

1 **PRACTICE OF MEDICINE**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Robert F. Montgomery**

5 AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; AMENDING THE
6 DEFINITION OF THE PRACTICE OF MEDICINE TO INCLUDE ADMINISTERING
7 ANESTHESIA.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **58-67-102**, as last amended by Chapters 10 and 227, Laws of Utah 1997

10a **§ 58-68-102**, as last amended by Chapter 10 and 227, Laws of Utah 1997 §

11 *Be it enacted by the Legislature of the state of Utah:*

12 Section 1. Section **58-67-102** is amended to read:

13 **58-67-102. Definitions.**

14 In addition to the definitions in Section 58-1-102, as used in this chapter:

15 (1) "Administrative penalty" means a monetary fine imposed by the division for acts or
16 omissions determined to constitute unprofessional or unlawful conduct, as a result of an
17 adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative
18 Procedures Act.

19 (2) "ACGME" means the Accreditation Council for Graduate Medical Education of the
20 American Medical Association.

21 (3) "Board" means the Physicians Licensing Board created in Section 58-67-201.

22 (4) "Diagnose" means:

23 (a) to examine in any manner another person, parts of a person's body, substances, fluids,
24 or materials excreted, taken, or removed from a person's body, or produced by a person's body, to
25 determine the source, nature, kind, or extent of a disease or other physical or mental condition;

26 (b) to attempt to conduct an examination or determination described under Subsection
27 (4)(a);

28 (c) to hold oneself out as making or to represent that one is making an examination or
 29 determination as described in Subsection (4)(a); or

30 (d) to make an examination or determination as described in Subsection (4)(a) upon or
 31 from information supplied directly or indirectly by another person, whether or not in the presence
 32 of the person making or attempting the diagnosis or examination.

33 (5) "LCME" means the Liaison Committee on Medical Education of the American
 34 Medical Association.

35 (6) "Medical assistant" means an unlicensed individual working under the direct and
 36 immediate supervision of a licensed physician and surgeon and engaged in specific tasks assigned
 37 by the licensed physician and surgeon in accordance with the standards and ethics of the
 38 profession.

39 (7) "Physician" means both physicians and surgeons licensed under Section 58-67-301,
 40 Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section
 41 58-68-301, Utah Osteopathic Medical Practice Act.

42 (8) "Practice of medicine" means:

43 (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease,
 44 ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary,
 45 or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the
 46 state upon or for any human within the state; **§ EXCEPT THAT CONDUCT DESCRIBED THIS**
 46a **SUBSECTION (8)(a) THAT IS PERFORMED BY A PERSON LEGALLY AND IN ACCORDANCE WITH A**
 46b **LICENSE ISSUED UNDER ANOTHER CHAPTER OF THIS TITLE DOES NOT CONSTITUTE THE**
 46c **PRACTICE OF MEDICINE.** §

47 (b) when a person not licensed as a physician directs a licensee under this chapter to
 48 withhold or alter the health care services that the licensee has ordered, but practice of medicine
 49 does not include any conduct under Subsection 58-67-501(2);

50 (c) to maintain an office or place of business for the purpose of doing any of the acts
 51 described in Subsection (8)(a) whether or not for compensation; or

52 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
 53 treatment of human diseases or conditions in any printed material, stationery, letterhead, envelopes,
 54 signs, or advertisements, the designation "doctor", "doctor of medicine", "physician", "surgeon",
 55 "physician and surgeon", "Dr.," "M.D.," or any combination of these designations in any manner
 56 which might cause a reasonable person to believe the individual using the designation is a licensed
 57 physician and surgeon, and if the party using the designation is not a licensed physician and
 58 surgeon, the designation must additionally contain the description of the branch of the healing arts
 59 for which the person has a license.

60 (9) "Prescription drug or device" means:

61 (a) a drug or device which, under federal law, is required to be labeled with either of the
62 following statements or their equivalent:

63 (i) "CAUTION: Federal law prohibits dispensing without prescription"; or

64 (ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed
65 veterinarian"; or

66 (b) a drug or device that is required by any applicable federal or state law or rule to be
67 dispensed on prescription only or is restricted to use by practitioners only.

68 (10) "SPEX" means the Special Purpose Examination of the Federation of State Medical
69 Boards.

70 (11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

71 (12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and as
72 may be further defined by division rule.

72a **Section 2. Section 58-68-102 is amended to read:**

72b **58-68-102. Definitions.**

72c **In addition to the definitions in Section 58-1-102, as used in this chapter:**

72d **(1) "Administrative penalty" means a monetary fine imposed by the division for acts or**
72e **omissions determined to constitute unprofessional or unlawful conduct, as a result of an**
adjudicative

72f **proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.**

72g **(2) "ACGME" means the Accreditation Council for Graduate Medical Education of the**
72h **American Medical Association.**

72i **(3) "AOA" means the American Osteopathic Association.**

72j **(4) "Board" means the Osteopathic Physicians Licensing Board created in Section 58-68-201.**

72k **(5) "Diagnose" means:**

72l **(a) to examine in any manner another person, parts of a person's body, substances, fluids, or**
72m **materials excreted, taken, or removed from a person's body, or produced by a person's body, to**
72n **determine the source, nature, kind, or extent of a disease or other physical or mental condition;**

72o **(b) to attempt to conduct an examination or determination described under Subsection (5)(a);**

72p **(c) to hold oneself out as making or to represent that one is making an examination or**
72q **determination as described in Subsection (5)(a); or**

72r **(d) to make an examination or determination as described in Subsection (5)(a) upon or from**
72s **information supplied directly or indirectly by another person, whether or not in the presence of the**
72t **person making or attempting the diagnosis or examination.**

72u **(6) "Medical assistant" means an unlicensed individual working under the direct and**
72v **immediate supervision of a licensed osteopathic physician and surgeon and engaged in specific**
tasks

72w **assigned by the licensed osteopathic physician and surgeon in accordance with the standards**

72x and ethics of the profession.

72y (7) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah
72z Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301,
72aa Utah Osteopathic Medical Practice Act.

72ab (8) "Practice of osteopathic medicine" means:

72ac (a) to diagnose, treat, correct, ADMINISTER ANESTHESIA, or prescribe for any human
72ad disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or
72ae imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part is based
72af upon emphasis of the importance of the musculoskeletal system and manipulative therapy in the
72ag maintenance and restoration of health, by an individual in Utah or outside of the state upon or for any
72ah human within the state, EXCEPT THAT CONDUCT DESCRIBED THIS SUBSECTION (8)(a) THAT IS
72ai PERFORMED BY A PERSON LEGALLY AND IN ACCORDANCE WITH A LICENSE ISSUED UNDER
72aj ANOTHER CHAPTER OF THIS TITLE DOES NOT CONSTITUTE THE PRACTICE OF MEDICINE.

72ak (b) when a person not licensed as a physician directs a licensee under this chapter to
72al withhold or alter the health care services that the licensee has ordered, but practice of medicine does
72am not include any conduct under Subsection 58-68-501(2);

72an (c) to maintain an office or place of business for the purpose of doing any of the acts
72ao described in Subsection (8)(a) whether or not for compensation; or

72ap (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
72aq treatment of human diseases or conditions, in any printed material, stationery, letterhead, envelopes,
72ar signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine," "osteopathic
72as physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.," "D.O.," or any
72at combination of these designations in any manner which might cause a reasonable person to believe
72au the individual using the designation is a licensed osteopathic physician, and if the party using the
72av designation is not a licensed osteopathic physician, the designation must additionally contain the
72aw description of the branch of the healing arts for which the person has a license.

72ax (9) "Prescription drug or device" means:

72ay (a) a drug or device which, under federal law, is required to be labeled with either of the
72az following statements or their equivalent:

72ba (i) "CAUTION: Federal law prohibits dispensing without prescription"; or

72bb (ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed
72bc veterinarian"; or

72bd (b) a drug or device that is required by any applicable federal or state law or rule to be
72be dispensed on prescription only or is restricted to use by practitioners only.

72bf (10) "SPEX" means the Special Purpose Examination of the Federation of State Medical
72bg Boards.

72bh (11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

72bi (12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502 and as may
be

72bj further defined by division rule. §

Legislative Review Note
as of 12-1-98 6:21 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel