

PROFESSIONAL LICENSING REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the responsibilities and duties of the Department of Occupational and Professional Licensing ("DOPL") and modifies certain provisions of Title 58, Occupations and Professions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies DOPL's oversight of factory built housing;
- ▶ modifies DOPL's ability to remove board members for certain conduct;
- ▶ provides that DOPL's access to criminal-background information for applicants applies to licensure and renewal of licensure;
- ▶ allows licensees to designate email addresses for correspondence with DOPL;
- ▶ provides that DOPL has the authority to place a license on probation and to issue fines to enforce probation violations;
- ▶ modifies the provisions for diversion to align them with the provisions for probation;
- ▶ modifies the requirements to qualify as an approved education program for nursing education;
- ▶ reduces the statutory fee for manufactured housing dealers;
- ▶ modifies the supervision required for medical assistants to better align the requirements with current practice; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

33 AMENDS:

- 34 **15A-1-306**, as enacted by Laws of Utah 2011, Chapter 14
- 35 **58-1-201**, as last amended by Laws of Utah 2011, Chapter 367
- 36 **58-1-301.5**, as last amended by Laws of Utah 2010, Chapter 372
- 37 **58-1-301.7**, as enacted by Laws of Utah 2011, Chapter 367
- 38 **58-1-302**, as renumbered and amended by Laws of Utah 1993, Chapter 297
- 39 **58-1-304**, as enacted by Laws of Utah 1993, Chapter 297
- 40 **58-1-401**, as last amended by Laws of Utah 2011, Chapter 367
- 41 **58-1-404**, as last amended by Laws of Utah 2011, Chapter 367
- 42 **58-1-501**, as last amended by Laws of Utah 2011, Chapter 214
- 43 **58-1-502**, as last amended by Laws of Utah 2011, Chapter 367
- 44 **58-3a-502**, as last amended by Laws of Utah 2008, Chapter 382
- 45 **58-17b-103**, as enacted by Laws of Utah 2004, Chapter 280
- 46 **58-17b-501**, as enacted by Laws of Utah 2004, Chapter 280
- 47 **58-17b-504**, as last amended by Laws of Utah 2011, Chapter 23
- 48 **58-17b-622**, as enacted by Laws of Utah 2012, Chapter 265
- 49 **58-22-305**, as last amended by Laws of Utah 2008, Chapter 277
- 50 **58-22-503**, as last amended by Laws of Utah 2008, Chapter 382
- 51 **58-31b-503**, as last amended by Laws of Utah 2011, Chapter 340
- 52 **58-31b-601 (Effective 01/01/13)**, as last amended by Laws of Utah 2012, Fourth
- 53 Special Session, Chapter 4
- 54 **58-37c-3**, as last amended by Laws of Utah 2008, Chapter 382
- 55 **58-37c-8**, as last amended by Laws of Utah 2010, Chapter 240
- 56 **58-37c-11**, as last amended by Laws of Utah 1999, Chapter 21
- 57 **58-37c-19**, as last amended by Laws of Utah 2000, Chapter 1
- 58 **58-37c-19.5**, as last amended by Laws of Utah 2004, Chapter 280
- 59 **58-37c-19.7**, as enacted by Laws of Utah 2000, Chapter 272
- 60 **58-37c-19.9**, as enacted by Laws of Utah 2000, Chapter 272
- 61 **58-37c-20**, as last amended by Laws of Utah 2007, Chapter 358
- 62 **58-37d-3**, as last amended by Laws of Utah 2003, Chapter 115
- 63 **58-40a-501**, as enacted by Laws of Utah 2006, Chapter 206

64 **58-53-502**, as last amended by Laws of Utah 2008, Chapter 382
 65 **58-56-17**, as last amended by Laws of Utah 2009, Chapter 72
 66 **58-57-14**, as last amended by Laws of Utah 2008, Chapter 382
 67 **58-60-205**, as last amended by Laws of Utah 2012, Chapter 113
 68 **58-60-206**, as last amended by Laws of Utah 2010, Chapter 214
 69 **58-60-508**, as last amended by Laws of Utah 2012, Chapter 179
 70 **58-61-201**, as enacted by Laws of Utah 1994, Chapter 32
 71 **58-61-304**, as last amended by Laws of Utah 2009, Chapter 183
 72 **58-67-102**, as last amended by Laws of Utah 2012, Chapter 362
 73 **58-67-305**, as last amended by Laws of Utah 2012, Chapter 267
 74 **58-67-806**, as enacted by Laws of Utah 2012, Chapter 162
 75 **58-70a-504**, as enacted by Laws of Utah 1997, Chapter 229
 76 **58-72-502**, as renumbered and amended by Laws of Utah 1996, Chapter 253
 77 **58-76-502**, as last amended by Laws of Utah 2008, Chapter 382

78 REPEALS:

79 **58-37c-4**, as last amended by Laws of Utah 1993, Chapter 297
 80 **58-61-303**, as enacted by Laws of Utah 1994, Chapter 32

81

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

83 Section 1. Section **15A-1-306** is amended to read:

84 **15A-1-306. Factory built housing and modular units -- Division responsibility --**

85 **Unlawful conduct.**

86 (1) The division:

87 (a) shall maintain current information on the HUD Code and the portions of the State
 88 Construction Code relevant to manufactured housing installation and will provide at reasonable
 89 cost the information to compliance agencies, local regulators, or state regulators requesting
 90 such information;

91 (b) shall provide qualified personnel to advise compliance agencies, local regulators,
 92 and state regulators regarding the standards for construction and setup, construction and setup
 93 inspection, and additions or modifications to factory built housing;

94 (c) is designated as the state administrative agency for purposes of the HUD Code;

95 (d) may inspect [~~the work of modular unit manufacturers~~] factory built housing units in
96 the state during the construction process to determine compliance of the manufacturer with this
97 chapter for those units to be installed within the state and upon a finding of substantive
98 deficiency, issue a corrective order to the manufacturer with a copy to the local regulator in the
99 state's political subdivision in which the unit is to be installed;

100 (e) shall have rights of entry and inspection as specified under the HUD Code; and

101 (f) shall implement by rule [~~as required by the HUD Code: (i) a dispute resolution~~
102 ~~program; and (ii)~~] a continuing education requirement for manufactured housing installation
103 contractors.

104 (2) The division may assess civil penalties payable to the state for violation of the
105 HUD Code in an amount identical to those set forth in Section 611 of the National
106 Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Sec. 5410.

107 (3) The state may impose criminal sanctions for violations of the HUD Code identical
108 to those set forth in Section 611 of the National Manufactured Housing Construction and
109 Safety Standards Act of 1974, 42 U.S.C. Sec. 5410, provided that if the criminal sanction is a
110 fine, the fine shall be payable to the state.

111 Section 2. Section **58-1-201** is amended to read:

112 **58-1-201. Boards -- Appointment -- Membership -- Terms -- Vacancies --**
113 **Quorum -- Per diem and expenses -- Chair -- Financial interest or faculty position in**
114 **professional school teaching continuing education prohibited.**

115 (1) (a) (i) The executive director shall appoint the members of the boards established
116 under this title.

117 (ii) In appointing these members the executive director shall give consideration to
118 recommendations by members of the respective occupations and professions and by their
119 organizations.

120 (b) Each board shall be composed of five members, four of whom shall be licensed or
121 certified practitioners in good standing of the occupation or profession the board represents,
122 and one of whom shall be a member of the general public, unless otherwise provided under the
123 specific licensing chapter.

124 (c) (i) The names of all persons appointed to boards shall be submitted to the governor

125 for confirmation or rejection.

126 (ii) If an appointee is rejected by the governor, the executive director shall appoint
127 another person in the same manner as set forth in Subsection (1)(a).

128 (2) (a) (i) Except as required by Subsection (2)(b), as terms of current board members
129 expire, the executive director shall appoint each new member or reappointed member to a
130 four-year term.

131 (ii) Upon the expiration of the term of a board member, the board member shall
132 continue to serve until a successor is appointed, but for a period not to exceed six months from
133 the expiration date of the member's term.

134 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
135 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
136 of board members are staggered so that approximately half of the board is appointed every two
137 years.

138 (c) A board member may not serve more than two consecutive terms, and a board
139 member who ceases to serve on a board may not serve again on that board until after the
140 expiration of a two-year period beginning from that cessation of service.

141 (d) (i) When a vacancy occurs in the membership for any reason, the replacement shall
142 be appointed for the unexpired term.

143 (ii) After filling that term, the replacement member may be appointed for only one
144 additional full term.

145 (e) ~~[If a board member fails or refuses to fulfill the responsibilities and duties of a~~
146 ~~board member, including the attendance at board meetings, the] The executive director with the~~
147 approval of the board may remove ~~[the] a~~ board member and replace the member in accordance
148 with this section[-] for the following reasons:

149 (i) the member fails or refuses to fulfill the responsibilities and duties of a board
150 member, including attendance at board meetings;

151 (ii) the member engages in unlawful or unprofessional conduct; or

152 (iii) if appointed to the board position as a licensed member of the board, the member
153 fails to maintain a license that is active and in good standing.

154 (3) A majority of the board members constitutes a quorum. A quorum is sufficient
155 authority for the board to act.

156 (4) A member may not receive compensation or benefits for the member's service, but
 157 may receive per diem and travel expenses in accordance with:

158 (a) Section 63A-3-106;

159 (b) Section 63A-3-107; and

160 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
 161 63A-3-107.

162 (5) Each board shall annually designate one of its members to serve as chair for a
 163 one-year period.

164 (6) A board member may not be a member of the faculty of or have any financial
 165 interest in any vocational or professional college or school which provides continuing
 166 education to any licensee if that continuing education is required by statute or rule.

167 Section 3. Section **58-1-301.5** is amended to read:

168 **58-1-301.5. Division access to Bureau of Criminal Identification records.**

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

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

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

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

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

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

179 (f) Section 58-64-302 of Title 58, Chapter 64, Deception Detection Examiners

180 Licensing Act.

181 (2) The ~~[division]~~ division's access to criminal background information under
 182 ~~[Subsection (1) shall be]~~ this section:

183 (a) ~~[in accordance with]~~ shall meet the requirements of Section 53-10-108; and

184 (b) ~~[to aH]~~ includes, convictions, pleas of nolo contendere, pleas of guilty or nolo
 185 contendere held in abeyance, ~~[aH]~~ dismissed charges, and charges without a known disposition.

186 Section 4. Section **58-1-301.7** is amended to read:

187 **58-1-301.7. Change of information.**

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

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

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

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

198 (a) mailing address ~~furnished~~ provided to the division by the applicant, licensee, or
199 certificate holder~~[-]; or~~

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

203 Section 5. Section **58-1-302** is amended to read:

204 **58-1-302. License by endorsement.**

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

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

212 Section 6. Section **58-1-304** is amended to read:

213 **58-1-304. Restricted license.**

214 (1) The division may issue a restricted or probationary license to an applicant for
215 licensure, renewal, or reinstatement of licensure if:

216 (a) the applicant appears to meet the qualifications for licensure, but has engaged in
217 unlawful, unprofessional, or other conduct bearing upon the applicant's qualifications; and

218 (b) the division determines the need to observe the applicant in a monitored or
219 supervised practice of the applicant's occupation or profession or to attach other reasonable
220 restrictions or conditions upon the applicant in order to accommodate licensure, while
221 protecting the public health, safety, and welfare.

222 (2) Issuance of a restricted or probationary license is considered a partial denial of
223 licensure that is subject to agency review.

224 Section 7. Section **58-1-401** is amended to read:

225 **58-1-401. Grounds for denial of license -- Disciplinary proceedings -- Time**
226 **limitations -- Sanctions.**

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

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

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

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

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

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

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

249 (4) The division may issue cease and desist orders to:
250 (a) a licensee or applicant who may be disciplined under Subsection (1) or (2);
251 (b) [any] a person who engages in or represents himself to be engaged in an occupation
252 or profession regulated under this title; and
253 (c) [any] a person who otherwise violates this title or any rules adopted under this title.
254 (5) The division may impose an administrative penalty in accordance with Section
255 58-1-502.

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

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

264 Section 8. Section **58-1-404** is amended to read:

265 **58-1-404. Diversion -- Procedure.**

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

270 (2) (a) (i) The director may establish, as circumstances require, a diversion advisory
271 committee for each occupation or profession or similar groups of occupations or professions
272 licensed by the division.

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

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

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

280 by or submitted to the division.

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

283 (iv) Committee members shall serve voluntarily without remuneration.

284 (v) The director may:

285 (A) dissolve any diversion advisory committee;

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

287 (C) establish any procedure that is necessary and proper for a committee's
288 administration.

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

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

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

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

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

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

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

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

309 (5) A licensee may be represented by counsel:

310 (a) during the negotiations for diversion;

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

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

313 (6) (a) As used in this section, "diversion agreement" means a written agreement
314 between the division, through its director, and the licensee, which specifies formal terms and
315 conditions the licensee must fulfill in order to comply with the diversion program.

316 (b) (i) A diversion agreement shall contain a full detailed statement of the requirements
317 agreed to by the licensee and a full detailed stipulation of the facts upon which the diversion
318 agreement is premised.

319 (ii) The facts stipulated in the diversion agreement shall constitute binding admissions
320 of the licensee:

321 (A) in any proceeding under Subsection (6)(c) or (6)(d) to terminate the diversion
322 agreement and impose disciplinary sanctions against the licensee; and

323 (B) in any disciplinary proceeding based on unprofessional or unlawful conduct that is
324 not the basis of the diversion agreement.

325 (c) The diversion agreement shall provide that if the licensee makes an intentional
326 material misrepresentation of fact in the stipulation of facts contained in the diversion
327 agreement, the director shall initiate the procedures set forth in Subsection (13) to terminate the
328 diversion agreement and issue an order of license revocation.

329 (d) (i) The diversion agreement shall provide that if the licensee fails to comply with its
330 terms, the director shall initiate the procedures set forth in Subsection (14) to terminate the
331 diversion agreement and issue an order of license suspension, which shall be stayed in favor of
332 an order of probation having the same terms as those which comprised the diversion
333 agreement.

334 (ii) The division may waive and not include as probationary requirements any terms of
335 the diversion agreement it does not consider necessary to protect the public.

336 (iii) The term of the order of probation shall be as provided in Subsection (14)(c)(ii).

337 (e) The division director may not approve a diversion agreement unless the licensee, as
338 part of the diversion agreement:

339 (i) knowingly and intelligently waives the right to a hearing under Title 63G, Chapter
340 4, Administrative Procedures Act, for the conduct upon which the diversion agreement was
341 premised;

342 (ii) agrees to be subject to the procedures and remedies set forth in this section;

343 (iii) acknowledges an understanding of the consequences of making an intentional

344 misrepresentation of fact in the stipulation of facts contained in the diversion agreement; and

345 (iv) acknowledges an understanding of the consequences of failing to comply with the

346 terms of the diversion agreement.

347 (7) (a) If the division and the licensee enter into a diversion agreement after the

348 division has commenced an adjudicative proceeding against the licensee, the director shall stay

349 that proceeding pending completion of the diversion agreement.

350 (b) The order staying the adjudicative proceeding shall be filed in that proceeding and

351 may reference the diversion agreement.

352 (8) (a) Upon successful completion of a diversion agreement, the director shall dismiss

353 any charges under the director's jurisdiction of unprofessional or unlawful conduct that were

354 filed against the licensee.

355 (b) Whether or not an adjudicative proceeding had been commenced against the

356 licensee, the division may not thereafter subject the licensee to disciplinary action for the

357 conduct which formed the basis of the completed diversion agreement.

358 (c) Neither the execution of a diversion agreement nor the dismissal of filed charges

359 constitute disciplinary action, and no report of either may be made to disciplinary databases.

360 (d) The division may consider the completion of a diversion program and the contents

361 of the diversion agreement in determining the appropriate disciplinary action if the licensee is

362 charged in the future with the same or similar conduct.

363 (e) The order of dismissal shall be filed in the adjudicative proceeding in which the

364 misconduct was charged and may reference the diversion agreement.

365 (9) (a) Acceptance of the licensee into diversion does not preclude the division from

366 investigating or continuing to investigate the licensee for any unlawful or unprofessional

367 conduct committed before, during, or after participation in the diversion program.

368 (b) Acceptance of the licensee into diversion does not preclude the division from

369 taking disciplinary action or continuing to take disciplinary action against the licensee for

370 unlawful or unprofessional conduct committed before, during, or after participation in the

371 diversion program, except for that conduct which formed the basis for the diversion agreement.

372 (c) Any licensee terminated from the diversion program for failure to comply with the

373 diversion agreement is subject to disciplinary action by the division for acts committed before,
374 during, and after participation in the diversion program, including violations identified in the
375 diversion agreement.

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

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

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

387 (13) (a) If, during the course of the diversion agreement, information is brought to the
388 attention of the director that the licensee made an intentional material misrepresentation of fact
389 in the stipulation of facts contained in the diversion agreement, the director shall cause to be
390 served upon the licensee an order to show cause specifying the information relied upon by the
391 director and setting a time and place for hearing to determine whether or not the licensee made
392 the intentional material misrepresentation of fact and whether the agreement should be
393 terminated on that ground.

394 (b) Proceedings to terminate a diversion agreement on the grounds that the licensee
395 made an intentional material misrepresentation of fact in the stipulation of facts contained in
396 the diversion agreement and to issue an order of license revocation shall comply with Title
397 63G, Chapter 4, Administrative Procedures Act, except as follows:

398 (i) the notice of agency action shall be in the form of an order to show cause, which
399 shall contain all of the information specified in Subsection 63G-4-201(2), except a statement
400 that a written response to the order to show cause is required;

401 (ii) no written response to the order to show cause is required;

402 (iii) discovery is prohibited, but the division may issue subpoenas or other orders to
403 compel production of necessary evidence on behalf of either party and all parties shall have

404 access to information contained in the division's diversion file to the extent permitted by law;

405 (iv) the hearing shall be held only after timely notice to all parties; and

406 (v) any agency review or reconsideration of an order terminating a diversion agreement

407 or of an order of license revocation pursuant to this Subsection (13) shall be limited to the

408 division director's findings of fact, conclusions of law, and order which arose out of the order

409 to show cause proceeding.

410 (c) Upon finding the licensee made an intentional material misrepresentation of fact in

411 the stipulation of facts contained in the diversion agreement and that terminating the agreement

412 is in the best interest of the public, and issuing an order to that effect, the director shall issue an

413 order of license revocation, revoking the licensee's professional license.

414 (d) The order terminating the diversion agreement and the order of license revocation

415 shall include findings of fact and conclusions of law as determined by the director following

416 the hearing or as otherwise stipulated and agreed to by the parties.

417 (e) If the diversion agreement being terminated was entered into after the division had

418 commenced an adjudicative proceeding against the licensee, that adjudicative proceeding shall

419 be considered to be merged into the order of license revocation and it may not constitute a basis

420 for any separate disciplinary action against the licensee.

421 (f) The order terminating the diversion agreement and the order of license revocation

422 shall notify the licensee of the right to request agency review or reconsideration.

423 (14) (a) If, during the course of the diversion agreement, information is brought to the

424 attention of the director that the licensee has violated the diversion agreement and if it appears

425 in the best interest of the public to proceed with charges, the director, after consultation with

426 the diversion advisory committee, shall cause to be served upon the licensee an order to show

427 cause specifying the facts relied upon by the director and setting a time and place for hearing to

428 determine whether or not the licensee has violated the diversion agreement and whether the

429 agreement should be terminated.

430 (b) Proceedings to terminate a diversion agreement [~~and to issue an order of license~~

431 ~~suspension and probation, and proceedings to terminate the probation and lift the stay of a~~

432 ~~license suspension] as described in Subsection 58-1-404(14)(c), shall comply with Title 63G,~~

433 Chapter 4, Administrative Procedures Act, except as follows:

434 (i) the notice of agency action shall be in the form of an order to show cause, which

435 shall contain all of the information specified in Subsection 63G-4-201(2), except a statement
436 that a written response to the order to show cause is required;

437 (ii) no written response to the order to show cause shall be required;

438 (iii) discovery is prohibited, but the division may issue subpoenas or other orders to
439 compel production of necessary evidence on behalf of either party and all parties shall have
440 access to information contained in the division's diversion file to the extent permitted by law;

441 (iv) the hearing shall be held only after timely notice to all parties; and

442 (v) any agency review or reconsideration of an order terminating a diversion agreement
443 or of an order of license suspension and probation pursuant to this Subsection (14) shall be
444 limited to the division director's findings of fact, conclusions of law, and order which arose out
445 of the order to show cause proceeding.

446 (c) (i) Upon finding the licensee has violated the diversion agreement by conduct that
447 is the same or similar to the conduct upon which the diversion agreement is premised, or by
448 violating a compliance provision contained in the diversion agreement, and further finding that
449 terminating the agreement is in the best interest of the public, and after issuing an order to that
450 effect, the director shall issue an order [~~of license suspension, suspending the licensee's~~
451 ~~professional license, but shall stay that suspension in favor of an order]~~ of probation, consisting
452 of the same terms as those which comprised the diversion agreement.

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

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

462 ~~(iii)~~ (iv) The period of probation is tolled during any time in which the licensee does
463 not have an active license in the state.

464 (d) (i) The order terminating the diversion agreement and the order of license
465 suspension and probation shall include findings of fact and conclusions of law as determined

466 by the director following the hearing or as otherwise stipulated and agreed to by the parties.

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

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

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

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

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

480 (h) (i) If, during the course of probation, the director has reason to believe the licensee
481 has violated the order of [~~suspension and~~] probation, the director shall cause to be served upon
482 the licensee an order to show cause why the probation should not be terminated [~~and the stay of~~
483 ~~suspension lifted~~] and why any other disciplinary sanction the division deems appropriate
484 should not be imposed, including suspension, public reprimand, a fine, or revocation of
485 licensure.

486 (ii) The order to show cause shall specify the facts relied upon by the director and shall
487 set a time and place for hearing before the director to determine whether or not the licensee has
488 violated the order of [~~suspension and~~] probation and whether that order should be terminated
489 [~~and the stay of suspension lifted~~] and why any other disciplinary sanction the division deems
490 appropriate should not be imposed, including suspension, public reprimand, a fine, or
491 revocation of licensure.

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

494 (b) If the division issues an emergency order against a licensee who is subject to a
495 diversion agreement with the division, that diversion agreement shall be immediately and
496 automatically terminated upon the issuance of the emergency order, without compliance with

497 the provisions of Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

505 (A) the licensee violated the diversion agreement; and

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

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

509 Section 9. Section **58-1-501** is amended to read:

510 **58-1-501. Unlawful and unprofessional conduct.**

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

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

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

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

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

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

524 (d) knowingly permitting the person's authority to practice or engage in any occupation
525 or profession licensed under this title to be used by another, except as permitted by law;

526 (e) violating the terms of an order governing a license;

527 [~~(e)~~] (f) obtaining a passing score on a licensure examination, applying for or obtaining

528 a license, or otherwise dealing with the division or a licensing board through the use of fraud,
529 forgery, or intentional deception, misrepresentation, misstatement, or omission; or

530 ~~(f)~~ (g) (i) issuing, or aiding and abetting in the issuance of, an order or prescription
531 for a drug or device to a person located in this state:

532 (A) without prescriptive authority conferred by a license issued under this title, or by
533 an exemption to licensure under this title; or

534 (B) with prescriptive authority conferred by an exception issued under this title or a
535 multistate practice privilege recognized under this title, if the prescription was issued without
536 first obtaining information, in the usual course of professional practice, that is sufficient to
537 establish a diagnosis, to identify underlying conditions, and to identify contraindications to the
538 proposed treatment; and

539 (ii) Subsection (1)~~(f)~~(g)(i) does not apply to treatment rendered in an emergency,
540 on-call or cross coverage situation, provided that the person who issues the prescription has
541 prescriptive authority conferred by a license under this title, or is exempt from licensure under
542 this title.

543 (2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined
544 as unprofessional conduct under this title or under any rule adopted under this title and
545 includes:

546 (a) violating, or aiding or abetting any other person to violate, any statute, rule, or order
547 regulating an occupation or profession under this title;

548 (b) violating, or aiding or abetting any other person to violate, any generally accepted
549 professional or ethical standard applicable to an occupation or profession regulated under this
550 title;

551 (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea
552 of guilty or nolo contendere which is held in abeyance pending the successful completion of
553 probation with respect to a crime of moral turpitude or any other crime that, when considered
554 with the functions and duties of the occupation or profession for which the license was issued
555 or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely
556 or competently practice the occupation or profession;

557 (d) engaging in conduct that results in disciplinary action, including reprimand,
558 censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory

559 authority having jurisdiction over the licensee or applicant in the same occupation or profession
560 if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary
561 proceedings under Section 58-1-401;

562 (e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar
563 chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the
564 ability of the licensee or applicant to safely engage in the occupation or profession;

565 (f) practicing or attempting to practice an occupation or profession regulated under this
566 title despite being physically or mentally unfit to do so;

567 (g) practicing or attempting to practice an occupation or profession regulated under this
568 title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

569 (h) practicing or attempting to practice an occupation or profession requiring licensure
570 under this title by any form of action or communication which is false, misleading, deceptive,
571 or fraudulent;

572 (i) practicing or attempting to practice an occupation or profession regulated under this
573 title beyond the scope of the licensee's competency, abilities, or education;

574 (j) practicing or attempting to practice an occupation or profession regulated under this
575 title beyond the scope of the licensee's license;

576 (k) verbally, physically, mentally, or sexually abusing or exploiting any person through
577 conduct connected with the licensee's practice under this title or otherwise facilitated by the
578 licensee's license;

579 (l) acting as a supervisor without meeting the qualification requirements for that
580 position that are defined by statute or rule;

581 (m) issuing, or aiding and abetting in the issuance of, an order or prescription for a
582 drug or device:

583 (i) without first obtaining information in the usual course of professional practice, that
584 is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to
585 the proposed treatment; or

586 (ii) with prescriptive authority conferred by an exception issued under this title, or a
587 multi-state practice privilege recognized under this title, if the prescription was issued without
588 first obtaining information, in the usual course of professional practice, that is sufficient to
589 establish a diagnosis, to identify underlying conditions, and to identify contraindications to the

590 proposed treatment; or

591 (n) violating a provision of Section 58-1-501.5.

592 Section 10. Section **58-1-502** is amended to read:

593 **58-1-502. Unlawful conduct -- Penalties.**

594 (1) Unless otherwise specified in this title, a person who violates the unlawful conduct
595 provisions defined in this title is guilty of a class A misdemeanor.

596 (2) (a) If upon inspection or investigation, the division concludes that a person has
597 violated Subsection 58-1-501(1)(a) [~~or~~], (c), or (e), or [~~any~~] a rule or order issued with respect
598 to those subsections, and that disciplinary action is appropriate, the director or the director's
599 designee from within the division shall promptly:

600 (i) issue a citation to the person according to this section and any pertinent rules;

601 (ii) attempt to negotiate a stipulated settlement; or

602 (iii) notify the person to appear before an adjudicative proceeding conducted under
603 Title 63G, Chapter 4, Administrative Procedures Act.

604 (b) (i) The division may assess a fine under this Subsection (2) against a person who
605 violates Subsection 58-1-501(1)(a) [~~or~~], (c), or (e), or [~~any~~] a rule or order issued with respect
606 to those subsections, as evidenced by:

607 (A) an uncontested citation;

608 (B) a stipulated settlement; or

609 (C) a finding of a violation in an adjudicative proceeding.

610 (ii) The division may, in addition to or in lieu of a fine under Subsection (2)(b)(i),
611 order the person to cease and desist from violating Subsection 58-1-501(1)(a) [~~or~~], (c), or (e),
612 or [~~any~~] a rule or order issued with respect to this section.

613 (c) Except for a cease and desist order, the division may not assess the licensure
614 sanctions cited in Section 58-1-401 through a citation.

615 (d) A citation shall:

616 (i) be in writing;

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

619 (iii) clearly state that the recipient must notify the division in writing within 20
620 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing

621 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

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

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

625 (f) (i) If within 20 calendar days from the service of the citation, the person to whom
626 the citation was issued fails to request a hearing to contest the citation, the citation becomes the
627 final order of the division and is not subject to further agency review.

628 (ii) The period to contest a citation may be extended by the division for cause.

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

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

633 (i) The division may not issue a citation under this section after the expiration of six
634 months following the occurrence of a violation.

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

636 (i) for the first offense handled pursuant to Subsection (2)(a), a fine of up to \$1,000;

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

638 and

639 (iii) for any subsequent offense handled pursuant to Subsection (2)(a), a fine of up to
640 \$2,000 for each day of continued offense.

641 (3) (a) An action for a first or second offense which has not yet resulted in a final order
642 of the division may not preclude initiation of any subsequent action for a second or subsequent
643 offense during the pendency of any preceding action.

644 (b) The final order on a subsequent action is considered a second or subsequent
645 offense, respectively, provided the preceding action resulted in a first or second offense,
646 respectively.

647 (4) (a) The director may collect a penalty that is not paid by:

648 (i) either referring the matter to a collection agency; or

649 (ii) bringing an action in the district court of the county in which the person against
650 whom the penalty is imposed resides or in the county where the office of the director is located.

651 (b) Any county attorney or the attorney general of the state shall provide legal

652 assistance and advice to the director in an action to collect the penalty.

653 (c) A court may award reasonable attorney fees and costs to the division in an action
654 brought by the division to enforce the provisions of this section.

655 Section 11. Section **58-3a-502** is amended to read:

656 **58-3a-502. Penalty for unlawful conduct.**

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

664 (i) A person who violates Subsections 58-1-501(1)(a) through [~~(d)~~ or] (e), Section
665 58-3a-501, or [any] a rule or order issued with respect to Section 58-3a-501, as evidenced by an
666 uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative
667 proceeding, may be assessed a fine pursuant to this Subsection (1) and may, in addition to or in
668 lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through [~~(d)~~
669 or] (e), Section 58-3a-501, or [any] a rule or order issued with respect to this section.

670 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
671 58-3a-401 may not be assessed through a citation.

672 (b) A citation shall:

673 (i) be in writing;

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

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

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

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

682 (d) Each citation issued under this section, or a copy of each citation, may be served

683 upon ~~[any]~~ a person whom a summons may be served in accordance with the Utah Rules of
684 Civil Procedure and may be made personally or upon the person's agent by a division
685 investigator or ~~[by any]~~ a person specially designated by the director or by mail.

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

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

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

694 (h) No citation may be issued under this section after the expiration of six months
695 following the occurrence of ~~[any]~~ a violation.

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

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

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

699 and

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

702 (2) An action initiated for a first or second offense ~~[which]~~ that has not yet resulted in a
703 final order of the division ~~[shall]~~ does not preclude initiation of ~~[any]~~ a subsequent action for a
704 second or subsequent offense during the pendency of ~~[any]~~ a preceding action. The final order
705 on a subsequent action shall be considered a second or subsequent offense, respectively,
706 provided the preceding action resulted in a first or second offense, respectively.

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

714 Section 12. Section **58-17b-103** is amended to read:

715 **58-17b-103. Administrative inspections.**

716 (1) The division may for the purpose of ascertaining compliance with the provisions of
717 this chapter, require a self-audit or enter and inspect the business premises of a person:

718 (a) licensed under Part 3, Licensing; or

719 (b) who is engaged in activities that require a license under Part 3, Licensing.

720 (2) Before conducting an inspection under Subsection (1), the division shall, after
721 identifying the person in charge:

722 (a) give proper identification;

723 (b) request to see the applicable license or licenses;

724 (c) describe the nature and purpose of the inspection; and

725 (d) provide upon request, the authority of the division to conduct the inspection and the
726 penalty for refusing to permit the inspection as provided in Section 58-17b-504.

727 (3) In conducting an inspection under Subsection (1), the division may, after meeting
728 the requirements of Subsection (2):

729 (a) examine any record, prescription, order, drug, device, equipment, machine,
730 electronic device or media, or area related to activities for which a license has been issued or is
731 required by Part 3, Licensing, for the purpose of ascertaining compliance with the applicable
732 provisions of this chapter;

733 (b) reproduce any record or media at the division's own cost;

734 [~~(b)~~] (c) take a drug or device for further analysis if considered necessary;

735 [~~(c)~~] (d) temporarily seize a drug or device [~~which~~] that is suspected to be adulterated,
736 misbranded, outdated, or otherwise in violation of this chapter, pending an adjudicative
737 proceeding on the matter;

738 [~~(d)~~] (e) box and seal drugs suspected to be adulterated, outdated, misbranded, or
739 otherwise in violation of this chapter; and

740 [~~(e)~~] (f) dispose of or return [~~any~~] a drug or device obtained under this Subsection (3)
741 in accordance with procedures established by division rule.

742 (4) An inspection [~~conducted under~~] described in Subsection (1) shall be conducted
743 during regular business hours.

744 (5) If upon inspection, the division concludes that a person has violated the provisions

745 of this chapter or Chapter 37, Utah Control Substances Act, or [any] a rule or order issued with
746 respect to those chapters, and that disciplinary action is appropriate, the director or the
747 director's designee shall promptly issue a fine or citation to the licensee in accordance with
748 Section 58-17b-504.

749 Section 13. Section **58-17b-501** is amended to read:

750 **58-17b-501. Unlawful conduct.**

751 "Unlawful conduct" includes:

752 (1) knowingly preventing or refusing to permit [any] an authorized agent of the
753 division to conduct an inspection pursuant to Section 58-17b-103;

754 (2) failing to deliver the license, permit, or certificate to the division upon demand, if it
755 has been revoked, suspended, or refused;

756 (3) (a) using the title "pharmacist", "druggist", "pharmacy intern", "pharmacy
757 technician", or [any] a term having similar meaning, except by a person licensed as a
758 pharmacist, pharmacy intern, or pharmacy technician; or

759 (b) conducting or transacting business under a name [which] that contains, as part of
760 that name, the words "drugstore", "pharmacy", "drugs", "medicine store", "medicines", "drug
761 shop", "apothecary", "prescriptions", or [any other] a term having a similar meaning, or in any
762 manner advertising, otherwise describing, or referring to the place of the conducted business or
763 profession, unless the place is a pharmacy issued a license by the division, except [any] an
764 establishment selling nonprescription drugs and supplies may display signs bearing the words
765 "packaged drugs", "drug sundries", or "nonprescription drugs", and is not considered to be a
766 pharmacy or drugstore by reason of the display;

767 (4) buying, selling, causing to be sold, or offering for sale, [any] a drug or device
768 [which] that bears, or the package bears or originally did bear, the inscription "sample,"[;] "not
769 for resale,"[;] "for investigational or experimental use only,"[;] or other similar words, except
770 when a cost is incurred in the bona fide acquisition of an investigational or experimental drug;

771 (5) using to [his] a person's own advantages or revealing to anyone other than the
772 division, board, and its authorized representatives, or to the courts, when relevant to [any] a
773 judicial or administrative proceeding under this chapter, [any] information acquired under
774 authority of this chapter or concerning [any] a method of process [which] that is a trade secret;

775 (6) procuring or attempting to procure [any] a drug [for himself] or to have someone

776 else procure or attempt to procure [~~any~~] a drug:

777 (a) by fraud, deceit, misrepresentation, or subterfuge;

778 (b) by forgery or alteration of a prescription or [~~any~~] a written order;

779 (c) by concealment of a material fact;

780 (d) by use of a false statement in [~~any~~] a prescription, chart, order, or report; or

781 (e) by theft;

782 (7) filling, refilling, or advertising the filling or refilling of prescriptions for [~~any~~] a
783 consumer or patient residing in this state if the person is not licensed:

784 (a) under this chapter; or

785 (b) in the state from which he is dispensing;

786 (8) requiring [~~any~~] an employed pharmacist, pharmacy intern, pharmacy technician, or
787 authorized supportive personnel to engage in [~~any~~] conduct in violation of this chapter;

788 (9) being in possession of a prescription drug for [~~any~~] an unlawful purpose;

789 (10) dispensing a prescription drug to [~~anyone~~] a person who does not have a
790 prescription from a practitioner or to [~~anyone~~] a person who [~~he~~] the person dispensing the
791 drug knows or should know is attempting to obtain drugs by fraud or misrepresentation;

792 (11) selling, dispensing, distributing, or otherwise trafficking in prescription drugs
793 when not licensed to do so or when not exempted from licensure; and

794 (12) a person using a prescription drug or controlled substance [~~for himself~~] that was
795 not lawfully prescribed for [~~him~~] the person by a practitioner.

796 Section 14. Section **58-17b-504** is amended to read:

797 **58-17b-504. Penalty for unlawful or unprofessional conduct -- Fines -- Citations.**

798 (1) [~~Any~~] A person who violates any of the unlawful conduct provisions of Subsection
799 58-1-501(1)(a)(i) and Subsections 58-17b-501(7) and (11) is guilty of a third degree felony.

800 (2) [~~Any~~] A person who violates any of the unlawful conduct provisions of Subsection
801 58-1-501(1)(a)(ii), Subsections 58-1-501(1)(b) through [~~(e)~~] (f), and Section 58-17b-501,
802 except Subsections 58-17b-501(7) and (11), is guilty of a class A misdemeanor.

803 (3) (a) Subject to Subsection (5) and in accordance with Section 58-17b-401, for acts
804 of unprofessional or unlawful conduct, the division may:

805 (i) assess administrative penalties; and

806 (ii) take [~~any~~] other appropriate administrative action.

807 (b) An administrative penalty imposed pursuant to this section shall be deposited in the
808 General Fund as a dedicated credit to be used by the division for pharmacy licensee education
809 and enforcement as provided in Section 58-17b-505.

810 (4) If a licensee has been convicted of violating Section 58-17b-501 prior to an
811 administrative finding of a violation of the same section, the licensee may not be assessed an
812 administrative fine under this chapter for the same offense for which the conviction was
813 obtained.

814 (5) (a) If upon inspection or investigation, the division concludes that a person has
815 violated the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled
816 Substances Act, Chapter 37f, Controlled Substance Database Act, Chapter 1, Division of
817 Occupational and Professional Licensing Act, or ~~[any]~~ a rule or order issued with respect to
818 these provisions, and that disciplinary action is appropriate, the director or the director's
819 designee from within the division shall promptly issue a citation to the person according to this
820 chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person
821 to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4,
822 Administrative Procedures Act.

823 (b) ~~[Any]~~ A person who is in violation of the provisions of Section 58-17b-501 or
824 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance
825 Database Act, Chapter 1, Division of Occupational and Professional Licensing Act, or ~~[any]~~ a
826 rule or order issued with respect to these provisions, as evidenced by an uncontested citation, a
827 stipulated settlement, or a finding of violation in an adjudicative proceeding, may be assessed a
828 fine pursuant to this Subsection (5) of up to \$10,000 per single violation or up to \$2,000 per
829 day of ongoing violation, whichever is greater, in accordance with a fine schedule established
830 by rule, and may, in addition to or in lieu of, be ordered to cease and desist from violating the
831 provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act,
832 Chapter 1, Division of Occupational and Professional Licensing Act, or ~~[any]~~ a rule or order
833 issued with respect to these provisions.

834 (c) Except for an administrative fine and a cease and desist order, the licensure
835 sanctions cited in Section 58-17b-401 may not be assessed through a citation.

836 (d) Each citation shall be in writing and ~~[specifically]~~ describe with particularity the
837 nature of the violation, including a reference to the provision of the chapter, rule, or order

838 alleged to have been violated. The citation shall clearly state that the recipient must notify the
839 division in writing within 20 calendar days of service of the citation in order to contest the
840 citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.
841 The citation shall clearly explain the consequences of failure to timely contest the citation or to
842 make payment of [~~any fines~~] a fine assessed by the citation within the time specified in the
843 citation.

844 (e) Each citation issued under this section, or a copy of each citation, may be served
845 upon [~~any~~] a person upon whom a summons may be served:

846 (i) in accordance with the Utah Rules of Civil Procedure;

847 (ii) personally or upon the person's agent by a division investigator or by [~~any~~] a person
848 specially designated by the director; or

849 (iii) by mail.

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

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

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

858 (i) No citation may be issued under this section after the expiration of six months
859 following the occurrence of [~~any~~] a violation.

860 Section 15. Section **58-17b-622** is amended to read:

861 **58-17b-622. Pharmacy benefit management services -- Auditing of pharmacy**
862 **records -- Appeals.**

863 (1) For purposes of this section:

864 (a) "Audit" means a review of the records of a pharmacy by or on behalf of an entity
865 that finances or reimburses the cost of health care services or pharmaceutical products.

866 (b) "Entity" includes:

867 (i) a pharmacy benefits manager or coordinator;

868 (ii) a health benefit plan;

- 869 (iii) a third party administrator as defined in Section 31A-1-301;
- 870 (iv) a state agency; or
- 871 (v) a company, group, or agent that represents, or is engaged by, one of the entities
- 872 described in Subsections (1)(b)(i) through (iv).
- 873 (c) "Fraud" means an intentional act of deception, misrepresentation, or concealment in
- 874 order to gain something of value.
- 875 (d) "Health benefit plan" means:
- 876 (i) a health benefit plan as defined in Section 31A-1-301; or
- 877 (ii) a health, dental, medical, Medicare supplement, or conversion program offered
- 878 under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.
- 879 (2) (a) Except as provided in Subsection (2)(b), this section applies to:
- 880 (i) a contract for the audit of a pharmacy entered into, amended, or renewed on or after
- 881 July 1, 2012; and
- 882 (ii) an entity that conducts an audit of the pharmacy records of a pharmacy licensed
- 883 under this chapter.
- 884 (b) This section does not apply to an audit of pharmacy records:
- 885 (i) for a federally funded prescription drug program, including:
- 886 (A) the state Medicaid program;
- 887 (B) the Medicare Part D program;
- 888 (C) a Department of Defense prescription drug program;
- 889 (D) a Veteran's Affairs prescription drug program; or
- 890 (ii) when fraud or other intentional and willful misrepresentation is alleged and the
- 891 pharmacy audit entity has evidence that the pharmacy's actions reasonably indicate fraud or
- 892 intentional and willful misrepresentation.
- 893 (3) (a) An audit that involves clinical or professional judgment shall be conducted by
- 894 or in consultation with a [~~licensed~~] pharmacist who is employed by or working with the
- 895 auditing entity and who is licensed in the state or another state.
- 896 (b) If an audit is conducted on site at a pharmacy, the entity conducting the audit:
- 897 (i) shall give the pharmacy 10 days advanced written notice of:
- 898 (A) the audit; and
- 899 (B) the range of prescription numbers or a date range included in the audit; and

900 (ii) may not audit a pharmacy during the first five business days of the month, unless
901 the pharmacy agrees to the timing of the audit.

902 (c) An entity may not audit claims:

903 (i) submitted more than 18 months prior to the audit, unless:

904 (A) required by federal law; or

905 (B) the originating prescription is dated in the preceding six months; or

906 (ii) that exceed 200 selected prescription claims.

907 (4) (a) An entity may not:

908 (i) include dispensing fees in the calculations of overpayments unless the prescription
909 is considered a misfill;

910 (ii) recoup funds for prescription clerical or recordkeeping errors, including
911 typographical errors, scrivener's errors, and computer errors on a required document or record
912 unless the audit entity is alleging fraud or other intentional or willful misrepresentation and the
913 audit entity has evidence that the pharmacy's actions reasonably indicate fraud or intentional
914 and willful misrepresentation; or

915 (iii) collect any funds, charge-backs, or penalties until the audit and all appeals are
916 final, unless the audit entity is alleging fraud or other intentional or willful misrepresentation
917 and the audit entity has evidence that the pharmacy's actions reasonably indicate fraud or
918 intentional and willful misrepresentation.

919 (b) Auditors shall only have access to previous audit reports on a particular pharmacy
920 if the previous audit was conducted by the same entity except as required for compliance with
921 state or federal law.

922 (5) A pharmacy subject to an audit may use the following records to validate a claim
923 for a prescription, refill, or change in a prescription:

924 (a) electronic or physical copies of records of a health care facility, or a health care
925 provider with prescribing authority; and

926 (b) any prescription that complies with state law.

927 (6) (a) An entity that audits a pharmacy shall provide the pharmacy with a preliminary
928 audit report, delivered to the pharmacy or its corporate office of record within 60 days after
929 completion of the audit.

930 (b) A pharmacy has 30 days following receipt of the preliminary audit report to

931 respond to questions, provide additional documentation, and comment on and clarify findings
932 of the audit. Receipt of the report shall be based on the postmark date or the date of a
933 computer transmission if transferred electronically.

934 (7) If an audit results in the dispute or denial of a claim, the entity conducting the audit
935 shall allow the pharmacy to resubmit a claim using any commercially reasonable method,
936 including fax, mail, or electronic claims submission provided that the period of time when a
937 claim may be resubmitted has not expired under the rules of the plan sponsor.

938 (8) (a) Within 120 days after the completion of the appeals process under Subsection
939 (9), a final audit report shall be delivered to the pharmacy or its corporate office of record.

940 (b) The final audit report shall include a disclosure of any money recovered by the
941 entity that conducted the audit.

942 (9) An entity that audits a pharmacy shall establish a written appeals process for
943 appealing a preliminary audit report and a final audit report, and shall provide the pharmacy
944 with notice of the written appeals process. If the pharmacy benefit manager's contract or
945 provider manual contains the information required by this Subsection (9), the requirement for
946 notice is met.

947 Section 16. Section **58-22-305** is amended to read:

948 **58-22-305. Exemption from licensure.**

949 (1) In addition to the exemptions from licensure in Section 58-1-307, the following
950 may engage in the following acts or practices without being licensed under this chapter:

951 (a) a person offering to render professional engineering, professional structural
952 engineering, or professional land surveying services in this state when not licensed under this
953 chapter if the person:

954 (i) holds a current and valid professional engineer, professional structural engineer, or
955 professional land surveyor license issued by a licensing authority recognized by rule by the
956 division in collaboration with the board;

957 (ii) discloses in writing to the potential client the fact that the professional engineer,
958 professional structural engineer, or professional land surveyor:

959 (A) is not licensed in the state;

960 (B) may not provide professional engineering, professional structural engineering, or
961 professional land surveying services in the state until licensed in the state; and

962 (C) that such condition may cause a delay in the ability of the professional engineer,
963 professional structural engineer, or professional land surveyor to provide licensed services in
964 the state;

965 (iii) notifies the division in writing of [~~his~~] the person's intent to offer to render
966 professional engineering, professional structural engineering, or professional land surveying
967 services in the state; and

968 (iv) does not provide professional engineering, professional structural engineering, or
969 professional land surveying services, or engage in the practice of professional engineering,
970 professional structural engineering, or professional land surveying in this state until licensed to
971 do so;

972 (b) a person preparing a plan and specification for a one- or two-family residence not
973 exceeding two stories in height;

974 (c) a person licensed to practice architecture under Title 58, Chapter 3a, Architects
975 Licensing Act, performing architecture acts or incidental engineering or structural engineering
976 practices that do not exceed the scope of the education and training of the person performing
977 engineering or structural engineering;

978 (d) unlicensed employees, subordinates, associates, or drafters of a person licensed
979 under this chapter while preparing plans, maps, sketches, drawings, documents, specifications,
980 plats, and reports under the supervision of a professional engineer, professional structural
981 engineer, or professional land surveyor;

982 (e) a person preparing a plan or specification for, or supervising the alteration of or
983 repair to, an existing building affecting an area not exceeding 3,000 square feet when structural
984 elements of a building are not changed, such as foundations, beams, columns, and structural
985 slabs, joists, bearing walls, and trusses;

986 (f) an employee of a communications, utility, railroad, mining, petroleum, or
987 manufacturing company, or an affiliate of such a company, if the professional engineering or
988 professional structural engineering work is performed solely in connection with the products or
989 systems of the company and is not offered directly to the public;

990 (g) an organization engaged in the practice of professional engineering, structural
991 engineering, or professional land surveying, provided that:

992 (i) the organization employs a principal; and

993 (ii) all individuals employed by the organization, who are engaged in the practice of
 994 professional engineering, structural engineering, or land surveying, are licensed or exempt from
 995 licensure under this chapter; and

996 (h) a person licensed as a professional engineer, a professional structural engineer, or a
 997 professional land surveyor in a state other than Utah serving as an expert witness, provided the
 998 expert testimony meets one of the following:

999 (i) oral testimony as an expert witness in an administrative, civil, or criminal
 1000 proceeding [~~is not part of the practice of the respective professions for which a license is~~
 1001 ~~required~~]; or

1002 (ii) written documentation included as part of the testimony in a preceding, including
 1003 designs, studies, plans, specifications, or similar documentation, [~~is not part of the practice of~~
 1004 ~~the respective professions for which a license is required~~] provided that the purpose of the
 1005 written documentation is not to establish specifications, plans, designs, processes, or standards
 1006 to be used in the future in [~~any~~] an industrial process, system, construction, [~~designs, or repairs~~]
 1007 design, or repair.

1008 (2) Nothing in this section shall be construed to restrict a draftsman from preparing
 1009 plans for a client under the exemption provided in Subsection (1)(b)₂ or taking those plans to a
 1010 professional engineer for [~~his~~] the engineer's review, approval, and subsequent fixing of the
 1011 engineer's seal to that set of plans, if [~~they~~] the plans meet the building code standards.

1012 Section 17. Section **58-22-503** is amended to read:

1013 **58-22-503. Penalty for unlawful conduct.**

1014 (1) (a) If upon inspection or investigation, the division concludes that a person has
 1015 violated Subsections 58-1-501(1)(a) through [~~(d) or~~](e), Section 58-22-501₂, or [~~any~~] a rule or
 1016 order issued with respect to Section 58-22-501, and that disciplinary action is appropriate, the
 1017 director or the director's designee from within the division for each alternative respectively,
 1018 shall promptly issue a citation to the person according to this chapter and any pertinent rules,
 1019 attempt to negotiate a stipulated settlement, or notify the person to appear before an
 1020 adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

1021 (i) A person who violates Subsections 58-1-501(1)(a) through [~~(d) or~~] (e), Section
 1022 58-22-501₂, or [~~any~~] a rule or order issued with respect to Section 58-22-501, as evidenced by
 1023 an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative

1024 proceeding, may be assessed a fine pursuant to this Subsection (1) and may, in addition to or in
1025 lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through [~~(d)~~
1026 ~~or~~] (e), Section 58-22-501, or [any] a rule or order issued with respect to this section.

1027 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
1028 58-22-401 may not be assessed through a citation.

1029 (b) A citation shall:

1030 (i) be in writing;

1031 (ii) describe with particularity the nature of the violation, including a reference to the
1032 provision of the chapter, rule, or order alleged to have been violated;

1033 (iii) clearly state that the recipient must notify the division in writing within 20
1034 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
1035 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

1036 (iv) clearly explain the consequences of failure to timely contest the citation or to make
1037 payment of [~~any fines~~] a fine assessed by the citation within the time specified in the citation.

1038 (c) The division may issue a notice in lieu of a citation.

1039 (d) Each citation issued under this section, or a copy of each citation, may be served
1040 upon [any] a person whom a summons may be served in accordance with the Utah Rules of
1041 Civil Procedure and may be made personally or upon the person's agent by a division
1042 investigator or by [any] a person specially designated by the director or by mail.

1043 (e) If within 20 calendar days from the service of the citation, the person to whom the
1044 citation was issued fails to request a hearing to contest the citation, the citation becomes the
1045 final order of the division and is not subject to further agency review. The period to contest a
1046 citation may be extended by the division for cause.

1047 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
1048 the license of a licensee who fails to comply with a citation after it becomes final.

1049 (g) The failure of an applicant for licensure to comply with a citation after it becomes
1050 final is a ground for denial of license.

1051 (h) No citation may be issued under this section after the expiration of six months
1052 following the occurrence of [any] a violation.

1053 (i) The director or the director's designee shall assess fines according to the following:

1054 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

1055 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

1056 and

1057 (iii) for ~~[any]~~ each subsequent offense handled pursuant to Subsection (1)(a), a fine of
1058 up to \$2,000 for each day of continued offense.

1059 (2) An action initiated for a first or second offense ~~[which]~~ that has not yet resulted in a
1060 final order of the division ~~[shall]~~ does not preclude initiation of ~~[any]~~ a subsequent action for a
1061 second or subsequent offense during the pendency of ~~[any]~~ a preceding action. The final order
1062 on a subsequent action shall be considered a second or subsequent offense, respectively,
1063 provided the preceding action resulted in a first or second offense, respectively.

1064 (3) ~~[Any]~~ A penalty which is not paid may be collected by the director by either
1065 referring the matter to a collection agency or bringing an action in the district court of the
1066 county in which the person against whom the penalty is imposed resides or in the county where
1067 the office of the director is located. ~~[Any]~~ A county attorney or the attorney general of the state
1068 shall provide legal assistance and advice to the director in ~~[any]~~ an action to collect the penalty.
1069 In ~~[any]~~ an action brought to enforce the provisions of this section, reasonable attorney's fees
1070 and costs shall be awarded to the division.

1071 Section 18. Section **58-31b-503** is amended to read:

1072 **58-31b-503. Penalties and administrative actions for unlawful conduct and**
1073 **unprofessional conduct.**

1074 (1) ~~[Any]~~ A person who violates the unlawful conduct provision specifically defined in
1075 Subsection 58-1-501(1)(a) is guilty of a third degree felony.

1076 (2) ~~[Any]~~ A person who violates any of the unlawful conduct provisions specifically
1077 defined in Subsections 58-1-501(1)(b) through ~~[(f)]~~ (g) and 58-31b-501(1)(d) is guilty of a
1078 class A misdemeanor.

1079 (3) ~~[Any]~~ A person who violates any of the unlawful conduct provisions specifically
1080 defined in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B
1081 misdemeanor.

1082 (4) (a) Subject to Subsection (6) and in accordance with Section 58-31b-401, for acts
1083 of unprofessional or unlawful conduct, the division may:

1084 (i) assess administrative penalties; and

1085 (ii) take ~~[any]~~ other appropriate administrative action.

1086 (b) An administrative penalty imposed pursuant to this section shall be deposited in the
1087 "Nurse Education and Enforcement Account" as provided in Section 58-31b-103.

1088 (5) If a licensee has been convicted of violating Section 58-31b-501 prior to an
1089 administrative finding of a violation of the same section, the licensee may not be assessed an
1090 administrative fine under this chapter for the same offense for which the conviction was
1091 obtained.

1092 (6) (a) If upon inspection or investigation, the division concludes that a person has
1093 violated the provisions of Section 58-31b-401, 58-31b-501, or 58-31b-502, Chapter 1, Division
1094 of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act,
1095 or [any] a rule or order issued with respect to these provisions, and that disciplinary action is
1096 appropriate, the director or the director's designee from within the division shall:

1097 (i) promptly issue a citation to the person according to this chapter and any pertinent
1098 administrative rules;

1099 (ii) attempt to negotiate a stipulated settlement; or

1100 (iii) notify the person to appear before an adjudicative proceeding conducted under
1101 Title 63G, Chapter 4, Administrative Procedures Act.

1102 (b) [Any] A person who is in violation of a provision described in Subsection (6)(a), as
1103 evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an
1104 adjudicative proceeding may be assessed a fine:

1105 (i) pursuant to this Subsection (6) of up to \$10,000 per single violation or up to \$2,000
1106 per day of ongoing violation, whichever is greater, in accordance with a fine schedule
1107 established by rule; and

1108 (ii) in addition to or in lieu of the fine imposed under Subsection (6)(b)(i), be ordered
1109 to cease and desist from violating a provision of Sections 58-31b-501 and 58-31b-502, Chapter
1110 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled
1111 Substances Act, or [any] a rule or order issued with respect to those provisions.

1112 (c) Except for an administrative fine and a cease and desist order, the licensure
1113 sanctions cited in Section 58-31b-401 may not be assessed through a citation.

1114 (d) Each citation issued under this section shall:

1115 (i) be in writing; and

1116 (ii) clearly describe or explain:

1117 (A) the nature of the violation, including a reference to the provision of the chapter,
1118 rule, or order alleged to have been violated;

1119 (B) that the recipient must notify the division in writing within 20 calendar days of
1120 service of the citation in order to contest the citation at a hearing conducted under Title 63G,
1121 Chapter 4, Administrative Procedures Act; and

1122 (C) the consequences of failure to timely contest the citation or to make payment of
1123 [~~any fines~~] a fine assessed by the citation within the time specified in the citation; and

1124 (iii) be served upon [~~any~~] a person upon whom a summons may be served:

1125 (A) in accordance with the Utah Rules of Civil Procedure;

1126 (B) personally or upon the person's agent by a division investigator or by [~~any~~] a person
1127 specially designated by the director; or

1128 (C) by mail.

1129 (e) If within 20 calendar days from the service of a citation, the person to whom the
1130 citation was issued fails to request a hearing to contest the citation, the citation becomes the
1131 final order of the division and is not subject to further agency review. The period to contest the
1132 citation may be extended by the division for cause.

1133 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
1134 the license of a licensee who fails to comply with the citation after it becomes final.

1135 (g) The failure of an applicant for licensure to comply with a citation after it becomes
1136 final is a ground for denial of license.

1137 (h) No citation may be issued under this section after the expiration of six months
1138 following the occurrence of [~~any~~] a violation.

1139 Section 19. Section **58-31b-601 (Effective 01/01/13)** is amended to read:

1140 **58-31b-601 (Effective 01/01/13). Minimum standards for nursing programs --**
1141 **Medication aide training.**

1142 (1) [~~To~~] Except as provided in Subsection (2), to qualify as an approved education
1143 program for the purpose of qualifying graduates for licensure under this chapter, a nursing
1144 education program shall be accredited by the:

1145 [~~(a) (i) be affiliated with an institution of higher education that is accredited by the:~~]

1146 [~~(A) Middle States Association of Colleges and Schools;~~]

1147 [~~(B) New England Association of Schools and Colleges;~~]

1148 [~~(C)~~ North Central Association of Colleges and Schools;]
 1149 [~~(D)~~ Northwest Commission on Colleges and Universities;]
 1150 [~~(E)~~ Western Association of Schools and Colleges; or]
 1151 [~~(F)~~ Southern Association of Colleges and Schools; and]
 1152 [~~(ii)~~ be accredited by the:]
 1153 [~~(A)~~] (a) Commission on Collegiate Nursing Education;
 1154 [~~(B)~~] (b) National League for Nursing Accrediting Commission; or
 1155 [~~(C)~~] (c) Council on Accreditation of Nurse Anesthesia Educational Programs[~~;-or~~].
 1156 [~~(b)~~ be approved by the board and comply with standards defined by division rules:]
 1157 [~~(2)~~ An approved education program described in Subsection (1), may offer its didactic
 1158 courses using classroom, clinical, or online methods.]

1159 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 1160 division, in consultation with the board, may make rules establishing requirements for a
 1161 nursing education program to qualify for a limited time as an approved education program for
 1162 the purpose of qualifying graduates for licensure under this chapter, prior to its obtaining an
 1163 accreditation described in Subsection (1).

1164 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
 1165 the provisions of this chapter, the division shall make rules defining the minimum standards for
 1166 a medication aide certified training program to qualify a person for certification under this
 1167 chapter as a medication aide certified.

1168 Section 20. Section **58-37c-3** is amended to read:

1169 **58-37c-3. Definitions.**

1170 In addition to the definitions in Section 58-1-102, as used in this chapter:

1171 [~~(1)~~ "Board" means the Controlled Substance Precursor Advisory Board created in
 1172 Section 58-37c-4.]

1173 [~~(2)~~] (1) "Controlled substance precursor" includes a chemical reagent and means any
 1174 of the following:

- 1175 (a) Phenyl-2-propanone;
- 1176 (b) Methylamine;
- 1177 (c) Ethylamine;
- 1178 (d) D-lysergic acid;

- 1179 (e) Ergotamine and its salts;
- 1180 (f) Diethyl malonate;
- 1181 (g) Malonic acid;
- 1182 (h) Ethyl malonate;
- 1183 (i) Barbituric acid;
- 1184 (j) Piperidine and its salts;
- 1185 (k) N-acetylanthranilic acid and its salts;
- 1186 (l) Pyrrolidine;
- 1187 (m) Phenylacetic acid and its salts;
- 1188 (n) Anthranilic acid and its salts;
- 1189 (o) Morpholine;
- 1190 (p) Ephedrine;
- 1191 (q) Pseudoephedrine;
- 1192 (r) Norpseudoephedrine;
- 1193 (s) Phenylpropanolamine;
- 1194 (t) Benzyl cyanide;
- 1195 (u) Ergonovine and its salts;
- 1196 (v) 3,4-Methylenedioxyphenyl-2-propanone;
- 1197 (w) propionic anhydride;
- 1198 (x) Insosafrole;
- 1199 (y) Safrole;
- 1200 (z) Piperonal;
- 1201 (aa) N-Methylephedrine;
- 1202 (bb) N-ethylephedrine;
- 1203 (cc) N-methylpseudoephedrine;
- 1204 (dd) N-ethylpseudoephedrine;
- 1205 (ee) Hydriotic acid;
- 1206 (ff) gamma butyrolactone (GBL), including butyrolactone, 1,2 butanolide,
1207 2-oxanolone, tetrahydro-2-furanone, dihydro-2(3H)-furanone, and tetramethylene glycol, but
1208 not including gamma aminobutric acid (GABA);
- 1209 (gg) 1,4 butanediol;

1210 (hh) any salt, isomer, or salt of an isomer of the chemicals listed in Subsections (2)(a)
1211 through (gg);

1212 (ii) Crystal iodine;

1213 (jj) Iodine at concentrations greater than 1.5% by weight in a solution or matrix;

1214 (kk) Red phosphorous, except as provided in Section 58-37c-19.7;

1215 (ll) anhydrous ammonia, except as provided in Section 58-37c-19.9;

1216 (mm) any controlled substance precursor listed under the provisions of the Federal
1217 Controlled Substances Act which is designated by the director under the emergency listing
1218 provisions set forth in Section 58-37c-14; and

1219 (nn) any chemical which is designated by the director under the emergency listing
1220 provisions set forth in Section 58-37c-14.

1221 [~~(3)~~] (2) "Deliver," "delivery," "transfer," or "furnish" means the actual, constructive,
1222 or attempted transfer of a controlled substance precursor.

1223 [~~(4)~~] (3) "Matrix" means something, as a substance, in which something else
1224 originates, develops, or is contained.

1225 [~~(5)~~] (4) "Person" means any individual, group of individuals, proprietorship,
1226 partnership, joint venture, corporation, or organization of any type or kind.

1227 [~~(6)~~] (5) "Practitioner" means a physician, dentist, podiatric physician, veterinarian,
1228 pharmacist, scientific investigator, pharmacy, hospital, pharmaceutical manufacturer, or other
1229 person licensed, registered, or otherwise permitted to distribute, dispense, conduct research
1230 with respect to, administer, or use in teaching, or chemical analysis a controlled substance in
1231 the course of professional practice or research in this state.

1232 [~~(7)~~] (6) (a) "Regulated distributor" means a person within the state who provides,
1233 sells, furnishes, transfers, or otherwise supplies a listed controlled substance precursor
1234 chemical in a regulated transaction.

1235 (b) "Regulated distributor" does not include any person excluded from regulation under
1236 this chapter.

1237 [~~(8)~~] (7) (a) "Regulated purchaser" means any person within the state who receives a
1238 listed controlled substance precursor chemical in a regulated transaction.

1239 (b) "Regulated purchaser" does not include any person excluded from regulation under
1240 this chapter.

1241 ~~[(9)]~~ (8) "Regulated transaction" means any actual, constructive or attempted:

1242 (a) transfer, distribution, delivery, or furnishing by a person within the state to another
1243 person within or outside of the state of a threshold amount of a listed precursor chemical; or

1244 (b) purchase or acquisition by any means by a person within the state from another
1245 person within or outside the state of a threshold amount of a listed precursor chemical.

1246 ~~[(10)]~~ (9) "Retail distributor" means a grocery store, general merchandise store, drug
1247 store, or other entity or person whose activities as a distributor are limited almost exclusively to
1248 sales for personal use:

1249 (a) in both number of sales and volume of sales; and

1250 (b) either directly to walk-in customers or in face-to-face transactions by direct sales.

1251 ~~[(11)]~~ (10) "Threshold amount of a listed precursor chemical" means any amount of a
1252 controlled substance precursor or a specified amount of a controlled substance precursor in a
1253 matrix; however, the division may exempt from the provisions of this chapter a specific
1254 controlled substance precursor in a specific amount and in certain types of transactions which
1255 provisions for exemption shall be defined by the division by rule adopted pursuant to Title
1256 63G, Chapter 3, Utah Administrative Rulemaking Act.

1257 ~~[(12)]~~ (11) "Unlawful conduct" as defined in Section 58-1-501 includes knowingly and
1258 intentionally:

1259 (a) engaging in a regulated transaction without first being appropriately licensed or
1260 exempted from licensure under this chapter;

1261 (b) acting as a regulated distributor and selling, transferring, or in any other way
1262 conveying a controlled substance precursor to a person within the state who is not appropriately
1263 licensed or exempted from licensure as a regulated purchaser, or selling, transferring, or
1264 otherwise conveying a controlled substance precursor to a person outside of the state and
1265 failing to report the transaction as required;

1266 (c) acting as a regulated purchaser and purchasing or in any other way obtaining a
1267 controlled substance precursor from a person within the state who is not a licensed regulated
1268 distributor, or purchasing or otherwise obtaining a controlled substance precursor from a
1269 person outside of the state and failing to report the transaction as required;

1270 (d) engaging in a regulated transaction and failing to submit reports and keep required
1271 records of inventories required under the provisions of this chapter or rules adopted pursuant to

1272 this chapter;

1273 (e) making any false statement in any application for license, in any record to be kept,
1274 or on any report submitted as required under this chapter;

1275 (f) with the intent of causing the evasion of the recordkeeping or reporting
1276 requirements of this chapter and rules related to this chapter, receiving or distributing any listed
1277 controlled substance precursor chemical in any manner designed so that the making of records
1278 or filing of reports required under this chapter is not required;

1279 (g) failing to take immediate steps to comply with licensure, reporting, or
1280 recordkeeping requirements of this chapter because of lack of knowledge of those
1281 requirements, upon becoming informed of the requirements;

1282 (h) presenting false or fraudulent identification where or when receiving or purchasing
1283 a listed controlled substance precursor chemical;

1284 (i) creating a chemical mixture for the purpose of evading any licensure, reporting or
1285 recordkeeping requirement of this chapter or rules related to this chapter, or receiving a
1286 chemical mixture created for that purpose;

1287 (j) if the person is at least 18 years of age, employing, hiring, using, persuading,
1288 inducing, enticing, or coercing another person under 18 years of age to violate any provision of
1289 this chapter, or assisting in avoiding detection or apprehension for any violation of this chapter
1290 by any federal, state, or local law enforcement official; and

1291 (k) obtaining or attempting to obtain or to possess any controlled substance precursor
1292 or any combination of controlled substance precursors knowing or having a reasonable cause to
1293 believe that the controlled substance precursor is intended to be used in the unlawful
1294 manufacture of any controlled substance.

1295 ~~[(13)]~~ (12) "Unprofessional conduct" as defined in Section 58-1-102 and as may be
1296 further defined by rule includes the following:

1297 (a) violation of any provision of this chapter, the Controlled Substance Act of this state
1298 or any other state, or the Federal Controlled Substance Act; and

1299 (b) refusing to allow agents or representatives of the division or authorized law
1300 enforcement personnel to inspect inventories or controlled substance precursors or records or
1301 reports relating to purchases and sales or distribution of controlled substance precursors as such
1302 records and reports are required under this chapter.

1303 Section 21. Section **58-37c-8** is amended to read:

1304 **58-37c-8. License -- Exceptions from licensure or regulation.**

1305 (1) [~~Any~~] A person engaged in a regulated transaction under this chapter shall hold a
1306 controlled substance precursor license issued under Section 58-37c-7, unless excepted from
1307 licensure under this chapter.

1308 (2) The division shall:

1309 (a) establish the form of application for a license, the requirements for licensure, and
1310 fees for initial licensure and renewal; and

1311 (b) identify required information to be contained in the application as a condition of
1312 licensure.

1313 (3) A practitioner who holds a Utah Controlled Substance License and a Controlled
1314 Substance Registration issued by the Drug Enforcement Administration of the U.S.
1315 Government is excepted from licensure under this chapter.

1316 (4) [~~Any~~] The purchase, sale, transfer, furnishing, or receipt of [~~any~~] a drug intended
1317 for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or
1318 other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or
1319 phenylpropanolamine, if the drug is lawfully purchased, sold, transferred, or furnished as an
1320 over-the-counter medication without prescription pursuant to the federal Food, Drug and
1321 Cosmetic Act, 21 USC, Sec. 301 et seq., or regulations adopted under that act, are excepted
1322 from licensure, reporting, and recordkeeping under this chapter, except that products
1323 containing ephedrine, pseudoephedrine, or phenylpropanolamine are subject to Section
1324 58-37c-20.5.

1325 (5) [~~Any~~] The purchase, sale, transfer, receipt, or manufacture of [~~any~~] dietary
1326 supplement, vitamins, minerals, herbs, or other similar substances, including concentrates or
1327 extracts, which are not otherwise prohibited by law, and which may contain naturally occurring
1328 amounts of chemicals or substances listed in this chapter, or in rules adopted pursuant to Title
1329 63G, Chapter 3, Utah Administrative Rulemaking Act, are exempt from licensure under this
1330 chapter.

1331 (6) A purchaser of two ounces or less of crystal iodine in a single transaction is not
1332 required to be licensed as a regulated purchaser if the transaction complies with Section
1333 58-37c-18.

1334 (7) ~~Any~~ The purchase, sale, transfer, receipt, or manufacture of ~~any~~ a product that
1335 contains ~~any~~ a precursor chemical listed in Subsection 58-37c-3~~(2)~~(1)(ff) or (gg) and that is
1336 not intended for human consumption is exempt from licensure or regulation and is not subject
1337 to criminal penalties under this chapter.

1338 Section 22. Section **58-37c-11** is amended to read:

1339 **58-37c-11. Penalty for unlawful conduct.**

1340 (1) ~~Any~~ A person who violates the unlawful conduct provision defined in
1341 Subsections 58-37c-3~~(12)~~(11)(a) through (j) is guilty of a class A misdemeanor.

1342 (2) ~~Any~~ A person who violates the unlawful conduct provisions defined in
1343 Subsection 58-37c-3~~(12)~~(11)(k) is guilty of a second degree felony.

1344 Section 23. Section **58-37c-19** is amended to read:

1345 **58-37c-19. Possession or sale of crystal iodine.**

1346 (1) ~~Any~~ A person licensed to engage in a regulated transaction is guilty of a class B
1347 misdemeanor who, under circumstances not amounting to a violation of Subsection
1348 58-37d-4(1)(c), offers to sell, sells, or distributes more than two ounces of crystal iodine to
1349 another person who is:

1350 (a) not licensed as a regulated purchaser of crystal iodine;

1351 (b) not excepted from licensure; or

1352 (c) not excepted under Subsection (3).

1353 (2) ~~Any~~ A person who is not licensed to engage in regulated transactions and not
1354 excepted from licensure is guilty of a class A misdemeanor who, under circumstances not
1355 amounting to a violation of Subsection 58-37c-3~~(12)~~(11)(k) or Subsection 58-37d-4(1)(a):

1356 (a) possesses more than two ounces of crystal iodine; or

1357 (b) offers to sell, sells, or distributes crystal iodine to another person.

1358 (3) Subsection (2)(a) does not apply to:

1359 (a) a chemistry laboratory maintained by:

1360 (i) a public or private regularly established secondary school; or

1361 (ii) a public or private institution of higher education that is accredited by a regional or
1362 national accrediting agency recognized by the United States Department of Education;

1363 (b) a veterinarian licensed to practice under Title 58, Chapter 28, Veterinary Practice
1364 Act; or

1365 (c) a general acute hospital.

1366 Section 24. Section **58-37c-19.5** is amended to read:

1367 **58-37c-19.5. Iodine solution greater than 1.5% -- Prescription or permit required**
1368 **-- Penalties.**

1369 (1) As used in this section, "iodine matrix" means iodine at concentrations greater than
1370 1.5% by weight in a matrix or solution.

1371 (2) A person may offer to sell, sell, or distribute an iodine matrix only:

1372 (a) as a prescription drug, pursuant to a prescription issued by a veterinarian or
1373 physician licensed within the state; or

1374 (b) to a person who is actively engaged in the legal practice of animal husbandry of
1375 livestock, as defined in Section 4-1-8.

1376 (3) Prescriptions issued under this section:

1377 (a) shall provide for a specified number of refills;

1378 (b) may be issued by electronic means, in accordance with Title 58, Chapter 17b,
1379 Pharmacy Practice Act; and

1380 (c) may be filled by a person other than the veterinarian or physician issuing the
1381 prescription.

1382 (4) A retailer offering iodine matrix for sale:

1383 (a) shall store the iodine matrix so that the public does not have access to the iodine
1384 matrix without the direct assistance or intervention of a retail employee;

1385 (b) shall keep a record, which may consist of sales receipts, of each person purchasing
1386 iodine matrix; and

1387 (c) may, if necessary to ascertain the identity of the purchaser, ask for proof of
1388 identification from the purchaser.

1389 (5) A person engaging in a regulated transaction under Subsection (2) is guilty of a
1390 class B misdemeanor if the person, under circumstances not amounting to a violation of
1391 Subsection 58-37d-4(1)(c), offers to sell, sells, or distributes an iodine matrix to a person who:

1392 (a) does not present a prescription or is not engaged in animal husbandry, as required
1393 under Subsection (2); or

1394 (b) is not excepted under Subsection (7).

1395 (6) A person is guilty of a class A misdemeanor who, under circumstances not

1396 amounting to a violation of Subsection 58-37c-3~~[(12)]~~(11)(k) or 58-37d-4(1)(a):

1397 (a) possesses an iodine matrix without proof of obtaining the solution in compliance
1398 with Subsection (2); or

1399 (b) offers to sell, sells, or distributes an iodine matrix in violation of Subsection (2).

1400 (7) Subsection (6)(a) does not apply to:

1401 (a) a chemistry or chemistry-related laboratory maintained by:

1402 (i) a public or private regularly established secondary school; or

1403 (ii) a public or private institution of higher education that is accredited by a regional or
1404 national accrediting agency recognized by the United States Department of Education;

1405 (b) a veterinarian licensed to practice under Title 58, Chapter 28, Veterinary Practice
1406 Act;

1407 (c) a general acute hospital; or

1408 (d) a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer,
1409 warehouseman, or common carrier, or an agent of any of these persons who possesses an
1410 iodine matrix in the regular course of lawful business activities.

1411 Section 25. Section **58-37c-19.7** is amended to read:

1412 **58-37c-19.7. Red phosphorus is a precursor -- Affirmative defense.**

1413 (1) A person is guilty of a class A misdemeanor who is not licensed to engage in a
1414 regulated transaction and is not excepted from licensure who, under circumstances not
1415 amounting to a violation of Subsection 58-37c-3~~[(12)]~~(11)(k) or 58-37d-4(1)(a), possesses any
1416 amount of red phosphorus.

1417 (2) It is an affirmative defense to a charge under Subsection (1) that the person in
1418 possession of red phosphorus:

1419 (a) is conducting a licensed business ~~[which]~~ that involves red phosphorus in the
1420 manufacture of any of the following:

1421 (i) the striking surface used for lighting matches, which is sometimes referred to as the
1422 striker plate;

1423 (ii) flame retardant in polymers; or

1424 (iii) fireworks, for which the person or entity possesses a federal license to manufacture
1425 explosives as required under 27 CFR Chapter 1, Part 55, Commerce in Explosives; or

1426 (b) (i) is a wholesaler, manufacturer, warehouseman, or common carrier handling red

1427 phosphorus, or is an agent of any of these persons; and

1428 (ii) possesses the substances in the regular course of lawful business activities.

1429 (3) (a) ~~[The]~~ A defendant shall provide written notice of intent to claim an affirmative
1430 defense under this section as soon as practicable, but not later than 10 days prior to trial. The
1431 court may waive the notice requirement in the interest of justice for good cause shown, if the
1432 prosecutor is not unfairly prejudiced by the lack of timely notice.

1433 (b) The notice shall include the specifics of the affirmative defense.

1434 (c) The defendant shall establish the affirmative defense by a preponderance of the
1435 evidence. If the defense is established, it is a complete defense to the charges.

1436 (4) Subsection (1) does not apply to:

1437 (a) a chemistry or chemistry-related laboratory maintained by:

1438 (i) a public or private regularly established secondary school; or

1439 (ii) a public or private institution of higher education that is accredited by a regional or
1440 national accrediting agency recognized by the United States Department of Education; or

1441 (b) a retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or
1442 an agent of any of these persons who possesses red phosphorus in the regular course of lawful
1443 business activities.

1444 Section 26. Section **58-37c-19.9** is amended to read:

1445 **58-37c-19.9. Anhydrous ammonia is a precursor -- Requirements regarding**
1446 **purposes and containers.**

1447 (1) A person is guilty of a class A misdemeanor who is not licensed to engage in a
1448 regulated transaction and is not excepted from licensure or exempted under Subsection (2), and
1449 who possesses any amount of anhydrous ammonia under circumstances not amounting to a
1450 violation of Subsection 58-37c-3~~[(12)]~~(11)(k) or 58-37d-4(1)(a).

1451 (2) A person who possesses anhydrous ammonia has an affirmative defense to a charge
1452 under Subsection (1) if the person is:

1453 (a) directly involved in or actively operating land in agricultural use as defined in
1454 Section 59-2-502;

1455 (b) a retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or
1456 an agent of any of these persons, who possesses anhydrous ammonia in the regular course of
1457 lawful business activities;

1458 (c) directly involved in or actively operating a business or other lawful activity
1459 providing or using anhydrous ammonia for refrigeration applications; or

1460 (d) directly involved in or actively operating a lawful business enterprise, including an
1461 industrial enterprise, that uses anhydrous ammonia in the regular course of its business
1462 activities.

1463 Section 27. Section **58-37c-20** is amended to read:

1464 **58-37c-20. Possession of ephedrine, pseudoephedrine, or phenylpropanolamine --**
1465 **Penalties.**

1466 (1) [~~Any~~] A person is guilty of a class A misdemeanor:

1467 (a) who is not licensed to engage in regulated transactions and is not excepted from
1468 licensure; and

1469 (b) who, under circumstances not amounting to a violation of Subsection
1470 58-37c-3[~~(12)~~](11)(k) or Subsection 58-37d-4(1)(a), possesses more than 9 grams of ephedrine,
1471 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a
1472 combination of any of these substances.

1473 (2) It is an affirmative defense to a charge under Subsection (1) that the person in
1474 possession of ephedrine, pseudoephedrine, phenylpropanolamine, or a combination of these
1475 two substances:

1476 (a) (i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer,
1477 warehouseman, or common carrier, or an agent of any of these persons; and

1478 (ii) possesses the substances in the regular course of lawful business activities; or

1479 (b) possesses the substance pursuant to a valid prescription as defined in Section
1480 58-37-2.

1481 (3) (a) [~~The~~] A defendant shall provide written notice of intent to claim an affirmative
1482 defense under this section as soon as practicable, but not later than 10 days prior to trial. The
1483 court may waive the notice requirement in the interest of justice for good cause shown, if the
1484 prosecutor is not unfairly prejudiced by the lack of timely notice.

1485 (b) The notice shall include the specifics of the asserted defense.

1486 (c) The defendant shall establish the affirmative defense by a preponderance of the
1487 evidence. If the defense is established, it is a complete defense to the charges.

1488 (4) This section does not apply to dietary supplements, herbs, or other natural products,

1489 including concentrates or extracts, which:

1490 (a) are not otherwise prohibited by law; and

1491 (b) may contain naturally occurring ephedrine, ephedrine alkaloids, or

1492 pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these

1493 substances, that:

1494 (i) are contained in a matrix of organic material; and

1495 (ii) do not exceed 15% of the total weight of the natural product.

1496 Section 28. Section **58-37d-3** is amended to read:

1497 **58-37d-3. Definitions.**

1498 (1) As used in this chapter:

1499 (a) (i) "Booby trap" means [~~any~~] a concealed or camouflaged device designed to cause
1500 bodily injury when triggered by [~~any~~] the action of a person making contact with the device.

1501 [~~This term~~]

1502 (ii) "Booby trap" includes guns, ammunition, or explosive devices attached to trip
1503 wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines
1504 or wires with hooks attached, and devices for the production of toxic fumes or gases.

1505 (b) "Clandestine laboratory operation" means the:

1506 (i) purchase or procurement of chemicals, supplies, equipment, or laboratory location
1507 for the illegal manufacture of specified controlled substances;

1508 (ii) transportation or arranging for the transportation of chemicals, supplies, or
1509 equipment for the illegal manufacture of specified controlled substances;

1510 (iii) setting up of equipment or supplies in preparation for the illegal manufacture of
1511 specified controlled substances;

1512 (iv) activity of compounding, synthesis, concentration, purification, separation,
1513 extraction, or other physical or chemical processing of [~~any~~] a substance, including a controlled
1514 substance precursor, or the packaging, repackaging, labeling, or relabeling of a container
1515 holding a substance that is a product of any of these activities, when the substance is to be used
1516 for the illegal manufacture of specified controlled substances;

1517 (v) illegal manufacture of specified controlled substances; or

1518 (vi) distribution or disposal of chemicals, equipment, supplies, or products used in or
1519 produced by the illegal manufacture of specified controlled substances.

1520 (c) "Controlled substance precursor" means those chemicals designated in Title 58,
1521 Chapter 37c, Controlled Substance Precursor Act, except those substances designated in
1522 Subsections 58-37c-3~~(2)~~(1)(kk) and (ll).

1523 (d) "Disposal" means the abandonment, discharge, deposit, injection, dumping,
1524 spilling, leaking, or placing of ~~[any]~~ hazardous or dangerous material into or on ~~[any]~~ property,
1525 land, or water so that the material may enter the environment, be emitted into the air, or
1526 discharged into any waters, including groundwater.

1527 (e) "Hazardous or dangerous material" means ~~[any]~~ a substance ~~[which]~~ that because of
1528 its quantity, concentration, physical characteristics, or chemical characteristics may cause or
1529 significantly contribute to an increase in mortality, an increase in serious illness, or may pose a
1530 substantial present or potential future hazard to human health or the environment when
1531 improperly treated, stored, transported, disposed of, or otherwise improperly managed.

1532 (f) "Illegal manufacture of specified controlled substances" means in violation of Title
1533 58, Chapter 37, Utah Controlled Substances Act, the:

1534 (i) compounding, synthesis, concentration, purification, separation, extraction, or other
1535 physical or chemical processing for the purpose of producing methamphetamine, other
1536 amphetamine compounds as listed in Schedule I of the Utah Controlled Substances Act,
1537 phencyclidine, narcotic analgesic analogs as listed in Schedule I of the Utah Controlled
1538 Substances Act, lysergic acid diethylamide, or mescaline;

1539 (ii) conversion of cocaine or methamphetamine to their base forms; or

1540 (iii) extraction, concentration, or synthesis of marijuana as that drug is defined in
1541 Section 58-37-2.

1542 (2) Unless otherwise specified, the definitions in Section 58-37-2 also apply to this
1543 chapter.

1544 Section 29. Section **58-40a-501** is amended to read:

1545 **58-40a-501. Unprofessional conduct.**

1546 In addition to the provisions of Subsection 58-1-501(2), "unprofessional conduct"
1547 includes:

1548 (1) failing to report to the ~~[board]~~ division an act or omission ~~[of]~~ that violates a
1549 provision of this chapter by a licensee, applicant, or ~~[any other]~~ another individual ~~[which~~
1550 ~~violates a provision of this chapter]~~;

1551 (2) interfering with an investigation of a disciplinary proceeding by willful
1552 misrepresentation of facts or by use of threats or harassment against a client or witness to
1553 prevent that individual from providing evidence in a disciplinary proceeding, investigation, or
1554 other legal action;

1555 (3) failing to maintain client confidentiality unless otherwise required by law;

1556 (4) promoting an unnecessary device, treatment, intervention, or service for financial
1557 gain by the athletic trainer or a third party; and

1558 (5) failing to maintain adequate records.

1559 Section 30. Section **58-53-502** is amended to read:

1560 **58-53-502. Citations -- Penalty for unlawful conduct.**

1561 (1) (a) If upon inspection or investigation, the division concludes that a person has
1562 violated Subsections 58-1-501(1)(a) through [~~(d)~~] (e), Section 58-53-501, [~~or~~] Section
1563 58-53-603, or [~~any~~] a rule or order issued with respect to Section 58-53-501, and that
1564 disciplinary action is appropriate, the director or the director's designee from within the
1565 division for each alternative respectively, shall promptly issue a citation to the person
1566 according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or
1567 notify the person to appear before an adjudicative proceeding conducted under Title 63G,
1568 Chapter 4, Administrative Procedures Act.

1569 (i) A person who violates Subsections 58-1-501(1)(a) through [~~(d)~~ or] (e), Section
1570 58-53-501, or [~~any~~] a rule or order issued with respect to Section 58-53-501, as evidenced by
1571 an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative
1572 proceeding, may be assessed a fine pursuant to Subsection (1)(i) and may, in addition to or in
1573 lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through [~~(d)~~
1574 or] (e), Section 58-53-501, or [~~any~~] a rule or order issued with respect to Section 58-53-501.

1575 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
1576 58-53-401 may not be assessed through a citation.

1577 (b) A citation shall:

1578 (i) be in writing;

1579 (ii) describe with particularity the nature of the violation, including a reference to the
1580 provision of the chapter, rule, or order alleged to have been violated;

1581 (iii) clearly state that the recipient must notify the division in writing within 20

1582 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
1583 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

1584 (iv) clearly explain the consequences of failure to timely contest the citation or to make
1585 payment of [~~any fines~~] a fine assessed by the citation within the time specified in the citation.

1586 (c) The division may issue a notice in lieu of a citation.

1587 (d) Each citation issued under this section, or a copy of each citation, may be served
1588 upon [~~any~~] a person whom a summons may be served in accordance with the Utah Rules of
1589 Civil Procedure and may be made personally or upon the person's agent by a division
1590 investigator or by [~~any~~] a person specially designated by the director or by mail.

1591 (e) If within 20 calendar days from the service of the citation, the person to whom the
1592 citation was issued fails to request a hearing to contest the citation, the citation becomes the
1593 final order of the division and is not subject to further agency review. The period to contest a
1594 citation may be extended by the division for cause.

1595 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
1596 the license of a licensee who fails to comply with a citation after it becomes final.

1597 (g) The failure of an applicant for licensure to comply with a citation after it becomes
1598 final is a ground for denial of license.

1599 (h) No citation may be issued under this section after the expiration of six months
1600 following the occurrence of [~~any~~] a violation.

1601 (i) The director or the director's designee shall assess fines according to the following:

1602 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

1603 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

1604 and

1605 (iii) for [~~any~~] each subsequent offense handled pursuant to Subsection (1)(a), a fine of
1606 up to \$2,000 for each day of continued offense.

1607 (2) An action initiated for a first or second offense [~~which~~] that has not yet resulted in a
1608 final order of the division does not preclude initiation of [~~any~~] a subsequent action for a second
1609 or subsequent offense during the pendency of [~~any~~] a preceding action. The final order on a
1610 subsequent action shall be considered a second or subsequent offense, respectively, provided
1611 the preceding action resulted in a first or second offense, respectively.

1612 (3) [~~Any~~] A penalty [~~which~~] that is not paid may be collected by the director by either

1613 referring the matter to a collection agency or bringing an action in the district court of the
1614 county in which the person against whom the penalty is imposed resides or in the county where
1615 the office of the director is located. [~~Any~~] A county attorney or the attorney general of the state
1616 shall provide legal assistance and advice to the director in [~~any~~] an action to collect the penalty.
1617 In [~~any~~] an action brought to enforce the provisions of this section, reasonable attorney's fees
1618 and costs shall be awarded to the division.

1619 Section 31. Section **58-56-17** is amended to read:

1620 **58-56-17. Fees on sale -- Escrow agents -- Sales tax.**

1621 (1) A dealer shall collect and remit a fee of [~~\$75~~] \$25 to the division for each factory
1622 built home the dealer sells that, as of the date of the sale, has not been permanently affixed to
1623 real property and converted to real property as provided in Section 70D-2-401. The fee shall be
1624 payable within 30 days following the close of each calendar quarter for all units sold during
1625 that calendar quarter. The fee shall be deposited in a restricted account as provided in Section
1626 58-56-17.5.

1627 (2) A principal real estate broker, associate broker, or sales agent exempt from
1628 registration as a dealer under Section 58-56-16 who sells a factory built home that has not been
1629 permanently affixed to real property shall close the sale only through a qualified escrow agent
1630 in this state registered with the Insurance Department or the Department of Financial
1631 Institutions.

1632 (3) An escrow agent through which a sale is closed under Subsection (2) shall remit all
1633 required sales tax to the state.

1634 Section 32. Section **58-57-14** is amended to read:

1635 **58-57-14. Unlawful conduct -- Penalty.**

1636 (1) [~~Beginning January 1, 2007, "unlawful"~~] "Unlawful conduct" includes:

1637 (a) using the following titles, names, or initials, if the user is not properly licensed
1638 under this chapter:

1639 (i) respiratory care practitioner;

1640 (ii) respiratory therapist; [~~and~~] or

1641 (iii) respiratory technician; [~~and~~] or

1642 (b) using [~~any other~~] another name, title, or initials that would cause a reasonable
1643 person to believe the user is licensed under this chapter if the user is not properly licensed

1644 under this chapter.

1645 (2) [~~Any~~] A person who violates the unlawful conduct provision specifically defined in
1646 Subsection 58-1-501(1)(a) is guilty of a third degree felony.

1647 (3) [~~Any~~] A person who violates any of the unlawful conduct provisions specifically
1648 defined in Subsections 58-1-501(1)(b) through [~~(f)~~] (g) and Subsection (1) of this section is
1649 guilty of a class A misdemeanor.

1650 (4) After a proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures
1651 Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the
1652 division may assess administrative penalties for acts of unprofessional or unlawful conduct or
1653 [~~any~~] other appropriate administrative action.

1654 Section 33. Section **58-60-205** is amended to read:

1655 **58-60-205. Qualifications for licensure or certification as a clinical social worker,**
1656 **certified social worker, and social service worker.**

1657 (1) An applicant for licensure as a clinical social worker shall:

1658 (a) submit an application on a form provided by the division;

1659 (b) pay a fee determined by the department under Section 63J-1-504;

1660 (c) be of good moral character;

1661 (d) produce certified transcripts from an accredited institution of higher education
1662 recognized by the division in collaboration with the board verifying satisfactory completion of
1663 an education and earned degree as follows:

1664 (i) an earned master's degree in social work resulting from completion of an education
1665 program accredited by the Council on Social Work Education; or

1666 (ii) an earned doctoral degree in social work that results from successful completion of
1667 a clinical concentration and practicum approved by the division and defined by rule under
1668 Section 58-1-203;

1669 (e) have completed a minimum of 4,000 hours of clinical social work training as
1670 defined by division rule under Section 58-1-203 in not less than two years and under the
1671 supervision of a clinical social worker supervisor approved by the division in collaboration
1672 with the board;

1673 (f) document successful completion of not less than 1,000 hours of supervised training
1674 in mental health therapy obtained after completion of the education requirement in Subsection

1675 (1)(d), which training may be included as part of the 4,000 hours of training in Subsection
1676 (1)(e), and of which documented evidence demonstrates not less than 100 of the hours were
1677 obtained under the direct personal face to face supervision of a clinical social worker approved
1678 by the division in collaboration with the board;

1679 (g) have completed a case work, group work, or family treatment course sequence with
1680 a clinical practicum in content as defined by rule under Section 58-1-203; and

1681 (h) pass the examination requirement established by rule under Section 58-1-203.

1682 (2) An applicant for licensure as a certified social worker shall:

1683 (a) submit an application on a form provided by the division;

1684 (b) pay a fee determined by the department under Section 63J-1-504;

1685 (c) be of good moral character;

1686 (d) produce certified transcripts from an accredited institution of higher education
1687 recognized by the division in collaboration with the Social Worker Licensing Board verifying
1688 satisfactory completion of an education and an earned degree as follows:

1689 (i) a social work education program accredited by the Council on Social Work
1690 Education and an earned master's degree resulting from completion of that program; or

1691 (ii) an education program that contains approved clinical social work concentration and
1692 practicum in content as defined by rule under Section 58-1-203 and an earned doctorate
1693 resulting from completion of that program; and

1694 (e) pass the examination requirement established by rule under Section 58-1-203.

1695 (3) (a) An applicant for certification as a certified social worker intern shall meet the
1696 requirements of Subsections (2)(a), (b), (c), and (d).

1697 (b) Certification under Subsection (3)(a) is limited to the time necessary to pass the
1698 examination required under Subsection (2)(e) or six months, whichever occurs first.

1699 (c) A certified social worker intern may provide mental health therapy under the
1700 general supervision of a clinical social worker.

1701 (4) An applicant for licensure as a social service worker shall:

1702 (a) submit an application on a form provided by the division;

1703 (b) pay a fee determined by the department under Section 63J-1-504;

1704 (c) be of good moral character;

1705 (d) produce certified transcripts from an accredited institution of higher education

1706 recognized by the division in collaboration with the Social Worker Licensing Board verifying
 1707 satisfactory completion of an earned degree resulting from education as follows:

1708 (i) a bachelor's degree in a social work program accredited by the Council on Social
 1709 Work Education;

1710 (ii) a master's degree in a field approved by the division in collaboration with the social
 1711 worker board;

1712 (iii) a bachelor's degree in any field if the applicant:

1713 (A) [~~except as provided in Subsection 58-60-205.2(2);~~] has completed at least three
 1714 semester hours, or the equivalent, in each of the following areas:

1715 (I) social welfare policy;

1716 (II) human growth and development; and

1717 (III) social work practice methods, as defined by rule; and

1718 (B) provides documentation that the applicant has completed at least 2,000 hours of
 1719 qualifying experience under the supervision of a mental health therapist, which experience is
 1720 approved by the division in collaboration with the Social Worker Licensing Board, and which
 1721 is performed after completion of the requirements to obtain the bachelor's degree required
 1722 under this Subsection (4); or

1723 (iv) successful completion of the first academic year of a Council on Social Work
 1724 Education approved master's of social work curriculum and practicum; and

1725 (e) pass the examination requirement established by rule under Section 58-1-203.

1726 (5) The division shall ensure that the rules for an examination described under
 1727 Subsections (1)(h), (2)(e), and (4)(e) allow additional time to complete the examination if
 1728 requested by an applicant who is:

1729 (a) a foreign born legal resident of the United States for whom English is a second
 1730 language; or

1731 (b) an enrolled member of a federally recognized Native American tribe.

1732 Section 34. Section **58-60-206** is amended to read:

1733 **58-60-206. Qualifications for admission to examination.**

1734 All applicants for admission to ~~[any]~~ an examination qualifying an individual for
 1735 licensure under this part shall, before taking the examination:

1736 (1) submit an application for examination ~~[and licensure]~~ on a form provided by the

1737 division;

1738 (2) pay the fee established for the examination; and

1739 (3) certify under penalty of perjury as evidenced by notarized signature on the
1740 application for examination [~~and licensure~~] that the applicant:

1741 (a) has completed the education requirement and been awarded the earned degree
1742 required for licensure; or

1743 (b) has only one semester, or the equivalent, remaining before the applicant completes
1744 the education requirement for earning the degree that is required for licensure.

1745 Section 35. Section **58-60-508** is amended to read:

1746 **58-60-508. Substance use disorder counselor supervisor's qualifications --**
1747 **Functions.**

1748 (1) A mental health therapist supervisor of a substance use disorder counselor shall:

1749 (a) be qualified by education or experience to treat substance use disorders;

1750 (b) be currently working in the substance use disorder treatment field;

1751 (c) review substance use disorder counselor assessment procedures and
1752 recommendations;

1753 (d) provide substance use disorder diagnosis and other mental health diagnoses in
1754 accordance with Subsection 58-60-102(7);

1755 (e) supervise the development of a treatment plan;

1756 (f) approve the treatment plan; and

1757 (g) provide direct supervision for not more than five persons, unless granted an
1758 exception in writing from the board and the division.

1759 (2) A supervisor of a certified substance use disorder counselor, certified substance use
1760 disorder counselor intern, certified advanced substance use disorder counselor, certified
1761 advanced substance use disorder counselor intern, or licensed substance use disorder counselor
1762 may:

1763 (a) be a licensed advanced substance use disorder counselor with:

1764 (i) until July 1, 2014, at least two years of experience as a substance use disorder
1765 counselor; or

1766 (ii) beginning on July 1, 2014, at least two years of experience as a licensed advanced
1767 substance use disorder counselor; [~~or~~]

1768 (b) be currently working in the substance use disorder field; and
1769 (c) provide direct supervision for no more than three persons, unless granted an
1770 exception in writing from the board and the division.

1771 Section 36. Section **58-61-201** is amended to read:

1772 **58-61-201. Board.**

1773 (1) There is created the Psychologist Licensing Board consisting of four licensed
1774 psychologists and one member from the general public.

1775 (2) The board shall be appointed, serve terms, and be compensated in accordance with
1776 Section 58-1-201.

1777 (3) The duties and responsibilities of the board are in accordance with Sections
1778 58-1-202 and 58-1-203. In addition, the board shall:

1779 (a) designate one of its members on a permanent or rotating basis to assist the division
1780 in review of complaints concerning unlawful or unprofessional practice by a licensee in the
1781 profession regulated by the board and to advise the division regarding the conduct of
1782 investigations of the complaints; and

1783 (b) disqualify any member from acting as presiding officer in any administrative
1784 procedure in which that member has previously reviewed the complaint or advised the division.

1785 Section 37. Section **58-61-304** is amended to read:

1786 **58-61-304. Qualifications for licensure by examination or endorsement.**

1787 (1) An applicant for licensure as a psychologist based upon education, clinical training,
1788 and examination shall:

1789 (a) submit an application on a form provided by the division;

1790 (b) pay a fee determined by the department under Section 63J-1-504;

1791 (c) be of good moral character;

1792 (d) produce certified transcripts of credit verifying satisfactory completion of a doctoral
1793 degree in psychology that includes specific core course work established by division rule under
1794 Section 58-1-203, from an institution of higher education whose doctoral program, at the time
1795 the applicant received the doctoral degree, met approval criteria established by division rule
1796 made in consultation with the board;

1797 (e) have completed a minimum of 4,000 hours of psychology training as defined by
1798 division rule under Section 58-1-203 in not less than two years and under the supervision of a

1799 psychologist supervisor approved by the division in collaboration with the board;

1800 (f) to be qualified to engage in mental health therapy, document successful completion
1801 of not less than 1,000 hours of supervised training in mental health therapy obtained after
1802 completion of a master's level of education in psychology, which training may be included as
1803 part of the 4,000 hours of training required in Subsection (1)(e), and for which documented
1804 evidence demonstrates not less than one hour of supervision for each 40 hours of supervised
1805 training was obtained under the direct personal face to face supervision of a psychologist
1806 approved by the division in collaboration with the board;

1807 (g) pass the examination requirement established by division rule under Section
1808 58-1-203; and

1809 (h) meet with the board, upon request for good cause, for the purpose of evaluating the
1810 applicant's qualifications for licensure.

1811 (2) An applicant for licensure as a psychologist by endorsement based upon licensure
1812 in another jurisdiction shall:

1813 (a) submit an application on a form provided by the division;

1814 (b) pay a fee determined by the department under Section 63J-1-504;

1815 (c) be of good moral character and professional standing, and not have any disciplinary
1816 action pending or in effect against the applicant's psychologist license in any jurisdiction;

1817 (d) have passed the Utah Psychologist Law and Ethics Examination established by
1818 division rule;

1819 (e) provide satisfactory evidence the applicant is currently licensed in another state,
1820 district, or territory of the United States, or in any other jurisdiction approved by the division in
1821 collaboration with the board;

1822 (f) provide satisfactory evidence the applicant has actively practiced psychology in that
1823 jurisdiction for not less than 2,000 hours or one year, whichever is greater;

1824 (g) provide satisfactory evidence that:

1825 (i) the education, supervised experience, examination, and all other requirements for
1826 licensure in that jurisdiction at the time the applicant obtained licensure were substantially
1827 equivalent to the licensure requirements for a psychologist in Utah at the time the applicant
1828 obtained licensure in the other jurisdiction; or

1829 (ii) the applicant is:

1830 (A) a current holder of [~~diplomate~~] Board Certified Specialist status in good standing
1831 from the American Board of Professional Psychology;

1832 (B) currently credentialed as a health service provider in psychology by the National
1833 Register of Health Service Providers in Psychology; or

1834 (C) currently holds a Certificate of Professional Qualification (CPQ) granted by the
1835 Association of State and Provincial Psychology Boards; and

1836 (h) meet with the board, upon request for good cause, for the purpose of evaluating the
1837 applicant's qualifications for licensure.

1838 (3) (a) An applicant for certification as a psychology resident shall comply with the
1839 provisions of Subsections (1)(a), (b), (c), (d), and (h).

1840 (b) (i) An individual's certification as a psychology resident is limited to the period of
1841 time necessary to complete clinical training as described in Subsections (1)(e) and (f) and
1842 extends not more than one year from the date the minimum requirement for training is
1843 completed, unless the individual presents satisfactory evidence to the division and the
1844 Psychologist Licensing Board that the individual is making reasonable progress toward passing
1845 the qualifying examination or is otherwise on a course reasonably expected to lead to licensure
1846 as a psychologist.

1847 (ii) The period of time under Subsection (3)(b)(i) may not exceed two years past the
1848 date the minimum supervised clinical training requirement has been completed.

1849 Section 38. Section **58-67-102** is amended to read:

1850 **58-67-102. Definitions.**

1851 In addition to the definitions in Section 58-1-102, as used in this chapter:

1852 (1) "Ablative procedure" means a procedure that is expected to excise, vaporize,
1853 disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium:
1854 YAG lasers, and excluding hair removal.

1855 (2) "ACGME" means the Accreditation Council for Graduate Medical Education of the
1856 American Medical Association.

1857 (3) "Administrative penalty" means a monetary fine or citation imposed by the division
1858 for acts or omissions determined to constitute unprofessional or unlawful conduct, in
1859 accordance with a fine schedule established by the division in collaboration with the board, as a
1860 result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4,

1861 Administrative Procedures Act.

1862 (4) "Board" means the Physicians Licensing Board created in Section 58-67-201.

1863 (5) (a) "Cosmetic medical device" means tissue altering energy based devices that have
1864 the potential for altering living tissue and that are used to perform ablative or nonablative
1865 procedures, such as American National Standards Institute (ANSI) designated Class IIIb and
1866 Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices, and
1867 excludes ANSI designated Class IIIa and lower powered devices.

1868 (b) Notwithstanding Subsection (5)(a), if an ANSI designated Class IIIa and lower
1869 powered device is being used to perform an ablative procedure, the device is included in the
1870 definition of cosmetic medical device under Subsection (5)(a).

1871 (6) "Cosmetic medical procedure":

1872 (a) includes the use of cosmetic medical devices to perform ablative or nonablative
1873 procedures; and

1874 (b) does not include a treatment of the ocular globe such as refractive surgery.

1875 (7) "Diagnose" means:

1876 (a) to examine in any manner another person, parts of a person's body, substances,
1877 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's
1878 body, to determine the source, nature, kind, or extent of a disease or other physical or mental
1879 condition;

1880 (b) to attempt to conduct an examination or determination described under Subsection
1881 (7)(a);

1882 (c) to hold oneself out as making or to represent that one is making an examination or
1883 determination as described in Subsection (7)(a); or

1884 (d) to make an examination or determination as described in Subsection (7)(a) upon or
1885 from information supplied directly or indirectly by another person, whether or not in the
1886 presence of the person making or attempting the diagnosis or examination.

1887 (8) "LCME" means the Liaison Committee on Medical Education of the American
1888 Medical Association.

1889 (9) "Medical assistant" means an unlicensed individual working under the [~~direct and~~
1890 ~~immediate~~] indirect supervision of a licensed physician and surgeon and engaged in specific
1891 tasks assigned by the licensed physician and surgeon in accordance with the standards and

1892 ethics of the profession.

1893 (10) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to
1894 alter living tissue, but is not intended or expected to excise, vaporize, disintegrate, or remove
1895 living tissue.

1896 (ii) Notwithstanding Subsection (10)(a)(i), nonablative procedure includes hair
1897 removal.

1898 (b) "Nonablative procedure" does not include:

1899 (i) a superficial procedure as defined in Section 58-1-102;

1900 (ii) the application of permanent make-up; or

1901 (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are
1902 performed by an individual licensed under this title who is acting within the individual's scope
1903 of practice.

1904 (11) "Physician" means both physicians and surgeons licensed under Section
1905 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
1906 Section 58-68-301, Utah Osteopathic Medical Practice Act.

1907 (12) (a) "Practice of medicine" means:

1908 (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
1909 disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real
1910 or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any
1911 means or instrumentality, and by an individual in Utah or outside the state upon or for any
1912 human within the state;

1913 (ii) when a person not licensed as a physician directs a licensee under this chapter to
1914 withhold or alter the health care services that the licensee has ordered;

1915 (iii) to maintain an office or place of business for the purpose of doing any of the acts
1916 described in Subsection (12)(a) whether or not for compensation; or

1917 (iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
1918 treatment of human diseases or conditions in any printed material, stationery, letterhead,
1919 envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine,"
1920 "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these
1921 designations in any manner which might cause a reasonable person to believe the individual
1922 using the designation is a licensed physician and surgeon, and if the party using the designation

1923 is not a licensed physician and surgeon, the designation must additionally contain the
1924 description of the branch of the healing arts for which the person has a license, provided that an
1925 individual who has received an earned degree of doctor of medicine degree but is not a licensed
1926 physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not
1927 Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

1928 (b) The practice of medicine does not include:

1929 (i) except for an ablative medical procedure as provided in Subsection (12)(b)(ii), the
1930 conduct described in Subsection (12)(a)(i) that is performed in accordance with a license issued
1931 under another chapter of this title;

1932 (ii) an ablative cosmetic medical procedure if the scope of practice for the person
1933 performing the ablative cosmetic medical procedure includes the authority to operate or
1934 perform a surgical procedure; or

1935 (iii) conduct under Subsection 58-67-501(2).

1936 (13) "Prescription device" means an instrument, apparatus, implement, machine,
1937 contrivance, implant, in vitro reagent, or other similar or related article, and any component
1938 part or accessory, which is required under federal or state law to be prescribed by a practitioner
1939 and dispensed by or through a person or entity licensed under this chapter or exempt from
1940 licensure under this chapter.

1941 (14) "Prescription drug" means a drug that is required by federal or state law or rule to
1942 be dispensed only by prescription or is restricted to administration only by practitioners.

1943 (15) "SPEX" means the Special Purpose Examination of the Federation of State
1944 Medical Boards.

1945 (16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

1946 (17) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and
1947 as may be further defined by division rule.

1948 Section 39. Section **58-67-305** is amended to read:

1949 **58-67-305. Exemptions from licensure.**

1950 In addition to the exemptions from licensure in Section 58-1-307, the following
1951 individuals may engage in the described acts or practices without being licensed under this
1952 chapter:

1953 (1) an individual rendering aid in an emergency, when no fee or other consideration of

- 1954 value for the service is charged, received, expected, or contemplated;
- 1955 (2) an individual administering a domestic or family remedy;
- 1956 (3) (a) (i) a person engaged in the sale of vitamins, health foods, dietary supplements,
1957 herbs, or other products of nature, the sale of which is not otherwise prohibited by state or
1958 federal law; and
- 1959 (ii) a person acting in good faith for religious reasons, as a matter of conscience, or
1960 based on a personal belief, when obtaining or providing any information regarding health care
1961 and the use of any product under Subsection (3)(a)(i); and
- 1962 (b) Subsection (3)(a) does not:
- 1963 (i) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity,
1964 pain, or other condition; or
- 1965 (ii) prohibit providing truthful and non-misleading information regarding any of the
1966 products under Subsection (3)(a)(i);
- 1967 (4) a person engaged in good faith in the practice of the religious tenets of any church
1968 or religious belief, without the use of prescription drugs;
- 1969 (5) an individual authorized by the Department of Health under Section 26-1-30, to
1970 draw blood pursuant to Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), or
1971 72-10-502(5)(a)(vi);
- 1972 (6) a medical assistant while working under the [~~direct and immediate~~] indirect
1973 supervision of a licensed physician and surgeon, to the extent the medical assistant:
- 1974 (a) is engaged in tasks appropriately delegated by the supervisor in accordance with the
1975 standards and ethics of the practice of medicine;
- 1976 (b) does not perform surgical procedures;
- 1977 (c) does not prescribe prescription medications; and
- 1978 (d) does not engage in other medical practices or procedures as defined by division
1979 rule.
- 1980 (7) an individual engaging in the practice of medicine when:
- 1981 (a) the individual is licensed in good standing as a physician in another state with no
1982 licensing action pending and no less than 10 years of professional experience;
- 1983 (b) the services are rendered as a public service and for a noncommercial purpose;
- 1984 (c) no fee or other consideration of value is charged, received, expected, or

1985 contemplated for the services rendered beyond an amount necessary to cover the proportionate
 1986 cost of malpractice insurance; and

1987 (d) the individual does not otherwise engage in unlawful or unprofessional conduct;

1988 (8) an individual providing expert testimony in a legal proceeding; and

1989 (9) an individual who is invited by a school, association, society, or other body
 1990 approved by the division to conduct a clinic or demonstration of the practice of medicine in
 1991 which patients are treated, if:

1992 (a) the individual does not establish a place of business in this state;

1993 (b) the individual does not regularly engage in the practice of medicine in this state;

1994 (c) the individual holds a current license in good standing to practice medicine issued
 1995 by another state, district or territory of the United States, or Canada;

1996 (d) the primary purpose of the event is the training of others in the practice of
 1997 medicine; and

1998 (e) neither the patient nor an insurer is billed for the services performed.

1999 Section 40. Section **58-67-806** is amended to read:

2000 **58-67-806. Representation of medical specialization.**

2001 (1) A physician may not represent to another person that the physician is certified in a
 2002 medical specialty or certified by a particular board unless:

2003 (a) the physician includes in the representation the name of:

2004 (i) the certification board or entity; and

2005 (ii) the medical specialty for which the physician is certified; and

2006 (b) the board or certification entity meets the requirements of Subsection (2).

2007 (2) A certification entity or board under Subsection (1) shall meet the following
 2008 qualifications:

2009 (a) be included in the American Board of Medical Specialties or an American
 2010 Osteopathic Association Certifying Board; [~~and~~] or

2011 (b) (i) require an Accreditation Council for Graduate Medical Education or American
 2012 Osteopathic Association approved post-graduate training program that provides complete
 2013 training in the specialty or sub-specialty; [~~or~~] and

2014 (ii) be certified or had prior certification by the member board of the American Board
 2015 of Medical Specialties or an American Osteopathic Certifying Board.

2016 Section 41. Section **58-70a-504** is amended to read:

2017 **58-70a-504. Penalty for unlawful conduct.**

2018 (1) [~~Any~~] A person who violates the unlawful conduct provision defined in Subsection
2019 58-1-501(1)(a) is guilty of a third degree felony.

2020 (2) [~~Any~~] A person who violates any of the unlawful conduct provisions defined in
2021 Subsections 58-1-501(1)(b) through (1)[~~(e)~~](f) or Section 58-70a-502 is guilty of a class A
2022 misdemeanor.

2023 Section 42. Section **58-72-502** is amended to read:

2024 **58-72-502. Penalty for unlawful conduct.**

2025 (1) [~~Any~~] A person who violates the unlawful conduct provision defined in Subsection
2026 58-1-501(1)(a) is guilty of a third degree felony.

2027 (2) [~~Any~~] A person who violates any of the unlawful conduct provisions defined in
2028 Subsections 58-1-501(1)(b) through [~~(e)~~] (f) is guilty of a class A misdemeanor.

2029 Section 43. Section **58-76-502** is amended to read:

2030 **58-76-502. Penalty for unlawful conduct.**

2031 (1) (a) If, upon inspection or investigation, the division concludes that a person has
2032 violated Section 58-76-501 or [~~any~~] a rule or order issued with respect to Section 58-76-501,
2033 and that disciplinary action is appropriate, the director or the director's designee from within
2034 the division shall promptly issue a citation to the person according to this chapter and any
2035 pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear
2036 before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative
2037 Procedures Act.

2038 (i) A person who violates Subsections 58-1-501(1)(a) through [~~(d)~~ or] (e), Section
2039 58-76-501, or [~~any~~] a rule or order issued with respect to Section 58-76-501, as evidenced by
2040 an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative
2041 proceeding, may be assessed a fine pursuant to this Subsection (1) and may, in addition to or in
2042 lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through [~~(d)~~
2043 or] (e), Section 58-76-501, or [~~any~~] a rule or order issued with respect to this section.

2044 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
2045 58-76-401 may not be assessed through a citation.

2046 (b) A citation shall:

- 2047 (i) be in writing;
- 2048 (ii) describe with particularity the nature of the violation, including a reference to the
2049 provision of the chapter, rule, or order alleged to have been violated;
- 2050 (iii) clearly state that the recipient must notify the division in writing within 20
2051 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
2052 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
- 2053 (iv) clearly explain the consequences of failure to timely contest the citation or to make
2054 payment of [~~any fines~~] a fine assessed by the citation within the time specified in the citation.
- 2055 (c) The division may issue a notice in lieu of a citation.
- 2056 (d) Each citation issued under this section, or a copy of each citation, may be served
2057 upon [~~any~~] a person upon whom a summons may be served in accordance with the Utah Rules
2058 of Civil Procedure and may be made personally or upon the person's agent by a division
2059 investigator or by [~~any~~] a person specially designated by the director or by mail.
- 2060 (e) If within 20 calendar days from the service of the citation, the person to whom the
2061 citation was issued fails to request a hearing to contest the citation, the citation becomes the
2062 final order of the division and is not subject to further agency review. The period to contest a
2063 citation may be extended by the division for cause.
- 2064 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
2065 the license of a licensee who fails to comply with a citation after it becomes final.
- 2066 (g) The failure of an applicant for licensure to comply with a citation after it becomes
2067 final is a ground for denial of license.
- 2068 (h) No citation may be issued under this section after the expiration of six months
2069 following the occurrence of [~~any~~] a violation.
- 2070 (i) The director or the director's designee shall assess fines according to the following:
- 2071 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;
- 2072 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;
- 2073 and
- 2074 (iii) for [~~any~~] each subsequent offense handled pursuant to Subsection (1)(a), a fine of
2075 up to \$2,000 for each day of continued offense.
- 2076 (2) An action initiated for a first or second offense [~~which~~] that has not yet resulted in a
2077 final order of the division [~~shall~~] does not preclude initiation of [~~any~~] a subsequent action for a

2078 second or subsequent offense during the pendency of [~~any~~] a preceding action. The final order
2079 on a subsequent action shall be considered a second or subsequent offense, respectively,
2080 provided the preceding action resulted in a first or second offense, respectively.

2081 (3) [~~Any~~] A penalty [~~which~~] that is not paid may be collected by the director by either
2082 referring the matter to a collection agency or bringing an action in the district court of the
2083 county in which the person against whom the penalty is imposed resides or in the county where
2084 the office of the director is located. [~~Any~~] A county attorney or the attorney general of the state
2085 shall provide legal assistance and advice to the director in [~~any~~] an action to collect the penalty.
2086 In [~~any~~] an action brought to enforce the provisions of this section, reasonable attorney's fees
2087 and costs shall be awarded to the division.

2088 Section 44. **Repealer.**

2089 This bill repeals:

2090 Section **58-37c-4, Board.**

2091 Section **58-61-303, Status of licenses held on the effective date of this chapter.**