

Chapter 1
Division of Occupational and Professional Licensing Act

Part 1
Division Administration

58-1-101 Short title.

This chapter is known as the "Division of Occupational and Professional Licensing Act."

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-102 Definitions.

For purposes of this title:

- (1) "Ablative procedure" is as defined in Section 58-67-102.
- (2) "Cosmetic medical procedure":
 - (a) is as defined in Section 58-67-102; and
 - (b) except for Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice Act, does not apply to the scope of practice of an individual licensed under this title if the individual's scope of practice includes the authority to operate or perform surgical procedures.
- (3) "Department" means the Department of Commerce.
- (4) "Director" means the director of the Division of Occupational and Professional Licensing.
- (5) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.
- (6) "Executive director" means the executive director of the Department of Commerce.
- (7) "Licensee" includes any holder of a license, certificate, registration, permit, student card, or apprentice card authorized under this title.
- (8)
 - (a)
 - (i) "Nonablative procedure" means a procedure that is expected or intended to alter living tissue, but not intended or expected to excise, vaporize, disintegrate, or remove living tissue.
 - (ii) Notwithstanding Subsection (8)(a)(i), nonablative procedure includes hair removal.
 - (b) "Nonablative procedure" does not include:
 - (i) a superficial procedure;
 - (ii) the application of permanent make-up; or
 - (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are performed by an individual licensed under this title who is acting within their scope of practice.
- (9) "Pain clinic" means:
 - (a) a clinic that advertises its primary purpose is the treatment of chronic pain; or
 - (b) a clinic in which greater than 50% of the clinic's annual patient population receive treatment primarily for non-terminal chronic pain using Schedule II-III controlled substances.
- (10) "Superficial procedure" means a procedure that is expected or intended to temporarily alter living skin tissue and may excise or remove stratum corneum but have no appreciable risk of damage to any tissue below the stratum corneum.
- (11) "Unlawful conduct" has the meaning given in Subsection 58-1-501(1).
- (12) "Unprofessional conduct" has the meaning given in Subsection 58-1-501(2).

Amended by Chapter 127, 2016 General Session

58-1-103 Division created to administer licensing laws.

There is created within the Department of Commerce the Division of Occupational and Professional Licensing. The division shall administer and enforce all licensing laws of Title 58, Occupations and Professions.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-104 Director of division -- Appointment -- Duties.

- (1) The division shall be under the supervision, direction, and control of a director. The director shall be appointed by the executive director with the approval of the governor. The director shall hold office at the pleasure of the governor.
- (2) The director shall perform all duties, functions, and responsibilities assigned to the division by law or rule and, where provided, with the collaboration and assistance of the boards established under this title.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-105 Employment of staff.

The director, with the approval of the executive director, may employ necessary staff, including specialists and professionals, to assist him in performing the duties, functions, and responsibilities of the division.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-106 Division -- Duties, functions, and responsibilities.

- (1) The duties, functions, and responsibilities of the division include the following:
 - (a) prescribing, adopting, and enforcing rules to administer this title;
 - (b) investigating the activities of any person whose occupation or profession is regulated or governed by the laws and rules administered and enforced by the division;
 - (c) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the production of any books, papers, documents, records, contracts, recordings, tapes, correspondence, or information relevant to an investigation upon a finding of sufficient need by the director or by the director's designee;
 - (d) taking administrative and judicial action against persons in violation of the laws and rules administered and enforced by the division, including the issuance of cease and desist orders;
 - (e) seeking injunctions and temporary restraining orders to restrain unauthorized activity;
 - (f) complying with Title 52, Chapter 4, Open and Public Meetings Act ;
 - (g) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew, or otherwise acting upon any license;
 - (h) preparing and submitting to the governor and the Legislature an annual report of the division's operations, activities, and goals;
 - (i) preparing and submitting to the executive director a budget of the expenses for the division;
 - (j) establishing the time and place for the administration of examinations; and
 - (k) preparing lists of licensees and making these lists available to the public at cost upon request unless otherwise prohibited by state or federal law.

- (2) The division may not include home telephone numbers or home addresses of licensees on the lists prepared under Subsection (1)(k), except as otherwise provided by rules of the division made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3)
 - (a) The division may provide the home address or home telephone number of a licensee on a list prepared under Subsection (1) upon the request of an individual who provides proper identification and the reason for the request, in writing, to the division.
 - (b) A request under Subsection (3)(a) is limited to providing information on only one licensee per request.
 - (c) The division shall provide, by rule, what constitutes proper identification under Subsection (3)(a).
- (4)
 - (a) Notwithstanding any contrary provisions in Title 63G, Chapter 2, Government Records Access and Management Act, the division may share licensee information with:
 - (i) the division's contracted agents when sharing the information in compliance with state or federal law; and
 - (ii) a person who is evaluating the progress or monitoring the compliance of an individual who has been disciplined by the division under this title.
 - (b) The division may make rules to implement the provisions of this Subsection (4).
- (5) All rules made by the division under this title shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 318, 2018 General Session

58-1-107 Applicability -- Relationship to specific chapters under title.

The provisions of this chapter uniformly apply to the administration and enforcement of this title. However, unless expressly prohibited in this chapter, any provision of this chapter may be supplemented or altered by specific chapters of this title.

Enacted by Chapter 297, 1993 General Session

58-1-108 Adjudicative proceedings.

- (1) The division and all boards created under the authority of this title shall comply with the procedures and requirements of Title 13, Chapter 1, Department of Commerce, and Title 63G, Chapter 4, Administrative Procedures Act, in all of their adjudicative proceedings as defined by Subsection 63G-4-103(1).
- (2) Before proceeding under Section 63G-4-502, the division shall review the proposed action with a committee of no less than three licensees appointed by the chairman of the licensing board created under this title for the profession of the person against whom the action is proposed.
- (3) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, a warning or final disposition letter which does not constitute disciplinary action against the addressee, issued in response to a complaint of unprofessional or unlawful conduct under this title, does not constitute an adjudicative proceeding.

Amended by Chapter 382, 2008 General Session

58-1-109 Presiding officers -- Content of orders -- Recommended orders -- Final orders -- Appeal of orders.

- (1) Unless otherwise specified by statute or rule, the presiding officer for adjudicative proceedings before the division shall be the director. However, pursuant to Title 63G, Chapter 4, Administrative Procedures Act, the director may designate in writing an individual or body of individuals to act as presiding officer to conduct or to assist the director in conducting any part or all of an adjudicative proceeding.
- (2) Unless otherwise specified by the director, an administrative law judge shall be designated as the presiding officer to conduct formal adjudicative proceedings in accordance with Subsection 63G-4-102(4), Sections 63G-4-204 through 63G-4-207, and 63G-4-209.
- (3) Unless otherwise specified by the director, the licensing board of the occupation or profession that is the subject of the proceedings shall be designated as the presiding officer to serve as fact finder at the evidentiary hearing in a formal adjudicative proceeding.
- (4) At the close of an evidentiary hearing in an adjudicative proceeding, unless otherwise specified by the director, the presiding officer who served as the fact finder at the hearing shall issue a recommended order based upon the record developed at the hearing determining all issues pending before the division.
- (5)
 - (a) The director shall issue a final order affirming the recommended order or modifying or rejecting all or any part of the recommended order and entering new findings of fact, conclusions of law, statement of reasons, and order based upon the director's personal attendance at the hearing or a review of the record developed at the hearing. Before modifying or rejecting a recommended order, the director shall consult with the presiding officer who issued the recommended order.
 - (b) If the director issues a final order modifying or rejecting a recommended order, the licensing board of the occupation or profession that is the subject of the proceeding may, by a two-thirds majority vote of all board members, petition the executive director or designee within the department to review the director's final order. The executive director's decision shall become the final order of the division. This subsection does not limit the right of the parties to appeal the director's final order by filing a request for agency review under Subsection (8).
- (6) If the director is unable for any reason to rule upon a recommended order of a presiding officer, the director may designate another person within the division to issue a final order.
- (7) If the director or the director's designee does not initiate additional fact finding or issue a final order within 20 calendar days after the date of the recommended order of the presiding officer, the recommended order becomes the final order of the director or the director's designee.
- (8) The final order of the director may be appealed by filing a request for agency review with the executive director or the executive director's designee within the department.
- (9) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

Amended by Chapter 238, 2016 General Session

58-1-110 Legislative review in Title 58, Occupations and Professions.

Legislation proposing the licensing or regulation of an occupation or profession under Title 58, Occupations and Professions, that is not currently subject to licensing or regulation under Title 58, Occupations and Professions:

- (1) may not be enacted by the Legislature unless:
 - (a) a proposal to license or regulate the occupation or profession has been reviewed by the Occupational and Professional Licensure Review Committee as described in Title 36, Chapter 23, Occupational and Professional Licensure Review Committee Act; or

- (b) the proposed legislation contains a provision that expressly exempts the legislation from the review requirement of Subsection (1)(a);
- (2) is subject to a reauthorization schedule as described in Title 63I, Chapter 1, Legislative Oversight and Sunset Act; and
- (3) shall include a repeal date in Section 63I-1-258 that is no later than 10 years after the effective date of the legislation.

Enacted by Chapter 323, 2013 General Session

58-1-111 Tax credit certificate -- Psychiatrists and psychiatric mental health nurse practitioners -- Underserved populations.

(1) As used in this section:

- (a) "Average of 30 hours or more per week" means that the quotient calculated when dividing the claimant's total hours providing licensed services in the state during the taxable year by the number of weeks in which the claimant is licensed in the state during the taxable year is greater than or equal to 30.
- (b) "Licensed services" means the provision of behavioral health treatment in the state and within the scope of practice of a psychiatrist, a psychiatric mental health nurse practitioner, or a volunteer health practitioner.
- (c) "Psychiatric mental health nurse practitioner" means an individual who:
 - (i) is licensed under Chapter 31b, Nurse Practice Act, for the practice of advanced practice registered nursing as that term is defined in Section 58-31b-102; and
 - (ii) holds a certification recognized by the American Nurses Credentialing Center of the American Association of Colleges of Nursing as a psychiatric mental health nurse practitioner.
- (d) "Psychiatrist" means an individual who:
 - (i) is licensed as a physician under:
 - (A) Chapter 67, Utah Medical Practice Act;
 - (B) Chapter 67b, Interstate Medical Licensure Compact; or
 - (C) Chapter 68, Utah Osteopathic Medical Practice Act; and
 - (ii) is board eligible for a psychiatry specialization recognized by the American Board of Medical Specialists or the American Osteopathic Association's Bureau of Osteopathic Specialists.
- (e) "Underserved population" means:
 - (i) an individual located in a county of the third, fourth, fifth, or sixth class, as designated in Section 17-50-501; or
 - (ii) a Native American Indian.
- (f) "Volunteer retired psychiatrist" means an individual:
 - (i) described in Subsection (1)(d) who, during the calendar year, did not receive payment for providing licensed services; or
 - (ii)
 - (A) licensed under Chapter 81, Retired Volunteer Health Care Practitioner Act; and
 - (B) previously or currently board certified in psychiatry.

- (2)
 - (a) An individual who seeks to obtain a state income tax credit under Subsections 59-10-1111(2) through (4) shall file an application with the division with respect to each taxable year in which the individual seeks a state income tax credit.
 - (b) An individual may qualify for a tax credit certificate under this section for no more than 10 taxable years for each tax credit.

- (3) The application for a tax credit certificate under Subsection 59-10-1111(2) shall require the individual to provide the following to the division:
 - (a) the date on which the individual obtained a license and the specialization described in Subsection (1)(c)(ii) or (d)(ii);
 - (b)
 - (i) an attestation that the individual was licensed on or after January 1, 2017, to provide licensed services; or
 - (ii) if the individual was licensed to provide licensed services prior to January 1, 2017, an attestation:
 - (A) that the individual did not provide licensed services for the two calendar years before the date the individual initially applied for the income tax credit under this subsection; and
 - (B) the date on which the individual resumed providing licensed services in the state; and
 - (c) other information as required by the division by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) An application for a tax credit certificate under Subsection 59-10-1111(3) shall require the individual to attest to the division:
 - (a) that the individual averaged 30 or more hours per week during the taxable year providing licensed services;
 - (b) that the individual devoted 25% or more of the individual's total hours of licensed services in the taxable year to an underserved population;
 - (c) the type of underserved population for which the individual provided services during the taxable year; and
 - (d) other information as required by the division by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (5) An application for a tax credit certificate under Subsection 59-10-1111(4) shall require the individual to attest to the division:
 - (a) whether the individual is licensed under Subsection (1)(f)(i) or (ii);
 - (b) that the individual did not receive payment during the calendar year for providing licensed services;
 - (c) that during the calendar year, the individual provided at least 300 hours of licensed services to an underserved population, the homeless population, or veterans without receiving payment for providing the licensed services;
 - (d) a description of the type of population described in Subsection (5)(c) for which the individual provided licensed services; and
 - (e) other information as required by the division by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (6)
 - (a) The division shall issue a tax credit certificate in accordance with this subsection.
 - (b) The tax credit certificate may state that an individual is entitled to:
 - (i) a tax credit under Subsection 59-10-1111(2) if the individual meets the requirements of Subsection (3);
 - (ii) a tax credit under Subsection 59-10-1111(3) if the individual meets the requirements of Subsection (4);
 - (iii) a tax credit under Subsection 59-10-1111(4) if the individual meets the requirements of Subsection (5); or
 - (iv) a tax credit under Subsections 59-10-1111(2) and (3) if the individual meets the requirements of Subsections (3) and (4).
- (7)

- (a) The division may issue a tax credit certificate to an individual under Subsection 59-10-1111(2) for no more than 10 taxable years after the date on which the individual resumed services under Subsection (3)(b)(ii).
- (b) The division may issue a tax credit certificate to an individual under Subsections 59-10-1111(3) and (4) for no more than 10 taxable years.
- (8) The division shall provide a copy of a tax credit certificate issued under this section to the individual and the State Tax Commission.

Enacted by Chapter 407, 2016 General Session

Part 2 Boards

58-1-201 Boards -- Appointment -- Membership -- Terms -- Vacancies -- Quorum -- Per diem and expenses -- Chair -- Financial interest or faculty position in professional school that teaches continuing education prohibited.

- (1)
 - (a)
 - (i) The executive director shall appoint the members of the boards established under this title.
 - (ii) In appointing these members the executive director shall give consideration to recommendations by members of the respective occupations and professions and by their organizations.
 - (b) Each board shall be composed of five members, four of whom shall be licensed or certified practitioners in good standing of the occupation or profession the board represents, and one of whom shall be a member of the general public, unless otherwise provided under the specific licensing chapter.
 - (c)
 - (i) The name of each person appointed to a board shall be submitted to the governor for confirmation or rejection.
 - (ii) If an appointee is rejected by the governor, the executive director shall appoint another person in the same manner as set forth in Subsection (1)(a).
- (2)
 - (a)
 - (i) Except as required by Subsection (2)(b), as terms of current board members expire, the executive director shall appoint each new member or reappointed member to a four-year term.
 - (ii) Upon the expiration of the term of a board member, the board member shall continue to serve until a successor is appointed, but for a period not to exceed six months from the expiration date of the member's term.
 - (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
 - (c) A board member may not serve more than two consecutive terms, and a board member who ceases to serve on a board may not serve again on that board until after the expiration of a two-year period beginning from that cessation of service.

- (d)
 - (i) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
 - (ii) After filling that term, the replacement member may be appointed for only one additional full term.
- (e) The director, with the approval of the executive director, may remove a board member and replace the member in accordance with this section for the following reasons:
 - (i) the member fails or refuses to fulfill the responsibilities and duties of a board member, including attendance at board meetings;
 - (ii) the member engages in unlawful or unprofessional conduct; or
 - (iii) if appointed to the board position as a licensed member of the board, the member fails to maintain a license that is active and in good standing.
- (3) A majority of the board members constitutes a quorum. A quorum is sufficient authority for the board to act.
- (4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (5) Each board shall annually designate one of its members to serve as chair for a one-year period.
- (6) A board member may not be a member of the faculty of, or have a financial interest in, a vocational or professional college or school that provides continuing education to any licensee if that continuing education is required by statute or rule.

Amended by Chapter 262, 2013 General Session

58-1-202 Boards -- Duties, functions, and responsibilities.

- (1) The duties, functions, and responsibilities of each board established under this title include the following:
 - (a) recommending to the director appropriate rules;
 - (b) recommending to the director policy and budgetary matters;
 - (c) approving and establishing a passing score for applicant examinations;
 - (d) screening applicants and recommending licensing, renewal, reinstatement, and relicensure actions to the director in writing;
 - (e) assisting the director in establishing standards of supervision for students or persons in training to become qualified to obtain a license in the occupation or profession it represents; and
 - (f) acting as presiding officer in conducting hearings associated with adjudicative proceedings and in issuing recommended orders when so designated by the director.
- (2) Subsection (1) does not apply to boards created in Title 58, Chapter 55, Utah Construction Trades Licensing Act.
- (3)
 - (a) Each board or commission established under this title may recommend to the appropriate legislative committee whether the board or commission supports a change to a licensing act.
 - (b) This Subsection (3) does not:
 - (i) require a board's approval to amend a practice act; and
 - (ii) apply to technical or clarifying amendments to a practice act.

Amended by Chapter 129, 2018 General Session

58-1-203 Duties, functions, and responsibilities of division in collaboration with board -- Construction Services Commission.

- (1) The following duties, functions, and responsibilities of the division shall be performed by the division with the collaboration and assistance of the appropriate board:
- (a) defining which schools, colleges, universities, departments of universities, military educational and training programs, or other institutions of learning are reputable and in good standing with the division;
 - (b) prescribing license qualifications;
 - (c) prescribing rules governing applications for licenses;
 - (d) providing for a fair and impartial method of examination of applicants;
 - (e) defining unprofessional conduct, by rule, to supplement the definitions under this chapter or other licensing chapters;
 - (f) establishing advisory peer committees to the board and prescribing their scope of authority; and
 - (g) establishing conditions for reinstatement and renewal of licenses.
- (2) Notwithstanding Subsection (1), the duties, functions, and responsibilities of the division outlined in Subsection (1) shall, instead, be performed by the Construction Services Commission for all purposes of Title 58, Chapter 55, Utah Construction Trades Licensing Act.

Amended by Chapter 181, 2011 General Session

**Part 3
Licensing**

58-1-301 License application -- Licensing procedure.

- (1)
- (a) Each license applicant shall apply to the division in writing upon forms available from the division.
 - (b) Each completed application shall:
 - (i) contain documentation of the particular qualifications required of the applicant;
 - (ii) include the applicant's social security number;
 - (iii) be verified by the applicant; and
 - (iv) be accompanied by the appropriate fees.
 - (c) An applicant's social security number is a private record under Subsection 63G-2-302(1)(i).
- (2)
- (a) The division shall issue a license to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.
 - (b) The division shall provide a written notice of additional proceedings to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon the applicant's qualifications for licensure, if the outcome of additional proceedings is required to determine the division's response to the application.

- (c) The division shall provide a written notice of denial of licensure to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.
 - (d) The division shall provide a written notice of incomplete application and conditional denial of licensure to an applicant who submits an incomplete application, which notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all qualifications for licensure.
- (3) The division may only issue a license to an applicant under this title if the applicant meets the requirements for that license as established under this title and by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) If an applicant meets all requirements for a specific license, the division shall issue the license to the applicant.
- (5)
- (a) As used in this Subsection (5):
 - (i)
 - (A) "Competency-based licensing requirement" means a practical assessment of knowledge and skills that clearly demonstrate a person is prepared to engage in an occupation or profession regulated by this title, and which the director determines is at least as effective as a time-based licensing requirement at demonstrating proficiency and protecting the health and safety of the public.
 - (B) "Competency-based licensing requirement" may include any combination of training, experience, testing, or observation.
 - (ii)
 - (A) "Time-based licensing requirement" means a specific number of hours, weeks, months, or years of education, training, supervised training, or other experience that an applicant for licensure under this title is required to complete before receiving a license under this title.
 - (B) "Time-based licensing requirement" does not include an associate degree, a bachelor's degree, or a graduate degree from an accredited institution of higher education.
 - (b) Subject to Subsection (5)(c), for an occupation or profession regulated by this title that has a time-based licensing requirement, the director, after consultation with the appropriate board, may by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, allow an applicant to complete a competency-based licensing requirement as an alternative to completing the time-based licensing requirement.
 - (c) If a time-based licensing requirement involves a program that must be approved or accredited by a specific entity or board, the director may only allow an applicant to complete a competency-based licensing requirement as an alternative to completing the time-based licensing requirement under Subsection (5)(b) if the competency-based requirement is approved or accredited by the specific entity or board as a replacement or alternative to the time-based licensing requirement.
 - (d) By October 1 of each year, the director shall provide a written report to the Occupational and Professional Licensure Review Committee describing any competency-based licensing requirements implemented under this Subsection (5).

Amended by Chapter 133, 2019 General Session

58-1-301.3 Waiver of licensing fees.

An individual applying for initial licensure or licensure renewal under this title may apply for initial licensure or licensure renewal without paying the fees described in Subsection 58-1-301(1) if the applicant provides evidence to the division in a form prescribed by the division that at the time of the application the applicant is:

- (1) on full-time active service with a branch of the armed forces of the United States, including an applicant who is on full-time active duty orders with the National Guard or reserve component of the armed forces; or
- (2) receiving public assistance through one of the following programs administered by the Department of Workforce Services:
 - (a) the Family Employment Program described in Section 35A-3-302; or
 - (b) General Assistance described in Section 35A-3-401.

Amended by Chapter 339, 2020 General Session

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

- (1) The division shall have direct access to local files maintained by the Bureau of Criminal Identification under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, for background screening of persons who are applying for licensure, licensure renewal, licensure reinstatement, or relicensure, as required in:
 - (a) Section 58-17b-307 of Title 58, Chapter 17b, Pharmacy Practice Act;
 - (b) Sections 58-24b-302 and 58-24b-302.1 of Title 58, Chapter 24b, Physical Therapy Practice Act;
 - (c) Section 58-31b-302 of Title 58, Chapter 31b, Nurse Practice Act;
 - (d) Section 58-47b-302 of Title 58, Chapter 47b, Massage Therapy Practice Act;
 - (e) Section 58-55-302 of Title 58, Chapter 55, Utah Construction Trades Licensing Act, as it applies to alarm companies and alarm company agents;
 - (f) Sections 58-61-304 and 58-61-304.1 of Title 58, Chapter 61, Psychologist Licensing Act;
 - (g) Section 58-63-302 of Title 58, Chapter 63, Security Personnel Licensing Act;
 - (h) Section 58-64-302 of Title 58, Chapter 64, Deception Detection Examiners Licensing Act;
 - (i) Sections 58-67-302 and 58-67-302.1 of Title 58, Chapter 67, Utah Medical Practice Act; and
 - (j) Sections 58-68-302 and 58-68-302.1 of Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
- (2) The division's access to criminal background information under this section:
 - (a) shall meet the requirements of Section 53-10-108; and
 - (b) includes convictions, pleas of nolo contendere, pleas of guilty or nolo contendere held in abeyance, dismissed charges, and charges without a known disposition.
- (3) The division may not disseminate outside of the division any criminal history record information that the division obtains from the Bureau of Criminal Identification or the Federal Bureau of Investigation under the criminal background check requirements of this section.

Amended by Chapter 339, 2020 General Session

58-1-301.7 Change of information.

- (1)
 - (a) An applicant, licensee, or certificate holder shall notify the division within 10 business days of a change in mailing address or email address.
 - (b) When providing a mailing address, the individual may provide a post office box or other mail drop location.

- (c) In addition to providing a mailing address, an applicant, licensee, or certificate holder shall provide to the division, in a form approved by the division, an email address.
- (2) An applicant, licensee, or certificate holder is considered to have received a notification that has been sent to the most recent:
 - (a) mailing address provided to the division by the applicant, licensee, or certificate holder; or
 - (b) email address furnished to the division by the applicant, licensee, or certificate holder.

Amended by Chapter 339, 2020 General Session

58-1-302 License by endorsement.

- (1) Subject to Subsections (2), (3), (4), and (5), the division shall issue a license without examination to a person who has been licensed in a state, district, or territory of the United States if:
 - (a) after being licensed outside of this state, the person has at least one year of experience in the state, district, or territory of the United States where the license was issued;
 - (b) the person's license is in good standing in the state, district, or territory of the United States where the license was issued; and
 - (c) the division determines that the license issued by the state, district, or territory of the United States encompasses a similar scope of practice as the license sought in this state.
- (2) The division, in consultation with the applicable licensing board, may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, prescribing the administration and requirements of this section.
- (3) Notwithstanding the provisions of Subsection (1), the division may refuse to issue a license to a person under the provisions of this section if:
 - (a) the division determines that there is reasonable cause to believe that the person is not qualified to receive a license in this state; or
 - (b) the person has a previous or pending disciplinary action related to the person's license.
- (4) Before a person may be issued a license under this section, the person shall:
 - (a) pay a fee determined by the department under Section 63J-1-504; and
 - (b) produce satisfactory evidence of the person's identity, qualifications, and good standing in the occupation or profession for which licensure is sought.
- (5) In accordance with Section 58-1-107, licensure endorsement provisions in this section are subject to and may be supplemented or altered by licensure endorsement provisions or multistate licensure compacts in specific chapters of this title.
- (6) On or before October 1, 2022, the division shall provide a written report to the Business and Labor Interim Committee regarding the effectiveness and sufficiency of the provisions of this section at ensuring that persons receiving a license without examination under the provisions of this section are qualified to receive a license in this state.

Amended by Chapter 339, 2020 General Session

58-1-303 Temporary license.

- (1)
 - (a) The division may issue a temporary license to a person who has met all license requirements except the passing of an examination. In this case:
 - (i) the licensee shall take the next available examination; and
 - (ii) the temporary license automatically expires upon release of official examination results if the applicant fails the examination.

- (b) The division may issue a temporary license to a person licensed in another state or country who is in Utah temporarily to teach or assist a Utah resident licensed to practice an occupation or profession under this title.
- (c) The division may issue a temporary license to a person licensed in another state who met the requirements for licensure in that state, which were equal to or greater than the requirements for licensure of this state at the time the license was obtained in the other state, upon a finding by the division, in collaboration with the appropriate board, that the issuance of a temporary license is necessary to or justified by:
 - (i) a local or national emergency or any governmental action causing an unusual circumstance that might be reasonably considered to materially jeopardize the public health, safety, or welfare if a temporary license is not issued;
 - (ii) a lack of necessary available services in any community or area of the state from an occupation or profession licensed under this title, if the lack of services might be reasonably considered to materially jeopardize the public health, safety, or welfare if a temporary license is not issued; or
 - (iii) a need to first observe an applicant for licensure in this state in a monitored or supervised practice of the applicant's occupation or profession before a decision is made by the division either to grant or deny the applicant a regular license.
- (2) The division may not issue a temporary license to a person who qualifies for one under Subsection (1)(a) more than three consecutive times within the three-year period immediately following the issuance of the first temporary license.
- (3) The division may not issue a temporary license to a person solely because there is a competitive advantage enjoyed or a competitive disadvantage suffered by any party caused by the absence of a licensed person, unless in addition there is or will be a material risk presented to the public health, safety, or welfare.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-304 Restricted license.

- (1) The division may issue a restricted or probationary license to an applicant for licensure, renewal, or reinstatement of licensure if:
 - (a) the applicant appears to meet the qualifications for licensure, but has engaged in unlawful, unprofessional, or other conduct bearing upon the applicant's qualifications; and
 - (b) the division determines the need to observe the applicant in a monitored or supervised practice of the applicant's occupation or profession or to attach other reasonable restrictions or conditions upon the applicant in order to accommodate licensure, while protecting the public health, safety, and welfare.
- (2) Issuance of a restricted or probationary license is considered a partial denial of licensure that is subject to agency review.

Amended by Chapter 262, 2013 General Session

58-1-305 Inactive license.

- (1)
 - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may adopt rules permitting inactive licensure.

- (b) The rules shall specify the requirements and procedures for placing a license on inactive status, the length of time a license may remain on inactive status, and the requirements and procedures to activate an inactive license.
- (2) Except as otherwise specified by rule, an inactive licensee has no right or privilege to engage in the practice of the licensed occupation or profession.
- (3) The division shall waive the renewal fee for a person holding or applying for an inactive license, if at the time of the application for or renewal of the inactive license, the person is on full-time active service with a branch of the armed forces of the United States, including a person who is on full-time active duty orders with the National Guard or reserve component of the armed forces.

Amended by Chapter 90, 2018 General Session

58-1-306 Surrender of license.

- (1) The division may, by written agreement, accept the voluntary surrender of a license.
- (2) Unless otherwise stated in the written agreement, tender and acceptance of a voluntary surrender of a license does not foreclose the division from pursuing additional disciplinary or other action authorized under this title or in rules adopted under this title.
- (3) Unless otherwise stated in the written agreement, tender and acceptance of a voluntary surrender of a license terminates all rights and privileges associated with the license.
- (4) Unless otherwise stated in the written agreement, the surrendered rights and privileges of licensure may be reacquired only by reapplying for licensure and meeting the requirements for a new or reinstated license set forth under this title or in rules adopted under this title.
- (5) Unless otherwise stated in the written agreement, documentation of tender and acceptance of a voluntary surrender of a license is a public record.
- (6) Unless otherwise stated in the written agreement, when a tender and acceptance of a voluntary surrender of a license occurs while adjudicative proceedings are pending against the licensee for unprofessional or unlawful conduct, the division may report the surrender of license to appropriate state and federal agencies and licensing data banks.

Enacted by Chapter 297, 1993 General Session

58-1-307 Exemptions from licensure.

- (1) Except as otherwise provided by statute or rule, the following individuals may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:
 - (a) an individual serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the individual holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;
 - (b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;
 - (c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified individuals;

- (d) an individual residing in another state and licensed to practice a regulated occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;
 - (e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;
 - (f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;
 - (g) an individual licensed in a health care profession in another state who performs that profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state;
 - (h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator;
 - (i) an individual licensed and in good standing in another state, who is in this state:
 - (i) temporarily, under the invitation and control of a sponsoring entity;
 - (ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division; and
 - (iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods; and
 - (j) the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, provided:
 - (i) the spouse holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division; and
 - (ii) the license is current and the spouse is in good standing in the state of licensure.
- (2)
- (a) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice.
 - (b) Violation of a limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.
- (3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.
- (4) Upon the declaration of a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the president of the United States or other federal official requesting public health-related activities, the division in collaboration with the relevant board may:
- (a) suspend the requirements for permanent or temporary licensure of individuals who are licensed in another state for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state;
 - (b) modify, under the circumstances described in this Subsection (4) and Subsection (5), the scope of practice restrictions under this title for individuals who are licensed under this title as:

- (i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;
 - (ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31e, Nurse Licensure Compact - Revised;
 - (iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;
 - (iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter 17b, Pharmacy Practice Act;
 - (v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act;
 - (vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist Practice Act; and
 - (vii) a physician assistant under Chapter 70a, Utah Physician Assistant Act;
- (c) suspend the requirements for licensure under this title and modify the scope of practice in the circumstances described in this Subsection (4) and Subsection (5) for medical services personnel or paramedics required to be licensed under Section 26-8a-302;
- (d) suspend requirements in Subsections 58-17b-620(3) through (6) which require certain prescriptive procedures;
- (e) exempt or modify the requirement for licensure of an individual who is activated as a member of a medical reserve corps during a time of emergency as provided in Section 26A-1-126;
- (f) exempt or modify the requirement for licensure of an individual who is registered as a volunteer health practitioner as provided in Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act; and
- (g) in accordance with rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, exempt or modify the requirements for licensure of an individual engaged in one or more of the construction trades described in Chapter 55, Utah Construction Trades Licensing Act.
- (5) Individuals exempt under Subsection (4)(c) and individuals operating under modified scope of practice provisions under Subsection (4)(b):
- (a) are exempt from licensure or subject to modified scope of practice for the duration of the emergency;
 - (b) must be engaged in the distribution of medicines or medical devices in response to the emergency or declaration; and
 - (c) must be employed by or volunteering for:
 - (i) a local or state department of health; or
 - (ii) a host entity as defined in Section 26-49-102.
- (6) In accordance with the protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health or a local health department shall coordinate with public safety authorities as defined in Subsection 26-23b-110(1) and may:
- (a) use a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance to prevent or treat a disease or condition that gave rise to, or was a consequence of, the emergency; or
 - (b) distribute a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance:
 - (i) if necessary, to replenish a commercial pharmacy in the event that the commercial pharmacy's normal source of the vaccine, antiviral, antibiotic, or other prescription medication is exhausted; or
 - (ii) for dispensing or direct administration to treat the disease or condition that gave rise to, or was a consequence of, the emergency by:
 - (A) a pharmacy;

- (B) a prescribing practitioner;
 - (C) a licensed health care facility;
 - (D) a federally qualified community health clinic; or
 - (E) a governmental entity for use by a community more than 50 miles from a person described in Subsections (6)(b)(ii)(A) through (D).
- (7) In accordance with protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health shall coordinate the distribution of medications:
- (a) received from the strategic national stockpile to local health departments; and
 - (b) from local health departments to emergency personnel within the local health departments' geographic region.
- (8) The Department of Health shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, protocols for administering, dispensing, and distributing a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance in the event of a declaration of a national, state, or local emergency. The protocol shall establish procedures for the Department of Health or a local health department to:
- (a) coordinate the distribution of:
 - (i) a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance received by the Department of Health from the strategic national stockpile to local health departments; and
 - (ii) a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication received by a local health department to emergency personnel within the local health department's geographic region;
 - (b) authorize the dispensing, administration, or distribution of a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance to the contact of a patient without a patient-practitioner relationship, if the contact's condition is the same as that of the physician's or physician assistant's patient; and
 - (c) authorize the administration, distribution, or dispensing of a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication to an individual who:
 - (i) is working in a triage situation;
 - (ii) is receiving preventative or medical treatment in a triage situation;
 - (iii) does not have coverage for the prescription in the individual's health insurance plan;
 - (iv) is involved in the delivery of medical or other emergency services in response to the declared national, state, or local emergency; or
 - (v) otherwise has a direct impact on public health.
- (9) The Department of Health shall give notice to the division upon implementation of the protocol established under Subsection (8).

Amended by Chapter 339, 2020 General Session

58-1-307.1 Delegation of health care services -- Division duties.

The division, in consultation with the Department of Health, shall identify by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a list of health care services that an unlicensed individual may perform without delegation by a health care provider, as defined in Section 78B-3-403, regardless of the setting or licensing of the facility in which the health care services are performed.

Enacted by Chapter 314, 2020 General Session

58-1-308 Term of license -- Expiration of license -- Renewal of license -- Reinstatement of license -- Application procedures.

- (1)
 - (a) Each license issued under this title shall be issued in accordance with a two-year renewal cycle established by rule.
 - (b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
- (2)
 - (a) The expiration date of a license shall be shown on the license.
 - (b) A license that is not renewed prior to the expiration date shown on the license automatically expires.
 - (c) A license automatically expires prior to the expiration date shown on the license upon the death of a licensee who is a natural person, or upon the dissolution of a licensee that is a partnership, corporation, or other business entity.
 - (d) If the existence of a dissolved partnership, corporation, or other business entity is reinstated prior to the expiration date shown upon the entity's expired license issued by the division, the division shall, upon written application, reinstate the applicant's license, unless it finds that the applicant no longer meets the qualifications for licensure.
 - (e) Expiration of licensure is not an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.
- (3)
 - (a) The division shall notify each licensee in accordance with procedures established by rule that the licensee's license is due for renewal and that unless an application for renewal is received by the division by the expiration date shown on the license, together with the appropriate renewal fee and documentation showing completion of or compliance with renewal qualifications, the license will not be renewed.
 - (b) Examples of renewal qualifications which by statute or rule the division may require the licensee to document completion of or compliance with include:
 - (i) continuing education;
 - (ii) continuing competency;
 - (iii) quality assurance;
 - (iv) utilization plan and protocol;
 - (v) financial responsibility;
 - (vi) certification renewal; and
 - (vii) calibration of equipment.
- (4)
 - (a)
 - (i) An application for renewal that complies with Subsection (3) is complete.
 - (ii) A renewed license shall be issued to applicants who submit a complete application, unless it is apparent to the division that the applicant no longer meets the qualifications for continued licensure.
 - (b)
 - (i) The division may evaluate or verify documentation showing completion of or compliance with renewal requirements on an entire population or a random sample basis, and may be assisted by advisory peer committees.

- (ii) If necessary, the division may complete its evaluation or verification subsequent to renewal and, if appropriate, pursue action to suspend or revoke the license of a licensee who no longer meets the qualifications for continued licensure.
 - (c) The application procedures specified in Subsection 58-1-301(2), apply to renewal applications to the extent they are not in conflict with this section.
- (5)
- (a) Any license that is not renewed may be reinstated:
 - (i) upon submission of an application for reinstatement, payment of the renewal fee together with a reinstatement fee determined by the department under Section 63J-1-504, and upon submission of documentation showing completion of or compliance with renewal qualifications; and
 - (ii)
 - (A) at any time within two years after nonrenewal; or
 - (B) between two years and five years after nonrenewal, if established by rule made by the division in consultation with the applicable licensing board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (b) The application procedures specified in Subsection 58-1-301(2) apply to the reinstatement applications to the extent they are not in conflict with this section.
 - (c) Except as otherwise provided by rule, a license that is reinstated no later than 120 days after it expires shall be retroactively reinstated to the date it expired.
- (6)
- (a) Except as provided in Subsection (5)(a), if not reinstated within two years, the holder may obtain a license only if the holder meets requirements provided by the division by rule or by statute for a new license.
 - (b) Each licensee under this title who has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States may reinstate the licensee's license without taking an examination by submitting an application for reinstatement, paying the current annual renewal fee and the reinstatement fee, and submitting documentation showing completion of or compliance with any renewal qualifications at any time within six months after reestablishing domicile within Utah or terminating full-time government service.

Amended by Chapter 238, 2016 General Session

58-1-309 Laws and rules examination.

In addition to qualifications for licensure or renewal of licensure enumerated in specific practice acts under this title, the division may by rule require an applicant to pass an examination of the laws and rules relevant to the occupation or profession to ensure familiarity with these laws and rules.

Enacted by Chapter 297, 1993 General Session

58-1-310 Application for division determination regarding criminal conviction.

- (1) An individual with a criminal record may apply to the division at any time for a determination of whether the individual's criminal record would disqualify the individual from obtaining a license in an occupation or profession regulated by this title if the individual has completed or were to complete all other licensing requirements for the occupation or profession.

- (2) To receive a determination, the individual shall submit the application described in this section in a form prescribed by the division and shall include information regarding:
 - (a) the individual's complete criminal conviction history;
 - (b) what occupational or professional license the individual is interested in seeking;
 - (c) what licensing requirements have been met by the individual;
 - (d) what licensing requirements have not yet been met by the individual; and
 - (e) any other information required by the division as established by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) The division may charge the individual a fee, established in accordance with Section 63J-1-504, to submit an application under this section.
- (4) Within 30 days of the day on which the division receives a completed application from an individual for a determination under this section, based on the statutory authority and administrative rules governing the occupation or profession at the time of the application, the division shall provide a written determination to the individual of whether the individual's criminal record would disqualify the individual from obtaining a license in an occupation or profession regulated by this title if the individual were to complete all other licensing requirements.
- (5) If the individual's criminal record would disqualify the individual from obtaining a license in an occupation or profession regulated by this title, the written determination described in Subsection (4) may also include information regarding additional steps the individual could take to qualify for licensure.

Enacted by Chapter 198, 2019 General Session

58-1-311 Required examinations in languages in addition to English.

In order to encourage economic development in the state in accordance with Subsection 63G-1-201(4)(e), the department may offer any required examination under this title, which is prepared by a national testing organization, in languages in addition to English.

Enacted by Chapter 117, 2019 General Session

58-1-312 Organ donation notification.

- (1) As used in this section:
 - (a) "Donor" means the same as that term is defined in Section 26-28-102.
 - (b) "Donor registry" means the same as that term is defined in Section 26-28-102.
- (2) At the same time the division issues a new license to a licensee in accordance with Subsection 58-1-301(4), and at the same time the division notifies a licensee that the licensee's license is due for renewal in accordance with Subsection 58-1-308(3)(a), the division shall distribute to the licensee, by email using the most recent email address furnished to the division by the licensee, a message notifying the licensee of the option to register as a donor and providing the licensee an Internet link to a website for a donor registry established under Section 26-28-120.

Enacted by Chapter 93, 2020 General Session

**Part 4
License Denial**

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

- (1) The division shall refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the qualifications for licensure under this title.
- (2) The division may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the license of a licensee for the following reasons:
 - (a) subject to the provisions of Subsection (7), the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title;
 - (b) the applicant or licensee has engaged in unlawful conduct as defined by statute under this title;
 - (c) the applicant or licensee has been determined to be mentally incompetent by a court of competent jurisdiction; or
 - (d) the applicant or licensee is unable to practice the occupation or profession with reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material, or as a result of a mental or physical condition, when the condition demonstrates a threat or potential threat to the public health, safety, or welfare.
- (3) A licensee whose license to practice an occupation or profession regulated by this title has been suspended, revoked, placed on probation, or restricted may apply for reinstatement of the license at reasonable intervals and upon compliance with conditions imposed upon the licensee by statute, rule, or terms of the license suspension, revocation, probation, or restriction.
- (4) The division may issue cease and desist orders to:
 - (a) a licensee or applicant who may be disciplined under Subsection (1) or (2);
 - (b) a person who engages in or represents that the person is engaged in an occupation or profession regulated under this title; and
 - (c) a person who otherwise violates this title or a rule adopted under this title.
- (5) The division may impose an administrative penalty in accordance with Section 58-1-502.
- (6)
 - (a) The division may not take disciplinary action against a person for unprofessional or unlawful conduct under this title, unless the division enters into a stipulated agreement or initiates an adjudicative proceeding regarding the conduct within four years after the conduct is reported to the division, except under Subsection (6)(b).
 - (b)
 - (i) The division may not take disciplinary action against a person for unprofessional or unlawful conduct more than 10 years after the occurrence of the conduct, unless the proceeding is in response to a civil or criminal judgment or settlement and the proceeding is initiated within one year following the judgment or settlement.
 - (ii) Notwithstanding Subsection (6)(b)(i), the division may refuse to issue a license due to unprofessional or unlawful conduct that occurred more than 10 years before a request or application for licensure is made.
- (7) When the division is determining whether to refuse to issue a license to an applicant, or to refuse to renew the license of a licensee, based solely on the criminal conviction of an applicant or licensee, the division shall:
 - (a) provide individualized consideration to the applicant or licensee;
 - (b) determine whether the criminal conviction bears a substantial relationship to the applicant's or licensee's ability to safely or competently practice the occupation or profession; and

- (c) consider the applicant's or licensee's current circumstances, which may include any of the following:
 - (i) the age of the applicant or licensee when the applicant or licensee committed the offense;
 - (ii) the time that has elapsed since the applicant or licensee committed the offense;
 - (iii) whether the applicant or licensee has completed the applicant's or licensee's criminal sentence;
 - (iv) whether the applicant has completed or is actively participating in rehabilitative drug or alcohol treatment;
 - (v) any testimonials or recommendations from other individuals provided by the applicant or licensee, including a progress report from the applicant's or licensee's probation or parole officer;
 - (vi) other evidence of rehabilitation provided by the applicant or licensee;
 - (vii) the education and training of the applicant or licensee;
 - (viii) the employment history of the applicant or licensee; and
 - (ix) other relevant information provided by the applicant or licensee.

Amended by Chapter 289, 2020 General Session

58-1-402 Administrative review -- Special appeals boards.

- (1)
 - (a) Any applicant who has been denied a license to practice on the basis of credentials, character, a criminal record, or failure to pass a required examination, or who has been refused renewal or reinstatement of a license to practice on the basis that the applicant does not meet qualifications for continued licensure in any occupation or profession under the jurisdiction of the division may submit a request for agency review to the executive director within 30 days following notification of the denial of a license or refusal to renew or reinstate a license.
 - (b) The executive director shall determine whether the circumstances for denying an application for an initial license or for renewal or reinstatement of a license would justify calling a special appeals board under Subsection (2). The executive director's decision is not subject to agency review.
- (2) A special appeals board shall consist of three members appointed by the executive director as follows:
 - (a) one member from the occupation or profession in question who is not on the board of that occupation or profession;
 - (b) one member from the general public who is neither an attorney nor a practitioner in an occupation or profession regulated by the division; and
 - (c) one member who is a resident lawyer currently licensed to practice law in this state who shall serve as chair of the special appeals board.
- (3) The special appeals board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its proceedings.
- (4)
 - (a) Within a reasonable amount of time following the conclusion of a hearing before a special appeals board, the board shall enter an order based upon the record developed at the hearing. The order shall state whether a legal basis exists for denying the application for an initial license or for renewal or reinstatement of a license that is the subject of the appeal. The order is not subject to further agency review.

- (b) The division or the applicant may obtain judicial review of the decision of the special appeals board in accordance with Sections 63G-4-401 and 63G-4-403.
- (5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (6) If an applicant under Subsection (1) is not given a special appeals board, the applicant shall be given agency review under the ordinary agency review procedures specified by rule.

Amended by Chapter 289, 2020 General Session

58-1-403 Minimum 90-day suspension.

A license may not be reinstated subsequent to action taken under Section 58-1-401 within 90 days after the action has been taken, unless the division in collaboration with the appropriate board imposes other conditions.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-405 Provisions of volunteer health or veterinary services -- Division authority.

In accordance with Section 26-49-205, the division may pursue actions against a volunteer health practitioner operating under Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

Enacted by Chapter 242, 2008 General Session

Part 5
Unlawful and Unprofessional Conduct - Penalties

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;
 - (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 an occupation or profession 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 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) 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 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 substantial 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;
 - (n) violating a provision of Section 58-1-501.5; or
 - (o) 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.
- (4) The following are not evidence of engaging in unprofessional conduct under Subsection (2)(c):
- (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 pursuant to 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 pursuant to Title 76, Chapter 6, Part 5, Fraud, or Title 76, Chapter 6, Part 4, Theft.

Amended by Chapter 289, 2020 General Session

Amended by Chapter 339, 2020 General Session

58-1-501.3 Health professional prescribing exceptions for expedited partner therapy for sexually transmitted diseases.

- (1) For purposes of this section:
 - (a) "Drug to treat a sexually transmitted disease" means a drug:
 - (i) as defined in Section 58-17b-102; and
 - (ii) that is:
 - (A) an antibiotic; and
 - (B) prescribed in accordance with guidelines from the Centers for Disease Control and Prevention for patient delivered expedited partner therapy in the management of sexually transmitted disease.
 - (b) "Partner" means a person:
 - (i) with whom a practitioner does not have a bonafide practitioner-patient relationship; and
 - (ii) who is identified as, or claims to be a sexual partner of a patient.
 - (c) "Patient" means a person who:
 - (i) has a sexually transmitted disease; and
 - (ii) has a bonafide practitioner-patient relationship with a practitioner.
 - (d) "Sexually transmitted disease" means:
 - (i) gonorrhea; or
 - (ii) chlamydia.
- (2) This section does not require a practitioner or a licensee under this chapter to prescribe or dispense a drug to treat a sexually transmitted disease for patient delivered expedited partner therapy. A practitioner's or licensee's decision to use expedited partner therapy as allowed by this section is voluntary.
- (3) Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502, it is not unlawful conduct or unprofessional conduct, and it does not violate the provisions of this chapter if:
 - (a) a practitioner, in accordance with this Subsection (3):
 - (i) issues a prescription for a drug to treat a sexually transmitted disease to a partner by:
 - (A) writing "partner of (patient name)" on the prescription order; and
 - (B) giving the partner's prescription to the patient for subsequent use by the partner; or
 - (ii) notwithstanding Section 58-17b-610, dispenses a drug sample to treat a sexually transmitted disease to the patient for the subsequent use of the partner; or
 - (b) a pharmacist, in accordance with this Subsection (3), dispenses a prescription drug for the treatment of a sexually transmitted disease to:
 - (i) a person who:
 - (A) claims to be a partner; and
 - (B) presents a prescription for the drug to the pharmacist which is written for the unnamed partner of a named patient;
 - (ii) the patient for the subsequent use by the unnamed partner; or
 - (iii) an agent of the patient or partner.
- (4)
 - (a) For purposes of Subsection (3), and notwithstanding Section 58-17b-602:
 - (i) the partner does not have to be identified on the prescription order by information that would disclose the identity of the partner; and
 - (ii) when dispensing a drug to treat a sexually transmitted disease directly to the partner, the patient's identifying information may, but does not need to, be included on the partner's drug label.
 - (b) Information provided by a pharmacist to a patient or the patient's agent for subsequent use by a partner satisfies the requirements of patient counseling for both the patient and the partner under Section 58-17b-613.
- (5)

- (a) The Legislature finds that the prevention and treatment of sexually transmitted diseases in the state is a compelling public health issue.
- (b) A practitioner or licensee under this chapter is not liable for a medical malpractice action if the use of expedited partner therapy is in compliance with this section, except for those acts which are grossly negligent or willful and wanton.

Enacted by Chapter 151, 2009 General Session

58-1-501.5 Anatomic pathology services -- Billing violations.

(1) As used in this section, the following definitions apply:

- (a)
 - (i) "Anatomic pathology services" including "technical or professional component of anatomic pathology services" means:
 - (A) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or under the supervision of a physician;
 - (B) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician or under the supervision of a physician;
 - (C) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral human blood smears when the attending or treating physician or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;
 - (D) subcellular pathology and molecular pathology; and
 - (E) blood bank services performed by a pathologist.
 - (ii) "Anatomic pathology services" including "technical or professional component of anatomic pathology services" does not include the initial collection or packaging of a sample for transport.
- (b) "Clinical laboratory" or "laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.
- (c) "Health care facility" has the meaning provided in Section 26-21-2.
- (d) "Health care provider" includes:
 - (i) an advanced practice registered nurse licensed under Chapter 31b, Nurse Practice Act;
 - (ii) a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act;
 - (iii) a dentist licensed under Chapter 69, Dentist and Dental Hygienist Practice Act;
 - (iv) a nurse midwife licensed under Chapter 44a, Nurse Midwife Practice Act;
 - (v) an optometrist licensed under Chapter 16a, Utah Optometry Practice Act;
 - (vi) an osteopathic physician and surgeon licensed under Chapter 68, Utah Osteopathic Medical Practice Act;
 - (vii) a podiatric physician licensed under Chapter 5a, Podiatric Physician Licensing Act;
 - (viii) a physician and surgeon licensed under Chapter 67, Utah Medical Practice Act; and
 - (ix) a physician assistant licensed under Chapter 70a, Utah Physician Assistant Act.
- (e) "Insurer" includes:
 - (i) any entity offering accident and health insurance as defined in Section 31A-1-301;
 - (ii) workers' compensation benefits;

- (iii) a health maintenance organization; or
 - (iv) any self-insurance, as defined in Section 31A-1-301, that offers health care insurance or benefits.
- (2)
- (a) A health care provider who orders anatomic pathology services for a patient from an independent physician or laboratory may not directly or indirectly mark up, charge a commission, or make a profit on the anatomic pathology service provided by the independent physician or laboratory.
 - (b) Nothing in Subsection (2)(a):
 - (i) restricts the ability of a health care provider, who has not performed or supervised either the technical or professional component of the anatomic pathology service, to obtain payment for services related solely to the collection and packaging of a sample and administrative billing costs; or
 - (ii) restricts the ability of the lab function in the Department of Health to bill for services.
- (3) A health care provider when billing a patient directly for anatomic pathology services provided by an independent physician or laboratory shall furnish an itemized bill which conforms with the billing practices of the American Medical Association that conspicuously discloses the charge for each anatomic pathology service, physician or laboratory name, and address for each anatomic pathology service rendered to the patient by the physician or laboratory that performed the anatomic pathology service.
- (4) The disclosure to be made under Subsection (3) shall not be required when the anatomic pathology service is being ordered by a hospital, a laboratory performing either the professional or technical component of the service, or a physician performing either the professional or technical component of the service, a public health clinic, or a state or federal agency.
- (5) Failure to comply with the requirements of this section shall be considered to be unprofessional conduct.

Amended by Chapter 250, 2008 General Session

58-1-501.6 Health care provider advertisements and disclosure -- Unprofessional conduct.

For purposes of this section:

- (1)
- (a) "Advertisement" includes:
 - (i) billboards;
 - (ii) written documents such as:
 - (A) brochures;
 - (B) pamphlets;
 - (C) direct mail solicitations;
 - (D) radio, television, and telephone solicitation scripts; and
 - (E) telephone directories;
 - (iii) media, including television, radio, and Internet websites; and
 - (iv) any other means of promotion intended to directly or indirectly induce a person to enter into an agreement for services with a health care provider.
 - (b) "Advertisement" does not include materials that provide information about health care provider networks established by health insurance carriers.
- (2) "Health care provider" means a natural person who is:
- (a) defined as a health care provider in Section 78B-3-403; and
 - (b) licensed under this title.

- (3)
 - (a) This section does not provide authority for a health care provider to advertise the services offered by the health care provider.
 - (b) If a health care provider's licensing authority and professional ethics permit the health care provider to advertise, the provisions of this section apply to any advertisement for the health care provider's services, on or after July 1, 2011.
- (4) An advertisement for a health care provider's services that includes the health care provider's name shall identify the license type, as used by the division, under which the health care provider is practicing.
- (5)
 - (a) A physician licensed under Chapter 67, Utah Medical Practice Act, may comply with the requirements of this section by using any one of the designations in the definitions of "practice of medicine" in Section 58-67-102.
 - (b) A physician licensed under Chapter 68, Utah Osteopathic Medical Practice Act, may comply with this section by using any of the designations in the definition of "practice of osteopathic medicine" in Section 58-68-102.
- (6) It is unprofessional conduct if a health care provider violates this section.

Enacted by Chapter 139, 2011 General Session

58-1-501.7 Standards of conduct for prescription drug education -- Academic and commercial detailing.

- (1) For purposes of this section:
 - (a) "Academic detailing":
 - (i) means a health care provider who is licensed under this title to prescribe or dispense a prescription drug and employed by someone other than a pharmaceutical manufacturer:
 - (A) for the purpose of countering information provided in commercial detailing; and
 - (B) to disseminate educational information about prescription drugs to other health care providers in an effort to better align clinical practice with scientific research; and
 - (ii) does not include a health care provider who:
 - (A) is disseminating educational information about a prescription drug as part of teaching or supervising students or graduate medical education students at an institution of higher education or through a medical residency program;
 - (B) is disseminating educational information about a prescription drug to a patient or a patient's representative; or
 - (C) is acting within the scope of practice for the health care provider regarding the prescribing or dispensing of a prescription drug.
 - (b) "Commercial detailing" means an educational practice employed by a pharmaceutical manufacturer in which clinical information and evidence about a prescription drug is shared with health care professionals.
 - (c) "Manufacture" is as defined in Section 58-37-2.
 - (d) "Pharmaceutical manufacturer" is a person who manufactures a prescription drug.
- (2)
 - (a) Except as provided in Subsection (3), the provisions of this section apply to an academic detailer beginning July 1, 2013.
 - (b) An academic detailer and a commercial detailer who educate another health care provider about prescription drugs through written or oral educational material is subject to federal regulations regarding:

- (i) false and misleading advertising in 21 C.F.R., Part 201 (2007);
 - (ii) prescription drug advertising in 21 C.F.R., Part 202 (2007); and
 - (iii) the federal Office of the Inspector General's Compliance Program Guidance for Pharmaceutical Manufacturers issued in April 2003, as amended.
- (c) A person who is injured by a violation of this section has a private right of action against a person engaged in academic detailing, if:
- (i) the actions of the person engaged in academic detailing, that are a violation of this section, are:
 - (A) the result of gross negligence by the person; or
 - (B) willful and wanton behavior by the person; and
 - (ii) the damages to the person are reasonable, foreseeable, and proximately caused by the violations of this section.
- (3)
- (a) For purposes of this Subsection, "accident and health insurance":
 - (i) means the same as that term is defined in Section 31A-1-301; and
 - (ii) includes a self-funded health benefit plan and an administrator for a self-funded health benefit plan.
 - (b) This section does not apply to a person who engages in academic detailing if that person is engaged in academic detailing on behalf of:
 - (i) a person who provides accident and health insurance, including when the person who provides accident and health insurance contracts with or offers:
 - (A) the state Medicaid program, including the Primary Care Network within the state's Medicaid program;
 - (B) the Children's Health Insurance Program created in Section 26-40-103;
 - (C) a Medicare plan; or
 - (D) a Medicare supplement plan;
 - (ii) a hospital as defined in Section 26-21-2;
 - (iii) any class of pharmacy as defined in Section 58-17b-102, including any affiliated pharmacies;
 - (iv) an integrated health system as defined in Section 13-5b-102; or
 - (v) a medical clinic.
 - (c) This section does not apply to communicating or disseminating information about a prescription drug for the purpose of conducting research using prescription drugs at a health care facility as defined in Section 26-21-2, or a medical clinic.

Amended by Chapter 354, 2020 General Session

58-1-501.8 Occupational and professional identification of health care providers -- Unlawful and unprofessional conduct -- Penalties.

- (1) For purposes of this section:
- (a) "Badge" means a tag or badge in plain view:
 - (i) attached to a health care provider's clothing; or
 - (ii) hanging from a lanyard around a health care provider's neck.
 - (b) "Clothing" means a health care provider's outermost article of clothing that is visible to others.
 - (c) "Deceptive or misleading conduct" means any affirmative communication or representation that falsely states, describes, holds out, or details an individual's licensure, training, education, or profession.
 - (d) "Health care provider" means a natural person who is:

- (i) defined as a health care provider in Section 78B-3-403; and
 - (ii) licensed under this title.
- (e) "Identification" means a badge or stitching, or permanent writing in plain view on clothing that:
- (i) includes the health care provider's name;
 - (ii) includes the license type held by the health care provider;
 - (iii) is worn in a manner that is visible and apparent to others; and
 - (iv) contains the information required by Subsections (1)(e)(i) and (ii):
 - (A) in a manner and of sufficient size that can be easily read; and
 - (B) on both sides of the badge, unless the badge or tag is attached to clothing in a way that prevents the badge from rotating.
- (f) "License type" means a designation of the license type that satisfies the requirements of Section 58-1-501.6.
- (g) "Patient encounter" means an interaction in a health care facility, health care clinic, or office in which a patient can see a health care provider delivering services directly to a patient.
- (2) Beginning January 1, 2015, except as provided in Subsections (3) and (4), a health care provider shall wear identification during any patient encounter.
- (3) A health care provider's identification may be covered if required under sterilization or isolation protocols.
- (4) A health care provider is not required to wear identification:
- (a) if wearing identification would jeopardize the health care provider's safety; or
 - (b)
 - (i) in an office in which:
 - (A) the license type and names of all health care providers working in the office are displayed on the office door; or
 - (B) each health care provider working in the office has the health care provider's license posted prominently in the office and readily visible to a patient; and
 - (ii) if the office is an office:
 - (A) of a solo health care provider; or
 - (B) of a single type of health care provider.
- (5) An individual who is a student or is in training to obtain a license as a health care provider shall:
- (a) wear identification during patient encounters that identifies the person as in training, or a student, for the particular license type; and
 - (b) otherwise comply with the provisions of this section.
- (6) It is unprofessional conduct if a health care provider violates this section.
- (7) It is unlawful conduct if an individual:
- (a) wears identification in a patient encounter that suggests that the individual is practicing or engaging in an occupation or profession that the individual may not lawfully practice or engage in under this title; or
 - (b) engages in deceptive or misleading conduct.
- (8) An individual who violates this section is subject to Section 58-1-502.

Enacted by Chapter 99, 2014 General Session

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

- (1)
 - (a) 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.

- (b) Unless a specific fine amount is specified elsewhere in this title, the director or the director's designee may assess an administrative fine of up to \$1,000 for each instance of unprofessional or unlawful conduct defined in this title.
- (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), (1)(g), or (2)(o), 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), (1)(g), or (2)(o), 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), (1)(g), or (2)(o), or a rule or order issued with respect to those subsections.
 - (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) Subject to the time limitations described in Subsection 58-1-401(6), the division may not issue a citation under this section after the expiration of one year following the date on which the violation that is the subject of the citation is reported to the division.
 - (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.
 - (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.

Amended by Chapter 339, 2020 General Session

58-1-503 Maximum civil penalty for violation of court order.

- (1) If any written order issued under this title or if an injunction or temporary restraining order issued by a court of competent jurisdiction relating to this title is violated, the court may impose a civil penalty of not more than \$2,000 for each day the written order, injunction, or temporary restraining order is violated, if the person in violation has received notice of the written order, injunction, or temporary restraining order.
- (2) All penalties ordered under this section shall be deposited into the General Fund.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-504 Court-ordered discipline.

The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this title if so ordered by a court.

Enacted by Chapter 232, 1997 General Session

58-1-505 Cosmetic medical procedure supervisor.

- (1) For purposes of this section and Section 58-1-506:
 - (a) "Cosmetic medical facility" means a physician's office or a facility that has a supervisor who performs the supervision required in Section 58-1-506.
 - (b) "Supervisor" means:
 - (i) a physician with an unrestricted license under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act, who is acting within the scope of the practice of medicine, as defined in Section 58-67-102; and

- (ii) an advanced practice registered nurse with an unrestricted license under Chapter 31b, Nurse Practice Act, who is acting within the scope of practice of advanced practice registered nursing, as defined in Section 58-31b-102.
- (2)
- (a) An individual authorized by this title to perform a cosmetic medical procedure shall be supervised by a supervisor when performing a medical procedure.
 - (b) Cosmetic medical procedures may only be performed in a cosmetic medical facility.
 - (c) A supervisor may delegate the supervisory role only to another individual who is qualified as a supervisor.

Enacted by Chapter 362, 2012 General Session

58-1-506 Supervision of cosmetic medical procedures.

- (1) For purposes of this section:
- (a) "Delegation group A" means the following who are licensed under this title, acting within their respective scopes of practice, and qualified under Subsections (2)(f)(i) and (iii):
 - (i) a physician assistant, if acting under the supervision of a physician and the procedure is included in the delegation of services agreement as defined in Section 58-70a-102;
 - (ii) a registered nurse;
 - (iii) a master esthetician; and
 - (iv) an electrologist, if evaluating for or performing laser hair removal.
 - (b) "Delegation group B" means:
 - (i) a practical nurse or an esthetician who is licensed under this title, acting within their respective scopes of practice, and qualified under Subsections (2)(f)(i) and (iii); and
 - (ii) a medical assistant who is qualified under Subsections (2)(f)(i) and (iii).
 - (c) "Direct cosmetic medical procedure supervision" means the supervisor:
 - (i) has authorized the procedure to be done on the patient by the supervisee; and
 - (ii) is present and available for a face-to-face communication with the supervisee when and where a cosmetic medical procedure is performed.
 - (d) "General cosmetic medical procedure supervision" means the supervisor:
 - (i) has authorized the procedure to be done on the patient by the supervisee;
 - (ii) is available in a timely and appropriate manner in person to evaluate and initiate care for a patient with a suspected adverse reaction or complication; and
 - (iii) is located within 60 minutes or 60 miles of the cosmetic medical facility.
 - (e) "Hair removal review" means:
 - (i) conducting an in-person, face-to-face interview of a patient based on the responses provided by the patient to a detailed medical history assessment that was prepared by the supervisor;
 - (ii) evaluating for contraindications and conditions that are part of the treatment plan; and
 - (iii) if the patient history or patient presentation deviates in any way from the treatment plan, referring the patient to the supervisor and receiving clearance from the supervisor before starting the treatment.
 - (f) "Indirect cosmetic medical procedure supervision" means the supervisor:
 - (i) has authorized the procedure to be done on the patient by the supervisee;
 - (ii) has given written instructions to the person being supervised;
 - (iii) is present within the cosmetic medical facility in which the person being supervised is providing services; and
 - (iv) is available to:
 - (A) provide immediate face-to-face communication with the person being supervised; and

- (B) evaluate the patient, as necessary.
- (2) A supervisor supervising a nonablative cosmetic medical procedure for hair removal shall:
- (a) have an unrestricted license to practice medicine or advanced practice registered nursing in the state;
 - (b) develop the medical treatment plan for the procedure;
 - (c) conduct a hair removal review, or delegate the hair removal review to a member of delegation group A, of the patient prior to initiating treatment or a series of treatments;
 - (d) personally perform the nonablative cosmetic medical procedure for hair removal, or authorize and delegate the procedure to a member of delegation group A or B;
 - (e) during the nonablative cosmetic medical procedure for hair removal provide general cosmetic medical procedure supervision to individuals in delegation group A performing the procedure, except physician assistants, who shall be supervised as provided in Chapter 70a, Utah Physician Assistant Act, and indirect cosmetic medical procedure supervision to individuals in delegation group B performing the procedure; and
 - (f) verify that a person to whom the supervisor delegates an evaluation under Subsection (2)(c) or delegates a procedure under Subsection (2)(d) or (3)(c)(ii):
 - (i) has received appropriate training regarding the medical procedures developed under Subsection (2)(b);
 - (ii) has an unrestricted license under this title or is performing under the license of the supervising physician and surgeon; and
 - (iii) has maintained competence to perform the nonablative cosmetic medical procedure through documented education and experience of at least 80 hours, as further defined by rule, regarding:
 - (A) the appropriate standard of care for performing nonablative cosmetic medical procedures;
 - (B) physiology of the skin;
 - (C) skin typing and analysis;
 - (D) skin conditions, disorders, and diseases;
 - (E) pre- and post-procedure care;
 - (F) infection control;
 - (G) laser and light physics training;
 - (H) laser technologies and applications;
 - (I) safety and maintenance of lasers;
 - (J) cosmetic medical procedures an individual is permitted to perform under this title;
 - (K) recognition and appropriate management of complications from a procedure; and
 - (L) cardiopulmonary resuscitation (CPR).
- (3) For a nonablative cosmetic medical procedure other than hair removal under Subsection (2):
- (a) a physician who has an unrestricted license to practice medicine, a nurse practitioner who has an unrestricted license for advanced practice registered nursing, or a physician assistant acting under the supervision of a physician, with the procedure included in the delegation of service agreement as defined in Section 58-70a-102, shall:
 - (i) develop a treatment plan for the nonablative cosmetic medical procedure; and
 - (ii) conduct an in-person face-to-face evaluation of the patient prior to the initiation of a treatment protocol or series of treatments; and
 - (b) a nurse practitioner or physician assistant conducting an in-person face-to-face evaluation of a patient under Subsection (3)(a)(ii) prior to removing a tattoo shall:
 - (i) inspect the patient's skin for any discoloration unrelated to the tattoo and any other indication of cancer or other condition that should be treated or further evaluated before the tattoo is removed;

- (ii) refer a patient with any such condition to a physician for treatment or further evaluation; and
 - (iii) shall not supervise a nonablative cosmetic medical procedure to remove a tattoo on the patient until the patient has been approved for the tattoo removal by a physician who has evaluated the patient; and
- (c) the supervisor supervising the procedure shall:
- (i) have an unrestricted license to practice medicine or advanced practice registered nursing;
 - (ii) personally perform the nonablative cosmetic medical procedure or:
 - (A) authorize and provide general cosmetic medical procedure supervision for the nonablative cosmetic medical procedure that is performed by a registered nurse or a master esthetician;
 - (B) authorize and provide supervision as provided in Chapter 70a, Utah Physician Assistant Act, for the nonablative cosmetic medical procedure that is performed by a physician assistant, if the procedure is included in the delegation of services agreement; or
 - (C) authorize and provide direct cosmetic medical procedure supervision for the nonablative cosmetic medical procedure that is performed by an esthetician; and
 - (iii) verify that a person to whom the supervisor delegates a procedure under Subsection (3)(c):
 - (A) has received appropriate training regarding the medical procedures to be performed;
 - (B) has an unrestricted license and is acting within the person's scope of practice under this title; and
 - (C) is qualified under Subsection (2)(f)(iii).
- (4) A supervisor performing or supervising a cosmetic medical procedure under Subsection (2) or (3) shall ensure that:
- (a) the supervisor's name is prominently posted at the cosmetic medical facility identifying the supervisor;
 - (b) a copy of the supervisor's license is displayed on the wall of the cosmetic medical facility;
 - (c) the patient receives written information with the name and licensing information of the supervisor who is supervising the nonablative cosmetic medical procedure and the person who is performing the nonablative cosmetic medical procedure;
 - (d) the patient is provided with a telephone number that is answered within 24 hours for follow-up communication; and
 - (e) the cosmetic medical facility's contract with a master esthetician who performs a nonablative cosmetic medical procedure at the facility is kept on the premises of the facility.
- (5) Failure to comply with the provisions of this section is unprofessional conduct.
- (6) A chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act, is not subject to the supervision requirements in this section for a nonablative cosmetic medical procedure for hair removal if the chiropractic physician is acting within the scope of practice of a chiropractic physician and with training specific to nonablative hair removal.

Amended by Chapter 75, 2016 General Session

58-1-507 Cosmetic medical procedure -- Truth in advertising.

Beginning July 1, 2013, a facility that performs a cosmetic medical procedure as defined in Section 58-67-102 may not advertise or hold itself out to the public as a "medical spa," "medical facility," or "medical clinic" unless the facility has an individual on the premises while a cosmetic medical procedure is performed who is licensed under:

- (1) Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse, practicing as a nurse practitioner;
- (2) Chapter 67, Utah Medical Practice Act; or

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

Enacted by Chapter 362, 2012 General Session

58-1-508 Failure to follow certain health care claims practices and reporting requirements -- Penalties.

- (1) As used in this section, "health care provider" means an individual who is licensed to provide health care services under this title.
- (2) The division may assess a fine of up to \$500 per violation against a health care provider that violates Section 31A-26-313.
- (3) The division shall waive the fine described in Subsection (2) if:
 - (a) the health care provider demonstrates to the division that the health care provider mitigated and reversed any damage to the insured caused by the health care provider or third party's violation; or
 - (b) the insured does not pay the full amount due on the bill that is the subject of the violation, including any interest, fees, costs, and expenses, within 120 days after the day on which the health care provider or third party makes a report to a credit bureau or takes an action in violation of Section 31A-26-313.
- (4) A health care provider that is subject to the reporting requirement in Section 31A-22-653 shall submit information to the Insurance Department in accordance with Section 31A-22-653.

Amended by Chapter 382, 2020 General Session

58-1-509 Patient consent for certain medical examinations.

- (1) As used in this section:
 - (a) "Health care provider" means:
 - (i) an individual who is:
 - (A) a healthcare provider as defined in Section 78B-3-403; and
 - (B) licensed under this title;
 - (ii) emergency medical service personnel as defined in Section 26-8a-102; or
 - (iii) an individual described in Subsection 58-1-307(1)(b) or (c).
 - (b) "Patient examination" means a medical examination that requires contact with the patient's sexual organs.
- (2) A health care provider may not perform a patient examination on an anesthetized or unconscious patient unless:
 - (a) the health care provider obtains consent from the patient or the patient's representative in accordance with Subsection (3);
 - (b) a court orders performance of the patient examination for the collection of evidence;
 - (c) the performance of the patient examination is within the scope of care for a procedure or diagnostic examination scheduled to be performed on the patient; or
 - (d) the patient examination is immediately necessary for diagnosis or treatment of the patient.
- (3) To obtain consent to perform a patient examination on an anesthetized or unconscious patient, before performing the patient examination, the health care provider shall:
 - (a) provide the patient or the patient's representative with a written or electronic document that:
 - (i) is provided separately from any other notice or agreement;
 - (ii) contains the following heading at the top of the document in not smaller than 18-point bold face type: "CONSENT FOR EXAMINATION OF PELVIC REGION";
 - (iii) specifies the nature and purpose of the patient examination;

- (iv) names one or more primary health care providers whom the patient or the patient's representative may authorize to perform the patient examination;
- (v) states whether there may be a student or resident that the patient or the patient's representative authorizes to:
 - (A) perform an additional patient examination; or
 - (B) observe or otherwise be present at the patient examination, either in person or through electronic means; and
- (vi) provides the patient or the patient's representative with a series of check boxes that allow the patient or the patient's representative to:
 - (A) consent to the patient examination for diagnosis or treatment and an additional patient examination performed by a student or resident for an educational or training purpose;
 - (B) consent to the patient examination only for diagnosis or treatment; or
 - (C) refuse to consent to the patient examination;
- (b) obtain the signature of the patient or the patient's representative on the written or electronic document while witnessed by a third party; and
- (c) sign the written or electronic document.

Enacted by Chapter 346, 2019 General Session

Part 6

Suicide Prevention Training for Primary Care Providers

58-1-601 Suicide prevention video -- Primary care providers.

- (1) As used in this section:
 - (a) "Nurse practitioner" means an individual who is licensed to practice as an advanced practice registered nurse under Chapter 31b, Nurse Practice Act.
 - (b) "Physician" means an individual licensed to practice as a physician or osteopath under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act.
 - (c) "Physician assistant" means an individual who is licensed to practice as a physician assistant under Chapter 70a, Utah Physician Assistant Act.
 - (d) "Primary care provider" means a nurse practitioner, physician, or physician assistant.
- (2) The division, in conjunction with the Division of Substance Abuse and Mental Health created in Section 62A-15-103, shall:
 - (a) create a series of suicide prevention videos that:
 - (i) are web-accessible;
 - (ii) are each no longer than 20 minutes in length; and
 - (iii) include information about:
 - (A) individuals at-risk for suicide; and
 - (B) suicide prevention and intervention; and
 - (b) provide, on the division's website, educational materials or courses that relate to suicide prevention that a primary care provider may complete at no cost and apply toward continuing competency requirements required by division rule.
- (3) The division shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that establish procedures for:
 - (a) producing the suicide prevention videos described in Subsection (2); and
 - (b) providing access to the videos to each primary care provider.

Enacted by Chapter 447, 2019 General Session