

Effective 5/1/2024

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 profession requiring licensure under this title, except the behavioral health technician under Chapter 60, Part 6, Behavioral Health Coach and Technician Licensing Act, 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 a 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 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 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 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;
 - (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) aiding or abetting any other person to violate any statute, rule, or order regulating a profession under this title.
- (2)
 - (a) "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:
 - (i) violating any statute, rule, or order regulating an a profession under this title;

- (ii) 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;
 - (iii) subject to the provisions of Subsection (4), engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere that is held in abeyance pending the successful completion of probation with respect to a crime that, when considered with the functions and duties of the profession for which the license was issued or is to be issued, bears a substantial relationship to the licensee's or applicant's ability to safely or competently practice the profession;
 - (iv) 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 profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401;
 - (v) 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 profession;
 - (vi) practicing or attempting to practice a profession regulated under this title despite being physically or mentally unfit to do so;
 - (vii) practicing or attempting to practice a or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;
 - (viii) practicing or attempting to practice a profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent;
 - (ix) practicing or attempting to practice a profession regulated under this title beyond the scope of the licensee's competency, abilities, or education;
 - (x) practicing or attempting to practice a profession regulated under this title beyond the scope of the licensee's license;
 - (xi) 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;
 - (xii) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule;
 - (xiii) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device:
 - (A) 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
 - (B) 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;
 - (xiv) violating a provision of Section 58-1-501.5;
 - (xv) violating the terms of an order governing a license; or
 - (xvi) violating Section 58-1-511.
- (b) "Unprofessional conduct" does not include:

- (i) a health care provider, as defined in Section 78B-3-403 and who is licensed under this title, deviating from medical norms or established practices if the conditions described in Subsection (5) are met; and
- (ii) notwithstanding Section 58-1-501.6, a health care provider advertising that the health care provider deviates from medical norms or established practices, including the maladies the health care provider treats, if the health care provider:
 - (A) does not guarantee any results regarding any health care service;
 - (B) fully discloses on the health care provider's website that the health care provider deviates from medical norms or established practices with a conspicuous statement; and
 - (C) includes the health care provider's contact information on the website.
- (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.
- (4) The following are not evidence of engaging in unprofessional conduct under Subsection (2)(a) (iii):
 - (a) an arrest not followed by a conviction; or
 - (b) a conviction for which an individual's incarceration has ended more than seven years before the date of the division's consideration, unless:
 - (i) after the incarceration the individual has engaged in additional conduct that results in another conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere that is held in abeyance pending the successful completion of probation; or
 - (ii) the conviction was for:
 - (A) a violent felony as defined in Section 76-3-203.5;
 - (B) a felony related to a criminal sexual act under Title 76, Chapter 5, Part 4, Sexual Offenses, or Title 76, Chapter 5b, Sexual Exploitation Act; or
 - (C) a felony related to criminal fraud or embezzlement, including a felony under Title 76, Chapter 6, Part 5, Fraud, or Title 76, Chapter 6, Part 4, Theft.
- (5) In accordance with Subsection (2)(b)(i), a health care provider may deviate from medical norms or established practices if:
 - (a) the health care provider does not deviate outside of the health care provider's scope of practice and possesses the education, training, and experience to competently and safely administer the alternative health care service;
 - (b) the health care provider does not provide an alternative health care service that is otherwise contrary to any state or federal law;
 - (c) the alternative health care service has reasonable potential to be of benefit to the patient to whom the alternative health care service is to be given;
 - (d) the potential benefit of the alternative health care service outweighs the known harms or side effects of the alternative health care service;
 - (e) the alternative health care service is reasonably justified under the totality of the circumstances;
 - (f) after diagnosis but before providing the alternative health care service:
 - (i) the health care provider educates the patient on the health care services that are within the medical norms and established practices;
 - (ii) the health care provider discloses to the patient that the health care provider is recommending an alternative health care service that deviates from medical norms and established practices;
 - (iii) the health care provider discusses the rationale for deviating from medical norms and established practices with the patient;

- (iv) the health care provider discloses any potential risks associated with deviation from medical norms and established practices; and
 - (v) the patient signs and acknowledges a notice of deviation; and
 - (g) before providing an alternative health care service, the health care provider discloses to the patient that the patient may enter into an agreement describing what would constitute the health care provider's negligence related to deviation.
- (6) As used in this section, "notice of deviation" means a written notice provided by a health care provider to a patient that:
- (a) is specific to the patient;
 - (b) indicates that the health care provider is deviating from medical norms or established practices in the health care provider's recommendation for the patient's treatment;
 - (c) describes how the alternative health care service deviates from medical norms or established practices;
 - (d) describes the potential risks and benefits associated with the alternative health care service;
 - (e) describes the health care provider's reasonably justified rationale regarding the reason for the deviation; and
 - (f) provides clear and unequivocal notice to the patient that the patient is agreeing to receive the alternative health care service which is outside medical norms and established practices.

Amended by Chapter 420, 2024 General Session