

## HB0399S01 compared with HB0399

~~text~~ shows text that was in HB0399 but was deleted in HB0399S01.

Inserted text shows text that was not in HB0399 but was inserted into HB0399S01.

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Representative Craig Hall proposes the following substitute bill:

### PROHIBITION OF THE PRACTICE OF CONVERSION THERAPY UPON MINORS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Craig Hall**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill enacts provisions relating to conversion therapy for minors.

##### Highlighted Provisions:

This bill:

- ▶ prohibits certain health care professionals from providing conversion therapy to a minor; and
- ▶ adds a violation of the prohibition to the list of conduct that constitutes unprofessional conduct for licensing purposes.

##### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**58-1-501**, as last amended by Laws of Utah 2018, Chapter 318

**58-1-502**, as last amended by Laws of Utah 2018, Chapter 318

#### ENACTS:

**58-1-509**, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) engaging in conduct that results in disciplinary action, including reprimand,

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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

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establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment;

(n) violating a provision of Section 58-1-501.5; [~~or~~]

(o) violating the prohibition in Section 58-1-509; or

~~(p)~~ (p) violating the terms of an order governing a license.

(3) Unless otherwise specified by statute or administrative rule, in a civil or administrative proceeding commenced by the division under this title, a person subject to any of the unlawful and unprofessional conduct provisions of this title is strictly liable for each violation.

Section 2. Section **58-1-502** is amended to read:

### **58-1-502. Unlawful and unprofessional conduct -- Penalties.**

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

(2) (a) In addition to any other statutory penalty for a violation related to a specific occupation or profession regulated by this title, if upon inspection or investigation, the division concludes that a person has violated Subsection 58-1-501(1)(a), (1)(c), or (2)~~(p)~~(p), or a rule or order issued with respect to those subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly:

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

(ii) attempt to negotiate a stipulated settlement; or

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

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

(A) an uncontested citation;

(B) a stipulated settlement; or

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

(ii) The division may, in addition to or in lieu of a fine under Subsection (2)(b)(i), order the person to cease and desist from violating Subsection 58-1-501(1)(a), (1)(c), or (2)~~(p)~~(p), or a rule or order issued with respect to those subsections.

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

(d) A citation shall:

(i) be in writing;

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

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

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

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

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

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

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

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

(i) The division may not issue a citation under this section after the expiration of one year following the occurrence of a violation.

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

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

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

and

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

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

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

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

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

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

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(c) A court may award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 3. Section **58-1-509** is enacted to read:

### **58-1-509. Prohibition on providing conversion therapy to a minor.**

(1) As used in this section:

(a) (i) "Conversion therapy" means any practice or treatment that seeks to change the sexual orientation or gender identity of a patient or client, including mental health therapy that seeks to change, eliminate, or reduce behaviors, expressions, attractions, or feelings related to a patient or client's sexual orientation or gender identity.

(ii) "Conversion therapy" does not mean a practice or treatment that does not seek to change a patient or client's sexual orientation or gender identity, including mental health therapy that:

(A) is neutral with respect to sexual orientation ~~for~~and gender identity;

(B) provides assistance to a patient or client undergoing gender transition;

(C) provides acceptance, support, and understanding of a patient or client;

(D) facilitates a patient or client's ability to cope, social support, and identity exploration and development;

(E) addresses unlawful, unsafe, premarital, or extramarital sexual activities in a manner that is neutral with respect to sexual orientation; or

(F) discusses with a patient or client the patient or client's moral or religious beliefs or practices.

(b) "Health care professional" means an individual who is licensed, or an individual

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who provides mental health therapy as part of the individual's training for a profession that is licensed, under:

(i) Chapter 31b, Nurse Practice Act;

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

(iii) Chapter 61, Psychologist Licensing Act;

(iv) Chapter 67, Utah Medical Practice Act; or

(v) Chapter 68, Utah Osteopathic Medical Practice Act.

(2) A health care professional may not provide conversion therapy to a patient or client who is younger than 18 years old.

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

(a) a clergy member or religious counselor who is acting substantially in a pastoral or religious capacity and not in the capacity of a health care professional; or

(b) a parent or grandparent who is a health care professional and who is acting substantially in the capacity of a parent or grandparent and not in the capacity of a health care professional.