

Part 5

Unlawful and Unprofessional Conduct - Penalties - Enforcement

58-17b-501 Unlawful conduct.

"Unlawful conduct" includes:

- (1) knowingly preventing or refusing to permit an authorized agent of the division to conduct an inspection pursuant to Section 58-17b-103;
- (2) failing to deliver the license, permit, or certificate to the division upon demand, if it has been revoked, suspended, or refused;
- (3)
 - (a) using the title "pharmacist," "druggist," "pharmacy intern," "pharmacy technician," or a term having similar meaning, except by a person licensed as a pharmacist, pharmacy intern, or pharmacy technician; or
 - (b) conducting or transacting business under a name that contains, as part of that name, the words "drugstore," "pharmacy," "drugs," "medicine store," "medicines," "drug shop," "apothecary," "prescriptions," or a term having a similar meaning, or in any manner advertising, otherwise describing, or referring to the place of the conducted business or profession, unless the place is a pharmacy issued a license by the division, except an establishment selling nonprescription drugs and supplies may display signs bearing the words "packaged drugs," "drug sundries," or "nonprescription drugs," and is not considered to be a pharmacy or drugstore by reason of the display;
- (4) buying, selling, causing to be sold, or offering for sale, a drug or device that bears, or the package bears or originally did bear, the inscription "sample," "not for resale," "for investigational or experimental use only," or other similar words, except when a cost is incurred in the bona fide acquisition of an investigational or experimental drug;
- (5) using to a person's own advantages or revealing to anyone other than the division, board, and its authorized representatives, or to the courts, when relevant to a judicial or administrative proceeding under this chapter, information acquired under authority of this chapter or concerning a method of process that is a trade secret;
- (6) procuring or attempting to procure a drug or to have someone else procure or attempt to procure a drug:
 - (a) by fraud, deceit, misrepresentation, or subterfuge;
 - (b) by forgery or alteration of a prescription or a written order;
 - (c) by concealment of a material fact;
 - (d) by use of a false statement in a prescription, chart, order, or report; or
 - (e) by theft;
- (7) filling, refilling, or advertising the filling or refilling of prescriptions for a consumer or patient residing in this state if the person is not licensed:
 - (a) under this chapter; or
 - (b) in the state from which he is dispensing;
- (8) requiring an employed pharmacist, pharmacy intern, pharmacy technician, or authorized supportive personnel to engage in conduct in violation of this chapter;
- (9) being in possession of a prescription drug for an unlawful purpose;
- (10) dispensing a prescription drug to a person who does not have a prescription from a practitioner, except as permitted under Title 26B, Chapter 4, Part 5, Treatment Access;
- (11) dispensing a prescription drug to a person who the person dispensing the drug knows or should know is attempting to obtain drugs by fraud or misrepresentation;

- (12) selling, dispensing, distributing, or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure; and
- (13) a person using a prescription drug or controlled substance that was not lawfully prescribed for the person by a practitioner.

Amended by Chapter 328, 2023 General Session

58-17b-502 Unprofessional conduct.

(1) "Unprofessional conduct" includes:

- (a) willfully deceiving or attempting to deceive the division, the board, or their agents as to any relevant matter regarding compliance under this chapter;
- (b) except as provided in Subsection (2):
 - (i) paying or offering rebates to practitioners or any other health care providers, or receiving or soliciting rebates from practitioners or any other health care provider; or
 - (ii) paying, offering, receiving, or soliciting compensation in the form of a commission, bonus, rebate, kickback, or split fee arrangement with practitioners or any other health care provider, for the purpose of obtaining referrals;
- (c) misbranding or adulteration of any drug or device or the sale, distribution, or dispensing of any outdated, misbranded, or adulterated drug or device;
- (d) engaging in the sale or purchase of drugs or devices that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases;
- (e) except as provided in Section 58-17b-503, accepting back and redistributing any unused drug, or a part of it, after it has left the premises of a pharmacy;
- (f) an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, or pharmacy technician;
- (g) violating:
 - (i) the federal Controlled Substances Act, Title II, P.L. 91-513;
 - (ii) Title 58, Chapter 37, Utah Controlled Substances Act; or
 - (iii) rules or regulations adopted under either act;
- (h) requiring or permitting pharmacy interns or technicians to engage in activities outside the scope of practice for their respective license classifications, as defined in this chapter and division rules made in collaboration with the board, or beyond their scope of training and ability;
- (i) administering:
 - (i) without appropriate training, as defined by rule;
 - (ii) without a physician's order, when one is required by law; and
 - (iii) in conflict with a practitioner's written guidelines or written protocol for administering;
- (j) disclosing confidential patient information in violation of the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended, or other applicable law;
- (k) engaging in the practice of pharmacy without a licensed pharmacist designated as the pharmacist-in-charge;
- (l) failing to report to the division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency, or court for conduct that in substance would be considered unprofessional conduct under this section;

- (m) as a pharmacist or pharmacy intern, compounding a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner;
- (n) failing to act in accordance with Title 26B, Chapter 4, Part 5, Treatment Access, when dispensing a self-administered hormonal contraceptive under a standing order;
- (o) violating the requirements of Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies, or Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or
- (p) falsely making an entry in, or altering, a medical record with the intent to conceal:
 - (i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or
 - (ii) conduct described in Subsections (1)(a) through (o) or Subsection 58-1-501(1).
- (2) Subsection (1)(b) does not apply to:
 - (a) giving or receiving a price discount based on purchase volume;
 - (b) passing along a pharmaceutical manufacturer's rebate; or
 - (c) providing compensation for services to a veterinarian.
- (3) "Unprofessional conduct" does not include:
 - (a) in accordance with
 - Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis when registered as a pharmacy medical provider, as that term is defined in Section 26B-4-201, providing pharmacy medical provider services in a medical cannabis pharmacy; or
 - (b) if a pharmacist reasonably believes that a prescription drug will have adverse or harmful effects on an individual and warns the individual of the potential effects, filling a prescription prescribed by a health care provider who:
 - (i) is operating within the health care provider's scope of practice; and
 - (ii) is deviating from a medical norm or established practice in accordance with Subsection 58-1-501(2)(b)(i).
- (4) Notwithstanding Subsection (3), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a pharmacist described in Subsections (3)(a) and (b).

Amended by Chapter 273, 2023 General Session

Amended by Chapter 317, 2023 General Session

Amended by Chapter 321, 2023 General Session

Amended by Chapter 328, 2023 General Session

58-17b-503 Exception to unprofessional conduct.

- (1) For purposes of this section:
 - (a) "Licensed intermediate care facility for people with an intellectual disability" means an intermediate care facility for people with an intellectual disability that is licensed as a nursing care facility or a small health care facility under Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection.
 - (b) "Nursing care facility" means the same as that term is defined in Section 26B-2-201.
 - (c) "Unit pack" means a tamper-resistant nonreusable single-dose single-drug package with identification that indicates the lot number and expiration date for the drug.
- (2) A pharmacist may accept and redistribute an unused drug, or part of it, after it has left the premises of the pharmacy:
 - (a) in accordance with Part 9, Charitable Prescription Drug Recycling Act;
 - (b) if:

- (i) the drug was prescribed to a patient in a nursing care facility, licensed intermediate care facility for people with an intellectual disability, or state prison facility, county jail, or state hospital;
 - (ii) the drug was stored under the supervision of a licensed health care provider according to manufacturer recommendations;
 - (iii) the drug is in a unit pack or in the manufacturer's sealed container;
 - (iv) the drug was returned to the original dispensing pharmacy;
 - (v) the drug was initially dispensed by a licensed pharmacist or licensed pharmacy intern; and
 - (vi) accepting back and redistributing of the drug complies with federal Food and Drug Administration and Drug Enforcement Administration regulations; or
- (c) if:
- (i) the pharmacy has attempted to deliver the drug to a patient or a patient's agent via the United States Postal Service, a licensed common carrier, or supportive personnel;
 - (ii) the drug is returned to the pharmacy by the same person or carrier that attempted to deliver the drug; and
 - (iii) in accordance with United States Food and Drug Administration regulations and rules established by the division, a pharmacist at the pharmacy determines that the drug has not been adversely affected by the drug's attempted delivery and return.

Amended by Chapter 328, 2023 General Session

58-17b-504 Penalty for unlawful or unprofessional conduct -- Fines -- Citations.

- (1) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(i) and Subsections 58-17b-501(7) and (11) is guilty of a third degree felony.
- (2) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(ii), Subsections 58-1-501(1)(b) through (e), and Section 58-17b-501, except Subsections 58-17b-501(7) and (11), is guilty of a class A misdemeanor.
- (3)
 - (a) Subject to Subsection (5) and in accordance with Section 58-17b-401, for acts of unprofessional or unlawful conduct, the division may:
 - (i) assess administrative penalties; and
 - (ii) take any other appropriate administrative action.
 - (b) An administrative penalty imposed pursuant to this section shall be deposited in the General Fund as a dedicated credit to be used by the division for pharmacy licensee education and enforcement as provided in Section 58-17b-505.
- (4) If a licensee has been convicted of violating Section 58-17b-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative fine under this chapter for the same offense for which the conviction was obtained.
- (5)
 - (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance Database Act, Chapter 1, Division of Professional Licensing Act, or any rule or order issued with respect to these provisions, 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.

- (b) Any person who is in violation of the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance Database Act, Chapter 1, Division of Professional Licensing Act, or any rule or order issued with respect to these provisions, as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (5) of up to \$10,000 per single violation or up to \$2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule, and may, in addition to or in lieu of, be ordered to cease and desist from violating the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 1, Division of Professional Licensing Act, or any rule or order issued with respect to these provisions.
 - (c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-17b-401 may not be assessed through a citation.
 - (d) Each citation shall be in writing and specifically 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. The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation in order to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.
 - (e) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served:
 - (i) in accordance with the Utah Rules of Civil Procedure;
 - (ii) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or
 - (iii) by mail.
 - (f) 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. The period to contest the 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 the 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) No citation may be issued 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.
- (6)
- (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 shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Amended by Chapter 415, 2022 General Session

58-17b-505 Educational and enforcement fund.

- (1) The director may use the money collected pursuant to Section 58-17b-504 for the following purposes:
 - (a) education and training of licensees under this chapter;
 - (b) enforcement of this chapter by:
 - (i) investigating unprofessional or unlawful conduct;
 - (ii) providing legal representation to the division when legal action is taken against a person engaging in unprofessional or unlawful conduct;
 - (iii) monitoring compliance of renewal requirement; and
 - (iv) education and training of division staff and board members.
- (2) All funding for the purposes listed in Subsection (1) is nonlapsing.
- (3) Any 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.
- (4) Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.

Enacted by Chapter 280, 2004 General Session

58-17b-506 Petitioning for reinstatement of licensure.

Any person whose license to practice pharmacy in this state has been revoked, suspended, or surrendered voluntarily or by action of the division, shall have the right at reasonable intervals, to petition the division for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the division. Upon investigation and hearing, the division may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances that have changed sufficiently to warrant such modifications. The division, also at its discretion, may require such person to pass an examination or examinations for re-entry into the practice of pharmacy.

Enacted by Chapter 280, 2004 General Session

58-17b-507 Opiate antagonist -- Immunity from liability -- Exclusion from unlawful or unprofessional conduct.

- (1) As used in this section:
 - (a) "Opiate antagonist" means the same as that term is defined in Section 26B-4-501.
 - (b) "Opiate-related drug overdose event" means the same as that term is defined in Section 26B-4-501.
- (2) A person licensed under this chapter that dispenses an opiate antagonist to an individual with a prescription for an opiate antagonist, to an overdose outreach provider with a prescription for an opiate antagonist, or pursuant to a standing prescription drug order issued in accordance with Subsection 26B-4-510(2) is not liable for any civil damages resulting from the outcomes of the eventual administration of the opiate antagonist to an individual who another individual believes is experiencing an opiate-related drug overdose event.

- (3) The provisions of this section and Title 26B, Chapter 4, Part 5, Treatment Access, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.
- (4) It is not unprofessional conduct or unlawful conduct for a licensee under this chapter to dispense an opiate antagonist to a person, including a person described in Subsections 26B-4-512(1)(a)(i)(A) through (1)(a)(i)(F), on behalf of an individual if the person obtaining the opiate antagonist has a prescription for the opiate antagonist from a licensed prescriber or the opiate antagonist is dispensed pursuant to a standing prescription drug order issued in accordance with Subsection 26B-4-510(2).
- (5) It is not unprofessional conduct or unlawful conduct for a licensee under this chapter to dispense an opiate antagonist to an overdose outreach provider if the overdose outreach provider has a prescription for the opiate antagonist from a licensed prescriber issued pursuant to Subsection 26B-4-509(2)(a)(iii).

Amended by Chapter 328, 2023 General Session