

## **Part 5**

### **Unprofessional and Unlawful Conduct - Penalties**

#### **58-11a-501 Unprofessional conduct.**

Unprofessional conduct includes:

- (1) failing as a licensed school to obtain or maintain accreditation as required by rule;
- (2) failing as a licensed school to comply with the standards of accreditation applicable to such schools;
- (3) failing as a licensed school to provide adequate instruction to enrolled students;
- (4) failing as an apprentice supervisor to provide direct supervision to the apprentice;
- (5) failing as an instructor to provide direct supervision to students who are providing services to an individual under the instructor's supervision;
- (6) failing as an apprentice supervisor to comply with division rules relating to apprenticeship programs under this chapter;
- (7) keeping a salon or school, its furnishing, tools, utensils, linen, or appliances in an unsanitary condition;
- (8) failing to comply with Title 26, Utah Health Code;
- (9) failing to display licenses or certificates as required under Section 58-11a-305;
- (10) failing to comply with physical facility requirements established by rule;
- (11) failing to maintain mechanical or electrical equipment in safe operating condition;
- (12) failing to adequately monitor patrons using steam rooms, dry heat rooms, baths, showers, or saunas;
- (13) prescribing or administering prescription drugs;
- (14) failing to comply with all applicable state and local health or sanitation laws;
- (15) engaging in any act or practice in a professional capacity that is outside the applicable scope of practice;
- (16) engaging in any act or practice in a professional capacity which the licensee is not competent to perform through education or training;
- (17) in connection with the use of a chemical exfoliant, unless under the supervision of a licensed health care practitioner acting within the scope of his or her license:
  - (a) using any acid, concentration of an acid, or combination of treatments which violates the standards established by rule;
  - (b) removing any layer of skin deeper than the stratum corneum of the epidermis; or
  - (c) using an exfoliant that contains phenol, TCA acid of over 15%, or BCA acid;
- (18) in connection with the sanding of the skin, unless under the supervision of a licensed health care practitioner acting within the scope of his or her license, removing any layer of skin deeper than the stratum corneum of the epidermis;
- (19) using as a barber, cosmetologist/barber, or nail technician any laser procedure or intense, pulsed light source, except that nothing in this chapter precludes an individual licensed under this chapter from using a nonprescriptive laser device; or
- (20) failing to comply with a judgment order from a court of competent jurisdiction resulting from the failure to pay outstanding tuition or education costs incurred to comply with this chapter.

Amended by Chapter 238, 2016 General Session

Amended by Chapter 274, 2016 General Session

#### **58-11a-502 Unlawful conduct.**

Unlawful conduct includes:

- (1) practicing or engaging in, or attempting to practice or engage in activity for which a license is required under this chapter unless:
  - (a) the person holds the appropriate license under this chapter; or
  - (b) an exemption in Section 58-1-307 or 58-11a-304 applies;
- (2) aiding or abetting a person engaging in the practice of, or attempting to engage in the practice of, any occupation or profession licensed under this chapter if the employee is not licensed to do so under this chapter or exempt from licensure;
- (3) touching, or applying an instrument or device to the following areas of a client's body:
  - (a) the genitals or the anus, except in cases where the patron states to a licensee that the patron requests a hair removal procedure and signs a written consent form, which must also include the witnessed signature of a legal guardian if the patron is a minor, authorizing the licensee to perform a hair removal procedure; or
  - (b) the breast of a female patron, except in cases in which the female patron states to a licensee that the patron requests breast skin procedures and signs a written consent form, which must also include the witnessed signature of a parent or legal guardian if the patron is a minor, authorizing the licensee to perform breast skin procedures;
- (4) using or possessing a solution composed of at least 10% methyl methacrylate on a client;
- (5) performing an ablative procedure as defined in Section 58-67-102;
- (6) when acting as an instructor regarding a service requiring licensure under this chapter, for a class or education program where attendees are not licensed under this chapter, failing to inform each attendee in writing that:
  - (a) taking the class or program without completing the requirements for licensure under this chapter is insufficient to certify or qualify the attendee to perform a service for compensation that requires licensure under this chapter; and
  - (b) the attendee is required to obtain licensure under this chapter before performing the service for compensation; or
- (7) failing as a salon or school where nail technology is practiced or taught to maintain a source capture system required under Title 15A, State Construction and Fire Codes Act, including failing to maintain and clean a source capture system's air filter according to the manufacturer's instructions.

Amended by Chapter 249, 2016 General Session

Amended by Chapter 274, 2016 General Session

**58-11a-503 Penalties.**

- (1) Unless Subsection (2) applies, an individual who commits an act of unlawful conduct under Section 58-11a-502 or who fails to comply with a citation issued under this section after it is final is guilty of a class A misdemeanor.
- (2) Sexual conduct that violates Section 58-11a-502 and Title 76, Utah Criminal Code, shall be subject to the applicable penalties in Title 76, Utah Criminal Code.
- (3) Grounds for immediate suspension of a licensee's license by the division include the issuance of a citation for violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7).
- (4)
  - (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7), or a rule or order issued with respect to Subsection 58-11a-502(1), (2), (4), (5), (6), or (7), and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue

a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

- (i) A person who is in violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-11a-502(1), (2), (4), (5), (6), or (7).
  - (ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-11a-401 may not be assessed through a citation.
- (b)
- (i) Each citation shall be in writing and 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.
  - (ii) The citation shall 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.
  - (iii) The citation shall 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.
- (c) Each citation issued under this section, or a copy of each citation, may be served upon a person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the person's agent by a division investigator or by a person specially designated by the director or by mail.
- (d)
- (i) If within 20 calendar days from the service of a 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.
- (e) 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.
- (f) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
- (g) No citation may be issued under this section after the expiration of six months following the occurrence of a violation.
- (h) Fines shall be assessed by the director or the director's designee according to the following:
- (i) for a first offense under Subsection (4)(a), a fine of up to \$1,000;
  - (ii) for a second offense under Subsection (4)(a), a fine of up to \$2,000; and
  - (iii) for any subsequent offense under Subsection (4)(a), a fine of up to \$2,000 for each day of continued offense.
- (i)
- (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:
    - (A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7); or
    - (B)
      - (I) the division initiated an action for a first or second offense;
      - (II) no final order has been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7); and

(IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.

(5)

- (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund.
- (b) A penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.
- (c) A county attorney or the attorney general of the state is to provide legal assistance and advice to the director in an action to collect the penalty.
- (d) A court shall award reasonable attorney fees and costs in an action brought to enforce the provisions of this section.

Amended by Chapter 100, 2014 General Session