

BIOFEEDBACK LICENSING AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends the Physical Therapist Licensing Act, the Psychologist Licensing Act, and the Naturopathic Physician Licensing Act to clarify that a person does not have to be licensed as a psychologist, naturopathic physician, or physical therapist to use biofeedback.

Highlighted Provisions:

This bill:

- ▶ removes the word "biofeedback" from the definition of the practice of physical therapy, the practice of psychology, and the practice of naturopathic physical medicine to clarify that the use of biofeedback is not limited to those particular licensing acts.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-24b-102, as enacted by Laws of Utah 2009, Chapter 220

58-61-102, as enacted by Laws of Utah 1994, Chapter 32

58-71-102, as last amended by Laws of Utah 2010, Chapter 101

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

30 Section 1. Section **58-24b-102** is amended to read:

31 **58-24b-102. Definitions.**

32 As used in this chapter:

33 (1) "Animal physical therapy" means practicing physical therapy or physiotherapy on
34 an animal.

35 (2) "Board" means the Utah Physical Therapy Licensing Board, created in Section
36 58-24b-201.

37 (3) "Consultation by telecommunication" means the provision of expert or professional
38 advice by a physical therapist who is licensed outside of Utah to a licensed physical therapist or
39 a health care provider by telecommunication or electronic communication.

40 (4) "General supervision" means supervision and oversight of a person by a licensed
41 physical therapist when the licensed physical therapist is immediately available in person, by
42 telephone, or by electronic communication to assist the person.

43 (5) "Licensed physical therapist" means a person licensed under this chapter to engage
44 in the practice of physical therapy.

45 (6) "Licensed physical therapist assistant" means a person licensed under this chapter
46 to engage in the practice of physical therapy, subject to the provisions of Subsection
47 58-24b-401(2)(a).

48 (7) "Licensing examination" means a nationally recognized physical therapy
49 examination that is approved by the division, in consultation with the board.

50 (8) "On-site supervision" means supervision and oversight of a person by a licensed
51 physical therapist or a licensed physical therapist assistant when the licensed physical therapist
52 or licensed physical therapist assistant is:

53 (a) continuously present at the facility where the person is providing services;

54 (b) immediately available to assist the person; and

55 (c) regularly involved in the services being provided by the person.

56 (9) "Physical impairment" means:

57 (a) a mechanical impairment;

- 58 (b) a physiological impairment;
- 59 (c) a developmental impairment;
- 60 (d) a functional limitation;
- 61 (e) a disability;
- 62 (f) a mobility impairment; or
- 63 (g) a bodily malfunction.
- 64 (10) "Physical therapy aide" means a person who:
 - 65 (a) is trained, on-the-job, by a licensed physical therapist; and
 - 66 (b) provides routine assistance to a licensed physical therapist or licensed physical
 - 67 therapist assistant, while the licensed physical therapist or licensed physical therapist assistant
 - 68 practices physical therapy, within the scope of the licensed physical therapist's or licensed
 - 69 physical therapist assistant's license.
- 70 (11) (a) "Physical therapy" or "physiotherapy" means:
 - 71 (i) examining, evaluating, and testing an individual who has a physical impairment or
 - 72 injury;
 - 73 (ii) identifying or labeling a physical impairment or injury;
 - 74 (iii) formulating a therapeutic intervention plan for the treatment of a physical
 - 75 impairment, injury, or pain;
 - 76 (iv) assessing the ongoing effects of therapeutic intervention for the treatment of a
 - 77 physical impairment or injury;
 - 78 (v) treating or alleviating a physical impairment by designing, modifying, or
 - 79 implementing a therapeutic intervention;
 - 80 (vi) reducing the risk of an injury or physical impairment;
 - 81 (vii) providing instruction on the use of physical measures, activities, or devices for
 - 82 preventative and therapeutic purposes;
 - 83 (viii) promoting and maintaining health and fitness;
 - 84 (ix) the administration of a prescription drug pursuant to Section 58-24b-403;
 - 85 (x) subject to Subsection 58-28-307(12)(b), engaging in the functions described in

86 Subsections (11)(a)(i) through (ix) in relation to an animal, in accordance with the
87 requirements of Section 58-24b-405; and

88 (xi) engaging in administration, consultation, education, and research relating to the
89 practices described in this Subsection (11)(a).

90 (b) "Physical therapy" or "physiotherapy" does not include:

91 (i) diagnosing disease;

92 (ii) performing surgery;

93 (iii) performing acupuncture;

94 (iv) taking x-rays; or

95 (v) prescribing or dispensing a drug, as defined in Section 58-37-2.

96 (12) "Recognized accreditation agency" means an accreditation agency that:

97 (a) grants accreditation, nationally, in the United States of America; and

98 (b) is approved by the division, in consultation with the board.

99 (13) (a) "Testing" means a standard method or technique used to gather data regarding
100 a patient that is generally and nationally accepted by physical therapists for the practice of
101 physical therapy.

102 (b) "Testing" includes measurement or evaluation of:

103 (i) muscle strength, force, endurance, or tone;

104 (ii) cardiovascular fitness;

105 (iii) physical work capacity;

106 (iv) joint motion, mobility, or stability;

107 (v) reflexes or autonomic reactions;

108 (vi) movement skill or accuracy;

109 (vii) sensation;

110 (viii) perception;

111 (ix) peripheral nerve integrity;

112 (x) locomotor skills, stability, and endurance;

113 (xi) the fit, function, and comfort of prosthetic, orthotic, or other assistive devices;

- 114 (xii) posture;
- 115 (xiii) body mechanics;
- 116 (xiv) limb length, circumference, and volume;
- 117 [~~(xv) biofeedback;~~
- 118 [~~(xvi)~~ (xv) thoracic excursion and breathing patterns;
- 119 [~~(xvii)~~ (xvi) activities of daily living related to physical movement and mobility; ~~and~~
- 120 [~~(xviii)~~ (xvii) functioning in the physical environment at home or work, as it relates to
- 121 physical movement and mobility[-]; and
- 122 (xviii) neural muscular responses.
- 123 (14) "Therapeutic intervention" includes:
- 124 (a) therapeutic exercise, with or without the use of a device;
- 125 (b) functional training in self-care, as it relates to physical movement and mobility;
- 126 (c) community or work integration, as it relates to physical movement and mobility;
- 127 (d) manual therapy, including:
- 128 (i) soft tissue mobilization;
- 129 (ii) therapeutic massage; or
- 130 (iii) joint mobilization, as defined by the division, by rule;
- 131 (e) prescribing, applying, or fabricating an assistive, adaptive, orthotic, prosthetic,
- 132 protective, or supportive device;
- 133 (f) airway clearance techniques, including postural drainage;
- 134 (g) integumentary protection and repair techniques;
- 135 (h) wound debridement, cleansing, and dressing;
- 136 (i) the application of a physical agent, including:
- 137 (i) light;
- 138 (ii) heat;
- 139 (iii) cold;
- 140 (iv) water;
- 141 (v) air;

- 142 (vi) sound;
- 143 (vii) compression;
- 144 (viii) electricity; and
- 145 (ix) electromagnetic radiation;
- 146 (j) mechanical or electrotherapeutic modalities;
- 147 (k) positioning;
- 148 (l) instructing or training a patient in locomotion or other functional activities, with or
- 149 without an assistive device;
- 150 (m) manual or mechanical traction; and
- 151 (n) correction of posture, body mechanics, or gait.

152 Section 2. Section **58-61-102** is amended to read:

153 **58-61-102. Definitions.**

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

155 (1) "Board" means the Psychologist Licensing Board created in Section 58-61-201.

156 (2) "Client" or "patient" means an individual who consults or is examined or
157 interviewed by a psychologist acting in his professional capacity.

158 (3) "Confidential communication" means information, including information obtained
159 by the psychologist's examination of the client or patient, which is:

160 (a) (i) transmitted between the client or patient and a psychologist in the course of that
161 relationship; or

162 (ii) transmitted among the client or patient, the psychologist, and individuals who are
163 participating in the diagnosis or treatment under the direction of the psychologist, including
164 members of the client's or patient's family; and

165 (b) made in confidence, for the diagnosis or treatment of the client or patient by the
166 psychologist, and by a means not intended to be disclosed to third persons other than those
167 individuals:

168 (i) present to further the interest of the client or patient in the consultation,
169 examination, or interview;

170 (ii) reasonably necessary for the transmission of the communications; or
171 (iii) participating in the diagnosis and treatment of the client or patient under the
172 direction of the psychologist.

173 (4) "Hypnosis" means, regarding individuals exempted from licensure under this
174 chapter, a process by which one individual induces or assists another individual into a hypnotic
175 state without the use of drugs or other substances and for the purpose of increasing motivation
176 or to assist the individual to alter lifestyles or habits.

177 (5) "Individual" means a natural person.

178 (6) "Mental health therapist" means an individual licensed under this title as a:

179 (a) physician and surgeon, or osteopathic physician engaged in the practice of mental
180 health therapy;

181 (b) registered psychiatric mental health nurse specialist;

182 (c) psychologist qualified to engage in the practice of mental health therapy;

183 (d) clinical social worker;

184 (e) certified social worker;

185 (f) marriage and family therapist; or

186 (g) professional counselor.

187 (7) "Mental illness" means a mental or emotional condition defined in an approved
188 diagnostic and statistical manual for mental disorders generally recognized in the professions of
189 mental health therapy listed under Subsection (6).

190 (8) "Practice of mental health therapy" means the treatment or prevention of mental
191 illness, including:

192 (a) conducting a professional evaluation of an individual's condition of mental health,
193 mental illness, or emotional disorder;

194 (b) establishing a diagnosis in accordance with established written standards generally
195 recognized in the professions of mental health therapy listed under Subsection (6);

196 (c) prescribing a plan for the prevention or treatment of a condition of mental illness or
197 emotional disorder; and

198 (d) engaging in the conduct of professional intervention, including psychotherapy by
199 the application of established methods and procedures generally recognized in the professions
200 of mental health therapy listed under Subsection (6).

201 (9) (a) "Practice of psychology" includes:

202 (i) the practice of mental health therapy by means of observation, description,
203 evaluation, interpretation, intervention, and treatment to effect modification of human behavior
204 by the application of generally recognized professional psychological principles, methods, and
205 procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or
206 dysfunction, the symptoms of any of these, or maladaptive behavior;

207 (ii) the observation, description, evaluation, interpretation, or modification of human
208 behavior by the application of generally recognized professional principles, methods, or
209 procedures requiring the education, training, and clinical experience of a psychologist, for the
210 purpose of assessing, diagnosing, preventing, or eliminating symptomatic, maladaptive, or
211 undesired behavior and of enhancing interpersonal relationships, work and life adjustment,
212 personal effectiveness, behavioral health, and mental health;

213 (iii) psychological testing and the evaluation or assessment of personal characteristics
214 such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological
215 functioning;

216 (iv) counseling, marriage and family therapy, psychoanalysis, psychotherapy, hypnosis,
217 [~~biofeedback,~~] and behavior analysis and therapy;

218 (v) diagnosis and treatment of mental and emotional disorders of disability, alcoholism
219 and substance abuse, disorders of habit or conduct, and the psychological aspects of physical
220 illness, accident, injury, or disability; and

221 (vi) psychoeducational evaluation, therapy, remediation, and consultation.

222 (b) An individual practicing psychology may provide services to individuals, couples,
223 families, groups of individuals, members of the public, and individuals or groups within
224 organizations or institutions.

225 (10) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-61-501.

226 (11) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-61-502, and
227 may be further defined by division rule.

228 Section 3. Section **58-71-102** is amended to read:

229 **58-71-102. Definitions.**

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

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

235 (2) "Acupuncture" has the same definition as in Section 58-72-102.

236 (3) "Board" means the Naturopathic Physicians Licensing Board created in Section
237 58-71-201.

238 (4) "Diagnose" means:

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

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

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

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

250 (5) "Local anesthesia" means an agent, whether a natural medicine or prescription drug,
251 which:

252 (a) is applied topically or by injection in superficial tissues associated with the
253 performance of minor office procedures;

254 (b) has the ability to produce loss of sensation at the site of minor office procedures;
255 and

256 (c) does not cause loss of consciousness or produce general sedation.

257 (6) "Medical naturopathic assistant" means an unlicensed individual working under the
258 direct and immediate supervision of a licensed naturopathic physician and engaged in specific
259 tasks assigned by the licensed naturopathic physician in accordance with the standards and
260 ethics of the profession.

261 (7) (a) "Minor office procedures" means:

262 (i) the use of operative, electrical, or other methods for repair and care of superficial
263 lacerations, abrasions, and benign lesions;

264 (ii) removal of foreign bodies located in the superficial tissues, excluding the eye or
265 ear; and

266 (iii) the use of antiseptics and local anesthetics in connection with minor office surgical
267 procedures.

268 (b) "Minor office procedures" does not include:

269 (i) general or spinal anesthesia;

270 (ii) office procedures more complicated or extensive than those set forth in Subsection
271 (7)(a);

272 (iii) procedures involving the eye; or

273 (iv) any office procedure involving tendons, nerves, veins, or arteries.

274 (8) "Natural medicine" means:

275 (a) food, food extracts, dietary supplements as defined by the federal Food, Drug, and
276 Cosmetics Act, all homeopathic remedies, and plant substances that are not designated as
277 prescription drugs or controlled substances;

278 (b) over-the-counter medications;

279 (c) other nonprescription substances, the prescription or administration of which is not
280 otherwise prohibited or restricted under federal or state law;

281 (d) prescription drugs:

- 282 (i) that, except as provided in Subsection (8)(e), are not controlled substances as
283 defined in Section 58-37-2;
- 284 (ii) the prescription of which is consistent with the competent practice of naturopathic
285 medicine; and
- 286 (iii) the prescription of which is approved by the division in collaboration with the
287 naturopathic formulary advisory peer committee; and
- 288 (e) testosterone, if the testosterone is:
- 289 (i) bio-identical;
- 290 (ii) designed to be:
- 291 (A) administered topically, for transdermal absorption; or
- 292 (B) absorbed across the mucosal membranes of the mouth; and
- 293 (iii) prescribed or administered, in accordance with the requirements of federal and
294 state law, solely for the purpose of treating a patient with a low testosterone level in order to
295 restore the patient to a normal testosterone level.
- 296 (9) (a) "Naturopathic childbirth" means uncomplicated natural childbirth assisted by a
297 naturopathic physician, and includes the use of:
- 298 (i) natural medicines; and
- 299 (ii) uncomplicated episiotomy.
- 300 (b) "Naturopathic childbirth" does not include the use of:
- 301 (i) forceps delivery;
- 302 (ii) general or spinal anesthesia;
- 303 (iii) caesarean section delivery; or
- 304 (iv) induced labor or abortion.
- 305 (10) "Naturopathic mobilization therapy":
- 306 (a) means manually administering mechanical treatment of body structures or tissues
307 for the purpose of restoring normal physiological function to the body by normalizing and
308 balancing the musculoskeletal system of the body;
- 309 (b) does not mean manipulation or adjustment of the joints of the human body beyond

310 the elastic barrier; and

311 (c) does not include manipulation as defined in Title 58, Chapter 73, Chiropractic
312 Physician Practice Act.

313 (11) "Naturopathic physical medicine" means the use of the physical agents of air,
314 water, heat, cold, sound, light, and electromagnetic nonionizing radiation, and the physical
315 modalities of electrotherapy, [biofeedback], acupuncture, diathermy, ultraviolet light,
316 ultrasound, hydrotherapy, naturopathic mobilization therapy, and exercise. Naturopathic
317 medicine does not include the practice of physical therapy or physical rehabilitation.

318 (12) "Practice of naturopathic medicine" means:

319 (a) a system of primary health care for the prevention, diagnosis, and treatment of
320 human health conditions, injuries, and diseases that uses education, natural medicines, and
321 natural therapies, to support and stimulate the patient's intrinsic self-healing processes:

322 (i) using naturopathic childbirth, but only if:

323 (A) the licensee meets standards of the American College of Naturopathic
324 Obstetricians (ACNO) or its successor as determined by the division in collaboration with the
325 board; and

326 (B) the licensee follows a written plan for naturopathic physicians practicing
327 naturopathic childbirth approved by the division in collaboration with the board, which
328 includes entering into an agreement with a consulting physician and surgeon or osteopathic
329 physician, in cases where the scope of practice of naturopathic childbirth may be exceeded and
330 specialty care and delivery is indicated, detailing the guidelines by which the naturopathic
331 physician will:

332 (I) refer patients to the consulting physician; and

333 (II) consult with the consulting physician;

334 (ii) using naturopathic mobilization therapy;

335 (iii) using naturopathic physical medicine;

336 (iv) using minor office procedures;

337 (v) prescribing or administering natural medicine;

- 338 (vi) prescribing medical equipment and devices, diagnosing by the use of medical
- 339 equipment and devices, and administering therapy or treatment by the use of medical devices
- 340 necessary and consistent with the competent practice of naturopathic medicine;
- 341 (vii) prescribing barrier devices for contraception;
- 342 (viii) using dietary therapy;
- 343 (ix) taking and using diagnostic x-rays, electrocardiograms, ultrasound, and
- 344 physiological function tests;
- 345 (x) taking of body fluids for clinical laboratory tests and using the results of the tests in
- 346 diagnosis;
- 347 (xi) taking of a history from and conducting of a physical examination upon a human
- 348 patient; and
- 349 (xii) prescribing and administering natural medicines and medical devices, except a
- 350 naturopathic physician may only administer:
 - 351 (A) a prescription drug, as defined in Section 58-17b-102, in accordance with
 - 352 Subsection (8)(d); and
 - 353 (B) local anesthesia that is not a controlled substance, and only in the performance of
 - 354 minor office procedures;
 - 355 (b) to maintain an office or place of business for the purpose of doing any of the acts
 - 356 described in Subsection (12)(a), whether or not for compensation; or
 - 357 (c) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
 - 358 treatment of human diseases or conditions, in any printed material, stationery, letterhead,
 - 359 envelopes, signs, or advertisements, the designation "naturopathic physician," "naturopathic
 - 360 doctor," "naturopath," "doctor of naturopathic medicine," "doctor of naturopathy,"
 - 361 "naturopathic medical doctor," "naturopathic medicine," "naturopathic health care,"
 - 362 "naturopathy," "N.D.," "N.M.D.," or any combination of these designations in any manner that
 - 363 might cause a reasonable person to believe the individual using the designation is a licensed
 - 364 naturopathic physician.
- 365 (13) "Prescribe" means to issue a prescription:

366 (a) orally or in writing; or

367 (b) by telephone, facsimile transmission, computer, or other electronic means of
368 communication as defined by division rule.

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

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

376 (16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-71-501.

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