

HEALTH CARE PROFESSIONAL LICENSING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends the definition of unprofessional conduct for prescribing health care professionals and pharmacists.

Highlighted Provisions:

This bill:

- ▶ adds a provision to each health care profession's definition of unprofessional conduct to include:
 - knowingly entering false or misleading information on a medical record; or
 - knowingly altering a medical record for the purpose of concealing any circumstance related to the health care provided to a patient.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 58-5a-102**, as last amended by Laws of Utah 2015, Chapter 230
- 58-16a-502**, as last amended by Laws of Utah 2012, Chapter 234
- 58-17b-502**, as last amended by Laws of Utah 2019, First Special Session, Chapter 5
- 58-31b-502**, as last amended by Laws of Utah 2019, Chapter 233
- 58-44a-502**, as last amended by Laws of Utah 2012, Chapter 285
- 58-67-502**, as last amended by Laws of Utah 2019, First Special Session, Chapter 5
- 58-68-502**, as last amended by Laws of Utah 2019, First Special Session, Chapter 5
- 58-69-502**, as last amended by Laws of Utah 2006, Chapter 158
- 58-70a-503**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1
- 58-71-502**, as enacted by Laws of Utah 1996, Chapter 282

32

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

34 Section 1. Section **58-5a-102** is amended to read:

35 **58-5a-102. Definitions.**

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

37 (1) "Board" means the Podiatric Physician Board created in Section 58-5a-201.

38 (2) "Indirect supervision" means the same as that term is defined by the division by
39 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

40 (3) "Medical assistant" means an unlicensed individual working under the indirect
41 supervision of a licensed podiatric physician and engaging in specific tasks assigned by the
42 licensed podiatric physician in accordance with the standards and ethics of the podiatry
43 profession.

44 (4) "Practice of podiatry" means the diagnosis and treatment of conditions affecting the
45 human foot and ankle and their manifestations of systemic conditions by all appropriate and
46 lawful means, subject to Section 58-5a-103.

47 (5) "Unlawful conduct" includes:

48 (a) the conduct that constitutes unlawful conduct under Section 58-1-501; and

49 (b) for an individual who is not licensed under this chapter:

50 (i) using the title or name podiatric physician, podiatrist, podiatric surgeon, foot doctor,
51 foot specialist, or D.P.M.; or

52 (ii) implying or representing that the individual is qualified to practice podiatry.

53 (6) "Unprofessional conduct" includes, for an individual licensed under this chapter:

54 (a) the conduct that constitutes unprofessional conduct under Section 58-1-501;

55 (b) communicating to a third party, without the consent of the patient, information the
56 individual acquires in treating the patient, except as necessary for professional consultation
57 regarding treatment of the patient;

58 (c) allowing the individual's name or license to be used by an individual who is not
59 licensed to practice podiatry under this chapter;

60 (d) except as described in Section 58-5a-306, employing, directly or indirectly, any
61 unlicensed individual to practice podiatry;

62 (e) using alcohol or drugs, to the extent the individual's use of alcohol or drugs impairs

63 the individual's ability to practice podiatry;

64 (f) unlawfully prescribing, selling, or giving away any prescription drug, including
65 controlled substances, as defined in Section 58-37-2;

66 (g) gross incompetency in the practice of podiatry;

67 (h) willfully and intentionally making a false statement or entry in hospital records,
68 medical records, or reports;

69 (i) willfully making a false statement in reports or claim forms to governmental
70 agencies or insurance companies with the intent to secure payment not rightfully due;

71 (j) willfully using false or fraudulent advertising; [~~and~~]

72 (k) conduct the division defines as unprofessional conduct by rule made in accordance
73 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[-]; or

74 (l) knowingly:

75 (i) entering into any medical record any false or misleading information; or

76 (ii) altering a medical record in any way for the purpose of concealing an act, omission,
77 or record of events, medical condition, or any other circumstance related to the patient and the
78 medical or podiatric care provided.

79 Section 2. Section **58-16a-502** is amended to read:

80 **58-16a-502. Unprofessional conduct.**

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

82 (1) using or employing the services of an optometric assistant to assist a licensee in any
83 manner not in accordance with:

84 (a) the generally recognized practices and standards of ethics of the profession; or

85 (b) applicable state law or division rule;

86 (2) failure to refer a patient to an appropriate licensed practitioner when:

87 (a) the patient's condition does not respond to treatment; or

88 (b) the treatment is not within the scope of competence or licensure of the licensee;

89 (3) providing confidential information regarding a patient to any third party who does
90 not have a legal and professional ground for obtaining the information;

91 (4) knowingly prescribing, selling, giving away, or administering any prescription drug

92 unless:

93 (a) for a legitimate medical purpose;

94 (b) upon a proper diagnosis indicating the use of the drug in the amount prescribed or
95 provided; and

96 (c) in compliance with Section 58-17b-309;

97 (5) giving or receiving directly or indirectly any fee, commission, rebate, or other
98 compensation for professional services not actually and personally rendered, except as part of a
99 legal relationship within a lawful professional partnership, corporation, or association;

100 (6) failure to transfer pertinent and necessary information from a patient's medical
101 records to another optometrist or physician when so requested by the patient or his
102 representative, as designated in writing; [or]

103 (7) failure to provide a contact lens prescription to a person who sells contact lenses in
104 accordance with Section 58-16a-306[-]; or

105 (8) knowingly:

106 (a) entering into any medical record any false or misleading information; or

107 (b) altering a medical record in any way for the purpose of concealing an act, omission,
108 or record of events, medical condition, or any other circumstance related to the patient and the
109 medical or optometric care provided.

110 Section 3. Section **58-17b-502** is amended to read:

111 **58-17b-502. Unprofessional conduct.**

112 (1) "Unprofessional conduct" includes:

113 (a) willfully deceiving or attempting to deceive the division, the board, or their agents
114 as to any relevant matter regarding compliance under this chapter;

115 (b) except as provided in Subsection (2):

116 (i) paying or offering rebates to practitioners or any other health care providers, or
117 receiving or soliciting rebates from practitioners or any other health care provider; or

118 (ii) paying, offering, receiving, or soliciting compensation in the form of a commission,
119 bonus, rebate, kickback, or split fee arrangement with practitioners or any other health care
120 provider, for the purpose of obtaining referrals;

121 (c) misbranding or adulteration of any drug or device or the sale, distribution, or
122 dispensing of any outdated, misbranded, or adulterated drug or device;

123 (d) engaging in the sale or purchase of drugs or devices that are samples or packages
124 bearing the inscription "sample" or "not for resale" or similar words or phrases;

125 (e) except as provided in Section 58-17b-503 or Part 9, Charitable Prescription Drug
126 Recycling Act, accepting back and redistributing any unused drug, or a part of it, after it has
127 left the premises of any pharmacy, unless the drug is in a unit pack, as defined in Section
128 58-17b-503, or the manufacturer's sealed container, as defined in rule;

129 (f) an act in violation of this chapter committed by a person for any form of
130 compensation if the act is incidental to the person's professional activities, including the
131 activities of a pharmacist, pharmacy intern, or pharmacy technician;

132 (g) violating:

133 (i) the federal Controlled Substances Act, Title II, P.L. 91-513;

134 (ii) Title 58, Chapter 37, Utah Controlled Substances Act; or

135 (iii) rules or regulations adopted under either act;

136 (h) requiring or permitting pharmacy interns or technicians to engage in activities
137 outside the scope of practice for their respective license classifications, as defined in this
138 chapter and division rules made in collaboration with the board, or beyond their scope of
139 training and ability;

140 (i) administering:

141 (i) without appropriate training, as defined by rule;

142 (ii) without a physician's order, when one is required by law; and

143 (iii) in conflict with a practitioner's written guidelines or written protocol for
144 administering;

145 (j) disclosing confidential patient information in violation of the provisions of the
146 Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat.
147 1936, as amended, or other applicable law;

148 (k) engaging in the practice of pharmacy without a licensed pharmacist designated as
149 the pharmacist-in-charge;

150 (l) failing to report to the division any adverse action taken by another licensing
151 jurisdiction, government agency, law enforcement agency, or court for conduct that in
152 substance would be considered unprofessional conduct under this section;

153 (m) as a pharmacist or pharmacy intern, compounding a prescription drug in a dosage
154 form which is regularly and commonly available from a manufacturer in quantities and
155 strengths prescribed by a practitioner;

156 (n) failing to act in accordance with Title 26, Chapter 64, Family Planning Access Act,
157 when dispensing a self-administered hormonal contraceptive under a standing order; [~~and~~]

158 (o) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act[~~:-~~];
159 or

160 (p) knowingly:

161 (i) entering into any medical record any false or misleading information; or

162 (ii) altering a medical record in any way for the purpose of concealing an act, omission,
163 or record of events, medical condition, or any other circumstance related to the patient and the
164 medical or pharmaceutical care provided.

165 (2) Subsection (1)(b) does not apply to:

166 (a) giving or receiving a price discount based on purchase volume;

167 (b) passing along a pharmaceutical manufacturer's rebate; or

168 (c) providing compensation for services to a veterinarian.

169 (3) "Unprofessional conduct" does not include, in accordance with Title 26, Chapter
170 61a, Utah Medical Cannabis Act:

171 (a) when registered as a pharmacy medical provider, as that term is defined in Section
172 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

173 (b) when acting as a state central patient portal medical provider, as that term is defined
174 in Section 26-61a-102, providing state central patient portal medical provider services.

175 (4) Notwithstanding Subsection (3), the division, in consultation with the board and in
176 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define
177 unprofessional conduct for a pharmacist described in Subsections (3)(a) and (b).

178 Section 4. Section **58-31b-502** is amended to read:

179 **58-31b-502. Unprofessional conduct.**

180 (1) "Unprofessional conduct" includes:

181 (a) failure to safeguard a patient's right to privacy as to the patient's person, condition,
182 diagnosis, personal effects, or any other matter about which the licensee is privileged to know
183 because of the licensee's or person with a certification's position or practice as a nurse or
184 practice as a medication aide certified;

185 (b) failure to provide nursing service or service as a medication aide certified in a
186 manner that demonstrates respect for the patient's human dignity and unique personal character

187 and needs without regard to the patient's race, religion, ethnic background, socioeconomic
188 status, age, sex, or the nature of the patient's health problem;

189 (c) engaging in sexual relations with a patient during any:

190 (i) period when a generally recognized professional relationship exists between the
191 person licensed or certified under this chapter and the patient; or

192 (ii) extended period when a patient has reasonable cause to believe a professional
193 relationship exists between the person licensed or certified under the provisions of this chapter
194 and the patient;

195 (d) (i) as a result of any circumstance under Subsection (1)(c), exploiting or using
196 information about a patient or exploiting the licensee's or the person with a certification's
197 professional relationship between the licensee or holder of a certification under this chapter and
198 the patient; or

199 (ii) exploiting the patient by use of the licensee's or person with a certification's
200 knowledge of the patient obtained while acting as a nurse or a medication aide certified;

201 (e) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;

202 (f) unauthorized taking or personal use of nursing supplies from an employer;

203 (g) unauthorized taking or personal use of a patient's personal property;

204 (h) knowingly;

205 (i) entering into any medical record any false or misleading information; or

206 (ii) altering a medical record in any way for the purpose of concealing an act, omission,
207 or record of events, medical condition, or any other circumstance related to the patient and the
208 medical or nursing care provided;

209 (i) unlawful or inappropriate delegation of nursing care;

210 (j) failure to exercise appropriate supervision of persons providing patient care services
211 under supervision of the licensed nurse;

212 (k) employing or aiding and abetting the employment of an unqualified or unlicensed
213 person to practice as a nurse;

214 (l) failure to file or record any medical report as required by law, impeding or
215 obstructing the filing or recording of such a report, or inducing another to fail to file or record
216 such a report;

217 (m) breach of a statutory, common law, regulatory, or ethical requirement of

- 218 confidentiality with respect to a person who is a patient, unless ordered by a court;
- 219 (n) failure to pay a penalty imposed by the division;
- 220 (o) prescribing a Schedule II controlled substance without complying with the
- 221 requirements in Section 58-31b-803, if applicable;
- 222 (p) violating Section 58-31b-801;
- 223 (q) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b, Part
- 224 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if
- 225 applicable; and
- 226 (r) establishing or operating a pain clinic without a consultation and referral plan for
- 227 Schedule II or III controlled substances.
- 228 (2) "Unprofessional conduct" does not include, in accordance with Title 26, Chapter
- 229 61a, Utah Medical Cannabis Act, when registered as a qualified medical provider, as that term
- 230 is defined in Section 26-61a-102, recommending the use of medical cannabis.
- 231 (3) Notwithstanding Subsection (2), the division, in consultation with the board and in
- 232 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define
- 233 unprofessional conduct for an advanced practice registered nurse described in Subsection (2).
- 234 Section 5. Section **58-44a-502** is amended to read:
- 235 **58-44a-502. Unprofessional conduct.**
- 236 "Unprofessional conduct" includes:
- 237 (1) disregard for a patient's dignity or right to privacy as to [~~his~~] the patient's person,
- 238 condition, possessions, or medical record;
- 239 (2) engaging in an act, practice, or omission which when considered with the duties
- 240 and responsibilities of a certified nurse midwife does or could jeopardize the health, safety, or
- 241 welfare of a patient or the public;
- 242 (3) failure to confine one's practice as a certified nurse midwife to those acts or
- 243 practices permitted by law;
- 244 (4) failure to file or record any medical report as required by law, impeding or
- 245 obstructing the filing or recording of such a report, or inducing another to fail to file or record
- 246 such a report;
- 247 (5) breach of a statutory, common law, regulatory, or ethical requirement of
- 248 confidentiality with respect to a person who is a patient, unless ordered by the court;

- 249 (6) failure to pay a penalty imposed by the division;
- 250 (7) prescribing a schedule II-III controlled substance without a consulting physician;
- 251 [~~and~~]
- 252 (8) (a) failure to have and maintain a safe mechanism for obtaining medical
- 253 consultation, collaboration, and referral with a consulting physician, including failure to
- 254 identify one or more consulting physicians in the written documents required by Subsection
- 255 58-44a-102(9)(b)(iii); or
- 256 (b) representing that the certified nurse midwife is in compliance with Subsection
- 257 (8)(a) when the certified nurse midwife is not in compliance with Subsection (8)(a)[~~;~~]; or
- 258 (9) knowingly:
- 259 (i) entering into any medical record any false or misleading information; or
- 260 (ii) altering a medical record in any way for the purpose of concealing an act, omission,
- 261 or record of events, medical condition, or any other circumstance related to the patient and the
- 262 medical or midwife care provided.
- 263 Section 6. Section **58-67-502** is amended to read:
- 264 **58-67-502. Unprofessional conduct.**
- 265 (1) "Unprofessional conduct" includes, in addition to the definition in Section
- 266 58-1-501:
- 267 (a) using or employing the services of any individual to assist a licensee in any manner
- 268 not in accordance with the generally recognized practices, standards, or ethics of the
- 269 profession, state law, or division rule;
- 270 (b) making a material misrepresentation regarding the qualifications for licensure under
- 271 Section 58-67-302.7 or Section 58-67-302.8;
- 272 (c) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical
- 273 Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable; [~~or~~]
- 274 (d) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act[~~;~~];
- 275 or
- 276 (e) knowingly:
- 277 (i) entering into any medical record any false or misleading information; or
- 278 (ii) altering a medical record in any way for the purpose of concealing an act, omission,
- 279 or record of events, medical condition, or any other circumstance related to the patient and the

280 medical care provided.

281 (2) "Unprofessional conduct" does not include:

282 (a) in compliance with Section 58-85-103:

283 (i) obtaining an investigational drug or investigational device;

284 (ii) administering the investigational drug to an eligible patient; or

285 (iii) treating an eligible patient with the investigational drug or investigational device;

286 or

287 (b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:

288 (i) when registered as a qualified medical provider, as that term is defined in Section

289 26-61a-102, recommending the use of medical cannabis;

290 (ii) when registered as a pharmacy medical provider, as that term is defined in Section

291 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

292 (iii) when registered as a state central patient portal medical provider, as that term is
293 defined in Section 26-61a-102, providing state central patient portal medical provider services.

294 (3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and
295 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define
296 unprofessional conduct for a physician described in Subsection (2)(b).

297 Section 7. Section **58-68-502** is amended to read:

298 **58-68-502. Unprofessional conduct.**

299 (1) "Unprofessional conduct" includes, in addition to the definition in Section

300 58-1-501:

301 (a) using or employing the services of any individual to assist a licensee in any manner
302 not in accordance with the generally recognized practices, standards, or ethics of the
303 profession, state law, or division rule;

304 (b) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical
305 Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

306 (c) making a material misrepresentation regarding the qualifications for licensure under
307 Section 58-68-302.5; [or]

308 (d) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act[-];

309 or

310 (e) knowingly:

311 (i) entering into any medical record any false or misleading information; or
312 (ii) altering a medical record in any way for the purpose of concealing an act, omission,
313 or record of events, medical condition, or any other circumstance related to the patient and the
314 medical care provided.

315 (2) "Unprofessional conduct" does not include:

316 (a) in compliance with Section 58-85-103:

317 (i) obtaining an investigational drug or investigational device;

318 (ii) administering the investigational drug to an eligible patient; or

319 (iii) treating an eligible patient with the investigational drug or investigational device;

320 or

321 (b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:

322 (i) when registered as a qualified medical provider, as that term is defined in Section
323 26-61a-102, recommending the use of medical cannabis;

324 (ii) when registered as a pharmacy medical provider, as that term is defined in Section
325 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

326 (iii) when registered as a state central patient portal medical provider, as that term is
327 defined in Section 26-61a-102, providing state central patient portal medical provider services.

328 (3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and
329 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define
330 unprofessional conduct for a physician described in Subsection (2)(b).

331 Section 8. Section **58-69-502** is amended to read:

332 **58-69-502. Unprofessional conduct.**

333 (1) "Unprofessional conduct" includes, in addition to the definition in Section
334 58-1-501:

335 (a) sharing professional fees with an unlicensed person or paying any person for
336 sending or referring a patient;

337 (b) making an unsubstantiated claim of superiority in training or skill as a dentist or
338 dental hygienist or in the performance of professional services;

339 (c) refusing authorized agents of the division or state or local health authorities access
340 to the facilities related to the practice of dentistry or dental hygiene during normal business
341 hours for the purpose of inspection; [~~and~~]

342 (d) failing to maintain facilities, instruments, equipment, supplies, appliances, or other
343 property or conditions related to the practice of dentistry in a sanitary condition consistent with
344 the standards and ethics of the professions of dentistry or dental hygiene[-]; or

345 (e) knowingly:

346 (i) entering into any medical record any false or misleading information; or

347 (ii) altering a medical record in any way for the purpose of concealing an act, omission,
348 or record of events, medical condition, or any other circumstance related to the patient and the
349 medical or dental care provided.

350 (2) For purposes of Subsection (1)(b), an unsubstantiated claim of superiority:

351 (a) includes for the practice of dentistry:

352 (i) advertising or otherwise holding oneself out to the public as practicing a dental
353 specialty in which the dentist has not successfully completed the education specified for the
354 dental specialty as defined by the American Dental Association; and

355 (ii) using the following words in advertising "Endodontist," "Orthodontist," "Oral and
356 Maxillofacial Surgeon," "Specialist," "Board Certified," "Diplomat," "Practice Limited to,"
357 "Pediatric Dentist," "Periodontist," or "Limited to Specialty of" when the dentist has not
358 successfully completed the education specified for the dental specialty as defined by the
359 American Dental Association; and

360 (b) does not include a dentist who advertises as being qualified in a recognized
361 specialty area of dental practice so long as each such advertisement, regardless of form,
362 contains a prominent disclaimer that the dentist is licensed as a general dentist or that the
363 specialty services will be provided by a general dentist.

364 Section 9. Section **58-70a-503** is amended to read:

365 **58-70a-503. Unprofessional conduct.**

366 (1) "Unprofessional conduct" includes:

367 (a) violation of a patient confidence to any person who does not have a legal right and a
368 professional need to know the information concerning the patient;

369 (b) knowingly prescribing, selling, giving away, or directly or indirectly administering,
370 or offering to prescribe, sell, furnish, give away, or administer any prescription drug except for
371 a legitimate medical purpose upon a proper diagnosis indicating use of that drug in the amounts
372 prescribed or provided;

373 (c) prescribing prescription drugs for oneself or administering prescription drugs to
374 oneself, except those that have been legally prescribed for the physician assistant by a licensed
375 practitioner and that are used in accordance with the prescription order for the condition
376 diagnosed;

377 (d) failure to maintain at the practice site a delegation of services agreement that
378 accurately reflects current practices;

379 (e) failure to make the delegation of services agreement available to the division for
380 review upon request;

381 (f) in a practice that has physician assistant ownership interests, failure to allow the
382 supervising physician the independent final decision making authority on patient treatment
383 decisions, as set forth in the delegation of services agreement or as defined by rule; ~~[and]~~

384 (g) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical
385 Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable~~[-]~~; or

386 (h) knowingly:

387 (i) entering into any medical record any false or misleading information; or

388 (ii) altering a medical record in any way for the purpose of concealing an act, omission,
389 or record of events, medical condition, or any other circumstance related to the patient and the
390 medical care provided.

391 (2) "Unprofessional conduct" does not include, in accordance with Title 26, Chapter
392 61a, Utah Medical Cannabis Act, when registered as a qualified medical provider, as that term
393 is defined in Section 26-61a-102, recommending the use of medical cannabis.

394 (3) Notwithstanding Subsection (2), the division, in consultation with the board and in
395 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define
396 unprofessional conduct for a physician assistant described in Subsection (2).

397 Section 10. Section **58-71-502** is amended to read:

398 **58-71-502. Unprofessional conduct.**

399 "Unprofessional conduct" includes:

400 (1) using or employing the services of any individual to assist a licensee in any manner
401 not in accordance with the generally recognized practices, standards, or ethics of the
402 profession, state law, or division rule~~[-]~~; or

403 (2) knowingly:

- 404 (a) entering into any medical record any false or misleading information; or
- 405 (b) altering a medical record in any way for the purpose of concealing an act, omission,
- 406 or record of events, medical condition, or any other circumstance related to the patient and the
- 407 medical or naturopathic care provided.