 127, 2010 General Session

58-80a-304 Term of certification -- Expiration -- Renewal.
(1) The division shall issue each certification under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles that the division administers.
(2) Each certification automatically expires on the expiration date shown on the certification unless the certified medical language interpreter renews the certification in accordance with Section 58-1-308.

Enacted by Chapter 127, 2010 General Session

58-80a-305 Fees -- Rulemaking authority.
(1) The division may charge a fee, established under Section 63J-1-504, to recover the costs of:
(a) administering the examination described in Section 58-80a-303; and
(b) issuing the certificate described in Subsection 58-80a-301(1).
(2) The division may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to accomplish the requirements of this chapter.

Renumbered and Amended by Chapter 127, 2010 General Session

Part 4
Certification Denial and Discipline

58-80a-401 Grounds for denial of certification -- Disciplinary proceedings.

Grounds for refusing to issue a certification to an applicant, for refusing to renew the certification of a certified medical language interpreter, for revoking, suspending, restricting, or placing on probation the certification of a certified medical language interpreter, for issuing a public or private reprimand to a certified medical language interpreter, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 127, 2010 General Session

Part 5
Unlawful and Unprofessional Conduct

58-80a-501 Unlawful conduct.

In addition to the definition in Subsection 58-1-501(1), "unlawful conduct" includes representing or holding oneself out as a certified medical language interpreter when not certified under this chapter.

Renumbered and Amended by Chapter 127, 2010 General Session

58-80a-502 Penalty for unlawful conduct.

A person who violates the unlawful conduct provisions described in Section 58-80a-501 is guilty of a class A misdemeanor.

Renumbered and Amended by Chapter 127, 2010 General Session

58-80a-503 Unprofessional conduct.

"Unprofessional conduct" includes:

(1) conduct which is detrimental to the interests of the public;
(2) willful or negligent betrayal or disclosure of confidential information about which the certified medical language interpreter becomes knowledgeable as a result of or incidental to the certified medical language interpreter's practice as a certified medical language interpreter;
(3) false or deceptive representation of a certified medical language interpreter's skills, competence, capability, or resources as a certified medical language interpreter;
(4) offering, undertaking, or agreeing to undertake an assignment as a certified medical language interpreter for which the certified medical language interpreter is not qualified or which the certified medical language interpreter cannot complete as agreed in a professional manner;
(5) the use of any chemical, drug, or alcohol in any unlawful manner or in any manner which negatively affects the ability of the certified medical language interpreter to competently practice as a certified medical language interpreter;
(6) willfully and intentionally making any false or fraudulent interpretation, statement, or representation in the performance of the certified medical language interpreter's duties;
(7) any conduct contrary to the recognized standards and ethics of the profession of a certified medical language interpreter;
(8) gross incompetence in practice as a certified medical language interpreter;
(9) violation of any provision of this chapter or rules promulgated to regulate the practice of certified medical language interpreters; or

(10) conviction of a felony or any other crime which is considered by the division to represent activity detrimental to the public interest as that interest is reflected in the person continuing to practice as a certified medical language interpreter.

Enacted by Chapter 127, 2010 General Session

Part 6
Miscellaneous

58-80a-601 Priority for certified medical language interpreter.

The Department of Health and the Department of Human Services may give priority to contracting with companies that use certified medical language interpreters.

Renumbered and Amended by Chapter 127, 2010 General Session

Chapter 81
Retired Volunteer Health Care Practitioner Act

58-81-101 Title.

This chapter is known as the "Retired Volunteer Health Care Practitioner Act."

Enacted by Chapter 263, 2009 General Session

58-81-102 Definitions.

For purposes of this chapter:

(1) "Board" means the state licensing board created for each of the health care practitioners included in Subsection (2).

(2) "Health care practitioner" includes:

(a) a podiatrist licensed under Chapter 5a, Podiatric Physician Licensing Act;

(b) a physical therapist licensed under Chapter 24b, Physical Therapy Practice Act;

(c) a nurse or advanced practice registered nurse licensed under Chapter 31b, Nurse Practice Act;

(d) a recreational therapist licensed under Chapter 40, Recreational Therapy Practice Act;

(e) an occupational therapist licensed under Chapter 42a, Occupational Therapy Practice Act;

(f) a nurse midwife licensed under Chapter 44a, Nurse Midwife Practice Act;

(g) a mental health professional licensed under Chapter 60, Mental Health Professional Practice Act;

(h) a psychologist licensed under Chapter 61, Psychologist Licensing Act;

(i) a physician licensed under Chapter 67, Utah Medical Practice Act;

(j) an osteopath licensed under Chapter 68, Utah Osteopathic Medical Practice Act;

(k) a dentist or dental hygienist licensed under Chapter 69, Dentist and Dental Hygienist Practice Act;

(l) a physician assistant licensed under Chapter 70a, Physician Assistant Act;

(m) a pharmacist licensed under Chapter 17b, Pharmacy Practice Act; or

(n) an optometrist licensed under Chapter 16a, Utah Optometry Practice Act.
(3) "Qualified location" means:
(a) a clinic, hospital, church, or organization whose primary purpose is to sponsor, promote, or organize uncompensated health care services for people unable to pay for health care services; and
(b) is a location approved by the division.
(4) "Remuneration or compensation" means the same as that term is defined in Section 58-13-3.
(5) "Supervising professional" means a health care practitioner:
(a) who has an active license in the state in good standing;
(b) with a scope of practice that is appropriate for supervising the applicant as determined by the division and board; and
(c) who is practicing at the qualified location.
(6) "Supervision" means:
(a) the level of supervision required for:
(i) a social service worker in Chapter 60, Mental Health Professional Practice Act;
(ii) a dental hygienist in Chapter 69, Dentist and Dental Hygienist Practice Act;
(iii) a recreational therapist technician in Chapter 40, Recreational Therapy Practice Act; and
(iv) an occupational technician assistant in Chapter 42a, Occupational Therapy Practice Act; and
(b) for the health care practitioners listed in Subsections (2)(a) through (m) and not included in Subsection (5)(a):
(i) entering into a delegation of service agreement with a supervising professional in accordance with Subsection 58-81-103(2);
(ii) having the ability to contact the supervising professional during the time the volunteer is providing volunteer services; and
(iii) for every 40 hours of volunteer service hours, meeting with the supervising professional.
(7) "Volunteer" means the individual health care practitioner:
(a) will devote the health care practitioner's practice exclusively to providing care to the needy and indigent in the state:
(i) within:
(A) the practitioner's scope of practice; and
(B) the delegation of service agreement between the volunteer and the supervising professional; and
(ii) at a qualified location;
(b) will agree to donate professional services in a qualified location; and
(c) will not receive remuneration or compensation for the health care practitioner's services.

Amended by Chapter 238, 2016 General Session

58-81-103 Eligibility for volunteer health care practitioner license -- Delegation of service agreement.
(1) A health care practitioner is eligible to apply to the division and board for a volunteer health care practitioner license if the health care practitioner:
(a) certifies to the division and board that the applicant will be engaged exclusively in volunteer health care services; and
(b) completes an application for a volunteer health care practitioner license, which includes documentation:
(i) of professional education, exams passed, and graduation;

(ii) of practice history;
(iii) of a qualified location for which the health care practitioner will be practicing;
(iv) identifying the supervising health care practitioner and the supervising health care practitioner's delegation of service agreement with the volunteer practitioner; and
(v) that the applicant has:
(A) previously been issued an unrestricted license to practice in Utah, another state of the United States, or a district or territory of the United States;
(B) never been the subject of any significant disciplinary action in any jurisdiction; and
(C) is in good health and does not have a condition which would impair the health care practitioner's ability to practice with reasonable skill and safety to patients.
(2) A health care provider who has agreed to be a supervising professional for a volunteer at a qualified location shall:
(a) enter into a delegation of service agreement with the volunteer health care practitioner;
(b) agree to provide the level of supervision required in Subsection 58-81-102(6);
(c) determine with the volunteer whether the volunteer's scope of practice or ability to prescribe controlled substances will be limited by the delegation of service agreement;
(d) include in the delegation of service agreement that the volunteer may not prescribe a controlled substance to himself, the volunteer's family, or a staff member of the qualified location; and
(e) forward the delegation of service agreement to the division.

Amended by Chapter 49, 2014 General Session

58-81-104 Volunteer health care practitioner license -- Waiver of fees -- Rulemaking authority.
(1) The division and board shall issue a volunteer health care practitioner license to an applicant who:
(a) completes an application under Section 58-81-103; and
(b) meets the requirements of this chapter.
(2) A license issued under this chapter shall:
(a) comply with the scope of practice for a similarly situated licensed practitioner, except that the license shall limit the health care practitioner's practice to the qualified location;
(b) permit the health care practitioner to apply for a controlled substance license as permitted for other similarly situated licensed practitioners; and
(c) state that the license is a volunteer health care practitioner license and is subject to the restriction of Subsection (2)(a).
(3) The division and board shall waive all division fees, including application fees, examination fees, and annual renewal fees for an applicant who applies for a volunteer health care practitioner license and who otherwise meets licensure requirements.
(4) The division and board may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
(a) approve the charity locations that qualify under Section 58-81-102;
(b) develop standards for the information that must be included in a delegation of service agreement, including a standard form that a supervising professional may use; and
(c) implement the provisions of this chapter.
(5) A health care practitioner who is licensed as a volunteer health care practitioner under this chapter is entitled to qualified immunity for charity care if the health care practitioner meets the requirements of Section 58-13-3.

Enacted by Chapter 263, 2009 General Session

Chapter 82
Electronic Prescribing Act

Part 1
General Provisions

58-82-101 Title.

This chapter is known as the "Electronic Prescribing Act."

Enacted by Chapter 47, 2009 General Session

58-82-102 Definitions.

As used in this chapter:

(1) "Drug" is as defined in Section 58-37-2.

(2) "Electronic prescribing" means the electronic generation and transmission of a prescription between a practitioner and a pharmacy.

(3) "Existing patient" means a person who a practitioner has:

(a) obtained information regarding, in the usual course of professional practice, that is sufficient to:

(i) establish a diagnoses;

(ii) identify conditions; and

(iii) identify contraindications to potential treatment; and

(b) accepted as a patient.

(4)

(a) "Federal controlled substance" means a drug or substance included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any federal controlled substance analog.

(b) "Federal controlled substance" does not include:

(i) distilled spirits, wine, or malt beverages, as those terms are defined or used in Title 32B, Alcoholic Beverage Control Act, regarding tobacco or food;

(ii) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(iii) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which are not otherwise regulated by law, which may contain naturally occurring amounts of chemicals or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5)

(a) "Federal controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513:

(i) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances in the schedules set forth in Subsection (4); or
(ii) which, with respect to a particular individual, is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances in the schedules set forth in Subsection (4).
(b) "Federal controlled substance analog" does not include:
(i) a controlled substance currently scheduled in Schedules I through V of Section 58-37-4;
(ii) a substance for which there is an approved new drug application;
(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355, to the extent the conduct with respect to the substance is permitted by the exemption;
(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance;
(v) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or
(vi) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which are not otherwise regulated by law, which may contain naturally occurring amounts of chemicals or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(6) "Pharmacy" is as defined in Section 58-17b-102.
(7) "Practitioner" means an individual currently licensed, registered, or otherwise authorized by the state to prescribe and administer a drug in the course of professional practice.
(8) "Prescription" is as defined in Section 58-37-2.

Amended by Chapter 276, 2010 General Session

Part 2
Electronic Prescribing

58-82-201 Electronic prescriptions -- Restrictions -- Rulemaking authority.
(1) Subject to the provisions of this section, a practitioner shall:
(a) provide each existing patient of the practitioner with the option of participating in electronic prescribing for prescriptions issued for the patient, if the practitioner prescribes a drug or device for the patient on or after July 1, 2012; and
(b) offer the patient a choice regarding to which pharmacy the practitioner will issue the electronic prescription.
(2) A practitioner may not issue a prescription through electronic prescribing for a drug, device, or federal controlled substance that the practitioner is prohibited by federal law or federal rule from issuing through electronic prescribing.
(3) A pharmacy shall:
(a) accept an electronic prescription that is transmitted in accordance with the requirements of this section and division rules; and

(b) dispense a drug or device as directed in an electronic prescription described in Subsection (3)(a).
(4) The division shall make rules to ensure that:
(a) except as provided in Subsection (6), practitioners and pharmacies comply with this section;
(b) electronic prescribing is conducted in a secure manner, consistent with industry standards; and
(c) each patient is fully informed of the patient's rights, restrictions, and obligations pertaining to electronic prescribing.
(5) An entity that facilitates the electronic prescribing process under this section shall:
(a) transmit to the pharmacy the prescription for the drug prescribed by the prescribing practitioner however, this Subsection (5)(a) does not prohibit the use of an electronic intermediary if the electronic intermediary does not over-ride a patient's or prescriber's choice of pharmacy;
(b) transmit only scientifically accurate, objective, and unbiased information to prescribing practitioners; and
(c) allow a prescribing practitioner to electronically override a formulary or preferred drug status when medically necessary.
(6) The division may, by rule, grant an exemption from the requirements of this section to a pharmacy or a practitioner to the extent that the pharmacy or practitioner can establish, to the satisfaction of the division, that compliance with the requirements of this section would impose an extreme financial hardship on the pharmacy or practitioner.

Amended by Chapter 160, 2012 General Session

Chapter 83
Online Prescribing, Dispensing, and Facilitation Licensing Act

Part 1
General Provisions

58-83-101 Title.
This chapter is known as the "Online Prescribing, Dispensing, and Facilitation Licensing Act."

Enacted by Chapter 180, 2010 General Session

58-83-102 Definitions.
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Board" means the Online Prescribing, Dispensing, and Facilitation Licensing Board created in Section 58-83-201.
(2) "Branching questionnaire" means an adaptive and progressive assessment tool approved by the board.
(3) "Delivery of online pharmaceutical services" means the process in which a prescribing practitioner diagnoses a patient and prescribes one or more of the drugs authorized by Section 58-83-306, using:

(a) a branching questionnaire or other assessment tool approved by the division for the purpose of diagnosing and assessing a patient's health status;
(b) an Internet contract pharmacy to:
(i) dispense the prescribed drug; or
(ii) transfer the prescription to another pharmacy; and
(c) an Internet facilitator to facilitate the practices described in Subsections (3)(a) and (b).
(4) "Division" means the Utah Division of Occupational and Professional Licensing.
(5) "Internet facilitator" means a licensed provider of a web-based system for electronic communication between and among an online prescriber, the online prescriber's patient, and the online contract pharmacy.
(6) "Online contract pharmacy" means a pharmacy licensed and in good standing under Chapter 17b, Pharmacy Practice Act, as either a Class A Retail Pharmacy or a Class B Closed Door Pharmacy and licensed under this chapter to fulfill prescriptions issued by an online prescriber through a specific Internet facilitator.
(7) "Online prescriber" means a person:
(a) licensed under another chapter of this title;
(b) whose license under another chapter of this title includes assessing, diagnosing, and prescribing authority for humans; and
(c) who has obtained a license under this chapter to engage in online prescribing.
(8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-83-501.
(9) "Unprofessional conduct" is as defined in Sections 58-1-203 and 58-83-502, and as further defined by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 180, 2010 General Session

Part 2
Board

58-83-201 Board.
(1) There is created the Online Prescribing, Dispensing, and Facilitation Licensing Board consisting of the following seven members:
(a) two members who are licensed under either Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act, of which:
(i) one shall be engaged in the delivery of online pharmaceutical services; and
(ii) one may not be an online prescriber licensed under this chapter;
(b) two members who are licensed as a pharmacist under Chapter 17b, Pharmacy Practice Act, of which:
(i) one shall be associated with an online contract pharmacy; and
(ii) one may not be associated with an online contract pharmacy;
(c) two members of the general public who are not associated with:
(i) an online prescriber;
(ii) an online contract pharmacy; or
(iii) an Internet facilitator; and
(d) one member who is licensed under this chapter as an Internet facilitator.

(2) Notwithstanding any other requirement for membership on the board, no more than one member of the board may be associated in any of the following ways with the same Internet facilitator:
(a) as an owner;
(b) as an employee;
(c) as an officer;
(d) as a director;
(e) contracted with;
(f) as an agent of; or
(g) having any direct or indirect financial interest.
(3) The board shall be appointed and serve in accordance with Section 58-1-201.
(4)
(a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203, and as otherwise provided in this chapter.
(b) The board may designate one of its members on a permanent or rotating basis to:
(i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
(ii) advise the division in its investigation of a complaint.
(5) A board member who has, under Subsection (4), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Enacted by Chapter 180, 2010 General Session

Part 3
Licensing

58-83-301 Licensure required -- Issuance of licenses.
(1) Beginning July 1, 2010, and except as provided in Section 58-1-307:
(a) a physician licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act, shall be licensed under this chapter to engage in the delivery of online pharmaceutical services;
(b) an online contract pharmacy shall be licensed under this chapter to engage in the delivery of online pharmaceutical services; and
(c) an Internet facilitator shall be licensed under this chapter to engage in the delivery of online pharmaceutical services.
(2) The division shall issue, to any person who qualifies under this chapter, a license:
(a) to prescribe online;
(b) to operate as an online contract pharmacy; or
(c) to operate as an Internet facilitator.
(3)
(a) A license under this chapter is not required to engage in electronic prescribing under Chapter 82, Electronic Prescribing Act; and
(b) nothing in this chapter shall prohibit a physician licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act, from electronic

prescribing or Internet prescribing as permitted by Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act, or other law.

Enacted by Chapter 180, 2010 General Session

58-83-302 Qualifications for licensure.

(1) Each applicant for licensure as an online prescriber under this chapter shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character;
(d) document that the applicant holds a Utah license that is active and in good standing and authorizes the licensee to engage in the assessment, diagnosis, and treatment of human ailments and the prescription of medications;
(e) document that any other professional license the applicant possesses from other jurisdictions is in good standing;
(f)
(i) submit to the division an outline of the applicant's proposed online assessment, diagnosis, and prescribing tool, such as a branching questionnaire; and
(ii) demonstrate the proposed online assessment, diagnosis, and prescribing tool to the board and establish to the board's satisfaction that the utilization of that assessment tool to facilitate the prescription of the drugs approved for online prescribing under Section 58-83-305 does not compromise the public's health, safety, or welfare;
(g) submit policies and procedures that address patient confidentiality, including measures that will be taken to ensure that the age and other identifying information of the person completing the online branching questionnaire are accurate;
(h) describe the mechanism by which the online prescriber and patient will communicate with one another, including electronic and telephonic communication;
(i) describe how the online prescriber/patient relationship will be established and maintained;
(j) submit the name, address, and contact person of the Internet facilitator with whom the online prescriber has contracted to provide services that the online prescriber will use to engage in online assessment, diagnosis, and prescribing; and
(k) submit documentation satisfactory to the board regarding public health, safety, and welfare demonstrating:
(i) how the online prescriber will comply with the requirements of Section 58-83-305;
(ii) the contractual services arrangement between the online prescriber and:
(A) the Internet facilitator; and
(B) the online contract pharmacy; and
(iii) how the online prescriber will allow and facilitate the division's ability to conduct audits in accordance with Section 58-83-308.
(2) An online prescriber may not use the services of an Internet facilitator or online contract pharmacy whose license is not active and in good standing.
(3) Each applicant for licensure as an online contract pharmacy under this chapter shall:
(a) be licensed in good standing in Utah as a Class A Retail Pharmacy or a Class B Closed Door Pharmacy;
(b) submit a written application in the form prescribed by the division;
(c) pay a fee as determined by the department under Section 63J-1-504;
(d) submit any contract between the applicant and the Internet facilitator with which the applicant is or will be affiliated;

(e) submit proof of liability insurance acceptable to the division that expressly covers all activities the online contract pharmacy will engage in under this chapter, which coverage shall be in a minimum amount of $1,000,000 per occurrence with a policy limit of not less than $3,000,000;
(f) submit a signed affidavit to the division attesting that the online contract pharmacy will not dispense a drug that is prescribed by an online prescriber engaged in the delivery of online pharmaceutical services under the provisions of this chapter unless:
(i) the drug is specifically approved by the division under Section 58-83-306; and
(ii) both the prescribing and the dispensing of the drug were facilitated by the Internet facilitator with whom the Internet contract pharmacy is associated under Subsection 58-83-302(3)(d);
(g) document that any other professional license the applicant possesses from other jurisdictions is active and in good standing; and
(h) demonstrate to the division that the applicant has satisfied any background check required by Section 58-17b-307, and each owner, officer, or manager of the applicant online contract pharmacy has not engaged in any act, practice, or omission, which when considered with the duties and responsibilities of a licensee under this chapter indicates there is cause to believe that issuing a license under this chapter is inconsistent with the public's health, safety, or welfare.
(4) Each applicant for licensure as an Internet facilitator under this chapter shall:
(a) submit a written application in the form prescribed by the division;
(b) pay a fee as determined by the department under Section 63J-1-504;
(c) submit any contract between the applicant and the following with which the applicant will be affiliated:
(i) each online prescriber; and
(ii) the single online contract pharmacy;
(d) submit written policies and procedures satisfactory to the division that:
(i) address patient privacy, including compliance with 45 C.F.R. Parts 160, 162, and 164, Health Insurance Portability and Accountability Act of 1996;
(ii) ensure compliance with all applicable laws by health care personnel and the online prescriber who will process patient communications;
(iii) list the hours of operation;
(iv) describe the types of services that will be permitted electronically;
(v) describe the required patient information to be included in the communication, such as patient name, identification number, and type of transaction;
(vi) establish procedures for archiving and retrieving information; and
(vii) establish quality oversight mechanisms;
(e) submit written documentation of the applicant's security measures to ensure the confidentiality and integrity of any user-identifiable medical information;
(f) submit a description of the mechanism for:
(i) patients to access, supplement, and amend patient-provided personal health information;
(ii) back-up regarding the Internet facilitator electronic interface;
(iii) the quality of information and services provided via the interface; and
(iv) patients to register complaints regarding the Internet facilitator, the online prescriber, or the online contract pharmacy;
(g) submit a copy of the Internet facilitator's website;
(h) sign an affidavit attesting that:
(i) the applicant will not access any medical records or information contained in the medical record except as necessary to administer the website and the branching questionnaire; and

(ii) the applicant and its principals, and any entities affiliated with them, will only use the services of a single online contract pharmacy named on the license approved by the division; and
(i) submit any other information required by the division.

Enacted by Chapter 180, 2010 General Session

58-83-303 Term of license -- Expiration -- Renewal.
(1) The online prescriber's license shall be associated with the online prescriber's primary professional license and may be renewed at the time the primary license is renewed in accordance with Subsection 58-1-308(1).
(2) The online contract pharmacy license shall be associated with the online contract pharmacy's primary professional license and may be renewed at the time the primary license is renewed in accordance with Subsection 58-1-308(1).
(3) The Internet facilitator license shall be renewed in accordance with Section 58-1-308.
(4) Each licensee shall, at the time of applying for renewal, demonstrate compliance with this chapter.
(5) Each license shall automatically expire on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Enacted by Chapter 180, 2010 General Session

58-83-305 Duties and responsibilities.
(1) The online prescriber shall:
(a) be held to the same standards of appropriate practice as those applicable in traditional settings which, for purposes of this chapter, include the delivery of online pharmaceutical services;
(b) conduct an assessment and diagnosis based upon a comprehensive health history and an assessment tool such as a branching questionnaire;
(c) ensure that a comprehensive health history, assessment, and diagnosis have been made before prescribing any medication;
(d) conduct the online assessment and diagnosis only through the approved Internet facilitator identified in the online prescriber's application;
(e) comply with all applicable state and federal laws, rules, regulations, and orders;
(f) inform the patient electronically of the benefits and risks of appropriate treatment;
(g) guide the patient regarding the optimal course of action;
(h) treat the patient with courtesy, respect, dignity, responsiveness, and timely attention to the patient's needs;
(i) comply with the requirements for confidentiality as required by this title and applicable federal law;
(j) continue to provide the user with reasonable assistance and sufficient opportunity to make alternative arrangements for care;
(k) be available for ongoing consultation with the patient through e-mail or other forms of communication;
(l) not delegate to a third party the professional responsibility to:
(i) review and evaluate the results of the branching questionnaire;
(ii) consult with the patient electronically or through other means about the patient's medical condition; and

(iii) diagnose and prescribe medications to the patient;
(m) conduct the online assessment and diagnosis and the electronic communication between the online prescriber and the patient only through the approved Internet facilitator;
(n)
(i) maintain the online medical records of the patient; and
(ii) if maintenance of the records is delegated by the online prescriber, delegate that authority only to the approved Internet facilitator;
(o) inform a patient of the patient's freedom of choice to select the pharmacy to dispense the patient's prescription by providing the patient with the phone number of the online contract pharmacy so that the patient may contact the online contract pharmacy and request a transfer of the prescription to another pharmacy; and
(p) authorize the Internet facilitator to provide the online contract pharmacy with the patient's:
(i) full name;
(ii) current address and telephone number;
(iii) date of birth or age and gender;
(iv) height, weight, and vital signs (if known);
(v) medication allergies or drug reactions; and
(vi) current medications, including over-the-counter products, and any additional comments relevant to the patient's drug use.
(2) The online contract pharmacy shall:
(a) only dispense prescription drugs that:
(i) are approved by the division in accordance with Section 58-83-306; and
(ii) were prescribed by an online prescriber who is using the Internet facilitator that is under contract with the online contract pharmacy;
(b) maintain a toll-free number with a pharmacist available for patients using the services of the online contract pharmacy to receive medications prescribed online;
(c) use a tracking identification number system when shipping medications prescribed for patients by an online prescriber; and
(d) provide to the division a quarterly report of all drugs dispensed in accordance with this chapter.
(3) The Internet facilitator shall:
(a) provide services that the online prescriber will use in implementing the branching questionnaire;
(b) provide electronic or telephonic communication between the online prescriber and the patient that:
(i) is secure and confidential;
(ii) allows the online prescriber to be directly accessible to a patient to answer questions regarding the patient's treatment plan; and
(iii) provides privacy and security that complies with the provisions of 45 C.F.R. Parts 160, 162, and 164, Health Insurance Portability and Accountability Act of 1996;
(c) facilitate secure and confidential communication of the prescription issued by the online prescriber to the online contract pharmacy in accordance with Subsection (1)(p);
(d) disclose on its website:
(i) the owner of the website;
(ii) the specific services provided by any associated online prescribers; and
(iii) other information the division may require by rule; and
(e)

(i) only facilitate the delivery of online pharmaceutical services for the specific legend drugs approved by the division in accordance with Section 58-83-306; or
(ii) not facilitate, directly or indirectly, through related entities or affiliates, the dispensing or online prescribing of any drug whether controlled or legend that is not specifically approved under Section 58-83-306.

Enacted by Chapter 180, 2010 General Session

58-83-306 Drugs approved for online prescribing, dispensing, and facilitation -- Delivery of prescription drugs.

(1) An online prescriber may only prescribe, an online contract pharmacy may only dispense, and an Internet facilitator may only facilitate the prescribing and dispensing of, non-controlled, legend drugs:
(a) that have been approved by the Food and Drug Administration;
(b) that are prescribed to treat the condition for which the drug was approved, within the drug manufacturer's guidelines;
(c) that are specifically approved by the division for online prescribing by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(d) that are prescribed for a person who is:
(i) 18 years of age or older; or
(ii) at least 16 years of age:
(A) if permitted by the state or country in which the patient will receive the drug;
(B) with parental consent, if required by the state or country in which the patient will receive the drug; and
(C) only if the prescription is for a hormonal based contraceptive; and
(e) to a person who is located in another country, if the country is designated by the division, by administrative rule, as a country with a regulatory framework for prescribing and dispensing of drugs.
(2) If, after January 1, 2010, the Food and Drug Administration issues a clinical black box warning with respect to any drug approved by the board under Subsection (1), the division shall determine what action, if any, is necessary to protect the public health or welfare as a result of the black box warning.

Amended by Chapter 321, 2015 General Session

58-83-307 Approval of additional drugs -- Request to facilitate.

(1) An Internet facilitator licensed under this chapter may seek the division's approval to facilitate the online prescribing and dispensing of prescriptions for additional drugs.
(2) The Internet facilitator shall make a request for approval of additional drugs by petitioning for an amendment to the administrative rule adopted by the division in accordance with Section 58-83-306 and Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 180, 2010 General Session

58-83-308 Audits.

(1) Each licensee under this chapter shall allow and facilitate an audit by the division regarding the licensee's delivery of online pharmaceutical services to ensure compliance with state and federal statutes, rules, and regulations including ensuring that:

(a) a comprehensive history and assessment have been obtained and a diagnosis has been made for a patient before any medications are prescribed; and
(b) only the approved medications are being prescribed and dispensed.
(2) The division shall be provided with the following, in the manner that allows access from the division's office for the purpose of conducting an audit:
(a) full remote, read-only access rights to the data related to the online prescribing and dispensing of a drug under this chapter and that is used and stored in the Internet facilitator's system; and
(b) the information available to the online prescriber.
(3) An Internet facilitator licensed under this chapter shall provide to the division, at the times designated by the division by administrative rule, a report containing the following information:
(a) the number of prescriptions issued by the online prescribers associated with the Internet facilitator by drug name;
(b) the number of comprehensive histories/assessments received by the Internet facilitator;
(c) the number of comprehensive histories/assessments reviewed by an online prescriber;
(d) the demographic data of the patients receiving prescriptions through the Internet facilitator;
(e) the number of prescriptions:
(i) dispensed by the online contract pharmacy; or
(ii) transferred to a different pharmacy at the patient's request; and
(f) any other information specified by the division by administrative rule.
(4) The division's authority to conduct an audit pursuant to this chapter shall survive any termination or expiration of any prescriptive authority for online prescribing, dispensing, or facilitation.

Enacted by Chapter 180, 2010 General Session

Part 4
License Denial and Discipline

58-83-401 Grounds for denial of license -- Disciplinary proceedings -- Termination of authority to prescribe -- Immediate and significant danger.
(1) Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public reprimand to a licensee, and for issuing a cease and desist order:
(a) shall be in accordance with Section 58-1-401; and
(b) includes:
(i) prescribing, dispensing, or facilitating the prescribing or dispensing of a drug not approved by the board under Section 58-83-306; or
(ii) any other violation of this chapter.
(2) The termination or expiration of a license under this chapter for any reason does not limit the division's authority to start or continue any investigation or adjudicative proceeding.
(3)
(a) Because of the working business relationship between and among the online prescriber, the Internet facilitator, and the online contract pharmacy, each entity's ability to comply with this chapter may depend in some respects on the actions of the others.

(b) It is possible that a particular action or inaction by the online prescriber, the Internet facilitator, or the online contract pharmacy could have the effect of causing the other licensed entities to be out of compliance with this chapter, and each entity may, therefore, be held accountable for any related party's non-compliance, if the party knew or reasonably should have known of the other person's non-compliance.

(4)

(a) An online prescriber may lose the practitioner's professional license to prescribe any drug under this title if the online prescriber knew or reasonably should have known that the provisions of this chapter were violated by the online prescriber, the Internet facilitator, or the online contract pharmacy.

(b) It is not a defense to an alleged violation under this chapter that the alleged violation was a result of an action or inaction not by the charged party but by the related online prescriber, the online contract pharmacy, or the Internet facilitator.

(5) The following actions may result in an immediate suspension of the online prescriber's license, the online contract pharmacy's license, or the Internet facilitator's license, and each is considered an immediate and significant danger to the public health, safety, or welfare requiring immediate action by the division pursuant to Section 63G-4-502 to terminate the delivery of online pharmaceutical services by the licensee:

(a) online prescribing, dispensing, or facilitation with respect to:

(i) a person under the age of 18 years;

(ii) a legend drug not authorized by the division in accordance with Section 58-83-306; and

(iii) any controlled substance;

(b) violating this chapter after having been given reasonable opportunity to cure the violation;

(c) using the name or official seal of the state, the Utah Department of Commerce, or the Utah Division of Occupational and Professional Licensing, or their boards, in an unauthorized manner; or

(d) failing to respond to a request from the division within the time frame requested for:

(i) an audit of the website; or

(ii) records of the online prescriber, the Internet facilitator, or the online contract pharmacy.

Amended by Chapter 367, 2011 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

58-83-501 Practice without a license.

"Unlawful conduct" includes, in addition to the definition in Section 58-1-501, engaging in the practice of Internet prescribing without a license under this chapter.

Enacted by Chapter 180, 2010 General Session

58-83-502 Unprofessional conduct.

"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501 and as may be further defined by administrative rule:

(1) except as provided in Section 58-83-306, online prescribing, dispensing, or facilitation with respect to a person under the age of 18 years;

(2) using the name or official seal of the state, the Utah Department of Commerce, or the Utah Division of Occupational and Professional Licensing, or their boards, in an unauthorized manner;
(3) failing to respond promptly to a request by the division for information including:
(a) an audit of the website; or
(b) records of the online prescriber, the Internet facilitator, or the online contract pharmacy;
(4) using an online prescriber, online contract pharmacy, or Internet facilitator without approval of the division;
(5) failing to inform a patient of the patient's freedom of choice in selecting who will dispense a prescription in accordance with Subsection 58-83-305(1)(n);
(6) failing to keep the division informed of the name and contact information of the Internet facilitator or online contract pharmacy; and
(7) violating the dispensing and labeling requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy.

Amended by Chapter 321, 2015 General Session

58-83-503 Unlawful conduct.

Unlawful conduct includes, in addition to the definition in Section 58-1-501:
(1) online prescribing, dispensing or facilitating of a legend drug not authorized by the division in accordance with Section 58-83-306; or
(2) online prescribing, dispensing or facilitating of a controlled substance.

Enacted by Chapter 180, 2010 General Session

Chapter 84
State Certification of Music Therapists Act

Part 1
General Provisions

58-84-101 Title.

This chapter is known as the "State Certification of Music Therapists Act."

Enacted by Chapter 340, 2014 General Session

58-84-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Practice of music therapy" means the clinical and evidence-based use of music interventions to accomplish individualized goals within a therapeutic relationship.
(2) "State certification" means a designation granted by the division on behalf of the state to an individual who has met the requirements for state certification related to an occupation or profession described in this chapter.
(3) "State certified" means, when used in conjunction with an occupation or profession described in this chapter, a title that:

(a) may be used by a person who has met the state certification requirements related to that occupation or profession described in this chapter; and
(b) may not be used by a person who has not met the state certification requirements related to that occupation or profession described in this chapter.

Enacted by Chapter 340, 2014 General Session

58-84-103 Rulemaking.
When exercising rulemaking authority under this chapter, the division shall comply with the requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 340, 2014 General Session

Part 2
State Certification

58-84-201 Qualifications for state certification.
(1) The division shall grant state certification to a person who qualifies under this chapter to engage in the practice of music therapy as a state certified music therapist.
(2) Each applicant for state certification as a state certified music therapist shall:
(a) submit an application in a form prescribed by the division;
(b) pay a fee determined by the department under Section 63J-1-504;
(c) be of good moral character; and
(d) provide satisfactory documentation that the applicant is board certified by, and in good standing with, the Certification Board for Music Therapists, or an equivalent board as determined by division rule.

Enacted by Chapter 340, 2014 General Session

58-84-202 Term of state certification.
(1) The division shall grant state certification under this chapter in accordance with a two-year renewal cycle established by division rule.
(2) At the time of renewal, an applicant for renewal shall provide satisfactory documentation that the applicant is board certified by, and in good standing with, the Certification Board for Music Therapists, or an equivalent board as determined by division rule.
(3) If the board certification of a state certified music therapist required for obtaining or renewing state certification under this chapter is suspended, placed on probation, revoked, or has expired for any reason, the person:
(a) shall suspend using the title state certified music therapist in connection with the person's name or business;
(b) shall suspend representing to others that the person is a state certified music therapist; and
(c) shall inform the division within two weeks of the suspension, probation, revocation, or expiration of the board certification.
(4) When the division learns that the board certification of a state certified music therapist required for obtaining or renewing state certification under this chapter is suspended, placed on probation, revoked, or has expired for any reason, that person's state certification shall be

revoked and may not be reinstated unless the person meets the requirements and again applies for state certification as described in Section 58-84-201.

Enacted by Chapter 340, 2014 General Session

58-84-203 Limitation of state certification.

Nothing in this chapter shall be construed to prevent a person from lawfully engaging in the practice of music therapy without state certification.

Enacted by Chapter 340, 2014 General Session

Part 3
Unlawful Conduct - Penalties

58-84-301 Unlawful conduct.

(1) It is unlawful for a person who is not a state certified music therapist to use the title state certified music therapist, or represent that the person is a state certified music therapist, in connection with the person's name or business.
(2) It is unlawful for a state certified person whose board certification is suspended, placed on probation, revoked, or has expired for any reason to use the title state certified music therapist, or represent that the person is a state certified music therapist, in connection with the person's name or business.

Enacted by Chapter 340, 2014 General Session

Chapter 85
Utah Right to Try Act

58-85-101 Title.

This chapter is known as the "Utah Right to Try Act."

Enacted by Chapter 110, 2015 General Session

58-85-102 Definitions.

As used in this chapter:
(1) "Eligible patient" means an individual who has been diagnosed with a terminal illness by a physician.
(2) "Insurer" means the same as that term is defined in Section 31A-1-301.
(3) "Investigational device" means a device that:
  (a) meets the definition of "investigational device" in 21 C.F.R. Sec. 812.3; and
  (b) has successfully completed the United States Food and Drug Administration Phase 1 testing for an investigational device described in 21 C.F.R. Part 812.
(4) "Investigational drug" means a drug that:
  (a) meets the definition of "investigational new drug" in 21 C.F.R. Sec. 312.3; and

(b) has successfully completed the United States Food and Drug Administration Phase 1 testing for an investigational new drug described in 21 C.F.R. Part 312.
(5) "Physician" means an individual who is licensed under:
(a)Title 58, Chapter 67, Utah Medical Practice Act; or
(b)Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
(6) "Terminal illness" means a condition of a patient that:
(a) as determined by a physician:
(i) is likely to pose a greater risk to the patient than the risk posed to the patient by treatment with an investigational drug or investigational device; and
(ii) will inevitably lead to the patient's death; and
(b) presents the patient, after the patient has explored conventional therapy options, with no treatment option that is satisfactory or comparable to treatment with an investigational drug or device.

Enacted by Chapter 110, 2015 General Session

58-85-103 Right to request investigational drug or device.
(1) An eligible patient may obtain an investigational drug through an agreement with the investigational drug's manufacturer and the eligible patient's physician that provides:
(a) for the transfer of the investigational drug from the manufacturer to the physician; and
(b) that the physician will administer the investigational drug to the patient.
(2) An eligible patient may obtain an investigational device through an agreement with the investigational device's manufacturer and the eligible patient's physician that provides:
(a) for the transfer of the investigational device from the manufacturer to the physician; and
(b) that the physician will use the investigational device to treat the patient.
(3) An agreement described in Subsection (1) or (2), between an eligible patient, a physician, and a manufacturer, shall include an informed consent document that, based on the physician's knowledge of the relevant investigational drug or investigational device:
(a) describes the possible positive and negative outcomes the eligible patient could experience if the physician treats the eligible patient with the investigational drug or investigational device, including that the investigational drug or investigational device could increase the possibility of death;
(b) states that an insurer is not required to cover the cost of providing the investigational drug or investigational device to the patient;
(c) states that, subject to Section 58-85-105, an insurer may deny coverage for the eligible patient; and
(d) states that the patient may be liable for all expenses caused by the physician treating the patient with the investigational drug or investigational device, unless the agreement provides otherwise.
(4) A physician or an eligible patient shall notify the eligible patient's insurer of the day on which the physician treated an eligible patient with an investigational drug or investigational device, and the investigational drug or device used, under an agreement described in Subsection (1) or (2).

Enacted by Chapter 110, 2015 General Session

58-85-104 Standard of care -- Medical practitioners not liable -- No private right of action.

(1) It is not a breach of the applicable standard of care for a physician, other licensed health care provider, or hospital to treat an eligible patient with an investigational drug or investigational device under this chapter.
(2) A physician, other licensed health care provider, or hospital that treats an eligible patient with an investigational drug or investigational device under this chapter may not, for any harm done to the eligible patient by the investigational drug or device, be subject to:
(a) civil liability;
(b) criminal liability; or
(c) licensure sanctions under:
(i) for a physician:
(A)Title 58, Chapter 67, Utah Medical Practice Act; or
(B)Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
(ii) for the other licensed health care provider, the act governing the other licensed health care provider's license; or
(iii) for the hospital, Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.
(3) This chapter does not:
(a) require a manufacturer of an investigational drug or investigational device to agree to make an investigational drug or investigational device available to an eligible patient or an eligible patient's physician;
(b) require a physician to agree to:
(i) administer an investigational drug to an eligible patient under this chapter; or
(ii) treat an eligible patient with an investigational device under this chapter; or
(c) create a private right of action for an eligible patient:
(i) against a physician or hospital, for the physician's or hospital's refusal to:
(A) administer an investigational drug to an eligible patient under this chapter; or
(B) treat an eligible patient with an investigational device under this chapter; or
(ii) against a manufacturer, for the manufacturer's refusal to provide an eligible patient with an investigational drug or an investigational device under this chapter.

Amended by Chapter 348, 2016 General Session

58-85-105 Insurance coverage.
(1) This chapter does not:
(a) require an insurer to cover the cost of:
(i) administering an investigational drug under this chapter; or
(ii) treating a patient with an investigational device under this chapter; or
(b) prohibit an insurer from covering the cost of:
(i) administering an investigational drug under this chapter; or
(ii) treating a patient with an investigational device under this chapter.
(2) Except as described in Subsection (3), an insurer may deny coverage to an eligible patient who is treated with an investigational drug or investigational device, for harm to the eligible patient caused by the investigational drug or investigational device.
(3) An insurer may not deny coverage to an eligible patient under Subsection (2) for:
(a) the eligible patient's preexisting condition;
(b) benefits that commenced before the day on which the eligible patient is treated with the investigational drug or investigational device; or

(c) palliative or hospice care for an eligible patient that has been treated with an investigational drug or device, but is no longer receiving curative treatment with the investigational drug or device.

Enacted by Chapter 110, 2015 General Session

Chapter 86
State Certification of Commercial Interior Designers Act

Part 1
General Provisions

58-86-101 Title and scope.

(1) This chapter is known as the "State Certification of Commercial Interior Designers Act."
(2) Except for those practices specifically described in the definition of practice of commercial interior design in Section 58-86-102, this chapter does not require that a person obtain state certification as a state certified commercial interior designer to engage in an activity traditionally performed by an interior designer or other design professional.
(3) This chapter does not limit the scope of practice of a person licensed to practice:
  (a) architecture under Title 58, Chapter 3a, Architects Licensing Act; or
  (b) professional engineering under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

Enacted by Chapter 294, 2016 General Session

58-86-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "Building" means an enclosed structure, including the structural, mechanical, and electrical systems, utility services, and other facilities required for the structure, that has human occupancy or habitation as its principal purpose and is subject to the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.
(2) "International Building Code" means the edition of the International Building Code, issued by the International Code Council, most recently adopted by the state in Section 15A-2-103.
(3)
  (a) "Practice of commercial interior design" means, in relation to obtaining a building permit independent of an architect licensed under Title 58, Chapter 3a, Architects Licensing Act, the preparation of a plan or specification for, or the supervision of new construction, alteration, or repair of, an interior space within a newly constructed or existing building when the core and shell structural elements are not going to be changed.
  (b) "Practice of commercial interior design" only includes the preparation of a plan or specification for, or the supervision of new construction, alteration, or repair of, a building to be used for the following occupancy groups as described in the International Building Code:
    (i) B; and
    (ii) M.
  (c) "Practice of commercial interior design" does not include:

(i) providing commercial construction documents, independent of a licensed architect, for a space that:
(A) does not already have base building life safety components installed or designed and permitted, including required exit stairs and enclosures, paths of travel, ramps, horizontal exit passageways, disabled access, fire alarm systems, and base building fire suppression systems; or
(B) is undergoing a change of occupancy classification as described in the International Building Code; or
(ii) changes to or the addition of:
(A) foundations, beams, trusses, columns, or other primary structural framing members or seismic systems;
(B) structural concrete slabs, floor and roof framing structures, or bearing and shear walls;
(C) openings in roofs, floors, exterior walls, or bearing and shear walls;
(D) exterior doors, windows, awnings, canopies, sunshades, signage, or similar exterior building elements;
(E) as described in the International Building Code, life safety equipment, including smoke, fire, or carbon dioxide sensors or detectors, or other overhead building elements;
(F) as described in the International Building Code, partial height partitions with mounted or anchored casework, shelving, or equipment;
(G) as described in the International Building Code, bracing for partial height partitions if the top of the partition is more than eight feet above the floor; or
(H) heating, ventilating, or air conditioning equipment or distribution systems, building management systems, high or medium voltage electrical distribution systems, standby or emergency power systems or distribution systems, plumbing or plumbing distribution systems, fire alarm systems, fire sprinklers systems, security or monitoring systems, or related building systems.
(4) "State certification" means a designation granted by the division on behalf of the state to an individual who has met the requirements for state certification related to an occupation or profession described in this chapter.
(5) "State certified" means, when used in conjunction with an occupation or profession described in this chapter, a title that:
(a) may be used by a person who has met the state certification requirements related to that occupation or profession described in this chapter; and
(b) may not be used by a person who has not met the state certification requirements related to that occupation or profession described in this chapter.
(6) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-86-301.

Enacted by Chapter 294, 2016 General Session

58-86-103 Rulemaking.

When exercising rulemaking authority under this chapter, the division shall comply with the requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 294, 2016 General Session

Part 2
State Certification

58-86-201 State certification required.

(1) State certification is required to engage in the practice of commercial interior design except as specifically provided in Section 58-1-307 or 58-86-206.
(2) The division shall grant state certification to a person who qualifies under this chapter to engage in the practice of commercial interior design as a state certified commercial interior designer.

Enacted by Chapter 294, 2016 General Session

58-86-202 Qualifications for state certification.

Each applicant for state certification as a state certified commercial interior designer shall:
(1) submit an application in a form prescribed by the division;
(2) pay a fee determined by the department under Section 63J-1-504; and
(3) provide satisfactory evidence of:
  (a) good moral character; and
  (b) having qualified to take and having passed the examination of the National Council for Interior Design Qualification, or an equivalent body as determined by division rule.

Enacted by Chapter 294, 2016 General Session

58-86-203 Term of state certification -- Expiration -- Renewal.

(1)
  (a) The division shall grant state certification under this chapter in accordance with a two-year renewal cycle established by rule.
  (b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) At the time of renewal, an applicant for renewal shall:
  (a) submit an application in a form prescribed by the division;
  (b) pay a fee determined by the department under Section 63J-1-504; and
  (c) provide satisfactory evidence of having completed the continuing education requirements described in Section 58-86-204.

Enacted by Chapter 294, 2016 General Session

58-86-204 Continuing education.

(1) As a condition for the renewal of state certification under this chapter, a state certified commercial interior designer, during each two-year state certification cycle, shall complete 20 hours of continuing education that is offered or approved by the Interior Design Continuing Education Council, or another entity as determined by division rule.
(2) At least 10 of the continuing education hours described in Subsection (1) shall primarily emphasize health and safety.
(3) If a renewal cycle is extended or shortened under Section 58-86-203, the continuing education hours required for renewal under this section shall be increased or decreased proportionally.

Enacted by Chapter 294, 2016 General Session

58-86-205 Grounds for denial of state certification -- Disciplinary proceedings.

Grounds for refusing to issue state certification to an applicant, for refusing to renew state certification to an applicant, for revoking, suspending, restricting, or placing on probation the state certification of an individual certified under this chapter, for issuing a public or private reprimand to an individual certified under this chapter, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 294, 2016 General Session

58-86-206 Exemptions from state certification.

In addition to the exemptions from licensure in Section 58-1-307, the following may engage in the stated acts or practices without being a state certified commercial interior designer under this chapter:

(1) a person licensed to practice architecture under Title 58, Chapter 3a, Architects Licensing Act, practicing architecture or performing architecture acts or interior design;
(2) a person providing permit drawings, if allowed under Section 58-3a-304 or 58-22-305; and
(3) a person providing construction related documents not required for a building permit.

Enacted by Chapter 294, 2016 General Session

Part 3
Unlawful Conduct

58-86-301 Unlawful conduct.

"Unlawful conduct" includes:

(1) using the title "state certified commercial interior designer" if the person is not a state certified commercial interior designer in good standing under this chapter; or
(2) engaging in the practice of commercial interior design unless exempted from licensure or state certification under Section 58-1-307 or 58-86-206.

Enacted by Chapter 294, 2016 General Session

58-86-302 Penalty for unlawful conduct.

(1) If upon inspection or investigation the division concludes that a person has violated Subsections 58-1-501(1)(a) through (d), Section 58-86-301, or a rule or order issued with respect to Section 58-86-301, and that disciplinary action is appropriate, the director or the director's designee may:
  (a) issue a citation to the person according to this chapter and any pertinent rules;
  (b) attempt to negotiate a stipulated settlement; or
  (c) notify the person to appear at an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
(2) A person who violates Subsections 58-1-501(1)(a) through (d), Section 58-86-301, or a rule or order issued with respect to Section 58-86-301, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be

assessed a fine pursuant to this chapter and may, in addition to or in lieu of the fine, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d), Section 58-86-301, or a rule or order issued with respect to Section 58-86-301.

(3) A citation issued under this chapter shall:
  (a) be in writing;
  (b) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;
  (c) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
  (d) clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(4) The division may issue a notice in lieu of a citation.

(5) A citation issued under this section, or a copy of the citation, may be served upon a person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made by mail or may be made personally or upon the person's agent by a division investigator or by a person specially designated by the director.

(6)
  (a) If within 20 calendar days from the service of the citation the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.
  (b) The period to contest a citation may be extended by the division for cause.

(7) The division may refuse to issue or renew or may suspend, revoke, or place on probation the state certification of a state certified commercial interior designer who fails to comply with a citation after the citation becomes final.

(8) The failure of an applicant for state certification to comply with a citation after the citation becomes final is a ground for denial of state certification.

(9) No citation may be issued under this section after the expiration of six months following the occurrence of a violation.

(10) The director or the director's designee shall assess fines according to the following:
  (a) for a first offense handled pursuant to this section, a fine of up to $1,000;
  (b) for a second offense handled pursuant to this section, a fine of up to $2,000; and
  (c) for any subsequent offense handled pursuant to this section, a fine of up to $2,000 for each day of continued offense.

(11) An action initiated for a first or second offense that has not yet resulted in a final order of the division does not preclude initiation of a subsequent action for a second or subsequent offense during the pendency of a preceding action.

(12)
  (a) A penalty that is not paid may be collected by the director by either referring the matter to a collection agency or by bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.
  (b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect the penalty.
  (c) In an action brought to enforce the provisions of this section, reasonable attorney fees and costs shall be awarded to the division.

Enacted by Chapter 294, 2016 General Session

Part 4
State Certification Number and Signature

58-86-401 State certification number and signature.

(1) The division shall provide each state certified commercial interior designer with a certificate number.

(2) A final plan or specification for the construction of a commercial interior design within a newly constructed or existing building that is prepared by or under the supervision of a state certified commercial interior designer shall bear the signature and the certificate number of the state certified commercial interior designer when submitted to a client or a building official for the purpose of obtaining a building permit.

(3) A state certified commercial interior designer may only include the designer's signature and certificate number on a final plan or specification that is within the scope of practice of commercial interior design and when the plan or specification:

(a) is personally prepared by the certified interior designer;

(b) is prepared by an employee, subordinate, associate, or drafter under the direct supervision of the state certified commercial interior designer and the state certified commercial interior designer assumes responsibility for the plan or specification; or

(c) is prepared by another state certified commercial interior designer in the state or similarly qualified designer in another state provided that the state certified commercial interior designer attaching the designer's signature and certificate number:

(i) performs a thorough review of all work for compliance with all applicable laws, rules, and standards of the profession; and

(ii) makes any necessary corrections before submitting the final plan or specification:

(A) to a building official for the purpose of obtaining a building permit; or

(B) to a client, when the certified commercial interior designer represents, or can reasonably expect the client to consider, the plan or specification to be complete and final.

Enacted by Chapter 294, 2016 General Session