

## HB0294S01 compared with HB0294

~~{deleted text}~~ shows text that was in HB0294 but was deleted in HB0294S01.

inserted text shows text that was not in HB0294 but was inserted into HB0294S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative R. Curt Webb proposes the following substitute bill:

### AMENDMENTS TO MENTAL HEALTH PRACTICES

#### LICENSING LAWS

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: \_\_\_\_\_

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#### 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:

- ▶ ~~{amends}~~removes the word "biofeedback" from the definition of the practice of {psychology} physical therapy, the practice of psychology, and the practice of naturopathic physical medicine to clarify that {a person does not have to be licensed

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~~as a psychologist to practice biofeedback}~~ 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

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

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

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

As used in this chapter:

- (1) "Animal physical therapy" means practicing physical therapy or physiotherapy on an animal.
- (2) "Board" means the Utah Physical Therapy Licensing Board, created in Section 58-24b-201.
- (3) "Consultation by telecommunication" means the provision of expert or professional advice by a physical therapist who is licensed outside of Utah to a licensed physical therapist or a health care provider by telecommunication or electronic communication.
- (4) "General supervision" means supervision and oversight of a person by a licensed physical therapist when the licensed physical therapist is immediately available in person, by telephone, or by electronic communication to assist the person.
- (5) "Licensed physical therapist" means a person licensed under this chapter to engage in the practice of physical therapy.
- (6) "Licensed physical therapist assistant" means a person licensed under this chapter to engage in the practice of physical therapy, subject to the provisions of Subsection 58-24b-401(2)(a).

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

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

- (a) continuously present at the facility where the person is providing services;
- (b) immediately available to assist the person; and
- (c) regularly involved in the services being provided by the person.

(9) "Physical impairment" means:

- (a) a mechanical impairment;
- (b) a physiological impairment;
- (c) a developmental impairment;
- (d) a functional limitation;
- (e) a disability;
- (f) a mobility impairment; or
- (g) a bodily malfunction.

(10) "Physical therapy aide" means a person who:

- (a) is trained, on-the-job, by a licensed physical therapist; and
- (b) provides routine assistance to a licensed physical therapist or licensed physical therapist assistant, while the licensed physical therapist or licensed physical therapist assistant practices physical therapy, within the scope of the licensed physical therapist's or licensed physical therapist assistant's license.

(11) (a) "Physical therapy" or "physiotherapy" means:

(i) examining, evaluating, and testing an individual who has a physical impairment or injury;

(ii) identifying or labeling a physical impairment or injury;

(iii) formulating a therapeutic intervention plan for the treatment of a physical impairment, injury, or pain;

(iv) assessing the ongoing effects of therapeutic intervention for the treatment of a physical impairment or injury;

(v) treating or alleviating a physical impairment by designing, modifying, or

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implementing a therapeutic intervention;

(vi) reducing the risk of an injury or physical impairment;

(vii) providing instruction on the use of physical measures, activities, or devices for preventative and therapeutic purposes;

(viii) promoting and maintaining health and fitness;

(ix) the administration of a prescription drug pursuant to Section 58-24b-403;

(x) subject to Subsection 58-28-307(12)(b), engaging in the functions described in Subsections (11)(a)(i) through (ix) in relation to an animal, in accordance with the requirements of Section 58-24b-405; and

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

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

(i) diagnosing disease;

(ii) performing surgery;

(iii) performing acupuncture;

(iv) taking x-rays; or

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

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

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

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

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

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

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

(ii) cardiovascular fitness;

(iii) physical work capacity;

(iv) joint motion, mobility, or stability;

(v) reflexes or autonomic reactions;

(vi) movement skill or accuracy;

(vii) sensation;

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- (viii) perception;
- (ix) peripheral nerve integrity;
- (x) locomotor skills, stability, and endurance;
- (xi) the fit, function, and comfort of prosthetic, orthotic, or other assistive devices;
- (xii) posture;
- (xiii) body mechanics;
- (xiv) limb length, circumference, and volume;
- ~~[(xv) biofeedback;]~~
- ~~[(xvi)]~~ (xv) thoracic excursion and breathing patterns;
- ~~[(xvii)]~~ (xvi) activities of daily living related to physical movement and mobility; and
- ~~[(xviii)]~~ (xvii) functioning in the physical environment at home or work, as it relates to physical movement and mobility.

(14) "Therapeutic intervention" includes:

- (a) therapeutic exercise, with or without the use of a device;
- (b) functional training in self-care, as it relates to physical movement and mobility;
- (c) community or work integration, as it relates to physical movement and mobility;
- (d) manual therapy, including:
  - (i) soft tissue mobilization;
  - (ii) therapeutic massage; or
  - (iii) joint mobilization, as defined by the division, by rule;
- (e) prescribing, applying, or fabricating an assistive, adaptive, orthotic, prosthetic, protective, or supportive device;
- (f) airway clearance techniques, including postural drainage;
- (g) integumentary protection and repair techniques;
- (h) wound debridement, cleansing, and dressing;
- (i) the application of a physical agent, including:
  - (i) light;
  - (ii) heat;
  - (iii) cold;
  - (iv) water;
  - (v) air;

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

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

### **58-61-102. Definitions.**

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

- (1) "Board" means the Psychologist Licensing Board created in Section 58-61-201.
- (2) "Client" or "patient" means an individual who consults or is examined or interviewed by a psychologist acting in his professional capacity.
- (3) "Confidential communication" means information, including information obtained by the psychologist's examination of the client or patient, which is:
  - (a) (i) transmitted between the client or patient and a psychologist in the course of that relationship; or
  - (ii) transmitted among the client or patient, the psychologist, and individuals who are participating in the diagnosis or treatment under the direction of the psychologist, including members of the client's or patient's family; and
  - (b) made in confidence, for the diagnosis or treatment of the client or patient by the psychologist, and by a means not intended to be disclosed to third persons other than those individuals:
    - (i) present to further the interest of the client or patient in the consultation, examination, or interview;
    - (ii) reasonably necessary for the transmission of the communications; or
    - (iii) participating in the diagnosis and treatment of the client or patient under the direction of the psychologist.

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

(5) "Individual" means a natural person.

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

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

(b) registered psychiatric mental health nurse specialist;

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

(d) clinical social worker;

(e) certified social worker;

(f) marriage and family therapist; or

(g) professional counselor.

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

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

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

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

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

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

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

(i) the practice of mental health therapy by means of observation, description, evaluation, interpretation, intervention, and treatment to effect modification of human behavior

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by the application of generally recognized professional psychological principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunction, the symptoms of any of these, or maladaptive behavior;

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

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

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

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

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

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

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

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

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**Legislative Review Note**

~~as of 1-23-12 8:46 AM~~



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~~Office of Legislative Research and General Counsel~~ Section 3. Section 58-71-102 is amended to read:

### 58-71-102. Definitions.

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

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

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

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

(4) "Diagnose" means:

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

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

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

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

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

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

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

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

(6) "Medical naturopathic assistant" means an unlicensed individual working under the

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direct and immediate supervision of a licensed naturopathic physician and engaged in specific tasks assigned by the licensed naturopathic physician in accordance with the standards and ethics of the profession.

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

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

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

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

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

(i) general or spinal anesthesia;

(ii) office procedures more complicated or extensive than those set forth in Subsection

(7)(a);

(iii) procedures involving the eye; or

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

(8) "Natural medicine" means:

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

(b) over-the-counter medications;

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

(d) prescription drugs:

(i) that, except as provided in Subsection (8)(e), are not controlled substances as defined in Section 58-37-2;

(ii) the prescription of which is consistent with the competent practice of naturopathic medicine; and

(iii) the prescription of which is approved by the division in collaboration with the naturopathic formulary advisory peer committee; and

(e) testosterone, if the testosterone is:

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(i) bio-identical;

(ii) designed to be:

(A) administered topically, for transdermal absorption; or

(B) absorbed across the mucosal membranes of the mouth; and

(iii) prescribed or administered, in accordance with the requirements of federal and state law, solely for the purpose of treating a patient with a low testosterone level in order to restore the patient to a normal testosterone level.

(9) (a) "Naturopathic childbirth" means uncomplicated natural childbirth assisted by a naturopathic physician, and includes the use of:

(i) natural medicines; and

(ii) uncomplicated episiotomy.

(b) "Naturopathic childbirth" does not include the use of:

(i) forceps delivery;

(ii) general or spinal anesthesia;

(iii) caesarean section delivery; or

(iv) induced labor or abortion.

(10) "Naturopathic mobilization therapy":

(a) means manually administering mechanical treatment of body structures or tissues for the purpose of restoring normal physiological function to the body by normalizing and balancing the musculoskeletal system of the body;

(b) does not mean manipulation or adjustment of the joints of the human body beyond the elastic barrier; and

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

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

(12) "Practice of naturopathic medicine" means:

(a) a system of primary health care for the prevention, diagnosis, and treatment of

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human health conditions, injuries, and diseases that uses education, natural medicines, and natural therapies, to support and stimulate the patient's intrinsic self-healing processes:

(i) using naturopathic childbirth, but only if:

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

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

(I) refer patients to the consulting physician; and

(II) consult with the consulting physician;

(ii) using naturopathic mobilization therapy;

(iii) using naturopathic physical medicine;

(iv) using minor office procedures;

(v) prescribing or administering natural medicine;

(vi) prescribing medical equipment and devices, diagnosing by the use of medical equipment and devices, and administering therapy or treatment by the use of medical devices necessary and consistent with the competent practice of naturopathic medicine;

(vii) prescribing barrier devices for contraception;

(viii) using dietary therapy;

(ix) taking and using diagnostic x-rays, electrocardiograms, ultrasound, and physiological function tests;

(x) taking of body fluids for clinical laboratory tests and using the results of the tests in diagnosis;

(xi) taking of a history from and conducting of a physical examination upon a human patient; and

(xii) prescribing and administering natural medicines and medical devices, except a naturopathic physician may only administer:

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(A) a prescription drug, as defined in Section 58-17b-102, in accordance with Subsection (8)(d); and

(B) local anesthesia that is not a controlled substance, and only in the performance of minor office procedures;

(b) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (12)(a), whether or not for compensation; or

(c) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions, in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "naturopathic physician," "naturopathic doctor," "naturopath," "doctor of naturopathic medicine," "doctor of naturopathy," "naturopathic medical doctor," "naturopathic medicine," "naturopathic health care," "naturopathy," "N.D.," "N.M.D.," or any combination of these designations in any manner that might cause a reasonable person to believe the individual using the designation is a licensed naturopathic physician.

(13) "Prescribe" means to issue a prescription:

(a) orally or in writing; or

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

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

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

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

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