UTAH MEDICAL PRACTICE ACT AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor:  J. Stuart Adams

House Sponsor:  Paul Ray

LONG TITLE

General Description:
This bill amends the Utah Medical Practice Act and the Utah Osteopathic Medical Practice Act by clarifying policies and procedures.

Highlighted Provisions:
This bill:
• amends definitions;
• prohibits an individual from using the title "doctor," "M.D." or "O.D." in a misleading manner;
• clarifies licensing requirements;
• clarifies disciplinary procedures; and
• makes technical changes.

Money Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:
AMENDS:
58-1-501, as last amended by Laws of Utah 2010, Chapter 180
58-37-6, as last amended by Laws of Utah 2010, Chapter 287
58-67-102, as last amended by Laws of Utah 2010, Chapter 101
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 58-1-501 is amended to read:

58-1-501. Unlawful and unprofessional conduct.

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

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

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

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

(b) impersonating another licensee or practicing an occupation or profession under a false or assumed name, except as permitted by law;
(c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this title if the employee is not licensed to do so under this title;

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

(e) obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the division or a licensing board through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission; [or]

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

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

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

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

(g) using the designation "doctor," "Dr.", or a comparable designation in a manner which might cause a reasonable person to believe the individual using the designation is a doctor licensed under this title, if the individual is not licensed under this title, provided that an individual who has received an earned doctorate may use the designation of the degree if it is followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

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

(a) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title;
(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title;

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

(d) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401;

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

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

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

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

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

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

(k) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license;
(l) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule;

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

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

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

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

Section 2. Section 58-37-6 is amended to read:

58-37-6. License to manufacture, produce, distribute, dispense, administer, or conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records required -- Prescriptions.

(1) (a) The division may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state.

(b) The division may assess reasonable fees to defray the cost of issuing original and renewal licenses under this chapter pursuant to Section 63J-1-504.

(2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled substance in Schedules II through V within this state, or who proposes to engage in manufacturing, producing, distributing, prescribing, dispensing, administering, conducting research with, or performing laboratory analysis upon controlled substances included in Schedules II through V within this state shall obtain a license issued by the division.

(ii) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a
152 renewal period by as much as one year to stagger the renewal cycles it administers.
153 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,
154 administer, conduct research with, or perform laboratory analysis upon controlled substances in
155 Schedules II through V within this state may possess, manufacture, produce, distribute,
156 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon
157 those substances to the extent authorized by their license and in conformity with this chapter.
158 (c) The following persons are not required to obtain a license and may lawfully possess
159 controlled substances under this section:
160 (i) an agent or employee, except a sales representative, of any registered manufacturer,
161 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the
162 usual course of the person's business or employment; however, nothing in this subsection shall
163 be interpreted to permit an agent, employee, sales representative, or detail man to maintain an
164 inventory of controlled substances separate from the location of the person's employer's
165 registered and licensed place of business;
166 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or
167 warehouseman, who possesses any controlled substance in the usual course of the person's
168 business or employment; and
169 (iii) an ultimate user, or any person who possesses any controlled substance pursuant to
170 a lawful order of a practitioner.
171 (d) The division may enact rules waiving the license requirement for certain
172 manufacturers, producers, distributors, prescribers, dispensers, administrators, research
173 practitioners, or laboratories performing analysis if consistent with the public health and safety.
174 (e) A separate license is required at each principal place of business or professional
175 practice where the applicant manufactures, produces, distributes, dispenses, conducts research
176 with, or performs laboratory analysis upon controlled substances.
177 (f) The division may enact rules providing for the inspection of a licensee or applicant's
178 establishment, and may inspect the establishment according to those rules.
179 (3) (a) Upon proper application, the division shall license a qualified applicant to
180 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon
181 controlled substances included in Schedules I through V, unless it determines that issuance of a
182 license is inconsistent with the public interest. The division shall not issue a license to any
person to prescribe, dispense, or administer a Schedule I controlled substance. In determining public interest, the division shall consider whether or not the applicant has:

(i) maintained effective controls against diversion of controlled substances and any Schedule I or II substance compounded from any controlled substance into other than legitimate medical, scientific, or industrial channels;

(ii) complied with applicable state and local law;

(iii) been convicted under federal or state laws relating to the manufacture, distribution, or dispensing of substances;

(iv) past experience in the manufacture of controlled dangerous substances;

(v) established effective controls against diversion; and

(vi) complied with any other factors that the division establishes that promote the public health and safety.

(b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances in Schedule I other than those specified in the license.

(c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with substances in Schedules II through V if they are authorized to administer, dispense, or conduct research under the laws of this state.

(ii) The division need not require a separate license for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the licensee is already licensed under this chapter in another capacity.

(iii) With respect to research involving narcotic substances in Schedules II through V, or where the division by rule requires a separate license for research of nonnarcotic substances in Schedules II through V, a practitioner shall apply to the division prior to conducting research.

(iv) Licensing for purposes of bona fide research with controlled substances by a practitioner considered qualified may be denied only on a ground specified in Subsection (4), or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately the practitioner's supply of substances against diversion from medical or scientific use.

(v) Practitioners registered under federal law to conduct research in Schedule I
214 substances may conduct research in Schedule I substances within this state upon furnishing the
division evidence of federal registration.

216 (d) Compliance by manufacturers, producers, and distributors with the provisions of
217 federal law respecting registration, excluding fees, entitles them to be licensed under this
218 chapter.

219 (e) The division shall initially license those persons who own or operate an
220 establishment engaged in the manufacture, production, distribution, dispensation, or
221 administration of controlled substances prior to April 3, 1980, and who are licensed by the
222 state.

223 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed
224 on probation, or revoked by the division upon finding that the applicant or licensee has:
225 (i) materially falsified any application filed or required pursuant to this chapter;
226 (ii) been convicted of an offense under this chapter or any law of the United States, or
227 any state, relating to any substance defined as a controlled substance;
228 (iii) been convicted of a felony under any other law of the United States or any state
229 within five years of the date of the issuance of the license;
230 (iv) had a federal license denied, suspended, or revoked by competent federal authority
231 and is no longer authorized to [engage in the manufacturing, distribution, or dispensing of]
232 manufacture, distribute, prescribe, or dispense controlled substances;
233 (v) had the licensee's license suspended or revoked by competent authority of another
234 state for violation of laws or regulations comparable to those of this state relating to the
235 manufacture, distribution, or dispensing of controlled substances;
236 (vi) violated any division rule that reflects adversely on the licensee's reliability and
237 integrity with respect to controlled substances;
238 (vii) refused inspection of records required to be maintained under this chapter by a
239 person authorized to inspect them; or
240 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the
241 purpose of manipulating human hormonal structure so as to:
242 (A) increase muscle mass, strength, or weight without medical necessity and without a
243 written prescription by any practitioner in the course of the practitioner's professional practice;
(B) improve performance in any form of human exercise, sport, or game.

(b) The division may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, and conducted in conjunction with the appropriate representative committee designated by the director of the department.

(ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses, except where the division is designated by law to perform those functions, or, when not designated by law, is designated by the executive director of the Department of Commerce to conduct the proceedings.

(d) (i) The division may suspend any license simultaneously with the institution of proceedings under this section if it finds there is an imminent danger to the public health or safety.

(ii) Suspension shall continue in effect until the conclusion of proceedings, including judicial review, unless withdrawn by the division or dissolved by a court of competent jurisdiction.

(e) (i) If a license is suspended or revoked under this Subsection (4), all controlled substances owned or possessed by the licensee may be placed under seal in the discretion of the division.

(ii) Disposition may not be made of substances under seal until the time for taking an appeal has lapsed, or until all appeals have been concluded, unless a court, upon application, orders the sale of perishable substances and the proceeds deposited with the court.

(iii) If a revocation order becomes final, all controlled substances shall be forfeited.

(f) The division shall notify promptly the Drug Enforcement Administration of all orders suspending or revoking a license and all forfeitures of controlled substances.

(g) If an individual's Drug Enforcement Administration registration is denied, revoked, surrendered, or suspended, the division shall immediately suspend the individual's controlled substance license, which shall only be reinstated by the division upon reinstatement of the federal registration, unless the division has taken further administrative action under.
Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled substance license.

(5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and inventories in conformance with the record keeping and inventory requirements of federal and state law and any additional rules issued by the division.

(b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or other person who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by him and a record of all drugs administered, dispensed, or professionally used by him otherwise than by a prescription.

(ii) A person using small quantities or solutions or other preparations of those drugs for local application has complied with this Subsection (5)(b) if the person keeps a record of the quantity, character, and potency of those solutions or preparations purchased or prepared by him, and of the dates when purchased or prepared.

(6) Controlled substances in Schedules I through V may be distributed only by a licensee and pursuant to an order form prepared in compliance with division rules or a lawful order under the rules and regulations of the United States.

(7) (a) A person may not write or authorize a prescription for a controlled substance unless the person is:

(i) a practitioner authorized to prescribe drugs and medicine under the laws of this state or under the laws of another state having similar standards; and

(ii) licensed under this chapter or under the laws of another state having similar standards.

(b) A person other than a pharmacist licensed under the laws of this state, or the pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not dispense a controlled substance.

(c) (i) A controlled substance may not be dispensed without the written prescription of a practitioner, if the written prescription is required by the federal Controlled Substances Act.

(ii) That written prescription shall be made in accordance with Subsection (7)(a) and in conformity with Subsection (7)(d).

(iii) In emergency situations, as defined by division rule, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms.
designated by the division and filed by the pharmacy.

(iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with Subsection (7)(d).

(d) Except for emergency situations designated by the division, a person may not issue, fill, compound, or dispense a prescription for a controlled substance unless the prescription is signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of the prescriber as authorized by division rule, and contains the following information:

(i) the name, address, and registry number of the prescriber;

(ii) the name, address, and age of the person to whom or for whom the prescription is issued;

(iii) the date of issuance of the prescription; and

(iv) the name, quantity, and specific directions for use by the ultimate user of the controlled substance.

(e) A prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the following restrictions:

(i) (A) A prescription for a Schedule II substance may not be refilled.

(B) A Schedule II controlled substance may not be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions.

(ii) A Schedule III or IV controlled substance may be filled only within six months of issuance, and may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(iii) All other controlled substances in Schedule V may be refilled as the prescriber's prescription directs, but they may not be refilled one year after the date the prescription was issued unless renewed by the practitioner.

(iv) Any prescription for a Schedule II substance may not be dispensed if it is not presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days after the date the prescription was issued, or 30 days after the dispensing date, if that date is specified separately from the date of issue.
A practitioner may issue more than one prescription at the same time for the same Schedule II controlled substance, but only under the following conditions:

(A) no more than three prescriptions for the same Schedule II controlled substance may be issued at the same time;

(B) no one prescription may exceed a 30-day supply;

(C) a second or third prescription shall include the date of issuance and the date for dispensing; and

(D) unless the practitioner determines there is a valid medical reason to the contrary, the date for dispensing a second or third prescription may not be fewer than 30 days from the dispensing date of the previous prescription.

Each prescription for a controlled substance may contain only one controlled substance per prescription form and may not contain any other legend drug or prescription item.

An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of this Subsection (7) if the order is:

(i) issued or made by a prescribing practitioner who holds an unrestricted registration with the federal Drug Enforcement Administration, and an active Utah controlled substance license in good standing issued by the division under this section, or a medical resident who is exempted from licensure under Subsection 58-1-307(1)(c);

(ii) authorized by the prescribing practitioner treating the patient and the prescribing practitioner designates the quantity ordered;

(iii) entered upon the record of the patient, the record is signed by the prescriber affirming the prescriber’s authorization of the order within 48 hours after filling or administering the order, and the patient's record reflects the quantity actually administered; and

(iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within the physical structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital and the amount taken from the supply is administered directly to the patient authorized to receive it.

A practitioner licensed under this chapter may not prescribe, administer, or dispense a controlled substance to a child, without first obtaining the consent required in
Section 78B-3406 of a parent, guardian, or person standing in loco parentis of the child except in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same meaning as defined in Section 78A-6-105, and "emergency" means any physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering.

(i) A practitioner licensed under this chapter may not prescribe or administer dosages of a controlled substance in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user.

(j) A practitioner licensed under this chapter may not prescribe, administer, or dispense any controlled substance to another person knowing that the other person is using a false name, address, or other personal information for the purpose of securing the controlled substance.

(k) A person who is licensed under this chapter to manufacture, distribute, or dispense a controlled substance may not manufacture, distribute, or dispense a controlled substance to another licensee or any other authorized person not authorized by this license.

(l) A person licensed under this chapter may not omit, remove, alter, or obliterate a symbol required by this chapter or by a rule issued under this chapter.

(m) A person licensed under this chapter may not refuse or fail to make, keep, or furnish any record notification, order form, statement, invoice, or information required under this chapter.

(n) A person licensed under this chapter may not refuse entry into any premises for inspection as authorized by this chapter.

(o) A person licensed under this chapter may not furnish false or fraudulent material information in any application, report, or other document required to be kept by this chapter or willfully make any false statement in any prescription, order, report, or record required by this chapter.

(8) (a) (i) Any person licensed under this chapter who is found by the division to have violated any of the provisions of Subsections (7)(k) through (7)(o) is subject to a penalty not to exceed $5,000. The division shall determine the procedure for adjudication of any violations in accordance with Sections 58-1-106 and 58-1-108.

(ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

(b) Any person who knowingly and intentionally violates Subsections (7)(h) through
Section 2. [(7)(j)](j) is:

(i) upon first conviction, guilty of a class B misdemeanor;
(ii) upon second conviction, guilty of a class A misdemeanor; and
(iii) on third or subsequent conviction, guilty of a third degree felony.

(c) Any person who knowingly and intentionally violates Subsections (7)(k) through (7)(o) shall upon conviction be guilty of a third degree felony.

(9) Any information communicated to any licensed practitioner in an attempt to unlawfully procure, or to procure the administration of, a controlled substance is not considered to be a privileged communication.

Section 3. Section 58-67-102 is amended to read:

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

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

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

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

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

(4) "Diagnose" means:

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

(b) to attempt to conduct an examination or determination described under Subsection (4)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (4)(a); or

(d) to make an examination or determination as described in Subsection (4)(a) upon or from information supplied directly or indirectly by another person, whether or not in the
presence of the person making or attempting the diagnosis or examination.

(5) "LCME" means the Liaison Committee on Medical Education of the American Medical Association.

(6) "Medical assistant" means an unlicensed individual working under the direct or indirect supervision of a licensed physician and surgeon and engaged in specific tasks assigned by the licensed physician and surgeon in accordance with the standards and ethics of the profession, and as may be further defined in rule by the division in collaboration with the board, not to exceed the scope of this definition.

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

(8) "Practice of medicine" means:

(a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the state upon or for any human within the state, except that conduct described in this Subsection (8)(a) that is performed by a person legally and in accordance with a license issued under another chapter of this title does not constitute the practice of medicine;

(b) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered, but practice of medicine does not include any conduct under Subsection 58-67-501(2);

(c) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (8)(a) whether or not for compensation; or

(d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine," "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed physician and surgeon, and if the party using the designation is not a licensed physician and surgeon, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an
individual who has received an earned degree of doctor of medicine degree but is not a licensed physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

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

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

(11) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

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

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

Section 4. Section 58-67-302 is amended to read:


(1) An applicant for licensure as a physician and surgeon, except as set forth in Subsection (2), shall:

(a) submit an application in a form prescribed by the division, which may include:

(i) submissions by the applicant of information maintained by practitioner data banks, as designated by division rule, with respect to the applicant; [and]

(ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and

(iii) authorization to use a record coordination and verification service approved by the division in collaboration with the board;

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

(c) be of good moral character;

(d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as a physician and surgeon, as evidenced by [having received an earned degree of doctor of medicine from]:
[(i) an LCME accredited medical school or college; or]

[(ii) a medical school or college located outside of the United States or its jurisdictions which at the time of the applicant's graduation, met criteria for LCME accreditation:]

(i) having received an earned degree of doctor of medicine from an LCME accredited medical school or college; or

(ii) if the applicant graduated from a medical school or college located outside the United States, its territories, or Canada, submitting a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board;

[(e) hold a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board, if the applicant graduated from a medical school or college located outside of the United States or its jurisdictions;]

[(f) (e) satisfy the division and board that the applicant:

(i) has successfully completed 24 months of progressive resident training in a program approved by the ACGME, the Royal College of Physicians and Surgeons, the College of Family Physicians of Canada, or any similar body in the United States or Canada approved by the division in collaboration with the board; or

(ii) (A) has successfully completed 12 months of resident training in an ACGME approved program after receiving a degree of doctor of medicine as required under Subsection (1)(d);

(B) has been accepted in and is successfully participating in progressive resident training in an ACGME approved program within Utah, in the applicant's second or third year of postgraduate training; and

(C) has agreed to surrender to the division the applicant's license as a physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as a physician and surgeon will be automatically revoked by the division if the applicant fails to continue in good standing in an ACGME approved progressive resident training program within the state;

[(g) (f) pass the licensing examination sequence required by division rule made in collaboration with the board;]
[(g)] be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board;

[(h)] meet with the board and representatives of the division, if requested, for the purpose of evaluating the applicant's qualifications for licensure;

[(i)] designate:

(i) a contact person for access to medical records in accordance with the federal Health Insurance Portability and Accountability Act; and

(ii) an alternate contact person for access to medical records, in the event the original contact person is unable or unwilling to serve as the contact person for access to medical records; and

[(j)] establish a method for notifying patients of the identity and location of the contact person and alternate contact person, if the applicant will practice in a location with no other persons licensed under this chapter.

(2) An applicant for licensure as a physician and surgeon by endorsement who is currently licensed to practice medicine in any state other than Utah, a district or territory of the United States, or Canada shall:

(a) be currently licensed with a full unrestricted license in good standing in any state, district, or territory of the United States, or Canada;

(b) have been actively engaged in the legal practice of medicine in any state, district, or territory of the United States, or Canada for not less than 6,000 hours during the five years immediately preceding the date of application for licensure in Utah;

[(c) not have any action pending against the applicant's license;]

[(d) not have a license that was suspended or revoked in any state, unless the license was subsequently reinstated as a full unrestricted license in good standing; and]

(c) comply with the requirements for licensure under Subsection (1)(a) through (d) and (1)(e)(i);

(d) have passed the licensing examination sequence required in Subsection (1)(f) or another medical licensing examination sequence in another state, district or territory of the United States, or Canada that the division in collaboration with the board by rulemaking determines is equivalent to its own required examination;

(e) not have any investigation or action pending against any health care license of the
applicant, not have a health care license that was suspended or revoked in any state, district or territory of the United States, or Canada, and not have surrendered a health care license in lieu of a disciplinary action, unless:

(i) the license was subsequently reinstated as a full unrestricted license in good standing; or

(ii) the division in collaboration with the board determines to its satisfaction, after full disclosure by the applicant, that:

(A) the conduct has been corrected, monitored, and resolved; or

(B) a mitigating circumstance exists that prevents its resolution, and the division in collaboration with the board is satisfied that, but for the mitigating circumstance, the license would be reinstated;

(f) submit to a records review, a practice history review, and physical and psychological assessments, if requested by the division in collaboration with the board; and

produce satisfactory evidence that the applicant meets the requirements of this Subsection (2) to the satisfaction of the division in collaboration with the board.

(3) An applicant for licensure by endorsement may engage in the practice of medicine under a temporary license while the applicant's application for licensure is being processed by the division, provided:

(a) the applicant submits a complete application required for temporary licensure to the division;

(b) the applicant submits a written document to the division from:

(i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, stating that the applicant is practicing under the invitation of the health care facility; or

(ii) two individuals licensed under this chapter, whose license is in good standing and who practice in the same clinical location, both stating that:

(A) the applicant is practicing under the invitation of the individual; and

(B) the applicant will practice at the same clinical location as the individual;

(c) the applicant submits a signed certification to the division that the applicant meets the requirements of Subsection (2);
the applicant does not engage in the practice of medicine until the division has
issued a temporary license;
(e) the temporary license is only issued for and may not be extended beyond the
duration of one year from issuance; and
(f) the temporary license expires immediately and prior to the expiration of one year
from issuance, upon notification from the division that the applicant's application for licensure
by endorsement is denied.

(4) The division shall issue a temporary license under Subsection (3) within 15
business days after the applicant satisfies the requirements of Subsection (3).

Section 5. Section 58-67-302.5 is amended to read:

(1) Notwithstanding any other provision of law to the contrary, an individual enrolled
in a medical school outside the United States, its territories, the District of Columbia, or
Canada is eligible for licensure as a physician and surgeon in this state if the individual has
satisfied the following requirements:
(a) meets all the requirements of Subsection 58-67-302(1), except for
Subsection 58-67-302(1)(d);
(b) has studied medicine in a medical school located outside the United States which is
recognized by an organization approved by the division;
(c) has completed all of the formal requirements of the foreign medical school except
internship or social service;
(d) has attained a passing score on the educational commission for foreign medical
graduates examination or other qualifying examinations such as the United States Medical
Licensing Exam parts I and II, which are approved by the division or a medical school
approved by the division;
(e) has satisfactorily completed one calendar year of supervised clinical training under
the direction of a United States medical education setting accredited by the liaison committee
for graduate medical education and approved by the division;
(f) has completed the postgraduate hospital training required by Subsection
58-67-302(1)(f)(e)(i); and
(g) has passed the examination required by the division of all applicants for licensure.
(2) Satisfaction of the requirements of Subsection (1) is in lieu of:
(a) the completion of any foreign internship or social service requirements; and
(b) the certification required by Subsection 58-67-302(1)(e)(d).
(3) Individuals who satisfy the requirements of Subsections (1)(a) through (f) shall be eligible for admission to graduate medical education programs within the state, including internships and residencies, which are accredited by the liaison committee for graduate medical education.
(4) A document issued by a medical school located outside the United States shall be considered the equivalent of a degree of doctor of medicine for the purpose of licensure as a physician and surgeon in this state if:
(a) the foreign medical school is recognized by an organization approved by the division;
(b) the document granted by the foreign medical school is issued after the completion of all formal requirements of the medical school except internship or social service; and
(c) the foreign medical school certifies that the person to whom the document was issued has satisfactorily completed the requirements of Subsection (1)(c).
(5) The provisions for licensure under this section shall be known as the "fifth pathway program."

Section 6. Section 58-67-304 is amended to read:
58-67-304. License renewal requirements.
(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:
(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board;
(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-67-302(1)(f)(i); and
(c) if the licensee practices medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for the licensee.
(2) If a renewal period is extended or shortened under Section 58-67-303, the
continuing education hours required for license renewal under this section are increased or decreased proportionally.

Section 7. Section 58-67-305 is amended to read:

58-67-305. Exemptions from licensure.

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

1. an individual rendering aid in an emergency, when no fee or other consideration of value for the service is charged, received, expected, or contemplated;

2. an individual administering a domestic or family remedy;

3. (a) (i) a person engaged in the sale of vitamins, health foods, dietary supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited by state or federal law; and

   (ii) a person acting in good faith for religious reasons, as a matter of conscience, or based on a personal belief, when obtaining or providing any information regarding health care and the use of any product under Subsection (3)(a)(i); and

   (b) Subsection (3)(a) does not:

   (i) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity, pain, or other condition; or

   (ii) prohibit providing truthful and non-misleading information regarding any of the products under Subsection (3)(a)(i);

4. a person engaged in good faith in the practice of the religious tenets of any church or religious belief, without the use of prescription drugs;

5. an individual authorized by the Department of Health under Section 26-1-30, to withdraw blood to determine the alcohol or drug content pursuant to Section 41-6a-523;

6. a medical assistant while working under the direct [and immediate] or indirect supervision of a licensed physician and surgeon, to the extent the medical assistant is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of medicine, and as may be further defined in rule by the division in collaboration with the board, not to exceed the scope of this definition;

7. an individual engaging in the practice of medicine when:
(a) the individual is licensed in good standing as a physician in another state with no licensing action pending and no less than 10 years of professional experience;
(b) the services are rendered as a public service and for a noncommercial purpose;
(c) no fee or other consideration of value is charged, received, expected, or contemplated for the services rendered beyond an amount necessary to cover the proportionate cost of malpractice insurance; and
(d) the individual does not otherwise engage in unlawful or unprofessional conduct;
(8) an individual providing expert testimony in a legal proceeding; and
(9) an individual who is invited by a school, association, society, or other body approved by the division to conduct a clinic or demonstration of the practice of medicine in which patients are treated, if:
(a) the individual does not establish a place of business in this state;
(b) the individual does not regularly engage in the practice of medicine in this state;
(c) the individual holds a current license in good standing to practice medicine issued by another state, district or territory of the United States, or Canada;
(d) the primary purpose of the event is the training of others in the practice of medicine; and
(e) neither the patient nor an insurer is billed for the services performed.

Section 8. Section 58-67-401 is amended to read:
Grounds for division action regarding the following are under Section are set forth in Sections 58-1-401 and 58-67-503.
(4) refusing to issue a license to an applicant or refusing to renew the license of a licensee;
(2) revoking, suspending, restricting, or placing on probation the license of a licensee;
(3) assessing an administrative penalty; and
(4) issuing a public or private reprimand to a licensee or issuing a cease and desist order.

Section 9. Section 58-67-402 is repealed and reenacted to read:
710 **58-67-402. Authority to assess penalty.**
711 The division in collaboration with the board may assess penalties as described in
712 Section 58-67-503.
713
714 Section 10. Section **58-67-403** is amended to read:
715 **58-67-403. Revocation of license -- Nondisciplinary.**
716 Revocation by the division of a license under Subsection 58-67-302(1)(f) for
717 failure to continue on a resident training program for reasons other than unprofessional or
718 unlawful conduct is a nondisciplinary action and may not be reported by the division as a
719 disciplinary action against the licensee.
720
721 Section 11. Section **58-67-503** is amended to read:
722 **58-67-503. Penalties and administrative actions for unlawful and unprofessional
723 conduct.**
724 (1) Any person who violates the unlawful conduct provisions of Section 58-67-501 or
725 Subsection 58-1-501(1)(a) or Section 58-1-501(1)(c) is guilty of a third degree felony.
726 [(2) The division may assess administrative penalties in accordance with the provisions
727 of Section 58-67-402 for acts of unprofessional conduct:]
728 (2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful
729 conduct by:
730 (i) assessing administrative penalties; or
731 (ii) taking other appropriate administrative action.
732 (b) A monetary administrative penalty imposed under this section shall be deposited in
733 the Physician Education Fund created in Section 58-67a-1.
734 (3) If a licensee has been convicted of unlawful conduct, described in Section
735 58-67-501, before an administrative proceeding regarding the same conduct, the division may
736 not assess an additional administrative fine under this chapter for the same conduct.
737 (4) (a) If the division concludes that an individual has violated provisions of Section
738 58-67-501, Section 58-67-502, the Division of Occupational and Professional Licensing Act,
739 the Utah Controlled Substances Act, or any rule or order issued with respect to these
740 provisions, and disciplinary action is appropriate, the director or director's designee shall:
741 (i) issue a citation to the individual;
742 (ii) attempt to negotiate a stipulated settlement; or
(iii) notify the individual that an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to appear.

(b) The division may take the following action against an individual who is in violation of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding:

(i) assess a fine of up to $10,000 per single violation or up to $2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; or

(ii) order to cease and desist from the behavior that constitutes a violation of the provisions described in Subsection (4)(a).

(c) An individual's license may not be suspended or revoked through a citation.

(d) Each citation issued under this section shall:

(i) be in writing;

(ii) clearly describe or explain:

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

(B) that the recipient must notify the division in writing within 20 calendar days from the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(C) the consequences of failure to timely contest the citation or pay the fine assessed by the citation within the time specified in the citation; and

(iii) be served in accordance with the Utah Rules of Civil Procedure.

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

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

(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
(h) No citation may be issued under this section after six months from the day on
which the violation last occurred.

Section 12. Section 58-68-102 is amended to read:


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

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

(2) "Administrative penalty" means a monetary fine imposed by the division for acts or
omissions determined to constitute unprofessional or unlawful conduct, as a result of an
adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
Procedures Act.

(3) "AOA" means the American Osteopathic Association.

(4) "Board" means the Osteopathic [Physicians] Physician and Surgeon's Licensing
Board created in Section 58-68-201.

(5) "Diagnose" means:

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

(b) to attempt to conduct an examination or determination described under Subsection
(5)(a);

(c) to hold oneself out as making or to represent that one is making an examination or
determination as described in Subsection (5)(a); or

(d) to make an examination or determination as described in Subsection (5)(a) upon or
from information supplied directly or indirectly by another person, whether or not in the
presence of the person making or attempting the diagnosis or examination.

(6) "Medical assistant" means an unlicensed individual working under the direct [and
immediate] or indirect supervision of a licensed osteopathic physician and surgeon and
engaged in specific tasks assigned by the licensed osteopathic physician and surgeon in
accordance with the standards and ethics of the profession, and as may be further defined in
rule by the division in collaboration with the board, not to exceed the scope of this definition.
"Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

(8) "Practice of osteopathic medicine" means:

(a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part is based upon emphasis of the importance of the musculoskeletal system and manipulative therapy in the maintenance and restoration of health, by an individual in Utah or outside of the state upon or for any human within the state, except that conduct described in this Subsection (8)(a) that is performed by a person legally and in accordance with a license issued under another chapter of this title does not constitute the practice of medicine;

(b) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered, but practice of medicine does not include any conduct under Subsection 58-68-501(2);

(c) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (8)(a) whether or not for compensation; or

(d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions, in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine," "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.," "D.O.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed osteopathic physician, and if the party using the designation is not a licensed osteopathic physician, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an individual who has received an earned degree of doctor of osteopathic medicine degree but is not a licensed osteopathic physician and surgeon in Utah may use the designation "D.O." if it is followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

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

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

(11) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

(12) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

(13) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502 and as may be further defined by division rule.

Section 13. Section 58-68-302 is amended to read:


(1) An applicant for licensure as an osteopathic physician and surgeon, except as set forth in Subsection (2) (or (3)), shall:

(a) submit an application in a form prescribed by the division, which may include:

(i) submissions by the applicant of information maintained by practitioner data banks, as designated by division rule, with respect to the applicant; and

(ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and

(iii) authorization to use a record coordination and verification service approved by the division in collaboration with the board;

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

(c) be of good moral character;

(d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as an osteopathic physician and surgeon, as evidenced by:

(i) having received an earned degree of doctor of osteopathic medicine from an AOA approved medical school or college; or (ii);

(ii) submitting a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration
with the board, if the applicant is graduated from an osteopathic medical school or college located outside of the United States or its jurisdictions, or Canada which at the time of the applicant's graduation, met criteria for accreditation by the AOA;

[(e) hold a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board, if the applicant graduated from a medical school or college located outside of the United States or its jurisdictions;]

[(f) satisfy the division and board that the applicant:

(i) has successfully completed 24 months of progressive resident training in an ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine required under Subsection (1)(d); or

(ii) (A) has successfully completed 12 months of resident training in an ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine as required under Subsection (1)(d);

(B) has been accepted in and is successfully participating in progressive resident training in an ACGME or AOA approved program within Utah, in the applicant's second or third year of postgraduate training; and

(C) has agreed to surrender to the division the applicant's license as an osteopathic physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as an osteopathic physician and surgeon will be automatically revoked by the division if the applicant fails to continue in good standing in an ACGME or AOA approved progressive resident training program within the state;

[(g) pass the licensing examination sequence required by division rule, as made in collaboration with the board;

[(h) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board, if requested by the board;

[(i) meet with the board and representatives of the division, if requested for the purpose of evaluating the applicant's qualifications for licensure;

[(j) designate:

(i) a contact person for access to medical records in accordance with the federal Health Insurance Portability and Accountability Act; and
(ii) an alternate contact person for access to medical records, in the event the original contact person is unable or unwilling to serve as the contact person for access to medical records; and

[(k)] (j) establish a method for notifying patients of the identity and location of the contact person and alternate contact person, if the applicant will practice in a location with no other persons licensed under this chapter.

(2) An applicant for licensure as an osteopathic physician and surgeon [qualifying under the] by endorsement [provision of Section 58-1-302] who is currently licensed to practice osteopathic medicine in any state other than Utah, a district or territory of the United States, or Canada shall:

(a) be currently licensed with a full unrestricted license in good standing in [another jurisdiction as set forth in Section 58-1-302] any state, district or territory of the United States, or Canada;

(b) have been actively engaged in the legal practice of osteopathic medicine in any state, district or territory of the United States, or Canada for not less than 6,000 hours during the five years immediately preceding the day on which the applicant applied for licensure in Utah;

[(b)(i)] (c) [document having met all] comply with the requirements for licensure under [Subsection] Subsections (1)(a) through (d), (1)(e)(i), and (1)(g) through (j) [except, if an applicant received licensure in another state or jurisdiction based upon only 12 months residency training after graduation from medical school, the applicant may qualify for licensure in Utah by endorsement only if licensed in the other state prior to July 1, 1996; or];

[(ii) document having obtained licensure in another state or jurisdiction whose licensure requirements were at the time of obtaining licensure equal to licensure requirements at that time in Utah;]

[(c) have passed the SPEX examination within 12 months preceding the date of application for licensure in Utah if the date on which the applicant passed qualifying examinations for licensure is greater than five years prior to the date of the application for licensure in Utah, or meet medical specialty certification requirements which may be established by division rule made in collaboration with the board;]

[(d) have been actively engaged in the practice as an osteopathic physician and surgeon]
for not less than 6,000 hours during the five years immediately preceding the date of
application for licensure in Utah;

[(e) meet with the board and representatives of the division, if requested for the
purpose of evaluating the applicant's qualifications for licensure; and]

[(f) not have a license that was suspended or revoked in any state, unless the license
was subsequently reinstated as a full unrestricted license in good standing;]

(d) have passed the licensing examination sequence required in Subsection (1)(f) or
another medical licensing examination sequence in another state, district or territory of the
United States, or Canada that the division in collaboration with the board by rulemaking
determines is equivalent to its own required examination;

(e) not have any investigation or action pending against any health care license of the
applicant, not have a health care license that was suspended or revoked in any state, district, or
territory of the United States, or Canada, and not have surrendered a health care license in lieu
of a disciplinary action, unless:

(i) the license was subsequently reinstated as a full unrestricted license in good
standing; or

(ii) the division in collaboration with the board determines, after full disclosure by the
applicant, that:

(A) the conduct has been corrected, monitored, and resolved; or

(B) a mitigating circumstance exists that prevents its resolution, and the division in
collaboration with the board is satisfied that, but for the mitigating circumstance, the license
would be reinstated;

(f) submit to a records review, a practice review history, and physical and
psychological assessments, if requested by the division in collaboration with the board; and

(g) produce evidence that the applicant meets the requirements of this Subsection (2) to
the satisfaction of the division in collaboration with the board.

[(3) An applicant for licensure as an osteopathic physician and surgeon, who has been
licensed as an osteopathic physician in Utah, who has allowed the applicant's license in Utah to
expire for nonpayment of license fees, and who is currently licensed in good standing in
another state or jurisdiction of the United States shall:]

[(a) submit an application in a form prescribed by the division:]}
pay a fee determined by the department under Section 63J-1-504;]
[(e) be of good moral character;]
[(d) have passed the SPEX examination within 12 months preceding the date of
application for licensure in Utah if the date on which the applicant passed qualifying
examinations for licensure is greater than five years prior to the date of the application for
licensure in Utah;]
[(e) have been actively engaged in the practice as an osteopathic physician for not
fewer than 6,000 hours during the five years immediately preceding the date of application for
licensure; and]
[(f) meet with the board and representatives of the division, if requested for the purpose
of evaluating the applicant's qualifications for licensure;]
\([\rightarrow] (3) \) An applicant for licensure by endorsement may engage in the practice of
medicine under a temporary license while the applicant's application for licensure is being
processed by the division, provided:
\((a)\) the applicant submits a complete application required for temporary licensure to the
division;
\((b)\) the applicant submits a written document to the division from:
\((i)\) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
Licensing and Inspection Act, stating that the applicant is practicing under the invitation of the
health care facility; or
\((ii)\) two individuals licensed under this chapter, whose license is in good standing and
who practice in the same clinical location, both stating that:
\((A)\) the applicant is practicing under the invitation of the individual; and
\((B)\) the applicant will practice at the same clinical location as the individual;
\((c)\) the applicant submits a signed certification to the division that the applicant meets
the requirements of Subsection (2);
\((d)\) the applicant does not engage in the practice of medicine until the division has
issued a temporary license;
\((e)\) the temporary license is only issued for and may not be extended beyond the
duration of one year from issuance; and
\((f)\) the temporary license expires immediately and prior to the expiration of one year
989 from issuance, upon notification from the division that the applicant's application for licensure
990 by endorsement is denied.
991 (4) The division shall issue a temporary license under Subsection [(4)]{(3)} within
992 15 business days after the applicant satisfies the requirements of Subsection [(4)]{(3)}.
993 Section 14. Section 58-68-304 is amended to read:
994 58-68-304. License renewal requirements.
995 (1) As a condition precedent for license renewal, each licensee shall, during each
996 two-year licensure cycle or other cycle defined by division rule:
997 (a) complete qualified continuing professional education requirements in accordance
998 with the number of hours and standards defined by division rule in collaboration with the
999 board;
1000 (b) appoint a contact person for access to medical records and an alternate contact
1001 person for access to medical records in accordance with Subsection 58-68-302(1)(f)(j); and
1002 (c) if the licensee practices osteopathic medicine in a location with no other persons
1003 licensed under this chapter, provide some method of notice to the licensee's patients of the
1004 identity and location of the contact person and alternate contact person for access to medical
1005 records for the licensee in accordance with Subsection 58-68-302(1)(f)(j).
1006 (2) If a renewal period is extended or shortened under Section 58-68-303, the
1007 continuing education hours required for license renewal under this section are increased or
1008 decreased proportionally.
1009 Section 15. Section 58-68-305 is amended to read:
1010 58-68-305. Exemptions from licensure.
1011 In addition to the exemptions from licensure in Section 58-1-307, the following
1012 individuals may engage in the described acts or practices without being licensed under this
1013 chapter:
1014 (1) an individual rendering aid in an emergency, when no fee or other consideration of
1015 value for the service is charged, received, expected, or contemplated;
1016 (2) an individual administering a domestic or family remedy;
1017 (3) (a) (i) a person engaged in the lawful sale of vitamins, health foods, dietary
1018 supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited
1019 by state or federal law; and
(ii) a person acting in good faith for religious reasons, as a matter of conscience, or based on a personal belief, when obtaining or providing any information regarding health care and the use of any product under Subsection (3)(a)(i); and

(b) Subsection (3)(a) does not:

(i) permit a person to diagnose any human disease, ailment, injury, infirmity, deformity, pain, or other condition; or

(ii) prohibit providing truthful and non-misleading information regarding any of the products under Subsection (3)(a)(i);

(4) a person engaged in good faith in the practice of the religious tenets of any church or religious belief without the use of prescription drugs;

(5) an individual authorized by the Department of Health under Section 26-1-30, to withdraw blood to determine the alcohol or drug content pursuant to Section 41-6a-523;

(6) a medical assistant while working under the direct or indirect supervision of a licensed osteopathic physician, to the extent the medical assistant is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of medicine, and as may be further defined in rule by the division in collaboration with the board, not to exceed the scope of this definition;

(7) an individual engaging in the practice of osteopathic medicine when:

(a) the individual is licensed in good standing as an osteopathic physician in another state with no licensing action pending and no less than 10 years of professional experience;

(b) the services are rendered as a public service and for a noncommercial purpose;

(c) no fee or other consideration of value is charged, received, expected, or contemplated for the services rendered beyond an amount necessary to cover the proportionate cost of malpractice insurance; and

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

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

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

(a) the individual does not establish a place of business in this state;
(b) the individual does not regularly engage in the practice of medicine in this state;

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

d) the primary purpose of the event is the training of others in the practice of medicine; and

e) neither the patient nor an insurer is billed for the services performed.

Section 16. Section 58-68-401 is amended to read:


Grounds for division action [regarding the following are under Section] are set forth in Sections 58-1-401[.] and 58-68-503.

[1) refusing to issue a license to an applicant or refusing to renew the license of a licensee;]

[2) revoking, suspending, restricting, placing on probation the license of a licensee;]

[3) assessing an administrative penalty; and]

[4) issuing of a public or private reprimand to a licensee or issuance of a cease and desist order.]

Section 17. Section 58-68-402 is repealed and reenacted to read:

58-68-402. Authority to assess penalties.

The division may assess penalties under Section 58-67-503.

Section 18. Section 58-68-403 is amended to read:


Revocation by the division of a license under Subsection 58-68-302(1)[(a)][(e) for failure to continue on a resident training program for reasons other than unprofessional or unlawful conduct is a nondisciplinary action and may not be reported by the division as a disciplinary action against the licensee.

Section 19. Section 58-68-503 is amended to read:

58-68-503. Penalties and administrative actions for unlawful and unprofessional conduct.

(1) Any person who violates the unlawful conduct provisions of Section 58-68-501[. or Subsection] or Section 58-1-501[(a) or 58-1-501(1)(c)] is guilty of a third degree felony.

(2) The division may assess administrative penalties in accordance with Section
Subject to Subsection (4), the division may punish unprofessional or unlawful conduct by:

(i) assessing administrative penalties; or
(ii) taking any other appropriate administrative action.

(b) A monetary administrative penalty imposed under this section shall be deposited in the Physician Education Fund described in Section 58-67a-1.

(3) If a licensee is convicted of unlawful conduct, described in Section 58-68-501, before an administrative proceeding regarding the same conduct, the licensee may not be assessed an administrative fine under this chapter for the same conduct.

(4) (a) If the division concludes that an individual has violated the provisions of Section 58-68-501, Section 58-68-502, the Division of Occupational and Professional Licensing Act, the Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and disciplinary action is appropriate, the director or director's designee shall:

(i) issue a citation to the individual;
(ii) attempt to negotiate a stipulated settlement; or
(iii) notify the individual that an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to appear.

(b) The division may take the following action against an individual who is in violation of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding:

(i) assess a fine of up to $10,000 per single violation or $2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; or
(ii) order to cease and desist from the behavior that constitutes a violation of provisions described in Subsection (4)(a).

(c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-1-401 may not be assessed through a citation.

(d) Each citation issued under this section shall:

(i) be in writing;
(ii) clearly describe or explain:
(A) the nature of the violation, including a reference to the provision of the chapter,
rule, or order alleged to have been violated;
(B) that the recipient must notify the division in writing within 20 calendar days from
the day on which the citation is served if the recipient wishes to contest the citation at a hearing
conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
(C) the consequences of failure to timely contest the citation or pay the fine assessed by
the citation within the time specified in the citation; and
(iii) be served in accordance with the requirements of the Utah Rules of Civil
Procedure.
(e) If the individual to whom the citation is issued fails to request a hearing to contest
the citation within 20 calendar days from the day on which the citation is served, the citation
becomes the final order of the division and is not subject to further agency review. The period
to contest the citation may be extended by the division for cause.
(f) The division may refuse to issue or renew or suspend, revoke, or place on probation
the license of an individual who fails to comply with a citation after the citation becomes final.
(g) The failure of an applicant for licensure to comply with a citation after it becomes
final is a ground for denial of a license.
(h) No citation may be issued under this section after six months from the day on
which the last violation occurred.
FISCAL NOTE

SHORT TITLE: Utah Medical Practice Act Amendments

SPONSOR: Adams, J. S.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))
Enactment of this bill is expected to generate an estimated $16,000 annually in penalties to the restricted Physicians Education Fund.

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LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))
Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))
An estimated 32 citations with penalties of $500 each will be issued to violators.

2/25/2011; 05:14 PM, Lead Analyst: Pratt, S./Attorney: RF
Office of the Legislative Fiscal Analyst