

1 **UTAH MEDICAL PRACTICE ACT AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: J. Stuart Adams**

5 House Sponsor: Paul Ray

6

LONG TITLE

7 **General Description:**

8 This bill amends the Utah Medical Practice Act and the Utah Osteopathic Medical
9 Practice Act by clarifying policies and procedures.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends definitions;
- 13 ▶ prohibits an individual from using the title "doctor," "M.D." or "O.D." in a
14 misleading manner;
- 15 ▶ clarifies licensing requirements;
- 16 ▶ clarifies disciplinary procedures; and
- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **58-1-501**, as last amended by Laws of Utah 2010, Chapter 180

25 **58-37-6**, as last amended by Laws of Utah 2010, Chapter 287

26 **58-67-102**, as last amended by Laws of Utah 2010, Chapter 101



- 28 **58-67-302**, as last amended by Laws of Utah 2009, Chapter 183
- 29 **58-67-302.5**, as last amended by Laws of Utah 2008, Chapter 250
- 30 **58-67-304**, as last amended by Laws of Utah 2005, Chapter 94
- 31 **58-67-305**, as last amended by Laws of Utah 2005, Chapter 2
- 32 **58-67-401**, as enacted by Laws of Utah 1996, Chapter 248
- 33 **58-67-403**, as enacted by Laws of Utah 1996, Chapter 248
- 34 **58-67-503**, as enacted by Laws of Utah 1996, Chapter 248
- 35 **58-68-102**, as last amended by Laws of Utah 2010, Chapter 101
- 36 **58-68-302**, as last amended by Laws of Utah 2009, Chapter 183
- 37 **58-68-304**, as last amended by Laws of Utah 2005, Chapter 94
- 38 **58-68-305**, as last amended by Laws of Utah 2005, Chapter 2
- 39 **58-68-401**, as enacted by Laws of Utah 1996, Chapter 248
- 40 **58-68-403**, as enacted by Laws of Utah 1996, Chapter 248
- 41 **58-68-503**, as enacted by Laws of Utah 1996, Chapter 248

42 REPEALS AND REENACTS:

- 43 **58-67-402**, as last amended by Laws of Utah 2008, Chapter 382
- 44 **58-68-402**, as last amended by Laws of Utah 2008, Chapter 382



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

47 Section 1. Section **58-1-501** is amended to read:

48 **58-1-501. Unlawful and unprofessional conduct.**

49 (1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful
50 under this title and includes:

51 (a) practicing or engaging in, representing oneself to be practicing or engaging in, or
52 attempting to practice or engage in any occupation or profession requiring licensure under this
53 title if the person is:

54 (i) not licensed to do so or not exempted from licensure under this title; or

55 (ii) restricted from doing so by a suspended, revoked, restricted, temporary,
56 probationary, or inactive license;

57 (b) impersonating another licensee or practicing an occupation or profession under a
58 false or assumed name, except as permitted by law;

59 (c) knowingly employing any other person to practice or engage in or attempt to
60 practice or engage in any occupation or profession licensed under this title if the employee is
61 not licensed to do so under this title;

62 (d) knowingly permitting the person's authority to practice or engage in any occupation
63 or profession licensed under this title to be used by another, except as permitted by law;

64 (e) obtaining a passing score on a licensure examination, applying for or obtaining a
65 license, or otherwise dealing with the division or a licensing board through the use of fraud,
66 forgery, or intentional deception, misrepresentation, misstatement, or omission; ~~or~~

67 (f) (i) issuing, or aiding and abetting in the issuance of, an order or prescription for a
68 drug or device to a person located in this state:

69 (A) without prescriptive authority conferred by a license issued under this title, or by
70 an exemption to licensure under this title; or

71 (B) with prescriptive authority conferred by an exception issued under this title or a
72 multistate practice privilege recognized under this title, if the prescription was issued without
73 first obtaining information, in the usual course of professional practice, that is sufficient to
74 establish a diagnosis, to identify underlying conditions, and to identify contraindications to the
75 proposed treatment; and

76 (ii) Subsection (1)(f)(i) does not apply to treatment rendered in an emergency, on-call
77 or cross coverage situation, provided that the person who issues the prescription has
78 prescriptive authority conferred by a license under this title, or is exempt from licensure under
79 this title~~[-]; or~~

80 (g) using the designation "doctor," "Dr.," or a comparable designation in a manner
81 which might cause a reasonable person to believe the individual using the designation is a
82 doctor licensed under this title, if the individual is not licensed under this title, provided that an
83 individual who has received an earned doctorate may use the designation of the degree if it is
84 followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

85 (2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined
86 as unprofessional conduct under this title or under any rule adopted under this title and
87 includes:

88 (a) violating, or aiding or abetting any other person to violate, any statute, rule, or order
89 regulating an occupation or profession under this title;

90 (b) violating, or aiding or abetting any other person to violate, any generally accepted
91 professional or ethical standard applicable to an occupation or profession regulated under this
92 title;

93 (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea
94 of guilty or nolo contendere which is held in abeyance pending the successful completion of
95 probation with respect to a crime of moral turpitude or any other crime that, when considered
96 with the functions and duties of the occupation or profession for which the license was issued
97 or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely
98 or competently practice the occupation or profession;

99 (d) engaging in conduct that results in disciplinary action, including reprimand,
100 censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory
101 authority having jurisdiction over the licensee or applicant in the same occupation or profession
102 if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary
103 proceedings under Section 58-1-401;

104 (e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar
105 chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the
106 ability of the licensee or applicant to safely engage in the occupation or profession;

107 (f) practicing or attempting to practice an occupation or profession regulated under this
108 title despite being physically or mentally unfit to do so;

109 (g) practicing or attempting to practice an occupation or profession regulated under this
110 title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

111 (h) practicing or attempting to practice an occupation or profession requiring licensure
112 under this title by any form of action or communication which is false, misleading, deceptive,
113 or fraudulent;

114 (i) practicing or attempting to practice an occupation or profession regulated under this
115 title beyond the scope of the licensee's competency, abilities, or education;

116 (j) practicing or attempting to practice an occupation or profession regulated under this
117 title beyond the scope of the licensee's license;

118 (k) verbally, physically, mentally, or sexually abusing or exploiting any person through
119 conduct connected with the licensee's practice under this title or otherwise facilitated by the
120 licensee's license;

121 (l) acting as a supervisor without meeting the qualification requirements for that
122 position that are defined by statute or rule;

123 (m) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug
124 or device:

125 (i) without first obtaining information in the usual course of professional practice, that
126 is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to
127 the proposed treatment; or

128 (ii) with prescriptive authority conferred by an exception issued under this title, or a
129 multi-state practice privilege recognized under this title, if the prescription was issued without
130 first obtaining information, in the usual course of professional practice, that is sufficient to
131 establish a diagnosis, to identify underlying conditions, and to identify contraindications to the
132 proposed treatment; or

133 (n) violating a provision of Section 58-1-501.5.

134 Section 2. Section **58-37-6** is amended to read:

135 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**
136 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**
137 **required -- Prescriptions.**

138 (1) (a) The division may adopt rules relating to the licensing and control of the
139 manufacture, distribution, production, prescription, administration, dispensing, conducting of
140 research with, and performing of laboratory analysis upon controlled substances within this
141 state.

142 (b) The division may assess reasonable fees to defray the cost of issuing original and
143 renewal licenses under this chapter pursuant to Section 63J-1-504.

144 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,
145 administers, conducts research with, or performs laboratory analysis upon any controlled
146 substance in Schedules II through V within this state, or who proposes to engage in
147 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting
148 research with, or performing laboratory analysis upon controlled substances included in
149 Schedules II through V within this state shall obtain a license issued by the division.

150 (ii) The division shall issue each license under this chapter in accordance with a
151 two-year renewal cycle established by rule. The division may by rule extend or shorten a

152 renewal period by as much as one year to stagger the renewal cycles it administers.

153 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,
154 administer, conduct research with, or perform laboratory analysis upon controlled substances in
155 Schedules II through V within this state may possess, manufacture, produce, distribute,
156 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon
157 those substances to the extent authorized by their license and in conformity with this chapter.

158 (c) The following persons are not required to obtain a license and may lawfully possess
159 controlled substances under this section:

160 (i) an agent or employee, except a sales representative, of any registered manufacturer,
161 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the
162 usual course of the person's business or employment; however, nothing in this subsection shall
163 be interpreted to permit an agent, employee, sales representative, or detail man to maintain an
164 inventory of controlled substances separate from the location of the person's employer's
165 registered and licensed place of business;

166 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or
167 warehouseman, who possesses any controlled substance in the usual course of the person's
168 business or employment; and

169 (iii) an ultimate user, or any person who possesses any controlled substance pursuant to
170 a lawful order of a practitioner.

171 (d) The division may enact rules waiving the license requirement for certain
172 manufacturers, producers, distributors, prescribers, dispensers, administrators, research
173 practitioners, or laboratories performing analysis if consistent with the public health and safety.

174 (e) A separate license is required at each principal place of business or professional
175 practice where the applicant manufactures, produces, distributes, dispenses, conducts research
176 with, or performs laboratory analysis upon controlled substances.

177 (f) The division may enact rules providing for the inspection of a licensee or applicant's
178 establishment, and may inspect the establishment according to those rules.

179 (3) (a) Upon proper application, the division shall license a qualified applicant to
180 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon
181 controlled substances included in Schedules I through V, unless it determines that issuance of a
182 license is inconsistent with the public interest. The division shall not issue a license to any

183 person to prescribe, dispense, or administer a Schedule I controlled substance. In determining
184 public interest, the division shall consider whether or not the applicant has:

185 (i) maintained effective controls against diversion of controlled substances and any
186 Schedule I or II substance compounded from any controlled substance into other than

187 legitimate medical, scientific, or industrial channels;

188 (ii) complied with applicable state and local law;

189 (iii) been convicted under federal or state laws relating to the manufacture, distribution,
190 or dispensing of substances;

191 (iv) past experience in the manufacture of controlled dangerous substances;

192 (v) established effective controls against diversion; and

193 (vi) complied with any other factors that the division establishes that promote the
194 public health and safety.

195 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,
196 produce, distribute, conduct research with, or perform laboratory analysis upon controlled
197 substances in Schedule I other than those specified in the license.

198 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with
199 substances in Schedules II through V if they are authorized to administer, dispense, or conduct
200 research under the laws of this state.

201 (ii) The division need not require a separate license for practitioners engaging in
202 research with nonnarcotic controlled substances in Schedules II through V where the licensee is
203 already licensed under this chapter in another capacity.

204 (iii) With respect to research involving narcotic substances in Schedules II through V,
205 or where the division by rule requires a separate license for research of nonnarcotic substances
206 in Schedules II through V, a practitioner shall apply to the division prior to conducting
207 research.

208 (iv) Licensing for purposes of bona fide research with controlled substances by a
209 practitioner considered qualified may be denied only on a ground specified in Subsection (4),
210 or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard
211 adequately the practitioner's supply of substances against diversion from medical or scientific
212 use.

213 (v) Practitioners registered under federal law to conduct research in Schedule I

214 substances may conduct research in Schedule I substances within this state upon furnishing the
215 division evidence of federal registration.

216 (d) Compliance by manufacturers, producers, and distributors with the provisions of
217 federal law respecting registration, excluding fees, entitles them to be licensed under this
218 chapter.

219 (e) The division shall initially license those persons who own or operate an
220 establishment engaged in the manufacture, production, distribution, dispensation, or
221 administration of controlled substances prior to April 3, 1980, and who are licensed by the
222 state.

223 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed
224 on probation, or revoked by the division upon finding that the applicant or licensee has:

225 (i) materially falsified any application filed or required pursuant to this chapter;

226 (ii) been convicted of an offense under this chapter or any law of the United States, or
227 any state, relating to any substance defined as a controlled substance;

228 (iii) been convicted of a felony under any other law of the United States or any state
229 within five years of the date of the issuance of the license;

230 (iv) had a federal license denied, suspended, or revoked by competent federal authority
231 and is no longer authorized to [~~engage in the manufacturing, distribution, or dispensing of~~]
232 manufacture, distribute, prescribe, or dispense controlled substances;

233 (v) had the licensee's license suspended or revoked by competent authority of another
234 state for violation of laws or regulations comparable to those of this state relating to the
235 manufacture, distribution, or dispensing of controlled substances;

236 (vi) violated any division rule that reflects adversely on the licensee's reliability and
237 integrity with respect to controlled substances;

238 (vii) refused inspection of records required to be maintained under this chapter by a
239 person authorized to inspect them; or

240 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the
241 purpose of manipulating human hormonal structure so as to:

242 (A) increase muscle mass, strength, or weight without medical necessity and without a
243 written prescription by any practitioner in the course of the practitioner's professional practice;

244 or

245 (B) improve performance in any form of human exercise, sport, or game.

246 (b) The division may limit revocation or suspension of a license to a particular
247 controlled substance with respect to which grounds for revocation or suspension exist.

248 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to
249 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of
250 Occupational and Professional Licensing Act, and conducted in conjunction with the
251 appropriate representative committee designated by the director of the department.

252 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and
253 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,
254 except where the division is designated by law to perform those functions, or, when not
255 designated by law, is designated by the executive director of the Department of Commerce to
256 conduct the proceedings.

257 (d) (i) The division may suspend any license simultaneously with the institution of
258 proceedings under this section if it finds there is an imminent danger to the public health or
259 safety.

260 (ii) Suspension shall continue in effect until the conclusion of proceedings, including
261 judicial review, unless withdrawn by the division or dissolved by a court of competent
262 jurisdiction.

263 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled
264 substances owned or possessed by the licensee may be placed under seal in the discretion of the
265 division.

266 (ii) Disposition may not be made of substances under seal until the time for taking an
267 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,
268 orders the sale of perishable substances and the proceeds deposited with the court.

269 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

270 (f) The division shall notify promptly the Drug Enforcement Administration of all
271 orders suspending or revoking a license and all forfeitures of controlled substances.

272 (g) If an individual's Drug Enforcement Administration registration is denied, revoked,
273 surrendered, or suspended, the division shall immediately suspend the individual's controlled
274 substance license, which shall only be reinstated by the division upon reinstatement of the
275 federal registration, unless the division has taken further administrative action under

276 Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled
277 substance license.

278 (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and
279 inventories in conformance with the record keeping and inventory requirements of federal and
280 state law and any additional rules issued by the division.

281 (b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or
282 other person who is authorized to administer or professionally use a controlled substance shall
283 keep a record of the drugs received by him and a record of all drugs administered, dispensed, or
284 professionally used by him otherwise than by a prescription.

285 (ii) A person using small quantities or solutions or other preparations of those drugs for
286 local application has complied with this Subsection (5)(b) if the person keeps a record of the
287 quantity, character, and potency of those solutions or preparations purchased or prepared by
288 him, and of the dates when purchased or prepared.

289 (6) Controlled substances in Schedules I through V may be distributed only by a
290 licensee and pursuant to an order form prepared in compliance with division rules or a lawful
291 order under the rules and regulations of the United States.

292 (7) (a) A person may not write or authorize a prescription for a controlled substance
293 unless the person is:

294 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state
295 or under the laws of another state having similar standards; and

296 (ii) licensed under this chapter or under the laws of another state having similar
297 standards.

298 (b) A person other than a pharmacist licensed under the laws of this state, or the
299 pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not
300 dispense a controlled substance.

301 (c) (i) A controlled substance may not be dispensed without the written prescription of
302 a practitioner, if the written prescription is required by the federal Controlled Substances Act.

303 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in
304 conformity with Subsection (7)(d).

305 (iii) In emergency situations, as defined by division rule, controlled substances may be
306 dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms

307 designated by the division and filed by the pharmacy.

308 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with
309 Subsection (7)(d).

310 (d) Except for emergency situations designated by the division, a person may not issue,
311 fill, compound, or dispense a prescription for a controlled substance unless the prescription is
312 signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of
313 the prescriber as authorized by division rule, and contains the following information:

314 (i) the name, address, and registry number of the prescriber;

315 (ii) the name, address, and age of the person to whom or for whom the prescription is
316 issued;

317 (iii) the date of issuance of the prescription; and

318 (iv) the name, quantity, and specific directions for use by the ultimate user of the
319 controlled substance.

320 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I
321 controlled substance.

322 (f) Except when administered directly to an ultimate user by a licensed practitioner,
323 controlled substances are subject to the following restrictions:

324 (i) (A) A prescription for a Schedule II substance may not be refilled.

325 (B) A Schedule II controlled substance may not be filled in a quantity to exceed a
326 one-month's supply, as directed on the daily dosage rate of the prescriptions.

327 (ii) A Schedule III or IV controlled substance may be filled only within six months of
328 issuance, and may not be refilled more than six months after the date of its original issuance or
329 be refilled more than five times after the date of the prescription unless renewed by the
330 practitioner.

331 (iii) All other controlled substances in Schedule V may be refilled as the prescriber's
332 prescription directs, but they may not be refilled one year after the date the prescription was
333 issued unless renewed by the practitioner.

334 (iv) Any prescription for a Schedule II substance may not be dispensed if it is not
335 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days
336 after the date the prescription was issued, or 30 days after the dispensing date, if that date is
337 specified separately from the date of issue.

338 (v) A practitioner may issue more than one prescription at the same time for the same
339 Schedule II controlled substance, but only under the following conditions:

340 (A) no more than three prescriptions for the same Schedule II controlled substance may
341 be issued at the same time;

342 (B) no one prescription may exceed a 30-day supply;

343 (C) a second or third prescription shall include the date of issuance and the date for
344 dispensing; and

345 (D) unless the practitioner determines there is a valid medical reason to the contrary,
346 the date for dispensing a second or third prescription may not be fewer than 30 days from the
347 dispensing date of the previous prescription.

348 (vi) Each prescription for a controlled substance may contain only one controlled
349 substance per prescription form and may not contain any other legend drug or prescription
350 item.

351 (g) An order for a controlled substance in Schedules II through V for use by an
352 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this
353 Subsection (7) if the order is:

354 (i) issued or made by a prescribing practitioner who holds an unrestricted registration
355 with the federal Drug Enforcement Administration, and an active Utah controlled substance
356 license in good standing issued by the division under this section, or a medical resident who is
357 exempted from licensure under Subsection 58-1-307(1)(c);

358 (ii) authorized by the prescribing practitioner treating the patient and the prescribing
359 practitioner designates the quantity ordered;

360 (iii) entered upon the record of the patient, the record is signed by the prescriber
361 affirming the prescriber's authorization of the order within 48 hours after filling or
362 administering the order, and the patient's record reflects the quantity actually administered; and

363 (iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within
364 the physical structure of the hospital, or the order is taken from a supply lawfully maintained by
365 the hospital and the amount taken from the supply is administered directly to the patient
366 authorized to receive it.

367 (h) A practitioner licensed under this chapter may not prescribe, administer, or
368 dispense a controlled substance to a child, without first obtaining the consent required in

369 Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except
370 in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same
371 meaning as defined in Section 78A-6-105, and "emergency" means any physical condition
372 requiring the administration of a controlled substance for immediate relief of pain or suffering.

373 (i) A practitioner licensed under this chapter may not prescribe or administer dosages
374 of a controlled substance in excess of medically recognized quantities necessary to treat the
375 ailment, malady, or condition of the ultimate user.

376 (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense
377 any controlled substance to another person knowing that the other person is using a false name,
378 address, or other personal information for the purpose of securing the controlled substance.

379 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense
380 a controlled substance may not manufacture, distribute, or dispense a controlled substance to
381 another licensee or any other authorized person not authorized by this license.

382 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a
383 symbol required by this chapter or by a rule issued under this chapter.

384 (m) A person licensed under this chapter may not refuse or fail to make, keep, or
385 furnish any record notification, order form, statement, invoice, or information required under
386 this chapter.

387 (n) A person licensed under this chapter may not refuse entry into any premises for
388 inspection as authorized by this chapter.

389 (o) A person licensed under this chapter may not furnish false or fraudulent material
390 information in any application, report, or other document required to be kept by this chapter or
391 willfully make any false statement in any prescription, order, report, or record required by this
392 chapter.

393 (8) (a) (i) Any person licensed under this chapter who is found by the division to have
394 violated any of the provisions of Subsections (7)(k) through [(7)](o) is subject to a penalty not
395 to exceed \$5,000. The division shall determine the procedure for adjudication of any violations
396 in accordance with Sections 58-1-106 and 58-1-108.

397 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the
398 General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

399 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through

400 [(7)](j) is:

- 401 (i) upon first conviction, guilty of a class B misdemeanor;
- 402 (ii) upon second conviction, guilty of a class A misdemeanor; and
- 403 (iii) on third or subsequent conviction, guilty of a third degree felony.
- 404 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through
- 405 [(7)](o) shall upon conviction be guilty of a third degree felony.

406 (9) Any information communicated to any licensed practitioner in an attempt to
407 unlawfully procure, or to procure the administration of, a controlled substance is not considered
408 to be a privileged communication.

409 Section 3. Section **58-67-102** is amended to read:

410 **58-67-102. Definitions.**

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

412 (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the
413 American Medical Association.

414 (2) "Administrative penalty" means a monetary fine or citation imposed by the division
415 for acts or omissions determined to constitute unprofessional or unlawful conduct, in
416 accordance with a fine schedule established by the division in collaboration with the board, as a
417 result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4,
418 Administrative Procedures Act.

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

420 (4) "Diagnose" means:

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

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

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

429 (d) to make an examination or determination as described in Subsection (4)(a) upon or
430 from information supplied directly or indirectly by another person, whether or not in the

431 presence of the person making or attempting the diagnosis or examination.

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

434 (6) "Medical assistant" means an unlicensed individual working under the direct [~~and~~
435 ~~immediate~~] or indirect supervision of a licensed physician and surgeon and engaged in specific
436 tasks assigned by the licensed physician and surgeon in accordance with the standards and
437 ethics of the profession, and as may be further defined in rule by the division in collaboration
438 with the board, not to exceed the scope of this definition.

439 (7) "Physician" means both physicians and surgeons licensed under Section 58-67-301,
440 Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section
441 58-68-301, Utah Osteopathic Medical Practice Act.

442 (8) "Practice of medicine" means:

443 (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
444 disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real
445 or imaginary, or to attempt to do so, by any means or instrumentality, and by an individual in
446 Utah or outside the state upon or for any human within the state, except that conduct described
447 in this Subsection (8)(a) that is performed by a person legally and in accordance with a license
448 issued under another chapter of this title does not constitute the practice of medicine;

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

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

454 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
455 treatment of human diseases or conditions in any printed material, stationery, letterhead,
456 envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine,"
457 "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these
458 designations in any manner which might cause a reasonable person to believe the individual
459 using the designation is a licensed physician and surgeon, and if the party using the designation
460 is not a licensed physician and surgeon, the designation must additionally contain the
461 description of the branch of the healing arts for which the person has a license, provided that an

462 individual who has received an earned degree of doctor of medicine degree but is not a licensed
463 physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not
464 Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

465 (9) "Prescription device" means an instrument, apparatus, implement, machine,
466 contrivance, implant, in vitro reagent, or other similar or related article, and any component
467 part or accessory, which is required under federal or state law to be prescribed by a practitioner
468 and dispensed by or through a person or entity licensed under this chapter or exempt from
469 licensure under this chapter.

470 (10) "Prescription drug" means a drug that is required by federal or state law or rule to
471 be dispensed only by prescription or is restricted to administration only by practitioners.

472 (11) "SPEX" means the Special Purpose Examination of the Federation of State
473 Medical Boards.

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

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

477 Section 4. Section **58-67-302** is amended to read:

478 **58-67-302. Qualifications for licensure.**

479 (1) An applicant for licensure as a physician and surgeon, except as set forth in
480 Subsection (2), shall:

481 (a) submit an application in a form prescribed by the division, which may include:

482 (i) submissions by the applicant of information maintained by practitioner data banks,
483 as designated by division rule, with respect to the applicant; ~~and~~

484 (ii) a record of professional liability claims made against the applicant and settlements
485 paid by or on behalf of the applicant; and

486 (iii) authorization to use a record coordination and verification service approved by the
487 division in collaboration with the board;

488 (b) pay a fee determined by the department under Section 63J-1-504;

489 (c) be of good moral character;

490 (d) provide satisfactory documentation of having successfully completed a program of
491 professional education preparing an individual as a physician and surgeon, as evidenced by
492 ~~[having received an earned degree of doctor of medicine from]:~~

493 ~~[(i) an LCME accredited medical school or college; or]~~
494 ~~[(ii) a medical school or college located outside of the United States or its jurisdictions~~
495 ~~which at the time of the applicant's graduation, met criteria for LCME accreditation;]~~
496 (i) having received an earned degree of doctor of medicine from an LCME accredited
497 medical school or college; or
498 (ii) if the applicant graduated from a medical school or college located outside the
499 United States, its territories, or Canada, submitting a current certification by the Educational
500 Commission for Foreign Medical Graduates or any successor organization approved by the
501 division in collaboration with the board;
502 ~~[(e) hold a current certification by the Educational Commission for Foreign Medical~~
503 ~~Graduates or any successor organization approved by the division in collaboration with the~~
504 ~~board, if the applicant graduated from a medical school or college located outside of the United~~
505 ~~States or its jurisdictions;]~~
506 ~~[(f)] (e) satisfy the division and board that the applicant:~~
507 (i) has successfully completed 24 months of progressive resident training in a program
508 approved by the ACGME, the Royal College of Physicians and Surgeons, the College of
509 Family Physicians of Canada, or any similar body in the United States or Canada approved by
510 the division in collaboration with the board; or
511 (ii) (A) has successfully completed 12 months of resident training in an ACGME
512 approved program after receiving a degree of doctor of medicine as required under Subsection
513 (1)(d);
514 (B) has been accepted in and is successfully participating in progressive resident
515 training in an ACGME approved program within Utah, in the applicant's second or third year
516 of postgraduate training; and
517 (C) has agreed to surrender to the division the applicant's license as a physician and
518 surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act,
519 and has agreed the applicant's license as a physician and surgeon will be automatically revoked
520 by the division if the applicant fails to continue in good standing in an ACGME approved
521 progressive resident training program within the state;
522 ~~[(g)] (f) pass the licensing examination sequence required by division rule made in~~
523 ~~collaboration with the board;~~

524 ~~[(h)]~~ (g) be able to read, write, speak, understand, and be understood in the English
525 language and demonstrate proficiency to the satisfaction of the board if requested by the board;

526 ~~[(i)]~~ (h) meet with the board and representatives of the division, if requested, for the
527 purpose of evaluating the applicant's qualifications for licensure;

528 ~~[(j)]~~ (i) designate:

529 (i) a contact person for access to medical records in accordance with the federal Health
530 Insurance Portability and Accountability Act; and

531 (ii) an alternate contact person for access to medical records, in the event the original
532 contact person is unable or unwilling to serve as the contact person for access to medical
533 records; and

534 ~~[(k)]~~ (j) establish a method for notifying patients of the identity and location of the
535 contact person and alternate contact person, if the applicant will practice in a location with no
536 other persons licensed under this chapter.

537 (2) An applicant for licensure as a physician and surgeon by endorsement who is
538 currently licensed to practice medicine in any state other than Utah, a district or territory of the
539 United States, or Canada shall:

540 (a) be currently licensed with a full unrestricted license in good standing in any state,
541 district, or territory of the United States, or Canada;

542 (b) have been actively engaged in the legal practice of medicine in any state, district, or
543 territory of the United States, or Canada for not less than 6,000 hours during the five years
544 immediately preceding the date of application for licensure in Utah;

545 ~~[(c) not have any action pending against the applicant's license;]~~

546 ~~[(d) not have a license that was suspended or revoked in any state, unless the license~~
547 ~~was subsequently reinstated as a full unrestricted license in good standing; and]~~

548 (c) comply with the requirements for licensure under Subsection (1)(a) through (d) and
549 (1)(e)(i);

550 (d) have passed the licensing examination sequence required in Subsection (1)(f) or
551 another medical licensing examination sequence in another state, district or territory of the
552 United States, or Canada that the division in collaboration with the board by rulemaking
553 determines is equivalent to its own required examination;

554 (e) not have any investigation or action pending against any health care license of the

555 applicant, not have a health care license that was suspended or revoked in any state, district or
556 territory of the United States, or Canada, and not have surrendered a health care license in lieu
557 of a disciplinary action, unless:

558 (i) the license was subsequently reinstated as a full unrestricted license in good
559 standing; or

560 (ii) the division in collaboration with the board determines to its satisfaction, after full
561 disclosure by the applicant, that:

562 (A) the conduct has been corrected, monitored, and resolved; or

563 (B) a mitigating circumstance exists that prevents its resolution, and the division in
564 collaboration with the board is satisfied that, but for the mitigating circumstance, the license
565 would be reinstated;

566 (f) submit to a records review, a practice history review, and physical and
567 psychological assessments, if requested by the division in collaboration with the board; and

568 ~~[(e)]~~ (g) produce satisfactory evidence [of] that the [applicant's qualifications, identity,
569 and good standing] applicant meets the requirements of this Subsection (2) to the satisfaction
570 of the division in collaboration with the board.

571 (3) An applicant for licensure by endorsement may engage in the practice of medicine
572 under a temporary license while the applicant's application for licensure is being processed by
573 the division, provided:

574 (a) the applicant submits a complete application required for temporary licensure to the
575 division;

576 (b) the applicant submits a written document to the division from:

577 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
578 Licensing and Inspection Act, stating that the applicant is practicing under the invitation of the
579 health care facility; or

580 (ii) two individuals licensed under this chapter, whose license is in good standing and
581 who practice in the same clinical location, both stating that:

582 (A) the applicant is practicing under the invitation of the individual; and

583 (B) the applicant will practice at the same clinical location as the individual;

584 (c) the applicant submits a signed certification to the division that the applicant meets
585 the requirements of Subsection (2);

586 (d) the applicant does not engage in the practice of medicine until the division has
587 issued a temporary license;

588 (e) the temporary license is only issued for and may not be extended beyond the
589 duration of one year from issuance; and

590 (f) the temporary license expires immediately and prior to the expiration of one year
591 from issuance, upon notification from the division that the applicant's application for licensure
592 by endorsement is denied.

593 (4) The division shall issue a temporary license under Subsection (3) within 15
594 business days after the applicant satisfies the requirements of Subsection (3).

595 Section 5. Section **58-67-302.5** is amended to read:

596 **58-67-302.5. Licensing of graduates of foreign medical schools.**

597 (1) Notwithstanding any other provision of law to the contrary, an individual enrolled
598 in a medical school outside the United States, its territories, the District of Columbia, or
599 Canada is eligible for licensure as a physician and surgeon in this state if the individual has
600 satisfied the following requirements:

601 (a) meets all the requirements of [~~Section~~] Subsection 58-67-302(1), except for
602 Subsection 58-67-302(1)(d);

603 (b) has studied medicine in a medical school located outside the United States which is
604 recognized by an organization approved by the division;

605 (c) has completed all of the formal requirements of the foreign medical school except
606 internship or social service;

607 (d) has attained a passing score on the educational commission for foreign medical
608 graduates examination or other qualifying examinations such as the United States Medical
609 Licensing Exam parts I and II, which are approved by the division or a medical school
610 approved by the division;

611 (e) has satisfactorily completed one calendar year of supervised clinical training under
612 the direction of a United States medical education setting accredited by the liaison committee
613 for graduate medical education and approved by the division;

614 (f) has completed the postgraduate hospital training required by Subsection
615 58-67-302(1)[~~(f)~~](e)(i); and

616 (g) has passed the examination required by the division of all applicants for licensure.

- 617 (2) Satisfaction of the requirements of Subsection (1) is in lieu of:
618 (a) the completion of any foreign internship or social service requirements; and
619 (b) the certification required by Subsection 58-67-302(1)(~~e~~)(d).
620 (3) Individuals who satisfy the requirements of Subsections (1)(a) through (f) shall be
621 eligible for admission to graduate medical education programs within the state, including
622 internships and residencies, which are accredited by the liaison committee for graduate medical
623 education.
624 (4) A document issued by a medical school located outside the United States shall be
625 considered the equivalent of a degree of doctor of medicine for the purpose of licensure as a
626 physician and surgeon in this state if:
627 (a) the foreign medical school is recognized by an organization approved by the
628 division;
629 (b) the document granted by the foreign medical school is issued after the completion
630 of all formal requirements of the medical school except internship or social service; and
631 (c) the foreign medical school certifies that the person to whom the document was
632 issued has satisfactorily completed the requirements of Subsection (1)(c).
633 (5) The provisions for licensure under this section shall be known as the "fifth pathway
634 program."

635 Section 6. Section **58-67-304** is amended to read:

636 **58-67-304. License renewal requirements.**

- 637 (1) As a condition precedent for license renewal, each licensee shall, during each
638 two-year licensure cycle or other cycle defined by division rule:
639 (a) complete qualified continuing professional education requirements in accordance
640 with the number of hours and standards defined by division rule made in collaboration with the
641 board;
642 (b) appoint a contact person for access to medical records and an alternate contact
643 person for access to medical records in accordance with Subsection 58-67-302(1)(~~f~~)(i); and
644 (c) if the licensee practices medicine in a location with no other persons licensed under
645 this chapter, provide some method of notice to the licensee's patients of the identity and
646 location of the contact person and alternate contact person for the licensee.
647 (2) If a renewal period is extended or shortened under Section 58-67-303, the

648 continuing education hours required for license renewal under this section are increased or
649 decreased proportionally.

650 Section 7. Section **58-67-305** is amended to read:

651 **58-67-305. Exemptions from licensure.**

652 In addition to the exemptions from licensure in Section 58-1-307, the following
653 individuals may engage in the described acts or practices without being licensed under this
654 chapter:

655 (1) an individual rendering aid in an emergency, when no fee or other consideration of
656 value for the service is charged, received, expected, or contemplated;

657 (2) an individual administering a domestic or family remedy;

658 (3) (a) (i) a person engaged in the sale of vitamins, health foods, dietary supplements,
659 herbs, or other products of nature, the sale of which is not otherwise prohibited by state or
660 federal law; and

661 (ii) a person acting in good faith for religious reasons, as a matter of conscience, or
662 based on a personal belief, when obtaining or providing any information regarding health care
663 and the use of any product under Subsection (3)(a)(i); and

664 (b) Subsection (3)(a) does not:

665 (i) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity,
666 pain, or other condition; or

667 (ii) prohibit providing truthful and non-misleading information regarding any of the
668 products under Subsection (3)(a)(i);

669 (4) a person engaged in good faith in the practice of the religious tenets of any church
670 or religious belief, without the use of prescription drugs;

671 (5) an individual authorized by the Department of Health under Section 26-1-30, to
672 withdraw blood to determine the alcohol or drug content pursuant to Section 41-6a-523;

673 (6) a medical assistant while working under the direct [~~and immediate~~] or indirect
674 supervision of a licensed physician and surgeon, to the extent the medical assistant is engaged
675 in tasks appropriately delegated by the supervisor in accordance with the standards and ethics
676 of the practice of medicine, and as may be further defined in rule by the division in
677 collaboration with the board, not to exceed the scope of this definition;

678 (7) an individual engaging in the practice of medicine when:

679 (a) the individual is licensed in good standing as a physician in another state with no
680 licensing action pending and no less than 10 years of professional experience;

681 (b) the services are rendered as a public service and for a noncommercial purpose;

682 (c) no fee or other consideration of value is charged, received, expected, or
683 contemplated for the services rendered beyond an amount necessary to cover the proportionate
684 cost of malpractice insurance; and

685 (d) the individual does not otherwise engage in unlawful or unprofessional conduct;
686 ~~and]~~

687 (8) an individual providing expert testimony in a legal proceeding~~[-]; and~~

688 (9) an individual who is invited by a school, association, society, or other body
689 approved by the division to conduct a clinic or demonstration of the practice of medicine in
690 which patients are treated, if:

691 (a) the individual does not establish a place of business in this state;

692 (b) the individual does not regularly engage in the practice of medicine in this state;

693 (c) the individual holds a current license in good standing to practice medicine issued
694 by another state, district or territory of the United States, or Canada;

695 (d) the primary purpose of the event is the training of others in the practice of
696 medicine; and

697 (e) neither the patient nor an insurer is billed for the services performed.

698 Section 8. Section **58-67-401** is amended to read:

699 **58-67-401. Grounds for denial of license -- Disciplinary proceedings.**

700 Grounds for division action ~~[regarding the following are under Section]~~ are set forth in
701 Sections 58-1-401[:] and 58-67-503.

702 ~~[(1) refusing to issue a license to an applicant or refusing to renew the license of a~~
703 ~~licensee;]~~

704 ~~[(2) revoking, suspending, restricting, or placing on probation the license of a~~
705 ~~licensee;]~~

706 ~~[(3) assessing an administrative penalty; and]~~

707 ~~[(4) issuing a public or private reprimand to a licensee or issuing a cease and desist~~
708 ~~order.]~~

709 Section 9. Section **58-67-402** is repealed and reenacted to read:

710 **58-67-402. Authority to assess penalty.**

711 The division in collaboration with the board may assess penalties as described in
712 Section 58-67-503.

713 Section 10. Section **58-67-403** is amended to read:

714 **58-67-403. Revocation of license -- Nondisciplinary.**

715 Revocation by the division of a license under Subsection 58-67-302(1)[(f)](e) for
716 failure to continue on a resident training program for reasons other than unprofessional or
717 unlawful conduct is a nondisciplinary action and may not be reported by the division as a
718 disciplinary action against the licensee.

719 Section 11. Section **58-67-503** is amended to read:

720 **58-67-503. Penalties and administrative actions for unlawful and unprofessional**
721 **conduct.**

722 (1) Any person who violates the unlawful conduct provisions of Section 58-67-501[~~or~~
723 Subsection] or Section 58-1-501[(1)(a) or 58-1-501(1)(c)] is guilty of a third degree felony.

724 [(2) The division may assess administrative penalties in accordance with the provisions
725 of Section 58-67-402 for acts of unprofessional conduct.]

726 (2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful
727 conduct by:

728 (i) assessing administrative penalties; or

729 (ii) taking other appropriate administrative action.

730 (b) A monetary administrative penalty imposed under this section shall be deposited in
731 the Physician Education Fund created in Section 58-67a-1.

732 (3) If a licensee has been convicted of unlawful conduct, described in Section
733 58-67-501, before an administrative proceeding regarding the same conduct, the division may
734 not assess an additional administrative fine under this chapter for the same conduct.

735 (4) (a) If the division concludes that an individual has violated provisions of Section
736 58-67-501, Section 58-67-502, the Division of Occupational and Professional Licensing Act,
737 the Utah Controlled Substances Act, or any rule or order issued with respect to these
738 provisions, and disciplinary action is appropriate, the director or director's designee shall:

739 (i) issue a citation to the individual;

740 (ii) attempt to negotiate a stipulated settlement; or

741 (iii) notify the individual that an adjudicative proceeding conducted under Title 63G,
742 Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to
743 appear.

744 (b) The division may take the following action against an individual who is in violation
745 of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a
746 stipulated settlement, or a finding of violation in an adjudicative proceeding:

747 (i) assess a fine of up to \$10,000 per single violation or up to \$2,000 per day of
748 ongoing violation, whichever is greater, in accordance with a fine schedule established by rule;
749 or

750 (ii) order to cease and desist from the behavior that constitutes a violation of the
751 provisions described in Subsection (4)(a).

752 (c) An individual's license may not be suspended or revoked through a citation.

753 (d) Each citation issued under this section shall:

754 (i) be in writing;

755 (ii) clearly describe or explain:

756 (A) the nature of the violation, including a reference to the provision of the chapter,
757 rule, or order alleged to have been violated;

758 (B) that the recipient must notify the division in writing within 20 calendar days from
759 the day on which the citation is served if the recipient wishes to contest the citation at a hearing
760 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

761 (C) the consequences of failure to timely contest the citation or pay the fine assessed by
762 the citation within the time specified in the citation; and

763 (iii) be served in accordance with the Utah Rules of Civil Procedure.

764 (e) If the individual to whom the citation is issued fails to request a hearing to contest
765 the citation within 20 calendar days from the day on which the citation is served, the citation
766 becomes the final order of the division and is not subject to further agency review. The period
767 to contest the citation may be extended by the division for cause.

768 (f) The division may refuse to issue or renew or suspend, revoke, or place on probation
769 the license of an individual who fails to comply with a citation after the citation becomes final.

770 (g) The failure of an applicant for licensure to comply with a citation after it becomes
771 final is a ground for denial of license.

772 (h) No citation may be issued under this section after six months from the day on
773 which the violation last occurred.

774 Section 12. Section **58-68-102** is amended to read:

775 **58-68-102. Definitions.**

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

777 (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the
778 American Medical Association.

779 (2) "Administrative penalty" means a monetary fine imposed by the division for acts or
780 omissions determined to constitute unprofessional or unlawful conduct, as a result of an
781 adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
782 Procedures Act.

783 (3) "AOA" means the American Osteopathic Association.

784 (4) "Board" means the Osteopathic ~~[Physicians]~~ Physician and Surgeon's Licensing
785 Board created in Section 58-68-201.

786 (5) "Diagnose" means:

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

791 (b) to attempt to conduct an examination or determination described under Subsection
792 (5)(a);

793 (c) to hold oneself out as making or to represent that one is making an examination or
794 determination as described in Subsection (5)(a); or

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

798 (6) "Medical assistant" means an unlicensed individual working under the direct ~~[and~~
799 ~~immediate]~~ or indirect supervision of a licensed osteopathic physician and surgeon and
800 engaged in specific tasks assigned by the licensed osteopathic physician and surgeon in
801 accordance with the standards and ethics of the profession, and as may be further defined in
802 rule by the division in collaboration with the board, not to exceed the scope of this definition.

803 (7) "Physician" means both physicians and surgeons licensed under Section 58-67-301,
804 Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section
805 58-68-301, Utah Osteopathic Medical Practice Act.

806 (8) "Practice of osteopathic medicine" means:

807 (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
808 disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real
809 or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part
810 is based upon emphasis of the importance of the musculoskeletal system and manipulative
811 therapy in the maintenance and restoration of health, by an individual in Utah or outside of the
812 state upon or for any human within the state, except that conduct described in this Subsection
813 (8)(a) that is performed by a person legally and in accordance with a license issued under
814 another chapter of this title does not constitute the practice of medicine;

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

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

820 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
821 treatment of human diseases or conditions, in any printed material, stationery, letterhead,
822 envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine,"
823 "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.,"
824 "D.O.," or any combination of these designations in any manner which might cause a
825 reasonable person to believe the individual using the designation is a licensed osteopathic
826 physician, and if the party using the designation is not a licensed osteopathic physician, the
827 designation must additionally contain the description of the branch of the healing arts for which
828 the person has a license, provided that an individual who has received an earned degree of
829 doctor of osteopathic medicine degree but is not a licensed osteopathic physician and surgeon
830 in Utah may use the designation "D.O." if it is followed by "Not Licensed" or "Not Licensed in
831 Utah" in the same size and style of lettering.

832 (9) "Prescription device" means an instrument, apparatus, implement, machine,
833 contrivance, implant, in vitro reagent, or other similar or related article, and any component

834 part or accessory, which is required under federal or state law to be prescribed by a practitioner
835 and dispensed by or through a person or entity licensed under this chapter or exempt from
836 licensure under this chapter.

837 (10) "Prescription drug" means a drug that is required by federal or state law or rule to
838 be dispensed only by prescription or is restricted to administration only by practitioners.

839 (11) "SPEX" means the Special Purpose Examination of the Federation of State
840 Medical Boards.

841 (12) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

842 (13) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502 and as
843 may be further defined by division rule.

844 Section 13. Section **58-68-302** is amended to read:

845 **58-68-302. Qualifications for licensure.**

846 (1) An applicant for licensure as an osteopathic physician and surgeon, except as set
847 forth in Subsection (2) [~~or (3)~~], shall:

848 (a) submit an application in a form prescribed by the division, which may include:

849 (i) submissions by the applicant of information maintained by practitioner data banks,
850 as designated by division rule, with respect to the applicant; [~~and~~]

851 (ii) a record of professional liability claims made against the applicant and settlements
852 paid by or on behalf of the applicant; and

853 (iii) authorization to use a record coordination and verification service approved by the
854 division in collaboration with the board;

855 (b) pay a fee determined by the department under Section 63J-1-504;

856 (c) be of good moral character;

857 (d) provide satisfactory documentation of having successfully completed a program of
858 professional education preparing an individual as an osteopathic physician and surgeon, as
859 evidenced by [~~having received an earned degree of doctor of osteopathic medicine from: (i) an~~

860 ~~AOA approved medical school or college; or (ii)]:~~

861 (i) having received an earned degree of doctor of osteopathic medicine from an AOA
862 approved medical school or college; or

863 (ii) submitting a current certification by the Educational Commission for Foreign
864 Medical Graduates or any successor organization approved by the division in collaboration

865 with the board, if the applicant is graduated from an osteopathic medical school or college
866 located outside of the United States [or], its [jurisdictions] districts or territories, or Canada
867 which at the time of the applicant's graduation, met criteria for accreditation by the AOA;
868 ~~[(e) hold a current certification by the Educational Commission for Foreign Medical~~
869 ~~Graduates or any successor organization approved by the division in collaboration with the~~
870 ~~board, if the applicant graduated from a medical school or college located outside of the United~~
871 ~~States or its jurisdictions;]~~

872 ~~[(f)] (e)~~ satisfy the division and board that the applicant:

873 (i) has successfully completed 24 months of progressive resident training in an
874 ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine
875 required under Subsection (1)(d); or

876 (ii) (A) has successfully completed 12 months of resident training in an ACGME or
877 AOA approved program after receiving a degree of doctor of osteopathic medicine as required
878 under Subsection (1)(d);

879 (B) has been accepted in and is successfully participating in progressive resident
880 training in an ACGME or AOA approved program within Utah, in the applicant's second or
881 third year of postgraduate training; and

882 (C) has agreed to surrender to the division the applicant's license as an osteopathic
883 physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative
884 Procedures Act, and has agreed the applicant's license as an osteopathic physician and surgeon
885 will be automatically revoked by the division if the applicant fails to continue in good standing
886 in an ACGME or AOA approved progressive resident training program within the state;

887 ~~[(g)] (f)~~ pass the licensing examination sequence required by division rule, as made in
888 collaboration with the board;

889 ~~[(h)] (g)~~ be able to read, write, speak, understand, and be understood in the English
890 language and demonstrate proficiency to the satisfaction of the board, if requested by the board;

891 ~~[(i)] (h)~~ meet with the board and representatives of the division, if requested for the
892 purpose of evaluating the applicant's qualifications for licensure;

893 ~~[(j)] (i)~~ designate:

894 (i) a contact person for access to medical records in accordance with the federal Health
895 Insurance Portability and Accountability Act; and

896 (ii) an alternate contact person for access to medical records, in the event the original
897 contact person is unable or unwilling to serve as the contact person for access to medical
898 records; and

899 ~~[(k)]~~ (j) establish a method for notifying patients of the identity and location of the
900 contact person and alternate contact person, if the applicant will practice in a location with no
901 other persons licensed under this chapter.

902 (2) An applicant for licensure as an osteopathic physician and surgeon ~~[qualifying~~
903 ~~under the]~~ by endorsement [provision of Section 58-1-302] who is currently licensed to
904 practice osteopathic medicine in any state other than Utah, a district or territory of the United
905 States, or Canada shall:

906 (a) be currently licensed with a full unrestricted license in good standing in ~~[another~~
907 ~~jurisdiction as set forth in Section 58-1-302]~~ any state, district or territory of the United States,
908 or Canada;

909 (b) have been actively engaged in the legal practice of osteopathic medicine in any
910 state, district or territory of the United States, or Canada for not less than 6,000 hours during
911 the five years immediately preceding the day on which the applicant applied for licensure in
912 Utah;

913 ~~[(b)-(i)]~~ (c) ~~[document having met all]~~ comply with the requirements for licensure
914 under ~~[Subsection]~~ Subsections (1)(a) through (d), (1)(e)(i), and (1)(g) through (j) ~~[except, if an~~
915 ~~applicant received licensure in another state or jurisdiction based upon only 12 months~~
916 ~~residency training after graduation from medical school, the applicant may qualify for licensure~~
917 ~~in Utah by endorsement only if licensed in the other state prior to July 1, 1996; or];~~

918 ~~[(ii) document having obtained licensure in another state or jurisdiction whose~~
919 ~~licensure requirements were at the time of obtaining licensure equal to licensure requirements~~
920 ~~at that time in Utah;]~~

921 ~~[(c) have passed the SPEX examination within 12 months preceding the date of~~
922 ~~application for licensure in Utah if the date on which the applicant passed qualifying~~
923 ~~examinations for licensure is greater than five years prior to the date of the application for~~
924 ~~licensure in Utah, or meet medical specialty certification requirements which may be~~
925 ~~established by division rule made in collaboration with the board;]~~

926 ~~[(d) have been actively engaged in the practice as an osteopathic physician and surgeon~~

927 for not less than 6,000 hours during the five years immediately preceding the date of
928 application for licensure in Utah;]

929 ~~[(e) meet with the board and representatives of the division, if requested for the
930 purpose of evaluating the applicant's qualifications for licensure; and]~~

931 ~~[(f) not have a license that was suspended or revoked in any state, unless the license
932 was subsequently reinstated as a full unrestricted license in good standing;]~~

933 (d) have passed the licensing examination sequence required in Subsection (1)(f) or
934 another medical licensing examination sequence in another state, district or territory of the
935 United States, or Canada that the division in collaboration with the board by rulemaking
936 determines is equivalent to its own required examination;

937 (e) not have any investigation or action pending against any health care license of the
938 applicant, not have a health care license that was suspended or revoked in any state, district, or
939 territory of the United States, or Canada, and not have surrendered a health care license in lieu
940 of a disciplinary action, unless:

941 (i) the license was subsequently reinstated as a full unrestricted license in good
942 standing; or

943 (ii) the division in collaboration with the board determines, after full disclosure by the
944 applicant, that:

945 (A) the conduct has been corrected, monitored, and resolved; or

946 (B) a mitigating circumstance exists that prevents its resolution, and the division in
947 collaboration with the board is satisfied that, but for the mitigating circumstance, the license
948 would be reinstated;

949 (f) submit to a records review, a practice review history, and physical and
950 psychological assessments, if requested by the division in collaboration with the board; and

951 (g) produce evidence that the applicant meets the requirements of this Subsection (2) to
952 the satisfaction of the division in collaboration with the board.

953 ~~[(3) An applicant for licensure as an osteopathic physician and surgeon, who has been
954 licensed as an osteopathic physician in Utah, who has allowed the applicant's license in Utah to
955 expire for nonpayment of license fees, and who is currently licensed in good standing in
956 another state or jurisdiction of the United States shall:]~~

957 ~~[(a) submit an application in a form prescribed by the division;]~~

958 ~~[(b) pay a fee determined by the department under Section 63J-1-504;]~~
959 ~~[(c) be of good moral character;]~~
960 ~~[(d) have passed the SPEX examination within 12 months preceding the date of~~
961 ~~application for licensure in Utah if the date on which the applicant passed qualifying~~
962 ~~examinations for licensure is greater than five years prior to the date of the application for~~
963 ~~licensure in Utah;]~~
964 ~~[(e) have been actively engaged in the practice as an osteopathic physician for not~~
965 ~~fewer than 6,000 hours during the five years immediately preceding the date of application for~~
966 ~~licensure; and]~~
967 ~~[(f) meet with the board and representatives of the division, if requested for the purpose~~
968 ~~of evaluating the applicant's qualifications for licensure.]~~
969 ~~[(4)]~~ (3) An applicant for licensure by endorsement may engage in the practice of
970 medicine under a temporary license while the applicant's application for licensure is being
971 processed by the division, provided:
972 (a) the applicant submits a complete application required for temporary licensure to the
973 division;
974 (b) the applicant submits a written document to the division from:
975 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
976 Licensing and Inspection Act, stating that the applicant is practicing under the invitation of the
977 health care facility; or
978 (ii) two individuals licensed under this chapter, whose license is in good standing and
979 who practice in the same clinical location, both stating that:
980 (A) the applicant is practicing under the invitation of the individual; and
981 (B) the applicant will practice at the same clinical location as the individual;
982 (c) the applicant submits a signed certification to the division that the applicant meets
983 the requirements of Subsection (2);
984 (d) the applicant does not engage in the practice of medicine until the division has
985 issued a temporary license;
986 (e) the temporary license is only issued for and may not be extended beyond the
987 duration of one year from issuance; and
988 (f) the temporary license expires immediately and prior to the expiration of one year

989 from issuance, upon notification from the division that the applicant's application for licensure
990 by endorsement is denied.

991 ~~[(5)]~~ (4) The division shall issue a temporary license under Subsection ~~[(4)]~~ (3) within
992 15 business days after the applicant satisfies the requirements of Subsection ~~[(4)]~~ (3).

993 Section 14. Section **58-68-304** is amended to read:

994 **58-68-304. License renewal requirements.**

995 (1) As a condition precedent for license renewal, each licensee shall, during each
996 two-year licensure cycle or other cycle defined by division rule:

997 (a) complete qualified continuing professional education requirements in accordance
998 with the number of hours and standards defined by division rule in collaboration with the
999 board;

1000 (b) appoint a contact person for access to medical records and an alternate contact
1001 person for access to medical records in accordance with Subsection 58-68-302(1)~~[(j)]~~(i); and

1002 (c) if the licensee practices osteopathic medicine in a location with no other persons
1003 licensed under this chapter, provide some method of notice to the licensee's patients of the
1004 identity and location of the contact person and alternate contact person for access to medical
1005 records for the licensee in accordance with Subsection 58-68-302(1)~~[(k)]~~(j).

1006 (2) If a renewal period is extended or shortened under Section 58-68-303, the
1007 continuing education hours required for license renewal under this section are increased or
1008 decreased proportionally.

1009 Section 15. Section **58-68-305** is amended to read:

1010 **58-68-305. Exemptions from licensure.**

1011 In addition to the exemptions from licensure in Section 58-1-307, the following
1012 individuals may engage in the described acts or practices without being licensed under this
1013 chapter:

1014 (1) an individual rendering aid in an emergency, when no fee or other consideration of
1015 value for the service is charged, received, expected, or contemplated;

1016 (2) an individual administering a domestic or family remedy;

1017 (3) (a) (i) a person engaged in the lawful sale of vitamins, health foods, dietary
1018 supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited
1019 by state or federal law; and

1020 (ii) a person acting in good faith for religious reasons, as a matter of conscience, or
1021 based on a personal belief, when obtaining or providing any information regarding health care
1022 and the use of any product under Subsection (3)(a)(i); and

1023 (b) Subsection (3)(a) does not:

1024 (i) permit a person to diagnose any human disease, ailment, injury, infirmity,
1025 deformity, pain, or other condition; or

1026 (ii) prohibit providing truthful and non-misleading information regarding any of the
1027 products under Subsection (3)(a)(i);

1028 (4) a person engaged in good faith in the practice of the religious tenets of any church
1029 or religious belief without the use of prescription drugs;

1030 (5) an individual authorized by the Department of Health under Section 26-1-30, to
1031 withdraw blood to determine the alcohol or drug content pursuant to Section 41-6a-523;

1032 (6) a medical assistant while working under the direct [~~and immediate~~] or indirect
1033 supervision of a licensed osteopathic physician, to the extent the medical assistant is engaged in
1034 tasks appropriately delegated by the supervisor in accordance with the standards and ethics of
1035 the practice of medicine, and as may be further defined in rule by the division in collaboration
1036 with the board, not to exceed the scope of this definition;

1037 (7) an individual engaging in the practice of osteopathic medicine when:

1038 (a) the individual is licensed in good standing as an osteopathic physician in another
1039 state with no licensing action pending and no less than 10 years of professional experience;

1040 (b) the services are rendered as a public service and for a noncommercial purpose;

1041 (c) no fee or other consideration of value is charged, received, expected, or
1042 contemplated for the services rendered beyond an amount necessary to cover the proportionate
1043 cost of malpractice insurance; and

1044 (d) the individual does not otherwise engage in unlawful or unprofessional conduct;

1045 [~~and~~]

1046 (8) an individual providing expert testimony in a legal proceeding[-]; and

1047 (9) an individual who is invited by a school, association, society, or other body
1048 approved by the division in collaboration with the board to conduct a clinic or demonstration of
1049 the practice of medicine in which patients are treated, if:

1050 (a) the individual does not establish a place of business in this state;

- 1051 (b) the individual does not regularly engage in the practice of medicine in this state;
 1052 (c) the individual holds a current license in good standing to practice medicine issued
 1053 by another state, district or territory of the United States, or Canada;
 1054 (d) the primary purpose of the event is the training of others in the practice of
 1055 medicine; and
 1056 (e) neither the patient nor an insurer is billed for the services performed.

1057 Section 16. Section **58-68-401** is amended to read:

1058 **58-68-401. Grounds for denial of license -- Disciplinary proceedings.**

1059 Grounds for division action [~~regarding the following are under Section~~] are set forth in
 1060 Sections 58-1-401[?] and 58-68-503.

1061 [~~(1) refusing to issue a license to an applicant or refusing to renew the license of a~~
 1062 ~~licensee;]~~

1063 [~~(2) revoking, suspending, restricting, placing on probation the license of a licensee;]~~

1064 [~~(3) assessing an administrative penalty; and]~~

1065 [~~(4) issuing of a public or private reprimand to a licensee or issuance of a cease and~~
 1066 ~~desist order.]~~

1067 Section 17. Section **58-68-402** is repealed and reenacted to read:

1068 **58-68-402. Authority to assess penalties.**

1069 The division may assess penalties under Section 58-67-503.

1070 Section 18. Section **58-68-403** is amended to read:

1071 **58-68-403. Revocation of license -- Nondisciplinary.**

1072 Revocation by the division of a license under Subsection 58-68-302(1)[~~(f)~~](e) for
 1073 failure to continue on a resident training program for reasons other than unprofessional or
 1074 unlawful conduct is a nondisciplinary action and may not be reported by the division as a
 1075 disciplinary action against the licensee.

1076 Section 19. Section **58-68-503** is amended to read:

1077 **58-68-503. Penalties and administrative actions for unlawful and unprofessional**
 1078 **conduct.**

1079 (1) Any person who violates the unlawful conduct provisions of Section 58-68-501[~~, or~~
 1080 ~~Subsection~~] or Section 58-1-501[(1)(a) or 58-1-501(1)(c)] is guilty of a third degree felony.

1081 [~~(2) The division may assess administrative penalties in accordance with Section~~

1082 ~~58-68-402, for acts of unprofessional conduct.]~~

1083 (2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful
1084 conduct by:

1085 (i) assessing administrative penalties; or

1086 (ii) taking any other appropriate administrative action.

1087 (b) A monetary administrative penalty imposed under this section shall be deposited in
1088 the Physician Education Fund described in Section 58-67a-1.

1089 (3) If a licensee is convicted of unlawful conduct, described in Section 58-68-501,
1090 before an administrative proceeding regarding the same conduct, the licensee may not be
1091 assessed an administrative fine under this chapter for the same conduct.

1092 (4) (a) If the division concludes that an individual has violated the provisions of
1093 Section 58-68-501, Section 58-68-502, the Division of Occupational and Professional
1094 Licensing Act, the Utah Controlled Substances Act, or any rule or order issued with respect to
1095 these provisions, and disciplinary action is appropriate, the director or director's designee shall:

1096 (i) issue a citation to the individual;

1097 (ii) attempt to negotiate a stipulated settlement; or

1098 (iii) notify the individual that an adjudicative proceeding conducted under Title 63G,
1099 Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to
1100 appear.

1101 (b) The division may take the following action against an individual who is in violation
1102 of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a
1103 stipulated settlement, or a finding of violation in an adjudicative proceeding:

1104 (i) assess a fine of up to \$10,000 per single violation or \$2,000 per day of ongoing
1105 violation, whichever is greater, in accordance with a fine schedule established by rule; or

1106 (ii) order to cease and desist from the behavior that constitutes a violation of provisions
1107 described in Subsection (4)(a).

1108 (c) Except for an administrative fine and a cease and desist order, the licensure
1109 sanctions cited in Section 58-1-401 may not be assessed through a citation.

1110 (d) Each citation issued under this section shall:

1111 (i) be in writing;

1112 (ii) clearly describe or explain:

- 1113 (A) the nature of the violation, including a reference to the provision of the chapter,
1114 rule, or order alleged to have been violated;
- 1115 (B) that the recipient must notify the division in writing within 20 calendar days from
1116 the day on which the citation is served if the recipient wishes to contest the citation at a hearing
1117 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
- 1118 (C) the consequences of failure to timely contest the citation or pay the fine assessed by
1119 the citation within the time specified in the citation; and
- 1120 (iii) be served in accordance with the requirements of the Utah Rules of Civil
1121 Procedure.
- 1122 (e) If the individual to whom the citation is issued fails to request a hearing to contest
1123 the citation within 20 calendar days from the day on which the citation is served, the citation
1124 becomes the final order of the division and is not subject to further agency review. The period
1125 to contest the citation may be extended by the division for cause.
- 1126 (f) The division may refuse to issue or renew or suspend, revoke, or place on probation
1127 the license of an individual who fails to comply with a citation after the citation becomes final.
- 1128 (g) The failure of an applicant for licensure to comply with a citation after it becomes
1129 final is a ground for denial of a license.
- 1130 (h) No citation may be issued under this section after six months from the day on
1131 which the last violation occurred.

Legislative Review Note
as of 2-22-11 6:18 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 186

SHORT TITLE: Utah Medical Practice Act Amendments

SPONSOR: Adams, J. S.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill is expected to generate an estimated \$16,000 annually in penalties to the restricted Physicians Education Fund

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
Restricted Funds	\$0	\$16,000	\$16,000
Total Revenue	\$0	\$16,000	\$16,000
Expenditure	\$0	\$0	\$0
Net Impact, All Funds (Rev.-Exp.)	\$0	\$16,000	\$16,000
Net Impact, General/Education Funds	\$0	\$0	\$0

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

An estimated 32 citations with penalties of \$500 each will be issued to violators,