

Part 5 Unlawful and Unprofessional Conduct - Penalties

58-31b-501 Unlawful conduct.

"Unlawful conduct" includes:

- (1) using the following titles, names or initials, if the user is not properly licensed or certified under this chapter:
 - (a) nurse;
 - (b) licensed practical nurse, practical nurse, or L.P.N.;
 - (c) medication aide certified, or M.A.C.;
 - (d) registered nurse or R.N.;
 - (e) registered nurse practitioner, N.P., or R.N.P.;
 - (f) registered nurse specialist, N.S., or R.N.S.;
 - (g) registered psychiatric mental health nurse specialist;
 - (h) advanced practice registered nurse;
 - (i) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or C.R.N.A.; or
 - (j) other generally recognized names or titles used in the profession of nursing;
- (2)
 - (a) using any other name, title, or initials that would cause a reasonable person to believe the user is licensed or certified under this chapter if the user is not properly licensed or certified under this chapter; and
 - (b) for purposes of Subsection (2)(a), it is unlawful conduct for a medication aide certified to use the term "nurse"; and
- (3) conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601.

Amended by Chapter 291, 2006 General Session

58-31b-502 Unprofessional conduct.

- (1) "Unprofessional conduct" includes:
 - (a) failure to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's or person with a certification's position or practice as a nurse or practice as a medication aide certified;
 - (b) failure to provide nursing service or service as a medication aide certified in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's health problem;
 - (c) engaging in sexual relations with a patient during any:
 - (i) period when a generally recognized professional relationship exists between the person licensed or certified under this chapter and the patient; or
 - (ii) extended period when a patient has reasonable cause to believe a professional relationship exists between the person licensed or certified under the provisions of this chapter and the patient;
 - (d)

- (i) as a result of any circumstance under Subsection (1)(c), exploiting or using information about a patient or exploiting the licensee's or the person with a certification's professional relationship between the licensee or holder of a certification under this chapter and the patient; or
 - (ii) exploiting the patient by use of the licensee's or person with a certification's knowledge of the patient obtained while acting as a nurse or a medication aide certified;
 - (e) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;
 - (f) unauthorized taking or personal use of nursing supplies from an employer;
 - (g) unauthorized taking or personal use of a patient's personal property;
 - (h) unlawful or inappropriate delegation of nursing care;
 - (i) failure to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse;
 - (j) employing or aiding and abetting the employment of an unqualified or unlicensed person to practice as a nurse;
 - (k) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;
 - (l) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by a court;
 - (m) failure to pay a penalty imposed by the division;
 - (n) violating Section 58-31b-801;
 - (o) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;
 - (p) performing or inducing an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the person licensed or certified under the provisions of this chapter is found guilty of a crime in connection with the violation;
 - (q) 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 (n) or Subsection 58-1-501(1);
 - (r) violating the requirements of Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or
 - (s) for an advance practice registered nurse, designating a child as do not resuscitate without parental consent.
- (2) "Unprofessional conduct" does not include, in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, when registered as a qualified medical provider, or acting as a limited medical provider, as those terms are defined in Section 26B-4-201, recommending the use of medical cannabis.
- (3) Notwithstanding Subsection (2), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for an advanced practice registered nurse described in Subsection (2).

Amended by Chapter 237, 2024 General Session

58-31b-503 Penalties and administrative actions for unlawful conduct and unprofessional conduct.

- (1) Any person who violates the unlawful conduct provision specifically defined in Subsection 58-1-501(1)(a) is guilty of a third degree felony.

- (2) Any person who violates any of the unlawful conduct provisions specifically defined in Subsections 58-1-501(1)(b) through (f) and 58-31b-501(1)(d) is guilty of a class A misdemeanor.
- (3) Any person who violates any of the unlawful conduct provisions specifically defined in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B misdemeanor.
- (4)
 - (a) Subject to Subsection (6) and in accordance with Section 58-31b-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 into the "Nurse Education and Enforcement Account" as provided in Section 58-31b-103.
- (5) If a licensee has been convicted of violating Section 58-31b-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.
- (6)
 - (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Section 58-31b-401, 58-31b-501, or 58-31b-502, Chapter 1, Division of Professional Licensing Act, Chapter 37, Utah Controlled Substances 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:
 - (i) promptly issue a citation to the person according to this chapter and any pertinent administrative 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) Any person who is in violation of a provision described in Subsection (6)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding may be assessed a fine:
 - (i) pursuant to this Subsection (6) 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
 - (ii) in addition to or in lieu of the fine imposed under Subsection (6)(b)(i), be ordered to cease and desist from violating a provision of Sections 58-31b-501 and 58-31b-502, Chapter 1, Division of Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to those provisions.
 - (c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-31b-401 may not be assessed through a citation.
 - (d) Each citation issued under this section shall:
 - (i) be in writing; and
 - (ii) clearly describe or explain:
 - (A) the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;
 - (B) 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; and
 - (C) 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; and

- (iii) be served upon any person upon whom a summons may be served:
 - (A) in accordance with the Utah Rules of Civil Procedure;
 - (B) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or
 - (C) by mail.
 - (e) 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.
 - (f) 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.
 - (g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
 - (h) 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.
- (7)
- (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