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H.B. 37
1st Sub. (Buff)

Senator Curtis S. Bramble proposes the following substitute bill:

OCCUPATIONAL AND PROFESSIONAL LICENSING AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies statutory provisions related to the Division of Occupational and Professional Licensing (DOPL).

Highlighted Provisions:

This bill:

- modifies DOPL's authority to share certain licensee information;
- modifies provisions related to unlawful and unprofessional conduct;
- modifies provisions related to unpaid penalties;
- modifies the exemptions from licensure and other requirements related to cosmetology and associated professions;
- modifies background check requirements and other requirements for certain medical professions;
- modifies certain contractor licensing requirements;
- modifies the membership of the Hunting Guides and Outfitters Licensing Board; and
- makes technical changes.

Money Appropriated in this Bill:

None

1st Sub. H.B. 37

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

58-1-106, as last amended by Laws of Utah 2016, Chapter 238

58-1-301.5, as last amended by Laws of Utah 2013, Chapter 262

58-1-501, as last amended by Laws of Utah 2014, Chapter 408

58-1-502, as last amended by Laws of Utah 2016, Chapter 238

58-3a-502, as last amended by Laws of Utah 2013, Chapter 278

58-11a-304, as last amended by Laws of Utah 2013, Chapter 13

58-11a-306, as last amended by Laws of Utah 2016, Chapter 274

58-11a-503, as last amended by Laws of Utah 2014, Chapter 100

58-17b-307, as last amended by Laws of Utah 2012, Chapter 93

58-17b-504, as last amended by Laws of Utah 2011, Chapter 23

58-22-503, as last amended by Laws of Utah 2017, Chapter 218

58-24b-302, as last amended by Laws of Utah 2017, Chapter 164

58-24b-303, as last amended by Laws of Utah 2016, Chapter 238

58-28-503, as last amended by Laws of Utah 2008, Chapter 382

58-31b-201, as last amended by Laws of Utah 2010, Chapter 372

58-31b-302, as last amended by Laws of Utah 2014, Chapter 316

58-31b-503, as last amended by Laws of Utah 2011, Chapter 340

58-37-6, as last amended by Laws of Utah 2017, Chapter 237

58-37-6.5, as last amended by Laws of Utah 2017, Chapter 180

58-37f-401, as last amended by Laws of Utah 2011, Chapter 23

58-37f-402, as last amended by Laws of Utah 2013, Chapter 450

58-44a-402, as last amended by Laws of Utah 2008, Chapter 382

58-47b-501, as last amended by Laws of Utah 2000, Chapter 309

58-53-502, as last amended by Laws of Utah 2008, Chapter 382

58-55-305, as last amended by Laws of Utah 2013, Chapters 430 and 449

58-55-501, as last amended by Laws of Utah 2014, Chapter 188

58-55-503, as last amended by Laws of Utah 2017, Chapter 339

58-56-9.5, as last amended by Laws of Utah 2010, Chapter 278
58-60-117, as last amended by Laws of Utah 2015, Chapter 197
58-63-503, as last amended by Laws of Utah 2008, Chapters 246 and 382
58-67-302, as last amended by Laws of Utah 2012, Chapters 162 and 225
58-67-302.5, as last amended by Laws of Utah 2011, Chapter 214
58-67-302.7, as last amended by Laws of Utah 2015, Chapter 258
58-67-302.8 **(Effective 07/01/18)**, as enacted by Laws of Utah 2017, Chapter 299
58-67-304 **(Superseded 07/01/18)**, as last amended by Laws of Utah 2011, Chapters 161 and 214
58-67-304 **(Effective 07/01/18)**, as last amended by Laws of Utah 2017, Chapter 299
58-67-403, as last amended by Laws of Utah 2011, Chapter 214
58-67-503, as last amended by Laws of Utah 2012, Chapter 369
58-68-302, as last amended by Laws of Utah 2012, Chapters 162 and 225
58-68-302.5 **(Effective 07/01/18)**, as enacted by Laws of Utah 2017, Chapter 299
58-68-304 **(Superseded 07/01/18)**, as last amended by Laws of Utah 2011, Chapters 161 and 214
58-68-304 **(Effective 07/01/18)**, as last amended by Laws of Utah 2017, Chapter 299
58-68-403, as last amended by Laws of Utah 2011, Chapter 214
58-68-503, as last amended by Laws of Utah 2012, Chapter 369
58-71-503, as enacted by Laws of Utah 1996, Chapter 282
58-76-502, as last amended by Laws of Utah 2008, Chapter 382
58-79-201, as enacted by Laws of Utah 2009, Chapter 52
78B-3-416, as last amended by Laws of Utah 2010, Chapters 97 and 286

ENACTS:

58-24b-302.1, Utah Code Annotated 1953
58-67-302.1, Utah Code Annotated 1953
58-68-302.1, Utah Code Annotated 1953

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

Section 1. Section **58-1-106** is amended to read:

58-1-106. Division -- Duties, functions, and responsibilities.

(1) The duties, functions, and responsibilities of the division include the following:

(a) prescribing, adopting, and enforcing rules to administer this title;

(b) investigating the activities of any person whose occupation or profession is regulated or governed by the laws and rules administered and enforced by the division;

(c) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the production of any books, papers, documents, records, contracts, recordings, tapes, correspondence, or information relevant to an investigation upon a finding of sufficient need by the director or by the director's designee;

(d) taking administrative and judicial action against persons in violation of the laws and rules administered and enforced by the division, including the issuance of cease and desist orders;

(e) seeking injunctions and temporary restraining orders to restrain unauthorized activity;

(f) complying with Title 52, Chapter 4, Open and Public Meetings Act;

(g) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew, or otherwise acting upon any license;

(h) preparing and submitting to the governor and the Legislature an annual report of the division's operations, activities, and goals;

(i) preparing and submitting to the executive director a budget of the expenses for the division;

(j) establishing the time and place for the administration of examinations; and

(k) preparing lists of licensees and making these lists available to the public at cost upon request unless otherwise prohibited by state or federal law.

(2) The division may not include home telephone numbers or home addresses of licensees on the lists prepared under Subsection (1)(k), except as otherwise provided by rules of the division made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) (a) The division may provide the home address or home telephone number of a licensee on a list prepared under Subsection (1) upon the request of an individual who provides proper identification and the reason for the request, in writing, to the division.

(b) A request under Subsection (3)(a) is limited to providing information on only one

licensee per request.

(c) The division shall provide, by rule, what constitutes proper identification under Subsection (3)(a).

(4) (a) Nothwithstanding any contrary provisions in Title 63G, Chapter 2, Government Records Access and Management Act, the division may share licensee information with:

(i) the division's contracted agents when sharing the information in compliance with state or federal law; and

(ii) a person who is evaluating the progress or monitoring the compliance of an individual who has been disciplined by the division under this title.

(b) The division may make rules to implement the provisions of this Subsection (4).

(5) All rules made by the division under this title shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 2. Section **58-1-301.5** is amended to read:

58-1-301.5. Division access to Bureau of Criminal Identification records.

(1) The division shall have direct access to criminal background information maintained by the Bureau of Criminal Identification under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, for background screening of persons who are applying for licensure, licensure renewal, licensure reinstatement, or relicensure, as required in:

(a) Section 58-17b-307 of Title 58, Chapter 17b, Pharmacy Practice Act;

(b) Sections 58-24b-302 and 58-24b-302.1 of Title 58, Chapter 24b, Physical Therapy Practice Act;

[~~(b)~~] (c) Section 58-31b-302 of Title 58, Chapter 31b, Nurse Practice Act;

[~~(c)~~] (d) Section 58-47b-302 of Title 58, Chapter 47b, Massage Therapy Practice Act;

[~~(d)~~] (e) Section 58-55-302 of Title 58, Chapter 55, Utah Construction Trades Licensing Act, as it applies to alarm companies and alarm company agents;

[~~(e)~~] (f) Section 58-63-302 of Title 58, Chapter 63, Security Personnel Licensing Act; [~~and~~]

[~~(f)~~] (g) Section 58-64-302 of Title 58, Chapter 64, Deception Detection Examiners Licensing Act[~~.~~];

(h) Sections 58-67-302 and 58-67-302.1 of Title 58, Chapter 67, Utah Medical Practice Act; and

(i) Sections 58-68-302 and 58-68-302.1 of Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(2) The division's access to criminal background information under this section:

(a) shall meet the requirements of Section 53-10-108; and

(b) includes convictions, pleas of nolo contendere, pleas of guilty or nolo contendere held in abeyance, dismissed charges, and charges without a known disposition.

(3) The division may not disseminate outside of the division any criminal history record information that the division obtains from the Bureau of Criminal Identification or the Federal Bureau of Investigation under the criminal background check requirements of this section.

Section 3. Section **58-1-501** is amended to read:

58-1-501. Unlawful and unprofessional conduct.

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

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

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

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

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

(ii) for a licensee who has had a license under this title reinstated following disciplinary action, practicing the same occupation or profession using a different name than the name used before the disciplinary action, except as permitted by law and after notice to, and approval by, the division;

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

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

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

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

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

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

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

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

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

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

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

(d) engaging in conduct that results in disciplinary action, including reprimand,

censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401;

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

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

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

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

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

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

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

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

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

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

(ii) with prescriptive authority conferred by an exception issued under this title, or a multi-state practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to

establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment;

(n) violating a provision of Section 58-1-501.5; or

(o) violating the terms of an order governing a license.

(3) Unless otherwise specified by statute or administrative rule, in a civil or administrative proceeding commenced by the division under this title, a person subject to any of the unlawful and unprofessional conduct provisions of this title is strictly liable for each violation.

Section 4. Section **58-1-502** is amended to read:

58-1-502. Unlawful and unprofessional conduct -- Penalties.

(1) Unless otherwise specified in this title, a person who violates the unlawful conduct provisions defined in this title is guilty of a class A misdemeanor.

(2) (a) In addition to any other statutory penalty for a violation related to a specific occupation or profession regulated by this title, if upon inspection or investigation, the division concludes that a person has violated Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly:

(i) issue a citation to the person according to this section and any pertinent rules;

(ii) attempt to negotiate a stipulated settlement; or

(iii) notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(b) (i) The division may assess a fine under this Subsection (2) against a person who violates Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections, as evidenced by:

(A) an uncontested citation;

(B) a stipulated settlement; or

(C) a finding of a violation in an adjudicative proceeding.

(ii) The division may, in addition to or in lieu of a fine under Subsection (2)(b)(i), order the person to cease and desist from violating Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections.

(c) Except for a cease and desist order, the division may not assess the licensure

sanctions cited in Section 58-1-401 through a citation.

(d) A citation shall:

(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of a fine assessed by the citation within the time specified in the citation.

(e) The division may issue a notice in lieu of a citation.

(f) (i) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

(ii) The period to contest a citation may be extended by the division for cause.

(g) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

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

(i) The division may not issue a citation under this section after the expiration of one year following the occurrence of a violation.

(j) The director or the director's designee shall assess fines according to the following:

(i) for the first offense handled pursuant to Subsection (2)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (2)(a), a fine of up to $2,000; and

(iii) for each subsequent offense handled pursuant to Subsection (2)(a), a fine of up to $2,000 for each day of continued offense.

(3) (a) An action for a first or second offense that has not yet resulted in a final order of the division may not preclude initiation of a subsequent action for a second or subsequent offense during the pendency of a preceding action.

(b) The final order on a subsequent action is considered a second or subsequent

offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

(4) If, upon inspection or investigation, the division determines that a person has violated an unlawful conduct or an unprofessional conduct provision defined in this title more than one time, the division may treat each violation as a separate violation of the unlawful conduct or unprofessional conduct provision and may apply a penalty as described in this title to each violation.

[~~(4)~~] (5) (a) The director may collect a penalty that is not paid by:

(i) [~~either~~] referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect [~~the~~] a penalty.

(c) A court may award reasonable attorney fees and costs to the [~~division~~] prevailing party in an action brought by the division to [~~enforce the provisions of this section~~] collect a penalty.

Section 5. Section **58-3a-502** is amended to read:

58-3a-502. Penalty for unlawful conduct.

(1) (a) If upon inspection or investigation, the division concludes that a person has violated Subsections 58-1-501(1)(a) through (d) or Section 58-3a-501 or any rule or order issued with respect to Section 58-3a-501, and that disciplinary action is appropriate, the director or the director's designee from within the division for each alternative respectively, shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-3a-501 or any rule or order issued with respect to Section 58-3a-501, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section 58-3a-501 or any rule or order issued with respect to this section.

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-3a-401 may not be assessed through a citation.

(b) A citation shall:

(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon a person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the person's agent by a division investigator or by any person specially designated by the director or by mail.

(e) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

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

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

(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(i) The director or the director's designee shall assess fines according to the following:

(i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to

$2,000 for each day of continued offense.

(2) An action initiated for a first or second offense which has not yet resulted in a final order of the division shall not preclude initiation of any subsequent action for a second or subsequent offense during the pendency of any preceding action. The final order on a subsequent action shall be considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

[~~(3) Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state shall provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded to the division.~~]

(3) (a) The director may collect a penalty that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 6. Section **58-11a-304** is amended to read:

58-11a-304. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of barbering, cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology without being licensed under this chapter:

(1) a person licensed under the laws of this state to engage in the practice of medicine, surgery, osteopathy, or chiropractic when engaged in the practice of the profession for which they are licensed;

(2) a commissioned physician or surgeon serving in the armed forces of the United States or another federal agency;

(3) a registered nurse, undertaker, or mortician licensed under the laws of this state when engaged in the practice of the profession for which the person is licensed;

(4) a person who visits the state to engage in instructional seminars, advanced classes, trade shows, or competitions of a limited duration;

(5) a person who engages in the practice of barbering, cosmetology/barbering, hair design, esthetics, master-level esthetics, electrology, or nail technology without compensation;

(6) a person instructing an adult education class or other educational program directed toward persons who are not licensed under this chapter and that is not intended to train persons to become licensed under this chapter, provided:

(a) an attendee receives no credit toward educational requirements for licensure under this chapter;

(b) the instructor informs each attendee in writing that taking such a class or program will not certify or qualify the attendee to perform a service for compensation that requires licensure under this chapter; and

(c) (i) the instructor is properly licensed; or

(ii) the instructor receives no compensation;

(7) a person providing instruction in workshops, seminars, training meetings, or other educational programs whose purpose is to provide continuing professional development to licensed barbers, cosmetologists/barbers, hair designers, estheticians, master estheticians, electrologists, or nail technicians;

(8) a person enrolled in a licensed barber or cosmetology/barber school when participating in an on the job training internship under the direct supervision of a licensed barber or cosmetologist/barber upon completion of a basic program under the standards established by rule by the division in collaboration with the board;

(9) a person enrolled in an approved apprenticeship pursuant to Section 58-11a-306;

(10) an employee of a company that is primarily engaged in the business of selling products used in the practice of barbering, cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology when demonstrating the company's products to a potential customer, provided the employee makes no representation to a potential customer that attending such a demonstration will certify or qualify the attendee to perform a service for compensation that requires licensure under this chapter;

(11) a person who:

(a) is qualified to engage in the practice of barbering, cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology in another jurisdiction as evidenced by licensure, certification, or lawful practice in the other jurisdiction;

(b) is employed by, or under contract with, a motion picture company; and

(c) engages in the practice of barbering, cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology in the state:

(i) solely to assist in the production of a motion picture; and

(ii) for no more than 120 days per calendar year; and

(12) a person who:

(a) engages in hair braiding; and

(b) unless it is expressly exempted under this section or Section 58-1-307, does not engage in other activity requiring licensure under this chapter.

Section 7. Section **58-11a-306** is amended to read:

58-11a-306. Apprenticeship.

(1) An approved barber apprenticeship shall:

(a) consist of not less than 1,250 hours of training in not less than eight months; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as a barber instructor or a cosmetology/barber instructor; and

(ii) provides one-on-one direct supervision of the barber apprentice during the apprenticeship program.

(2) An approved cosmetologist/barber apprenticeship shall:

(a) consist of not less than 2,500 hours of training in not less than 15 months; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as a cosmetologist/barber instructor; and

(ii) provides one-on-one direct supervision of the cosmetologist/barber apprentice during the apprenticeship program.

(3) An approved esthetician apprenticeship shall:

(a) consist of not less than 800 hours of training in not less than five months; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as an esthetician instructor; and

(ii) provides one-on-one direct supervision of the esthetician apprentice during the apprenticeship program.

(4) An approved master esthetician apprenticeship shall:

(a) consist of not less than 1,500 hours of training in not less than 10 months; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as a master-level esthetician instructor; and

(ii) provides one-on-one direct supervision of the master esthetician apprentice during the apprenticeship program.

(5) An approved nail technician apprenticeship shall:

(a) consist of not less than 375 hours of training in not less than three months; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as a nail technician instructor or a cosmetology/barber instructor; [~~and~~]

(ii) provides [~~one-on-one~~] direct supervision of the nail technician apprentice during the apprenticeship program[~~.~~]; and

(iii) provides direct supervision to no more than two nail technician apprentices during the apprentice program.

(6) A person seeking to qualify for licensure by apprenticing in an approved apprenticeship under this chapter shall:

(a) register with the division before beginning the training requirements by:

(i) submitting a form prescribed by the division, which includes the name of the licensed supervisor; and

(ii) paying a fee determined by the department under Section 63J-1-504;

(b) complete the apprenticeship within five years of the date on which the division approves the registration; and

(c) notify the division within 30 days if the licensed supervisor changes after the registration is approved by the division.

(7) Notwithstanding Subsection (6), if a person seeking to qualify for licensure by apprenticing in an approved apprenticeship under this chapter registers with the division before January 1, 2017, any training requirements completed by the person as an apprentice in an

approved apprenticeship before registration may be applied to successful completion of the approved apprenticeship.

Section 8. Section **58-11a-503** is amended to read:

58-11a-503. Penalties.

(1) Unless Subsection (2) applies, an individual who commits an act of unlawful conduct under Section 58-11a-502 or who fails to comply with a citation issued under this section after it is final is guilty of a class A misdemeanor.

(2) Sexual conduct that violates Section 58-11a-502 and Title 76, Utah Criminal Code, shall be subject to the applicable penalties in Title 76, Utah Criminal Code.

(3) Grounds for immediate suspension of a licensee's license by the division include the issuance of a citation for violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7).

(4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7), or a rule or order issued with respect to Subsection 58-11a-502(1), (2), (4), (5), (6), or (7), and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who is in violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-11a-502(1), (2), (4), (5), (6), or (7).

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-11a-401 may not be assessed through a citation.

(b) (i) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated.

(ii) The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(iii) The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of a fine assessed by the citation within the time specified in the citation.

(c) Each citation issued under this section, or a copy of each citation, may be served upon a person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the person's agent by a division investigator or by a person specially designated by the director or by mail.

(d) (i) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

(ii) The period to contest a citation may be extended by the division for cause.

(e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

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

(g) No citation may be issued under this section after the expiration of six months following the occurrence of a violation.

(h) Fines shall be assessed by the director or the director's designee according to the following:

(i) for a first offense under Subsection (4)(a), a fine of up to $1,000;

(ii) for a second offense under Subsection (4)(a), a fine of up to $2,000; and

(iii) for any subsequent offense under Subsection (4)(a), a fine of up to $2,000 for each day of continued offense.

(i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7); or

(B) (I) the division initiated an action for a first or second offense;

(II) no final order has been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of

the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7); and

(IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.

(5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund.

(b) A penalty which is not paid may be collected by the director by either:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(c) A county attorney or the attorney general of the state [~~is to~~] shall provide legal assistance and advice to the director in an action to collect [~~the~~] a penalty.

(d) A court shall award reasonable attorney fees and costs [~~in an action brought to enforce the provisions of this section~~] to the prevailing party in an action brought by the division to collect a penalty.

Section 9. Section **58-17b-307** is amended to read:

58-17b-307. Qualification for licensure -- Criminal background checks.

(1) An applicant for licensure under this chapter shall:

(a) submit fingerprint cards in a form acceptable to the division at the time the license application is filed; and

(b) in accordance with this section and requirements established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consent to a fingerprint background check regarding the application conducted by the:

(i) Utah Bureau of Criminal Identification; and

(ii) Federal Bureau of Investigation.

[~~(2) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant through the National~~

~~Criminal History System (NCIC) or any successor system.~~]

(2) The division shall:

(a) in addition to other fees authorized by this chapter, collect from each applicant submitting fingerprints in accordance with this section the fee that the Bureau of Criminal Identification is authorized to collect for the services provided under Section 53-10-108 and the fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of obtaining federal criminal history record information;

(b) submit from each applicant the fingerprint card and the fees described in Subsection (2)(a) to the Bureau of Criminal Identification; and

(c) obtain and retain in division records, a signed waiver approved by the Bureau of Criminal Identification in accordance with Section 53-10-108 for each applicant.

(3) The Bureau of Criminal Identification shall, in accordance with the requirements of Section 53-10-108:

(a) check the fingerprints submitted under Subsection (2)(b) against the applicable state and regional criminal records databases;

(b) forward the fingerprints to the Federal Bureau of Investigation for a national criminal history background check; and

(c) provide the results from the state, regional, and nationwide criminal history background checks to the division.

[~~(3)~~] (4) For purposes of conducting the criminal background check required in Subsection (1), the division shall have direct access to criminal background information maintained under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

[~~(4)~~] (5) (a) A new pharmacist, pharmacy intern, or pharmacy technician license issued under this section is conditional, pending completion of the criminal background check.

(b) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, if the criminal background check required in Subsection (1), discloses the applicant has failed to accurately disclose a criminal history, the license is immediately and automatically revoked upon notice to the licensee by the division.

[~~(5)~~] (6) (a) A person whose conditional license has been revoked under Subsection (4) is entitled to a postrevocation hearing to challenge the revocation.

(b) The division shall conduct [~~the~~] a postrevocation hearing in accordance with Title

63G, Chapter 4, Administrative Procedures Act.

(7) The division may not disseminate outside of the division any criminal history record information that the division obtains from the Bureau of Criminal Identification or the Federal Bureau of Investigation under the criminal background check requirements of this section.

Section 10. Section **58-17b-504** is amended to read:

58-17b-504. Penalty for unlawful or unprofessional conduct -- Fines -- Citations.

(1) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(i) and Subsections 58-17b-501(7) and (11) is guilty of a third degree felony.

(2) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(ii), Subsections 58-1-501(1)(b) through (e), and Section 58-17b-501, except Subsections 58-17b-501(7) and (11), is guilty of a class A misdemeanor.

(3) (a) Subject to Subsection (5) and in accordance with Section 58-17b-401, for acts of unprofessional or unlawful conduct, the division may:

(i) assess administrative penalties; and

(ii) take any other appropriate administrative action.

(b) An administrative penalty imposed pursuant to this section shall be deposited in the General Fund as a dedicated credit to be used by the division for pharmacy licensee education and enforcement as provided in Section 58-17b-505.

(4) If a licensee has been convicted of violating Section 58-17b-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative fine under this chapter for the same offense for which the conviction was obtained.

(5) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance Database Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued with respect to these provisions, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4,

Administrative Procedures Act.

(b) Any person who is in violation of the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance Database Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued with respect to these provisions, as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (5) of up to $10,000 per single violation or up to $2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule, and may, in addition to or in lieu of, be ordered to cease and desist from violating the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued with respect to these provisions.

(c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-17b-401 may not be assessed through a citation.

(d) Each citation shall be in writing and specifically describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated. The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation in order to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(e) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served:

(i) in accordance with the Utah Rules of Civil Procedure;

(ii) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or

(iii) by mail.

(f) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.

(g) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with the citation after it becomes final.

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

(i) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(6) (a) The director may collect a penalty that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 11. Section **58-22-503** is amended to read:

58-22-503. Penalties and administrative actions for unlawful or unprofessional conduct.

(1) (a) If upon inspection or investigation, the division concludes that a person has violated Section 58-1-501, 58-22-501, or 58-22-502.5, or any rule or order issued with respect to Section 58-22-501 or 58-22-502.5, and that disciplinary action is appropriate, the director or the director's designee from within the division for each alternative respectively, shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who violates Section 58-1-501, 58-22-501, or 58-22-502.5, or any rule or order issued with respect to Section 58-22-501 or 58-22-502.5, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be ordered to cease and desist from violating Section 58-1-501, 58-22-501, or 58-22-502.5, or any rule or order issued with respect to this section.

(ii) Except for a cease and desist order, the licensure sanctions cited in Section

58-22-401 may not be assessed through a citation.

(b) A citation shall:

(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon a person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the person's agent by a division investigator or by any person specially designated by the director or by mail.

(e) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

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

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

(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(i) The director or the director's designee shall assess fines according to the following:

(i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to $2,000 for each day of continued offense.

(2) An action initiated for a first or second offense which has not yet resulted in a final order of the division shall not preclude initiation of any subsequent action for a second or subsequent offense during the pendency of any preceding action. The final order on a subsequent action shall be considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

[~~(3) Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state shall provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded to the division.~~]

(3) (a) The director may collect a penalty that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 12. Section **58-24b-302** is amended to read:

58-24b-302. Licensure.

(1) An applicant for a license as a physical therapist shall:

(a) be of good moral character;

(b) complete the application process, including payment of fees;

(c) submit proof of graduation from a professional physical therapist education program that is accredited by a recognized accreditation agency;

(d) after complying with Subsection (1)(c), pass a licensing examination;

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

(f) if the applicant is applying to participate in the Physical Therapy Licensure

Compact under Chapter 24c, Physical Therapy Licensure Compact, consent to a criminal background check in accordance with Section 58-24b-302.1 and any requirements established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

[~~(f)~~] (g) meet any other requirements established by the division, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) An applicant for a license as a physical therapist assistant shall:

(a) be of good moral character;

(b) complete the application process, including payment of fees set by the division, in accordance with Section 63J-1-504, to recover the costs of administering the licensing requirements relating to physical therapist assistants;

(c) submit proof of graduation from a physical therapist assistant education program that is accredited by a recognized accreditation agency;

(d) after complying with Subsection (2)(c), pass a licensing examination approved by division rule made in collaboration with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board;

(f) submit to, and pass, a criminal background check, in accordance with Section 58-24b-302.1 and standards established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(g) meet any other requirements established by the division, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) An applicant for a license as a physical therapist who is educated outside of the United States shall:

(a) be of good moral character;

(b) complete the application process, including payment of fees;

(c) (i) provide satisfactory evidence that the applicant graduated from a professional physical therapist education program that is accredited by a recognized accreditation agency; or

(ii) (A) provide satisfactory evidence that the applicant graduated from a physical therapist education program that prepares the applicant to engage in the practice of physical

therapy, without restriction;

(B) provide satisfactory evidence that the education program described in Subsection (3)(c)(ii)(A) is recognized by the government entity responsible for recognizing a physical therapist education program in the country where the program is located; and

(C) pass a credential evaluation to ensure that the applicant has satisfied uniform educational requirements;

(d) after complying with Subsection (3)(c), pass a licensing examination;

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

(f) if the applicant is applying to participate in the Physical Therapy Licensure Compact under Chapter 24c, Physical Therapy Licensure Compact, consent to a criminal background check in accordance with Section 58-24b-302.1 and any requirements established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

[~~(f)~~] (g) meet any other requirements established by the division, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) The division shall issue a license to a person who holds a current unrestricted license to practice physical therapy in a state, district, or territory of the United States of America, other than Utah, if the person:

(a) is of good moral character;

(b) completes the application process, including payment of fees; [~~and~~]

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

(d) if the applicant is applying to participate in the Physical Therapy Licensure Compact under Chapter 24c, Physical Therapy Licensure Compact, consents to a criminal background check in accordance with Section 58-24b-302.1 and any requirements established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(e) meets any other requirements established by the division, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) (a) Notwithstanding Subsection 58-1-307(1)(c), an individual may not engage in an

internship in physical therapy, unless the person is:

(i) certified by the division; or

(ii) exempt from licensure under Section 58-24b-304.

(b) The provisions of Subsection (5)(a) apply, regardless of whether the individual is participating in the supervised clinical training program for the purpose of becoming a physical therapist or a physical therapist assistant.

Section 13. Section **58-24b-302.1** is enacted to read:

58-24b-302.1. Criminal background check.

(1) An applicant for licensure under this chapter who requires a criminal background check shall:

(a) submit fingerprint cards in a form acceptable to the division at the time the license application is filed; and

(b) consent to a fingerprint background check conducted by the Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.

(2) The division shall:

(a) in addition to other fees authorized by this chapter, collect from each applicant submitting fingerprints in accordance with this section the fee that the Bureau of Criminal Identification is authorized to collect for the services provided under Section 53-10-108 and the fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of obtaining federal criminal history record information;

(b) submit from each applicant the fingerprint card and the fees described in Subsection (2)(a) to the Bureau of Criminal Identification; and

(c) obtain and retain in division records a signed waiver approved by the Bureau of Criminal Identification in accordance with Section 53-10-108 for each applicant.

(3) The Bureau of Criminal Identification shall, in accordance with the requirements of Section 53-10-108:

(a) check the fingerprints submitted under Subsection (2)(b) against the applicable state and regional criminal records databases;

(b) forward the fingerprints to the Federal Bureau of Investigation for a national criminal history background check; and

(c) provide the results from the state, regional, and nationwide criminal history

background checks to the division.

(4) For purposes of conducting a criminal background check required under this section, the division shall have direct access to criminal background information maintained under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

(5) The division may not disseminate outside of the division any criminal history record information that the division obtains from the Bureau of Criminal Identification or the Federal Bureau of Investigation under the criminal background check requirements of this section.

(6) (a) A new physical therapist assistant license issued under Subsection 58-24b-302(2) is conditional pending completion of the criminal background check.

(b) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, if the criminal background check required in Subsection 58-24b-302(2) demonstrates the applicant has failed to accurately disclose a criminal history, the license is immediately and automatically revoked upon notice to the licensee by the division.

(c) A person whose conditional license has been revoked under Subsection (6)(b) is entitled to a postrevocation hearing to challenge the revocation.

(d) The division shall conduct a postrevocation hearing in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(7) The division may not issue a letter of qualification to participate in the Physical Therapy Licensure Compact until the criminal background check described in this section is completed.

Section 14. Section **58-24b-303** is amended to read:

58-24b-303. Term of license -- Renewal -- Temporary license for physical therapist assistant.

(1) A license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. The division may, by rule, extend or shorten a license renewal process by one year in order to stagger the renewal cycles that the division administers.

(2) At the time of license renewal, the licensee shall provide satisfactory evidence that the licensee completed continuing education competency requirements, established by the division, by rule.

(3) If a license renewal cycle is shortened or extended under Subsection (1), the

division shall increase or reduce the required continuing education competency requirements accordingly.

(4) A license issued under this chapter expires on the expiration date indicated on the license, unless the license is renewed under this section.

[~~(5) Notwithstanding any other provision of this chapter, the division may, by rule, grant a temporary license, that expires on July 1, 2014, as a physical therapist assistant to an individual who:~~]

[~~(a) was working as a physical therapist assistant in Utah before July 1, 2009; and~~]

[~~(b) complies with the requirements described in Subsections 58-24b-302(2)(a), (b), (c), (e), and (f).~~]

Section 15. Section **58-28-503** is amended to read:

58-28-503. Penalty for unlawful or unprofessional conduct.

(1) Any person who violates the unlawful conduct provisions of Section 58-28-501 is guilty of a third degree felony.

(2) After proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and Chapter 1, Division of Occupational and Professional Licensing Act, the division may impose administrative penalties of up to $10,000 for acts of unprofessional conduct or unlawful conduct under this chapter.

(3) Assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.

(4) (a) The director may collect a penalty that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 16. Section **58-31b-201** is amended to read:

58-31b-201. Board.

(1) There is created the Board of Nursing that consists of the following 11 members:

(a) nine nurses in a manner as may be further defined in division rule; and

(b) two members of the public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and 58-1-203 and shall:

(a) (i) recommend to the division minimum standards for educational programs qualifying a person for licensure or certification under this chapter;

(ii) recommend to the division denial, approval, or withdrawal of approval regarding educational programs that meet or fail to meet the established minimum standards; and

(iii) designate one of its members on a permanent or rotating basis to:

(A) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(B) advise the division in its investigation of these complaints.

(b) A board member who has, under Subsection (3)(a)(iii), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

[~~(4) (a) The director shall appoint an individual to serve as an ex officio member of the Board of Nursing to represent the position of the division in matters considered by the board.~~]

[~~(b) The ex officio member shall be a licensed registered nurse, shall have earned a masters degree in nursing, and shall have a minimum of five years of experience working in nursing administration or nursing education.~~]

Section 17. Section **58-31b-302** is amended to read:

58-31b-302. Qualifications for licensure or certification -- Criminal background checks.

(1) An applicant for certification as a medication aide shall:

(a) submit an application to the division on a form prescribed by the division;

(b) pay a fee to the division as determined under Section 63J-1-504;

(c) have a high school diploma or its equivalent;

(d) have a current certification as a nurse aide, in good standing, from the Department of Health;

(e) have a minimum of 2,000 hours of experience within the two years prior to

application, working as a certified nurse aide in a long-term care facility;

(f) obtain letters of recommendation from a long-term care facility administrator and one licensed nurse familiar with the applicant's work practices as a certified nurse aide;

(g) be in a condition of physical and mental health that will permit the applicant to practice safely as a medication aide certified;

(h) have completed an approved education program or an equivalent as determined by the division in collaboration with the board;

(i) have passed the examinations as required by division rule made in collaboration with the board; and

(j) meet with the board, if requested, to determine the applicant's qualifications for certification.

(2) An applicant for licensure as a licensed practical nurse shall:

(a) submit to the division an application in a form prescribed by the division;

(b) pay to the division a fee determined under Section 63J-1-504;

(c) have a high school diploma or its equivalent;

(d) be in a condition of physical and mental health that will permit the applicant to practice safely as a licensed practical nurse;

(e) have completed an approved practical nursing education program or an equivalent as determined by the board;

(f) have passed the examinations as required by division rule made in collaboration with the board; and

(g) meet with the board, if requested, to determine the applicant's qualifications for licensure.

(3) An applicant for licensure as a registered nurse shall:

(a) submit to the division an application form prescribed by the division;

(b) pay to the division a fee determined under Section 63J-1-504;

(c) have a high school diploma or its equivalent;

(d) be in a condition of physical and mental health that will allow the applicant to practice safely as a registered nurse;

(e) have completed an approved registered nursing education program;

(f) have passed the examinations as required by division rule made in collaboration

with the board; and

(g) meet with the board, if requested, to determine the applicant's qualifications for licensure.

(4) Applicants for licensure as an advanced practice registered nurse shall:

(a) submit to the division an application on a form prescribed by the division;

(b) pay to the division a fee determined under Section 63J-1-504;

(c) be in a condition of physical and mental health which will allow the applicant to practice safely as an advanced practice registered nurse;

(d) hold a current registered nurse license in good standing issued by the state or be qualified at the time for licensure as a registered nurse;

(e) (i) have earned a graduate degree in:

(A) an advanced practice registered nurse nursing education program; or

(B) a related area of specialized knowledge as determined appropriate by the division in collaboration with the board; or

(ii) have completed a nurse anesthesia program in accordance with Subsection (4)(f)(ii);

(f) have completed:

(i) course work in patient assessment, diagnosis and treatment, and pharmacotherapeutics from an education program approved by the division in collaboration with the board; or

(ii) a nurse anesthesia program which is approved by the Council on Accreditation of Nurse Anesthesia Educational Programs;

(g) to practice within the psychiatric mental health nursing specialty, demonstrate, as described in division rule, that the applicant, after completion of a doctorate or master's degree required for licensure, is in the process of completing the applicant's clinical practice requirements in psychiatric mental health nursing, including in psychotherapy;

(h) have passed the examinations as required by division rule made in collaboration with the board;

(i) be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification; and

(j) meet with the board, if requested, to determine the applicant's qualifications for

licensure.

(5) For each applicant for licensure or certification under this chapter:

(a) the applicant shall:

(i) submit fingerprint cards in a form acceptable to the division at the time the application is filed; and

(ii) consent to a fingerprint background check conducted by the [~~Utah~~] Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application; [~~and~~]

[~~(b) the division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check through the national criminal history system (NCIC) or any successor system.~~]

(b) the division shall:

(i) in addition to other fees authorized by this chapter, collect from each applicant submitting fingerprints in accordance with this section the fee that the Bureau of Criminal Identification is authorized to collect for the services provided under Section 53-10-108 and the fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of obtaining federal criminal history record information;

(ii) submit from each applicant the fingerprint card and the fees described in this Subsection (5)(b) to the Bureau of Criminal Identification; and

(iii) obtain and retain in division records a signed waiver approved by the Bureau of Criminal Identification in accordance with Section 53-10-108 for each applicant; and

(c) the Bureau of Criminal Identification shall, in accordance with the requirements of Section 53-10-108:

(i) check the fingerprints submitted under Subsection (5)(b) against the applicable state and regional criminal records databases;

(ii) forward the fingerprints to the Federal Bureau of Investigation for a national criminal history background check; and

(iii) provide the results from the state, regional, and nationwide criminal history background checks to the division.

(6) For purposes of conducting the criminal background checks required in Subsection (5), the division shall have direct access to criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

(7) (a) (i) Any new nurse license or certification issued under this section shall be conditional, pending completion of the criminal background check.

(ii) [~~If~~] Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, if the criminal background check discloses the applicant has failed to accurately disclose a criminal history, the license or certification shall be immediately and automatically revoked upon notice to the licensee by the division.

(b) (i) [~~Any~~] A person whose conditional license or certification has been revoked under Subsection (7)(a) [~~shall be~~] is entitled to a postrevocation hearing to challenge the revocation.

(ii) [~~The~~] A postrevocation hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(8) [~~(a)~~] If a person has been charged with a violent felony, as defined in Subsection 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of guilty or nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance pending the successful completion of probation[~~: (i)~~], the person is disqualified for licensure under this chapter[~~;~~] and:

[~~(ii) (A)~~] (a) if the person is licensed under this chapter, the division:

[~~(I)~~] (i) shall act upon the license as required under Section 58-1-401; and

[~~(II)~~] (ii) may not renew or subsequently issue a license to the person under this chapter; and

[~~(B)~~] (b) if the person is not licensed under this chapter, the division may not issue a license to the person under this chapter.

[~~(b)~~] (9) If a person has been charged with a felony other than a violent felony, as defined in Subsection 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of guilty or nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance pending the successful completion of probation[~~: (i) if the person is licensed under this chapter~~], the division shall determine whether the felony disqualifies the person for licensure under this chapter and act upon the license, as required, in accordance with Section 58-1-401[~~; and~~].

[~~(ii) if the person is not licensed under this chapter, the person may not file an application for licensure under this chapter any sooner than five years after having completed~~

~~the conditions of the sentence or plea agreement.~~]

(10) The division may not disseminate outside of the division any criminal history record information that the division obtains from the Bureau of Criminal Identification or the Federal Bureau of Investigation under the criminal background check requirements of this section.

Section 18. Section **58-31b-503** is amended to read:

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

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

(2) Any person who violates any of the unlawful conduct provisions specifically defined in Subsections 58-1-501(1)(b) through (f) and 58-31b-501(1)(d) is guilty of a class A misdemeanor.

(3) Any person who violates any of the unlawful conduct provisions specifically defined in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B misdemeanor.

(4) (a) Subject to Subsection (6) and in accordance with Section 58-31b-401, for acts of unprofessional or unlawful conduct, the division may:

(i) assess administrative penalties; and

(ii) take any other appropriate administrative action.

(b) An administrative penalty imposed pursuant to this section shall be deposited in the "Nurse Education and Enforcement Account" as provided in Section 58-31b-103.

(5) If a licensee has been convicted of violating Section 58-31b-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative fine under this chapter for the same offense for which the conviction was obtained.

(6) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Section 58-31b-401, 58-31b-501, or 58-31b-502, Chapter 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and that disciplinary action is appropriate, the director or the director's designee from within the division shall:

(i) promptly issue a citation to the person according to this chapter and any pertinent administrative rules;

(ii) attempt to negotiate a stipulated settlement; or

(iii) notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(b) Any person who is in violation of a provision described in Subsection (6)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding may be assessed a fine:

(i) pursuant to this Subsection (6) of up to $10,000 per single violation or up to $2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; and

(ii) in addition to or in lieu of the fine imposed under Subsection (6)(b)(i), be ordered to cease and desist from violating a provision of Sections 58-31b-501 and 58-31b-502, Chapter 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to those provisions.

(c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-31b-401 may not be assessed through a citation.

(d) Each citation issued under this section shall:

(i) be in writing; and

(ii) clearly describe or explain:

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

(B) that the recipient must notify the division in writing within 20 calendar days of service of the citation in order to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(C) the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation; and

(iii) be served upon any person upon whom a summons may be served:

(A) in accordance with the Utah Rules of Civil Procedure;

(B) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or

(C) by mail.

(e) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.

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

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

(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(7) (a) The director may collect a penalty that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 19. Section **58-37-6** is amended to read:

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

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

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

(2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled

substance in Schedules I through V within this state, or who proposes to engage in manufacturing, producing, distributing, prescribing, dispensing, administering, conducting research with, or performing laboratory analysis upon controlled substances included in Schedules I through V within this state shall obtain a license issued by the division.

(ii) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

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

(c) The following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II through V under this section:

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

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

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

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

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

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

(3) (a) (i) Upon proper application, the division shall license a qualified applicant to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances included in Schedules I through V, unless it determines that issuance of a license is inconsistent with the public interest.

(ii) The division may not issue a license to any person to prescribe, dispense, or administer a Schedule I controlled substance except under Subsection (3)(a)(i).

(iii) In determining public interest under this Subsection (3)(a), the division shall consider whether or not the applicant has:

(A) maintained effective controls against diversion of controlled substances and any Schedule I or II substance compounded from any controlled substance into other than legitimate medical, scientific, or industrial channels;

(B) complied with applicable state and local law;

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

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

(E) established effective controls against diversion; and

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

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

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

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

(iii) With respect to research involving narcotic substances in Schedules II through V, or where the division by rule requires a separate license for research of nonnarcotic substances

in Schedules II through V, a practitioner shall apply to the division prior to conducting research.

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

(v) Practitioners registered under federal law to conduct research in Schedule I substances may conduct research in Schedule I substances within this state upon furnishing the division evidence of federal registration.

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

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

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

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

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

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

(iv) had a federal registration or license denied, suspended, or revoked by competent federal authority and is no longer authorized to manufacture, distribute, prescribe, or dispense controlled substances;

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

(vi) violated any division rule that reflects adversely on the licensee's reliability and

integrity with respect to controlled substances;

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

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

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

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

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

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

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

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

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

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

(ii) Disposition may not be made of substances under seal until the time for taking an appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,

orders the sale of perishable substances and the proceeds deposited with the court.

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

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

(g) If an individual's Drug Enforcement Administration registration is denied, revoked, surrendered, or suspended, the division shall immediately suspend the individual's controlled substance license, which shall only be reinstated by the division upon reinstatement of the federal registration, unless the division has taken further administrative action under Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled substance license.

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

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

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

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

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

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

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

(b) A person other than a pharmacist licensed under the laws of this state, or the

pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not dispense a controlled substance.

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

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

(iii) In emergency situations, as defined by division rule, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms designated by the division and filed by the pharmacy.

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

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

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

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

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

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

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

(i) the person who writes the prescription is licensed under Subsection (2); and

(ii) the prescribed controlled substance is to be used in research.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the restrictions of this Subsection (7)(f).

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

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

(iii) (A) Except as provided in Subsection (7)(f)(iii)(B), a prescription for a Schedule II

or Schedule III controlled substance that is an opiate and that is issued for an acute condition shall be completely or partially filled in a quantity not to exceed a seven-day supply as directed on the daily dosage rate of the prescription.

(B) Subsection (7)(f)(iii)(A) does not apply to a prescription issued for a surgery when the practitioner determined that a quantity exceeding seven days is needed, in which case the practitioner may prescribe up to a 30-day supply, with a partial fill at the discretion of the practitioner.

(C) Subsection (7)(f)(iii)(A) does not apply to prescriptions issued for complex or chronic conditions which are documented as being complex or chronic in the medical record.

(D) A pharmacist is not required to verify that a prescription is in compliance with Subsection (7)(f)(iii).

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

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

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

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

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

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

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

(g) An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of this

Subsection (7) if the order is:

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

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

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

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

(h) A practitioner licensed under this chapter may not prescribe, administer, or dispense a controlled substance to a child, without first obtaining the consent required in Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same meaning as defined in Section 78A-6-105, and "emergency" means any physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering.

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

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

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

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

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

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

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

(8) (a) (i) Any person licensed under this chapter who is found by the division to have violated any of the provisions of Subsections (7)(k) through (o) or Subsection (10) is subject to a penalty not to exceed $5,000. The division shall determine the procedure for adjudication of any violations in accordance with Sections 58-1-106 and 58-1-108.

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

(iii) The director may collect a penalty that is not paid by:

(A) referring the matter to a collection agency; or

(B) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(iv) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(v) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

(b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j) or Subsection (10) is:

(i) upon first conviction, guilty of a class B misdemeanor;

(ii) upon second conviction, guilty of a class A misdemeanor; and

(iii) on third or subsequent conviction, guilty of a third degree felony.

(c) Any person who knowingly and intentionally violates Subsections (7)(k) through (o) shall upon conviction be guilty of a third degree felony.

(9) Any information communicated to any licensed practitioner in an attempt to

unlawfully procure, or to procure the administration of, a controlled substance is not considered to be a privileged communication.

(10) A person holding a valid license under this chapter who is engaged in medical research may produce, possess, administer, prescribe, or dispense a controlled substance for research purposes as licensed under Subsection (2) but may not otherwise prescribe or dispense a controlled substance listed in Section 58-37-4.2.

Section 20. Section **58-37-6.5** is amended to read:

58-37-6.5. Continuing education for controlled substance prescribers.

(1) For the purposes of this section:

(a) "Controlled substance prescriber" means an individual, other than a veterinarian, who:

(i) is licensed to prescribe a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act; and

(ii) possesses the authority, in accordance with the individual's scope of practice, to prescribe schedule II controlled substances and schedule III controlled substances that are applicable to opioid narcotics, hypnotic depressants, or psychostimulants.

(b) "D.O." means an osteopathic physician and surgeon licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(c) "FDA" means the United States Food and Drug Administration.

(d) "M.D." means a physician and surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act.

(e) "SBIRT" means the Screening, Brief Intervention, and Referral to Treatment approach used by the federal Substance Abuse and Mental Health Services Administration or defined by the division, in consultation with the Division of Substance Abuse and Mental Health, by administrative rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) (a) Beginning with the licensing period that begins after January 1, 2014, as a condition precedent for license renewal, each controlled substance prescriber shall complete at least [~~four~~] 3.5 continuing education hours per licensing period that satisfy the requirements of [~~Subsections~~] Subsection (3) [~~and (4)~~].

(b) (i) Beginning with the licensing period that begins after January 1, 2024, as a

condition precedent for license renewal, each controlled substance prescriber shall complete at least 3.5 continuing education hours in an SBIRT-training class that satisfies the requirements of Subsection [~~(5)~~] (4).

(ii) Completion of the SBIRT-training class, in compliance with Subsection (2)(b)(i), fulfills the continuing education hours requirement in Subsection [~~(4)~~] (3) for the licensing period in which the class was completed.

(iii) A controlled substance prescriber:

(A) need only take the SBIRT-training class once during the controlled substance prescriber's licensure in the state; and

(B) shall provide a completion record of the SBIRT-training class in order to be reimbursed for SBIRT services to patients, in accordance with Section 26-18-22 and Section 49-20-416.

[~~(3) As provided in Subsection 58-37f-402(8), the online tutorial and passing the online test described in Section 58-37f-402 shall count as 1/2 hour of continuing professional education under Subsection (2) per licensing period.~~]

[~~(4)~~] (3) A controlled substance prescriber shall complete at least 3.5 hours of continuing education in one or more controlled substance prescribing classes, except dentists who shall complete at least two hours, that satisfy the requirements of Subsections [~~(5)~~] (4) and [~~(7)~~] (6).

[~~(5)~~] (4) A controlled substance prescribing class shall:

(a) satisfy the division's requirements for the continuing education required for the renewal of the controlled substance prescriber's respective license type;

(b) be delivered by an accredited or approved continuing education provider recognized by the division as offering continuing education appropriate for the controlled substance prescriber's respective license type; and

(c) include a postcourse knowledge assessment.

[~~(6)~~] (5) An M.D. or D.O. completing continuing professional education hours under Subsection (4) shall complete those hours in classes that qualify for the American Medical Association Physician's Recognition Award Category 1 Credit.

[~~(7)~~] (6) The 3.5 hours of the controlled substance prescribing classes under Subsection (4) shall include educational content covering the following:

(a) the scope of the controlled substance abuse problem in Utah and the nation;

(b) all elements of the FDA Blueprint for Prescriber Education under the FDA's Extended-Release and Long-Acting Opioid Analgesics Risk Evaluation and Mitigation Strategy, as published July 9, 2012, or as it may be subsequently revised;

(c) the national and Utah-specific resources available to prescribers to assist in appropriate controlled substance and opioid prescribing;

(d) patient record documentation for controlled substance and opioid prescribing; and

(e) office policies, procedures, and implementation.

[~~(8)~~] (7) (a) The division, in consultation with the Utah Medical Association Foundation, shall determine whether a particular controlled substance prescribing class satisfies the educational content requirements of Subsections [~~(5)~~] (4) and [~~(7)~~] (6) for an M.D. or D.O.

(b) The division, in consultation with the applicable professional licensing boards, shall determine whether a particular controlled substance prescribing class satisfies the educational content requirements of Subsections [~~(5)~~] (4) and [~~(7)~~] (6) for a controlled substance prescriber other than an M.D. or D.O.

(c) The division may by rule establish a committee that may audit compliance with the Utah Risk Evaluation and Mitigation Strategy (REMS) Educational Programming Project grant, that satisfies the educational content requirements of Subsections [~~(5)~~] (4) and [~~(7)~~] (6) for a controlled substance prescriber.

[~~(9)~~] (8) A controlled substance prescribing class required under this section:

(a) may be held:

(i) in conjunction with other continuing professional education programs; and

(ii) online; and

(b) does not increase the total number of state-required continuing professional education hours required for prescriber licensing.

[~~(10)~~] (9) The division may establish rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

[~~(11)~~] (10) A controlled substance prescriber who, on or after July 1, 2017, obtains a waiver to treat opioid dependency with narcotic medications, in accordance with the Drug Addiction Treatment Act of 2000, 21 U.S.C. Sec. 823 et seq., may use the waiver to satisfy the 3.5 hours of the continuing education requirement under Subsection [~~(4)~~] (3) for two

consecutive licensing periods.

Section 21. Section **58-37f-401** is amended to read:

58-37f-401. Database registration required -- Penalties for failure to register.

(1) Each individual, other than a veterinarian, who, on June 30, 2010, has a license to prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, but is not registered with the division to use the database shall, on or before September 30, 2010, register with the division to use the database.

[~~(2) Each individual who, on November 1, 2012, is registered with the division to use the database shall, on or before January 1, 2013, participate in the online tutorial and pass the online test described in Section 58-37f-402.~~]

[~~(3)~~] (2) (a) An individual who is not a veterinarian, who obtains a new license to prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, shall, within 30 days after the day on which the individual obtains a license to prescribe a controlled substance from the Drug Enforcement Administration, register with the division to use the database.

(b) An individual who is not a veterinarian may not renew a license to prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, unless the individual registers with the division to use the database.

[~~(4)~~] (3) Beginning on November 2, 2012, in order to register to use the database, the individual registering must participate in the online tutorial and pass the online test described in Section 58-37f-402.

[~~(5)~~] (4) Failure by an individual to comply with the requirements of this section is grounds for the division to take the following actions in accordance with Section 58-1-401:

(a) refuse to issue a license to the individual;

(b) refuse to renew the individual's license; or

(c) revoke, suspend, restrict, or place on probation the license.

[~~(6)~~] (5) Beginning on July 1, 2010, the division shall, in accordance with Section 63J-1-504, impose an annual database registration fee on an individual who registers to use the database, to pay the startup and ongoing costs of the division for complying with the requirements of this section [~~and Section 58-37f-402~~].

Section 22. Section **58-37f-402** is amended to read:

58-37f-402. Online tutorial and test relating to the database -- Fees -- Rulemaking authority -- Continuing professional education credit.

(1) The division shall develop an online tutorial and an online test for registration to use the database that provides instruction regarding, and tests, the following:

(a) the purpose of the database;

(b) how to access and use the database;

(c) the law relating to:

(i) the use of the database; and

(ii) the information submitted to, and obtained from, the database; and

(d) basic knowledge that is important for all people who prescribe controlled substances to know in order to help ensure the health and safety of an individual to whom a controlled substance is prescribed.

(2) The division shall design the test described in this section as follows:

(a) an individual shall answer all of the questions correctly in order to pass the test;

(b) an individual shall be permitted to immediately retake the portion of the test that the individual answers incorrectly as many times as necessary for the individual to pass the test; and

(c) after an individual takes the test, the test software shall:

(i) immediately inform the individual of the number of questions that were answered incorrectly;

(ii) provide the correct answers;

(iii) replay the portion of the tutorial that relates to the incorrectly answered questions; and

(iv) ask the individual the incorrectly answered questions again.

(3) The division shall design the tutorial and test so that it is possible to take the tutorial and complete the test in 20 minutes or less, if the individual answers all of the questions correctly on the first attempt.

(4) The division shall ensure that the tutorial and test described in this section are fully functional and available for use online on or before November 1, 2010.

(5) The division shall impose a fee, in accordance with Section 63J-1-504, on an individual who takes the test described in this section, to pay the costs incurred by the division

to:

(a) develop, implement, and administer the tutorial and test described in this section; and

(b) fulfill the other duties imposed on the division under this part.

(6) The division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) develop, implement, and administer the tutorial and test described in this section; and

(b) fulfill the other duties imposed on the division under this part.

(7) The Department of Health shall assist the division in developing the portion of the test described in Subsection (1)(d).

[~~(8) Completing the online tutorial and passing the online test described in this section shall count as 1/2 hour of continuing professional education under Subsection 58-37-6.5(2).~~]

Section 23. Section **58-44a-402** is amended to read:

58-44a-402. Authority to assess penalty.

(1) After a proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the division may impose an administrative penalty of up to $10,000 for unprofessional or unlawful conduct under this chapter in accordance with a fine schedule established by rule.

(2) The assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.

(3) The division may impose an administrative penalty of up to $500 for any violation of Subsection 58-44a-501(2), (3), or (4), consistent with Section 58-44a-503.

(4) (a) The director may collect a penalty that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 24. Section **58-47b-501** is amended to read:

58-47b-501. Unlawful conduct.

"Unlawful conduct" includes:

(1) practicing, engaging in, or attempting to practice or engage in massage therapy without holding a current license as a massage therapist or a massage apprentice under this chapter;

(2) advertising or representing himself as practicing massage therapy when not licensed to do so; and

(3) massaging, touching, or applying any instrument or device by a licensee in the course of practicing or engaging in massage therapy to the:

(a) genitals [~~or~~];

(b) anus; [~~and~~] or

[~~(b)~~] (c) breasts of a female patron, except when a female patron requests breast massage, as may be further defined by division rule, and signs a written consent form, which must also include the signature of a parent or legal guardian if the patron is a minor, authorizing the procedure and outlining the reason for it before the procedure is performed.

Section 25. Section **58-53-502** is amended to read:

58-53-502. Citations -- Penalty for unlawful conduct.

(1) (a) If upon inspection or investigation, the division concludes that a person has violated Subsections 58-1-501(1)(a) through (d), Section 58-53-501, or Section 58-53-603 or any rule or order issued with respect to Section 58-53-501, and that disciplinary action is appropriate, the director or the director's designee from within the division for each alternative respectively, shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-53-501 or any rule or order issued with respect to Section 58-53-501, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to Subsection (1)(i) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section 58-53-501

or any rule or order issued with respect to Section 58-53-501.

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-53-401 may not be assessed through a citation.

(b) A citation shall:

(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon any person whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the person's agent by a division investigator or by any person specially designated by the director or by mail.

(e) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

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

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

(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(i) The director or the director's designee shall assess fines according to the following:

(i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to $2,000 for each day of continued offense.

(2) An action initiated for a first or second offense which has not yet resulted in a final order of the division does not preclude initiation of any subsequent action for a second or subsequent offense during the pendency of any preceding action. The final order on a subsequent action shall be considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

[~~(3) Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state shall provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded to the division.~~]

(3) (a) The director may collect a penalty that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 26. Section **58-55-305** is amended to read:

58-55-305. Exemptions from licensure.

(1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts or practices included within the practice of construction trades, subject to the stated circumstances and limitations, without being licensed under this chapter:

(a) an authorized representative of the United States government or an authorized employee of the state or any of its political subdivisions when working on construction work of the state or the subdivision, and when acting within the terms of the person's trust, office, or employment;

(b) a person engaged in construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, and drainage districts or construction and repair relating to farming, dairying, agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel excavations, well drilling, as defined in Section 73-3-25, hauling to and from construction sites, and lumbering;

(c) public utilities operating under the rules of the Public Service Commission on work incidental to their own business;

(d) sole owners of property engaged in building:

(i) no more than one residential structure per year and no more than three residential structures per five years on their property for their own noncommercial, nonpublic use; except, a person other than the property owner or individuals described in Subsection (1)(e), who engages in building the structure must be licensed under this chapter if the person is otherwise required to be licensed under this chapter; or

(ii) structures on their property for their own noncommercial, nonpublic use which are incidental to a residential structure on the property, including sheds, carports, or detached garages;

(e) (i) a person engaged in construction or renovation of a residential building for noncommercial, nonpublic use if that person:

(A) works without compensation other than token compensation that is not considered salary or wages; and

(B) works under the direction of the property owner who engages in building the structure; and

(ii) as used in this Subsection (1)(e), "token compensation" means compensation paid by a sole owner of property exempted from licensure under Subsection (1)(d) to a person exempted from licensure under this Subsection (1)(e), that is:

(A) minimal in value when compared with the fair market value of the services provided by the person;

(B) not related to the fair market value of the services provided by the person; and

(C) is incidental to the providing of services by the person including paying for or providing meals or refreshment while services are being provided, or paying reasonable

transportation costs incurred by the person in travel to the site of construction;

(f) a person engaged in the sale or merchandising of personal property that by its design or manufacture may be attached, installed, or otherwise affixed to real property who has contracted with a person, firm, or corporation licensed under this chapter to install, affix, or attach that property;

(g) a contractor submitting a bid on a federal aid highway project, if, before undertaking construction under that bid, the contractor is licensed under this chapter;

(h) (i) subject to Subsection 58-1-401(2) and Sections 58-55-501 and 58-55-502, a person engaged in the alteration, repair, remodeling, or addition to or improvement of a building with a contracted or agreed value of less than $3,000, including both labor and materials, and including all changes or additions to the contracted or agreed upon work; and

(ii) notwithstanding Subsection (1)(h)(i) and except as otherwise provided in this section:

(A) work in the plumbing and electrical trades on a Subsection (1)(h)(i) project within any six month period of time:

(I) must be performed by a licensed electrical or plumbing contractor, if the project involves an electrical or plumbing system; and

(II) may be performed by a licensed journeyman electrician or plumber or an individual referred to in Subsection (1)(h)(ii)(A)(I), if the project involves a component of the system such as a faucet, toilet, fixture, device, outlet, or electrical switch;

(B) installation, repair, or replacement of a residential or commercial gas appliance or a combustion system on a Subsection (1)(h)(i) project must be performed by a person who has received certification under Subsection 58-55-308(2) except as otherwise provided in Subsection 58-55-308(2)(d) or 58-55-308(3);

(C) installation, repair, or replacement of water-based fire protection systems on a Subsection (1)(h)(i) project must be performed by a licensed fire suppression systems contractor or a licensed journeyman plumber;

(D) work as an alarm business or company or as an alarm company agent shall be performed by a licensed alarm business or company or a licensed alarm company agent, except as otherwise provided in this chapter;

(E) installation, repair, or replacement of an alarm system on a Subsection (1)(h)(i)

project must be performed by a licensed alarm business or company or a licensed alarm company agent;

(F) installation, repair, or replacement of a heating, ventilation, or air conditioning system (HVAC) on a Subsection (1)(h)(i) project must be performed by an HVAC contractor licensed by the division;

(G) installation, repair, or replacement of a radon mitigation system or a soil depressurization system must be performed by a licensed contractor; and

(H) if the total value of the project is greater than $1,000, the person shall file with the division a one-time affirmation, subject to periodic reaffirmation as established by division rule, that the person has:

(I) public liability insurance in coverage amounts and form established by division rule; and

(II) if applicable, workers compensation insurance which would cover an employee of the person if that employee worked on the construction project;

(i) a person practicing a specialty contractor classification or construction trade which the director does not classify by administrative rule as significantly impacting the public's health, safety, and welfare;

(j) owners and lessees of property and persons regularly employed for wages by owners or lessees of property or their agents for the purpose of maintaining the property, are exempt from this chapter when doing work upon the property;

(k) (i) a person engaged in minor plumbing work that is incidental, as defined by the division by rule, to the replacement or repair of a fixture or an appliance in a residential or small commercial building, or structure used for agricultural use, as defined in Section 15A-1-202, provided that no modification is made to:

(A) existing culinary water, soil, waste, or vent piping; or

(B) a gas appliance or combustion system; and

(ii) except as provided in Subsection (1)(e), installation for the first time of a fixture or an appliance is not included in the exemption provided under Subsection (1)(k)(i);

(l) a person who ordinarily would be subject to the plumber licensure requirements under this chapter when installing or repairing a water conditioner or other water treatment apparatus if the conditioner or apparatus:

(i) meets the appropriate state construction codes or local plumbing standards; and

(ii) is installed or repaired under the direction of a person authorized to do the work under an appropriate specialty contractor license;

(m) a person who ordinarily would be subject to the electrician licensure requirements under this chapter when employed by:

(i) railroad corporations, telephone corporations or their corporate affiliates, elevator contractors or constructors, or street railway systems; or

(ii) public service corporations, rural electrification associations, or municipal utilities who generate, distribute, or sell electrical energy for light, heat, or power;

(n) a person involved in minor electrical work incidental to a mechanical or service installation, including the outdoor installation of an above-ground, prebuilt hot tub;

(o) a person who ordinarily would be subject to the electrician licensure requirements under this chapter but who during calendar years 2009, 2010, or 2011 was issued a specialty contractor license for the electrical work associated with the installation, repair, or maintenance of solar energy panels, may continue the limited electrical work for solar energy panels under a specialty contractor license;

(p) a student participating in construction trade education and training programs approved by the commission with the concurrence of the director under the condition that:

(i) all work intended as a part of a finished product on which there would normally be an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed building inspector; and

(ii) a licensed contractor obtains the necessary building permits;

(q) a delivery person when replacing any of the following existing equipment with a new gas appliance, provided there is an existing gas shutoff valve at the appliance:

(i) gas range;

(ii) gas dryer;

(iii) outdoor gas barbeque; or

(iv) outdoor gas patio heater;

(r) a person performing maintenance on an elevator as defined in Subsection 58-55-102(14), if the maintenance is not related to the operating integrity of the elevator; and

(s) an apprentice or helper of an elevator mechanic licensed under this chapter when

working under the general direction of the licensed elevator mechanic.

(2) A compliance agency as defined in Section 15A-1-202 that issues a building permit to a person requesting a permit as a sole owner of property referred to in Subsection (1)(d) shall notify the division, in writing or through electronic transmission, of the issuance of the permit.

Section 27. Section **58-55-501** is amended to read:

58-55-501. Unlawful conduct.

Unlawful conduct includes:

(1) engaging in a construction trade, acting as a contractor, an alarm business or company, or an alarm company agent, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;

(2) acting in a construction trade, as an alarm business or company, or as an alarm company agent beyond the scope of the license held;

(3) hiring or employing a person who is not licensed under this chapter to perform work on a project, unless the person:

(a) is an employee of a person licensed under this chapter for wages; and

(b) is not required to be licensed under this chapter;

(4) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter;

(5) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;

(6) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;

(7) failing to obtain a building permit when required by law or rule;

(8) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;

(9) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;

(10) allowing one's license to be used by another except as provided by statute or rule;

(11) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;

(12) if licensed as a [~~specialty~~] contractor in the electrical trade or plumbing trade, journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician, or residential electrician, failing to directly supervise an apprentice under one's supervision or exceeding the number of apprentices one is allowed to have under the [~~speciality~~] contractor's supervision;

(13) if licensed as a contractor or representing oneself to be a contractor, receiving any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and after receiving the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;

(14) employing an unlicensed alarm business or company or an unlicensed individual as an alarm company agent, except as permitted under the exemption from licensure provisions under Section 58-1-307;

(15) if licensed as an alarm company or alarm company agent, filing with the division fingerprint cards for an applicant which are not those of the applicant, or are in any other way false or fraudulent and intended to mislead the division in its consideration of the applicant for licensure;

(16) if licensed under this chapter, willfully or deliberately disregarding or violating:

(a) the building or construction laws of this state or any political subdivision;

(b) the safety and labor laws applicable to a project;

(c) any provision of the health laws applicable to a project;

(d) the workers' compensation insurance laws of the state applicable to a project;

(e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, Social Security payroll taxes, or other required withholdings; or

(f) reporting, notification, and filing laws of this state or the federal government;

(17) aiding or abetting any person in evading the provisions of this chapter or rules established under the authority of the division to govern this chapter;

(18) engaging in the construction trade or as a contractor for the construction of

residences of up to two units when not currently registered or exempt from registration as a qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;

(19) failing, as an original contractor, as defined in Section 38-11-102, to include in a written contract the notification required in Section 38-11-108;

(20) wrongfully filing a preconstruction or construction lien in violation of Section 38-1a-308;

(21) if licensed as a contractor, not completing the approved continuing education required under Section 58-55-302.5;

(22) an alarm company allowing an employee with a temporary license under Section 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary license, as provided in Subsection 58-55-312(3)(a)(ii);

(23) an alarm company agent under a temporary license under Section 58-55-312 engaging in conduct outside the scope of the temporary license, as provided in Subsection 58-55-312(3)(a)(ii);

(24) (a) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in Utah while not lawfully present in the United States; or

(b) an unincorporated entity providing labor to an entity licensed under this chapter by providing an individual who owns an interest in the unincorporated entity to engage in a construction trade in Utah while not lawfully present in the United States;

(25) an unincorporated entity failing to provide the following for an individual who engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an individual who engages, or will engage, in a construction trade in Utah for a separate entity for which the unincorporated entity provides the individual as labor:

(a) workers' compensation coverage:

(i) to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; or

(ii) that would be required under the chapters listed in Subsection (25)(a)(i) if the unincorporated entity were licensed under this chapter; and

(b) unemployment compensation in accordance with Title 35A, Chapter 4,

Employment Security Act, for an individual who owns, directly or indirectly, less than an 8% interest in the unincorporated entity, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(26) the failure of a sign installation contractor or nonelectrical outdoor advertising sign contractor, as classified and defined in division rules, to:

(a) display the contractor's license number prominently on a vehicle that:

(i) the contractor uses; and

(ii) displays the contractor's business name; or

(b) carry a copy of the contractor's license in any other vehicle that the contractor uses at a job site, whether or not the vehicle is owned by the contractor;

(27) (a) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in the state while the individual is using a Social Security number that does not belong to that individual; or

(b) an unincorporated entity providing labor to an entity licensed under this chapter by providing an individual, who owns an interest in the unincorporated entity, to engage in a construction trade in the state while the individual is using a Social Security number that does not belong to that individual;

(28) a contractor failing to comply with a requirement imposed by a political subdivision, state agency, or board of education under Section 58-55-310; or

(29) failing to timely comply with the requirements described in Section 58-55-605.

Section 28. Section **58-55-503** is amended to read:

58-55-503. Penalty for unlawful conduct -- Citations.

(1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor.

(ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an individual and does not include a sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

(b) A person who violates the provisions of Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance of the work.

(2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.

(3) Grounds for immediate suspension of a licensee's license by the division and the commission include:

(a) the issuance of a citation for violation of Subsection 58-55-308(2), Section 58-55-501, or Subsection 58-55-504(2); and

(b) the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including:

(i) applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure;

(ii) filing a current financial statement with the division; and

(iii) notifying the division concerning loss of insurance coverage or change in qualifier.

(4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), (28), or (29), Subsection 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who is in violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2).

(ii) Except for a cease and desist order, the licensure sanctions cited in Section

58-55-401 may not be assessed through a citation.

(b) (i) A citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated.

(ii) A citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(iii) A citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) A citation issued under this section, or a copy of a citation, may be served upon a person upon whom a summons may be served:

(i) in accordance with the Utah Rules of Civil Procedure;

(ii) personally or upon the person's agent by a division investigator or by a person specially designated by the director; or

(iii) by mail.

(d) (i) If within 20 calendar days after the day on which a citation is served, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

(ii) The period to contest a citation may be extended by the division for cause.

(e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

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

(g) A citation may not be issued under this section after the expiration of six months following the occurrence of a violation.

(h) Except as provided in Subsection (5), the director or the director's designee shall assess a fine in accordance with the following:

(i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to $2,000 for each day of continued offense.

(i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2); or

(B) (I) the division initiated an action for a first or second offense;

(II) a final order has not been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2); and

(IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.

(j) In addition to any other licensure sanction or fine imposed under this section, the division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25) two or more times within a 12-month period, unless, with respect to a violation of Subsection 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal legal working status of the individual who was the subject of the violation using a status verification system, as defined in Section 13-47-102.

(k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25) for each individual is considered a separate violation.

(5) If a person violates Section 58-55-501, the division may not treat the violation as a subsequent violation of a previous violation if the violation occurs five years or more after the day on which the person committed the previous violation.

(6) If, after an investigation, the division determines that a person has committed multiple of the same type of violation of Section 58-55-501, the division may treat each violation as a separate violation of Section 58-55-501 and apply a penalty under this section to each violation.

(7) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Commerce Service Account created by Section 13-1-2.

(b) A penalty that is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(c) A county attorney or the attorney general of the state [~~is to~~] shall provide legal assistance and advice to the director in [~~any~~] an action to collect [~~the~~] a penalty.

(d) In an action brought to [~~enforce the provisions of this section~~] collect a penalty, the court shall award reasonable attorney fees and costs to the prevailing party.

Section 29. Section **58-56-9.5** is amended to read:

58-56-9.5. Penalty for unlawful conduct -- Citations.

(1) A person who violates a provision of Section 58-56-9.1 or who fails to comply with a citation issued under this section after it is final is guilty of a class A misdemeanor.

(2) Grounds for immediate suspension of a licensee's license by the division under this chapter include:

(a) the issuance of a citation for violation of a provision of Section 58-56-9.1; and

(b) failure by a licensee to make application to, report to, or notify the division with respect to a matter for which application, notification, or reporting is required under this chapter or rules made under this chapter by the division.

(3) (a) If upon inspection or investigation, the division concludes that a person has violated a provision of Section 58-56-9.1, or a rule or order issued with respect to that section, and that disciplinary action is appropriate, the director or the director's designee from within the division shall:

(i) promptly issue a citation to the person according to this chapter and any pertinent rules;

(ii) attempt to negotiate a stipulated settlement; or

(iii) notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(b) (i) A person who violates a provision of Section 58-56-9.1, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine under this Subsection (3)(b) and may, in addition to or instead of the fine, be ordered by the division to cease from violating the provision.

(ii) Except as otherwise provided in Subsection (2)(a), the division may not assess licensure sanctions referred to in Subsection 58-56-9(1)(c) through a citation.

(c) (i) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated.

(ii) The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(iii) The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served:

(i) in accordance with the Utah Rules of Civil Procedure;

(ii) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or

(iii) by mail.

(e) (i) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

(ii) The period to contest a citation may be extended by the division for cause.

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

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

(h) No citation may be issued under this section after the expiration of six months following the occurrence of the violation.

(i) The director or the director's designee may assess fines for violations of Section 58-56-9.1 as follows:

(i) for a first offense determined under this Subsection (3), a fine of up to $1,000;

(ii) for a second offense, a fine of up to $2,000; and

(iii) for any subsequent offense, a fine of up to $2,000 for each day of continued offense.

(j) For the purposes of issuing a final order under this section and assessing a fine under Subsection (3)(i), an offense constitutes a second or subsequent offense if:

(i) the division previously issued a final order determining that a person committed a first or second offense in violation of a provision of Section 58-56-9.1; or

(ii) (A) the division initiated an action for a first or second offense;

(B) no final order has been issued by the division in the action initiated under Subsection (3)(j)(ii)(A);

(C) the division determines during an investigation that occurred after the initiation of the action under Subsection (3)(j)(ii)(A) that the person committed a second or subsequent violation of a provision of Section 58-56-9.1; and

(D) after determining that the person committed a second or subsequent offense under Subsection (3)(j)(ii)(C), the division issues a final order on the action initiated under Subsection (3)(j)(ii)(A).

(k) In issuing a final order for a second or subsequent offense under Subsection (3)(j), the division shall comply with the requirements of this section.

(4) (a) Proceeds from a fine imposed under Subsection (3)(i) shall be deposited in the Commerce Service Account created by Section 13-1-2.

[~~(b) The director may collect an unpaid fine by:~~]

[~~(i) referring the matter to a collection agency; or~~]

[~~(ii) bringing an action in the district court of the county in which the person resides or in the county where the director's office is located.~~]

[~~(c) (i) The state's attorney general or a county attorney shall provide legal assistance and advice to the director in an action brought under Subsection (4)(b).~~]

[~~(ii) Reasonable attorney fees and costs shall be awarded in an action brought to enforce the provisions of this section.~~]

(b) The director may collect a fine that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(c) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(d) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 30. Section **58-60-117** is amended to read:

58-60-117. Externship licenses.

(1) The division shall issue a temporary license under Part 2, Social Worker Licensing Act, Part 3, Marriage and Family Therapist Licensing Act, or Part 4, Clinical Mental Health Counselor Licensing Act, of this chapter to a person who:

(a) submits an application for licensure under Part 2, Social Worker Licensing Act, Part 3, Marriage and Family Therapist Licensing Act, or Part 4, Clinical Mental Health Counselor Licensing Act;

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

(c) holds an earned doctoral degree or master's degree in a discipline that is a prerequisite for practice as a mental health therapist;

(d) has a deficiency, as defined by division rule, in course work;

(e) provides mental health therapy as an employee of a public or private organization, which provides mental health therapy, while under the supervision of a person licensed under this chapter; and

(f) is of good moral character and has no disciplinary action pending or in effect against the applicant in connection with the practice of mental health therapy, in any jurisdiction.

(2) A temporary license issued under this section shall expire upon the earlier of:

(a) issuance of the license applied for; or

(b) unless the deadline is extended for good cause as determined by the division, three

years from the date the temporary license was issued.

(3) The temporary license issued under this section is an externship license.

Section 31. Section **58-63-503** is amended to read:

58-63-503. Penalties.

(1) Unless Subsection (2) applies, an individual who commits an act of unlawful conduct under Section 58-63-501 or who fails to comply with a citation issued under this section after it becomes final is guilty of a class A misdemeanor.

(2) The division may immediately suspend a license issued under this chapter of a person who is given a citation for violating Subsection 58-63-501(1), (2), (4), or (5).

(3) (a) If upon inspection or investigation, the division determines that a person has violated Subsection 58-63-501(1), (2), (4), or (5) or any rule made or order issued under those subsections, and that disciplinary action is warranted, the director or the director's designee within the division shall promptly issue a citation to the person and:

(i) attempt to negotiate a stipulated settlement; or

(ii) notify the person to appear for an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(b) (i) The division may fine a person who violates Subsection 58-63-501(1), (2), (4), or (5), as evidenced by an uncontested citation, a stipulated settlement, or a finding of a violation in an adjudicative proceeding held under Subsection (3)(a)(ii), or order the person to cease and desist from the violation, or do both.

(ii) Except for a cease and desist order, the division may not impose the licensure sanctions listed in Section 58-63-401 through the issuance of a citation under this section.

(c) The written citation shall:

(i) describe the nature of the violation, including a reference to the allegedly violated statute, rule, or order;

(ii) state the recipient must notify the division in writing within 20 calendar days of issuance of the citation if the recipient wants to contest the citation at the adjudicative proceeding referred to in Subsection (3)(a)(ii); and

(iii) explain the consequences of failure to timely contest the citation or to make payment of a fine assessed under the citation with the time specified in the citation.

(d) (i) The division may serve a citation issued under this section, or a copy of the

citation, upon an individual who is subject to service of a summons under the Utah Rules of Civil Procedure.

(ii) (A) The division may serve the individual personally or serve the individual's agent.

(B) The division may serve the summons by a division investigator, by a person designated by the director, or by mail.

(e) (i) If within 20 days from the service of a citation the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

(ii) The division may grant an extension of the 20-day period for cause.

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

(g) The division may not issue a citation for an alleged violation under this section after the expiration of six months following the occurrence of the alleged violation.

(h) The director or the director's designee may assess fines under this section as follows:

(i) for a first offense under Subsection (3)(a), a fine of up to $1,000;

(ii) for a second offense under Subsection (3)(a), a fine of up to $2,000; and

(iii) for a subsequent offense under Subsection (3)(a), a fine of up to $2,000 for each day of continued violation.

(i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (3)(h), an offense is a second or subsequent offense if:

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-63-501(1) or (4); or

(B) (I) the division initiated an action for a first or second offense;

(II) no final order has been issued by the division in an action initiated under Subsection (3)(i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (3)(i)(i)(B)(I) that the person committed a second or subsequent violation of Subsection 58-63-501(1) or (4); and

(IV) after determining that the person committed a second or subsequent offense under

Subsection (3)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (3)(i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (3)(i)(i), the division shall comply with the requirements of this section.

(4) (a) The division shall deposit a fine imposed by the director under Subsection (3)(h) in the General Fund as a dedicated credit for use by the division for the purposes listed in Section 58-63-103.

[~~(b) The director may collect a Subsection (3)(h) fine which is not paid by:~~]

[~~(i) referring the matter to the Office of State Debt Collection or a collection agency; or~~]

[~~(ii) bringing an action in the district court of the county in which the person resides or in the county where the office of the director is located.~~]

[~~(c) The director may seek legal assistance from the attorney general or the county or district attorney of the district in which the action is brought to collect the fine.~~]

[~~(d) The court shall award reasonable attorney fees and costs to the division for successful actions under Subsection (4)(b)(ii).~~]

(b) The director may collect a fine that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(c) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(d) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 32. Section **58-67-302** is amended to read:

58-67-302. Qualifications for licensure.

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

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

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

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

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

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

(c) be of good moral character;

(d) if the applicant is applying to participate in the Interstate Medical Licensure Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal background check in accordance with Section 58-67-302.1 and any requirements established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

[~~(d)~~] (e) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as a physician and surgeon, as evidenced by:

(i) having received an earned degree of doctor of medicine from an LCME accredited medical school or college; or

(ii) if the applicant graduated from a medical school or college located outside the United States or its territories, submitting a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board;

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

(i) has successfully completed 24 months of progressive resident training in a program approved by the ACGME, the Royal College of Physicians and Surgeons, the College of Family Physicians of Canada, or any similar body in the United States or Canada approved by the division in collaboration with the board; or

(ii) (A) has successfully completed 12 months of resident training in an ACGME approved program after receiving a degree of doctor of medicine as required under Subsection (1)[~~(d)~~](e);

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

(C) has agreed to surrender to the division the applicant's license as a physician and

surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as a physician and surgeon will be automatically revoked by the division if the applicant fails to continue in good standing in an ACGME approved progressive resident training program within the state;

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

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

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

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

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

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

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

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

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

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

(c) comply with the requirements for licensure under Subsections (1)(a) through [~~(d)~~] (e), (1)[~~(c)~~](f)(i), and (1)[~~(g)~~](h) through [~~(j)~~] (k);

(d) have passed the licensing examination sequence required in Subsection (1)(f) or another medical licensing examination sequence in another state, district or territory of the

United States, or Canada that the division in collaboration with the board by rulemaking determines is equivalent to its own required examination;

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

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

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

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

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

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

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

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

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

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

(i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, stating that the applicant is practicing under the:

(A) invitation of the health care facility; and

(B) the general supervision of a physician practicing at the facility; or

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

(A) the applicant is practicing under the invitation and general supervision of the

individual; and

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

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

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

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

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

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

(5) The division may not require a post-residency board certification as a requirement for licensure.

Section 33. Section **58-67-302.1** is enacted to read:

58-67-302.1. Qualifications for licensure -- Criminal background check.

(1) An applicant for participation in the Interstate Medical Licensure Compact under Chapter 67b, Interstate Medical Licensure Compact, shall:

(a) submit fingerprint cards in a form acceptable to the division at the time the license application is filed; and

(b) consent to a fingerprint background check conducted by the Bureau of Criminal Identification and the Federal Bureau of Investigation.

(2) The division shall:

(a) in addition to other fees authorized by this chapter, collect from each applicant submitting fingerprints in accordance with this section the fee that the Bureau of Criminal Identification is authorized to collect for the services provided under Section 53-10-108 and the fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of obtaining federal criminal history record information;

(b) submit from each applicant the fingerprint card and the fees described in Subsection (2)(a) to the Bureau of Criminal Identification; and

(c) obtain and retain in division records a signed waiver approved by the Bureau of Criminal Identification in accordance with Section 53-10-108 for each applicant.

(3) The Bureau of Criminal Identification shall, in accordance with the requirements of Section 53-10-108:

(a) check the fingerprints submitted under Subsection (2)(b) against the applicable state and regional criminal records databases;

(b) forward the fingerprints to the Federal Bureau of Investigation for a national criminal history background check; and

(c) provide the results from the state, regional, and nationwide criminal history background checks to the division.

(4) For purposes of conducting a criminal background check required under this section, the division shall have direct access to criminal background information maintained under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

(5) The division may not disseminate outside of the division any criminal history record information that the division obtains from the Bureau of Criminal Identification or the Federal Bureau of Investigation under the criminal background check requirements of this section.

(6) The division may not issue a letter of qualification to participate in the Interstate Medical Licensure Compact until the criminal background check described in this section is completed.

Section 34. Section **58-67-302.5** is amended to read:

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

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

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

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

(c) has completed all of the formal requirements of the foreign medical school except

internship or social service;

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

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

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

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

(2) Satisfaction of the requirements of Subsection (1) is in lieu of:

(a) the completion of any foreign internship or social service requirements; and

(b) the certification required by Subsection 58-67-302(1)[~~(d)~~](e).

(3) Individuals who satisfy the requirements of Subsections (1)(a) through [~~(f)~~] (g) shall be eligible for admission to graduate medical education programs within the state, including internships and residencies, which are accredited by the liaison committee for graduate medical education.

(4) A document issued by a medical school located outside the United States shall be considered the equivalent of a degree of doctor of medicine for the purpose of licensure as a physician and surgeon in this state if:

(a) the foreign medical school is recognized by an organization approved by the division;

(b) the document granted by the foreign medical school is issued after the completion of all formal requirements of the medical school except internship or social service; and

(c) the foreign medical school certifies that the person to whom the document was issued has satisfactorily completed the requirements of Subsection (1)(c).

(5) The provisions for licensure under this section shall be known as the "fifth pathway program."

Section 35. Section **58-67-302.7** is amended to read:

58-67-302.7. Licensing of physician-educators.

(1) As used in this section:

(a) "Foreign country" means a country other than the United States, its territories, or Canada.

(b) "Foreign medical school" means a medical school that is outside the United States, its territories, and Canada.

(2) Notwithstanding any provision of law to the contrary, an individual may receive a type I foreign teaching license if the individual:

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

(i) submission by the applicant of information maintained in a practitioner data bank, as designated by division rule, with respect to the applicant;

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

(iii) the applicant's curriculum vitae;

(b) is a graduate of a foreign medical school that is accepted for certification by the Educational Commission for Foreign Medical Graduates;

(c) is licensed in good standing in a foreign country, the United States, its territories, or Canada;

(d) does not have an investigation or action pending against the physician's healthcare license, does not have a healthcare license that was suspended or revoked, and has not surrendered a healthcare license in lieu of disciplinary action, unless:

(i) the license was subsequently reinstated in good standing; or

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

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

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

(e) submits documentation of legal status to work in the United States;

(f) meets at least three of the following qualifications:

(i) (A) published original results of clinical research, within 10 years before the day on

which the application is submitted, in a medical journal listed in the Index Medicus or an equivalent scholarly publication; and

(B) submits the publication to the Board in English or in a foreign language with a verifiable, certified English translation;

(ii) held an appointment at a medical school approved by the LCME or at any medical school listed in the World Health Organization directory at the level of associate or full professor, or its equivalent, for at least five years;

(iii) (A) developed a treatment modality, surgical technique, or other verified original contribution to the field of medicine within 10 years before the day on which the application is submitted; and

(B) has the treatment modality, surgical technique, or other verified original contribution attested to by the dean of an LCME accredited school of medicine in Utah;

(iv) actively practiced medicine cumulatively for 10 years; or

(v) is board certified in good standing of a board of the American Board of Medical Specialities or equivalent specialty board;

(g) is of good moral character;

(h) is able to read, write, speak, understand, and be understood in the English language and demonstrates proficiency to the satisfaction of the division in collaboration with the board, if requested;

(i) is invited by an LCME accredited medical school in Utah to serve as a full-time member of the medical school's academic faculty, as evidenced by written certification from:

(i) the dean of the medical school, stating that the applicant has been appointed to a full-time faculty position, that because the applicant has unique expertise in a specific field of medicine the medical school considers the applicant to be a valuable member of the faculty, and that the applicant is qualified by knowledge, skill, and ability to practice medicine in the state; and

(ii) the head of the department to which the applicant is to be appointed, stating that the applicant will be under the direction of the head of the department and will be permitted to practice medicine only as a necessary part of the applicant's duties, providing detailed evidence of the applicant's qualifications and competence, including the nature and location of the applicant's proposed responsibilities, reasons for any limitations of the applicant's practice

responsibilities, and the degree of supervision, if any, under which the applicant will function;

(j) pays a licensing fee set by the division under Section 63J-1-504; and

(k) has practiced medicine for at least 10 years as an attending physician.

(3) Notwithstanding any provision of law to the contrary, an individual may receive a type II foreign teaching license if the individual:

(a) satisfies the requirements of Subsections (2)(a) through (e) and (g) through (j);

(b) has delivered clinical care to patients cumulatively for five years after graduation from medical school; and

(c) (i) will be completing a clinical fellowship while employed at the medical school described in Subsection (2)(i); or

(ii) has already completed a medical residency accredited by the Royal College of Physicians and Surgeons of Canada, the United Kingdom, Australia, or New Zealand, or a comparable accreditation organization as determined by the division in collaboration with the board.

(4) After an initial term of one year, a type I license may be renewed for periods of two years if the licensee continues to satisfy the requirements described in Subsection (2) and completes the division's continuing education renewal requirements established under Section 58-67-303.

(5) A type II license may be renewed on an annual basis, up to four times, if the licensee continues to satisfy the requirements described in Subsection (3) and completes the division's continuing education renewal requirements established under Section 58-67-303.

(6) A license issued under this section:

(a) authorizes the licensee to practice medicine:

(i) within the scope of the licensee's employment at the medical school described in Subsection (2)(i) and the licensee's academic position; and

(ii) at a hospital or clinic affiliated with the medical school described in Subsection (2)(i) for the purpose of teaching, clinical care, or pursuing research;

(b) shall list the limitations described in Subsection (6)(a); and

(c) shall expire on the earlier of:

(i) one year after the day on which the type I or type II license is initially issued, unless the license is renewed;

(ii) for a type I license, two years after the day on which the license is renewed;

(iii) for a type II license, one year after the day on which the license is renewed; or

(iv) the day on which employment at the medical school described in Subsection (2)(i) ends.

(7) A person who holds a type I license for five consecutive years may apply for licensure as a physician and surgeon in this state and shall be licensed if the individual satisfies the requirements described in Subsection (8). If the person fails to obtain licensure as a physician and surgeon in this state, the person may apply for a renewal of the type I license under Subsection (2).

(8) An individual who holds a type I or type II license for five consecutive years is eligible for licensure as a physician and surgeon in this state if the individual:

(a) worked an average of at least 40 hours per month at the level of an attending physician during the time the individual held the type I or type II license;

(b) holds the rank of associate professor or higher at the medical school described in Subsection (2)(i);

(c) obtains certification from the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board;

(d) spent a cumulative 20 hours per year while holding a type I or type II license:

(i) teaching or lecturing to medical students or house staff;

(ii) participating in educational department meetings or conferences that are not certified to meet the continuing medical education license renewal requirement; or

(iii) attending continuing medical education classes in addition to the requirements for continuing education described in Subsections (4) and (5);

(e) obtains a passing score on the final step of the licensing examination sequence required by division rule made in collaboration with the board; and

(f) satisfies the requirements described in Subsections 58-67-302(1)(a) through [~~(c), (h), and (i)~~] (d), (i), and (j).

(9) If a person who holds a type II license fails to obtain licensure as a physician and surgeon in this state after applying under the procedures described in Subsection (8), the person may not:

(a) reapply for or renew a type II license; or

(b) apply for a type I license.

(10) The division or the board may require an applicant for licensure under this section to meet with the board and representatives of the division for the purpose of evaluating the applicant's qualifications for licensure.

(11) The division in collaboration with the board may withdraw a license under this section at any time for material misrepresentation or unlawful or unprofessional conduct.

Section 36. Section **58-67-302.8 (Effective 07/01/18)** is amended to read:

58-67-302.8 (Effective 07/01/18). Restricted licensing of an associate physician.

(1) An individual may apply for a restricted license as an associate physician if the individual:

(a) meets the requirements described in Subsections 58-67-302(1)(a) through [~~(c)~~] (d), (1)[~~(d)~~](e)(i), and (1)[~~(g)~~](h) through [~~(j)~~] (k);

(b) successfully completes Step 1 and Step 2 of the United States Medical Licensing Examination or the equivalent steps of another board-approved medical licensing examination:

(i) within three years after the day on which the applicant graduates from a program described in Subsection 58-67-302(1)[~~(d)~~](e)(i); and

(ii) within two years before applying for a restricted license as an associate physician; and

(c) is not currently enrolled in and has not completed a residency program.

(2) Before a licensed associate physician may engage in the practice of medicine as described in Subsection (3), the licensed associate physician shall:

(a) enter into a collaborative practice arrangement described in Section 58-67-807 within six months after the associate physician's initial licensure; and

(b) receive division approval of the collaborative practice arrangement.

(3) An associate physician's scope of practice is limited to primary care services to medically underserved populations or in medically underserved areas within the state.

Section 37. Section **58-67-304 (Superseded 07/01/18)** is amended to read:

58-67-304 (Superseded 07/01/18). License renewal requirements.

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

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

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-67-302(1)[~~(i)~~](j); and

(c) if the licensee practices medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for the licensee.

(2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) An application to renew a license under this chapter shall:

(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection (3)(a).

Section 38. Section **58-67-304 (Effective 07/01/18)** is amended to read:

58-67-304 (Effective 07/01/18). License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each

two-year licensure cycle or other cycle defined by division rule:

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

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-67-302(1)[~~(i)~~](j);

(c) if the licensee practices medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for the licensee; and

(d) if the licensee is an associate physician licensed under Section 58-67-302.8, successfully complete the educational methods and programs described in Subsection 58-67-807(4).

(2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) An application to renew a license under this chapter shall:

(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection

(3)(a).

Section 39. Section **58-67-403** is amended to read:

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

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

Section 40. Section **58-67-503** is amended to read:

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

(1) Any person who violates the unlawful conduct provisions of Section 58-67-501 or Section 58-1-501 is guilty of a third degree felony.

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

(i) assessing administrative penalties; or

(ii) taking other appropriate administrative action.

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

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

(4) (a) If the division concludes that an individual has violated provisions of Section 58-67-501, Section 58-67-502, Chapter 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and disciplinary action is appropriate, the director or director's designee shall:

(i) issue a citation to the individual;

(ii) attempt to negotiate a stipulated settlement; or

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

(b) The division may take the following action against an individual who is in violation

of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding:

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

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

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

(d) Each citation issued under this section shall:

(i) be in writing;

(ii) clearly describe or explain:

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

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

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

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

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

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

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

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

(5) (a) The director may collect a penalty imposed under this section that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 41. Section **58-68-302** is amended to read:

58-68-302. Qualifications for licensure.

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

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

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

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

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

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

(c) be of good moral character;

(d) if the applicant is applying to participate in the Interstate Medical Licensure Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal background check in accordance with Section 58-68-302.1 and any requirements established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

[~~(d)~~] (e) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as an osteopathic physician and surgeon, as evidenced by:

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

(ii) submitting a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board, if the applicant is graduated from an osteopathic medical school or college

located outside of the United States or its territories which at the time of the applicant's graduation, met criteria for accreditation by the AOA;

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

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

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

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

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

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

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

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

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

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

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

[~~(j)~~] (k) establish a method for notifying patients of the identity and location of the contact person and alternate contact person, if the applicant will practice in a location with no

other persons licensed under this chapter.

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

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

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

(c) comply with the requirements for licensure under Subsections (1)(a) through [~~(d)~~] (e), (1)[~~(e)~~](f)(i), and (1)[~~(g)~~](h) through [~~(j)~~] (k);

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

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

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

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

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

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

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

(g) produce evidence that the applicant meets the requirements of this Subsection (2) to

the satisfaction of the division in collaboration with the board.

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

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

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

(i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, stating that the applicant is practicing under the:

(A) invitation of the health care facility; and

(B) the general supervision of a physician practicing at the health care facility; or

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

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

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

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

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

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

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

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

(5) The division may not require a post-residency board certification as a requirement for licensure.

Section 42. Section **58-68-302.1** is enacted to read:

58-68-302.1. Qualifications for licensure -- Criminal background check.

(1) An applicant for participation in the Interstate Medical Licensure Compact under Chapter 67b, Interstate Medical Licensure Compact, shall:

(a) submit fingerprint cards in a form acceptable to the division at the time the license application is filed; and

(b) consent to a fingerprint background check conducted by the Bureau of Criminal Identification and the Federal Bureau of Investigation.

(2) The division shall:

(a) in addition to other fees authorized by this chapter, collect from each applicant submitting fingerprints in accordance with this section the fee that the Bureau of Criminal Identification is authorized to collect for the services provided under Section 53-10-108 and the fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of obtaining federal criminal history record information;

(b) submit from each applicant the fingerprint card and the fees described in Subsection (2)(a) to the Bureau of Criminal Identification; and

(c) obtain and retain in division records a signed waiver approved by the Bureau of Criminal Identification in accordance with Section 53-10-108 for each applicant.

(3) The Bureau of Criminal Identification shall, in accordance with the requirements of Section 53-10-108:

(a) check the fingerprints submitted under Subsection (2)(b) against the applicable state and regional criminal records databases;

(b) forward the fingerprints to the Federal Bureau of Investigation for a national criminal history background check; and

(c) provide the results from the state, regional, and nationwide criminal history background checks to the division.

(4) For purposes of conducting a criminal background check required under this section, the division shall have direct access to criminal background information maintained under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

(5) The division may not disseminate outside of the division any criminal history record information that the division obtains from the Bureau of Criminal Identification or the Federal Bureau of Investigation under the criminal background check requirements of this section.

(6) The division may not issue a letter of qualification to participate in the Interstate Medical Licensure Compact until the criminal background check described in this section is completed.

Section 43. Section **58-68-302.5 (Effective 07/01/18)** is amended to read:

58-68-302.5 (Effective 07/01/18). Restricted licensing of an associate physician.

(1) An individual may apply for a restricted license as an associate physician if the individual:

(a) meets the requirements described in Subsections 58-68-302(1)(a) through [~~(c)~~] (d), (1)[~~(d)~~](e)(i), and (1)[~~(g)~~](h) through [~~(j)~~] (k);

(b) successfully completes Step 1 and Step 2 of the United States Medical Licensing Examination or the equivalent steps of another board-approved medical licensing examination:

(i) within three years after the day on which the applicant graduates from a program described in Subsection 58-68-302(1)[~~(d)~~](e)(i); and

(ii) within two years before applying for a restricted license as an associate physician; and

(c) is not currently enrolled in and has not completed a residency program.

(2) Before a licensed associate physician may engage in the practice of medicine as described in Subsection (3), the licensed associate physician shall:

(a) enter into a collaborative practice arrangement described in Section 58-68-807 within six months after the associate physician's initial licensure; and

(b) receive division approval of the collaborative practice arrangement.

(3) An associate physician's scope of practice is limited to primary care services to medically underserved populations or in medically underserved areas within the state.

Section 44. Section **58-68-304 (Superseded 07/01/18)** is amended to read:

58-68-304 (Superseded 07/01/18). License renewal requirements.

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

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

(b) appoint a contact person for access to medical records and an alternate contact

person for access to medical records in accordance with Subsection 58-68-302(1)[~~(i)~~](j); and

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

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

(3) An application to renew a license under this chapter shall:

(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection (3)(a).

Section 45. Section **58-68-304 (Effective 07/01/18)** is amended to read:

58-68-304 (Effective 07/01/18). License renewal requirements.

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

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

board;

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

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

(d) if the licensee is an associate physician licensed under Section 58-68-302.5, successfully complete the educational methods and programs described in Subsection 58-68-807(4).

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

(3) An application to renew a license under this chapter shall:

(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection (3)(a).

Section 46. Section **58-68-403** is amended to read:

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

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

Section 47. Section **58-68-503** is amended to read:

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

(1) Any person who violates the unlawful conduct provisions of Section 58-68-501 or Section 58-1-501 is guilty of a third degree felony.

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

(i) assessing administrative penalties; or

(ii) taking any other appropriate administrative action.

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

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

(4) (a) If the division concludes that an individual has violated the provisions of Section 58-68-501, Section 58-68-502, Chapter 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and disciplinary action is appropriate, the director or director's designee shall:

(i) issue a citation to the individual;

(ii) attempt to negotiate a stipulated settlement; or

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

(b) The division may take the following action against an individual who is in violation of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a

stipulated settlement, or a finding of violation in an adjudicative proceeding:

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

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

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

(d) Each citation issued under this section shall:

(i) be in writing;

(ii) clearly describe or explain:

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

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

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

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

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

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

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

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

(5) (a) The director may collect a penalty imposed under this section that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 48. Section **58-71-503** is amended to read:

58-71-503. Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provisions of Section 58-71-501, Subsection 58-1-501(1)(a), or 58-1-501(1)(c) is guilty of a third degree felony.

(2) The division may assess administrative penalties in accordance with the provisions of Section 58-71-402, for acts of unlawful conduct.

(3) (a) The director may collect a penalty that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 49. Section **58-76-502** is amended to read:

58-76-502. Penalty for unlawful conduct.

(1) (a) If, upon inspection or investigation, the division concludes that a person has violated Section 58-76-501 or any rule or order issued with respect to Section 58-76-501, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-76-501 or any rule or order issued with respect to Section 58-76-501, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may

be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section 58-76-501 or any rule or order issued with respect to this section.

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-76-401 may not be assessed through a citation.

(b) A citation shall:

(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the person's agent by a division investigator or by any person specially designated by the director or by mail.

(e) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

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

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

(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(i) The director or the director's designee shall assess fines according to the following:

(i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to $2,000 for each day of continued offense.

(2) An action initiated for a first or second offense which has not yet resulted in a final order of the division shall not preclude initiation of any subsequent action for a second or subsequent offense during the pendency of any preceding action. The final order on a subsequent action shall be considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

[~~(3) Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state shall provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded to the division.~~]

(3) (a) The director may collect a penalty that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 50. Section **58-79-201** is amended to read:

58-79-201. Board.

(1) There is created the Hunting Guides and Outfitters Licensing Board consisting of [~~three persons licensed in accordance with this chapter,~~] five members as follows:

(a) three persons licensed as a hunting guide or an outfitter in accordance with this chapter;

(b) one member of the Wildlife Board, created in Section 23-14-2, selected by the

Wildlife Board[~~,~~]; and

(c) one person appointed by the Wildlife Board.

(2) Except for the two members selected by the Wildlife Board, the board shall be appointed and serve in accordance with Section 58-1-201.

(3) The two members selected by the Wildlife Board may not hold a license regulated by this chapter.

[~~(3)~~] (4) (a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

(b) The board shall also:

(i) designate one of its members on a permanent or rotating basis to assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of hunting guides and outfitters; and

(ii) advise the division in its investigations of these complaints.

[~~(4)~~] (5) A board member who has, under Subsection [~~(3)~~] (4)(b), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Section 51. Section **78B-3-416** is amended to read:

78B-3-416. Division to provide panel -- Exemption -- Procedures -- Statute of limitations tolled -- Composition of panel -- Expenses -- Division authorized to set license fees.

(1) (a) The division shall provide a hearing panel in alleged medical liability cases against health care providers as defined in Section 78B-3-403, except dentists.

(b) (i) The division shall establish procedures for prelitigation consideration of medical liability claims for damages arising out of the provision of or alleged failure to provide health care.

(ii) The division may establish rules necessary to administer the process and procedures related to prelitigation hearings and the conduct of prelitigation hearings in accordance with Sections 78B-3-416 through 78B-3-420.

(c) The proceedings are informal, nonbinding, and are not subject to Title 63G, Chapter 4, Administrative Procedures Act, but are compulsory as a condition precedent to commencing litigation.

(d) Proceedings conducted under authority of this section are confidential, privileged, and immune from civil process.

(2) (a) The party initiating a medical liability action shall file a request for prelitigation panel review with the division within 60 days after the service of a statutory notice of intent to commence action under Section 78B-3-412.

(b) The request shall include a copy of the notice of intent to commence action. The request shall be mailed to all health care providers named in the notice and request.

(3) (a) The filing of a request for prelitigation panel review under this section tolls the applicable statute of limitations until the later of:

(i) 60 days following the division's issuance of:

(A) an opinion by the prelitigation panel; or

(B) a certificate of compliance under Section 78B-3-418; or

(ii) the expiration of the time for holding a hearing under Subsection (3)(b)(ii).

(b) The division shall:

(i) send any opinion issued by the panel to all parties by regular mail; and

(ii) complete a prelitigation hearing under this section within:

(A) 180 days after the filing of the request for prelitigation panel review; or

(B) any longer period as agreed upon in writing by all parties to the review.

(c) If the prelitigation hearing has not been completed within the time limits established in Subsection (3)(b)(ii), the claimant shall:

(i) file an affidavit of merit under the provisions of Section 78B-3-423; or

(ii) file an affidavit with the division within 180 days of the request for pre-litigation review, in accordance with Subsection (3)(d), alleging that the respondent has failed to reasonably cooperate in scheduling the hearing.

(d) If the claimant files an affidavit under Subsection (3)(c)(ii):

(i) within 15 days of the filing of the affidavit under Subsection (3)(c)(ii), the division shall determine whether either the respondent or the claimant failed to reasonably cooperate in the scheduling of a pre-litigation hearing; and

(ii) (A) if the determination is that the respondent failed to reasonably cooperate in the scheduling of a hearing, and the claimant did not fail to reasonably cooperate, the division shall, issue a certificate of compliance for the claimant in accordance with Section 78B-3-418;

or

(B) if the division makes a determination other than the determination in Subsection (3)(d)(ii)(A), the claimant shall file an affidavit of merit in accordance with Section 78B-3-423, within 30 days of the determination of the division under this Subsection (3).

(e) (i) The claimant and any respondent may agree by written stipulation that no useful purpose would be served by convening a prelitigation panel under this section.

(ii) When the stipulation is filed with the division, the division shall within 10 days after receipt issue a certificate of compliance under Section 78B-3-418, as it concerns the stipulating respondent, and stating that the claimant has complied with all conditions precedent to the commencement of litigation regarding the claim.

(4) The division shall provide for and appoint an appropriate panel or panels to hear complaints of medical liability and damages, made by or on behalf of any patient who is an alleged victim of medical liability. The panels are composed of:

(a) one member who is a resident lawyer currently licensed and in good standing to practice law in this state and who shall serve as chairman of the panel, who is appointed by the division from among qualified individuals who have registered with the division indicating a willingness to serve as panel members, and a willingness to comply with the rules of professional conduct governing lawyers in the state, and who has completed division training regarding conduct of panel hearings;

(b) (i) one member who is a licensed health care provider listed under Section 78B-3-403, who is practicing and knowledgeable in the same specialty as the proposed defendant, and who is appointed by the division in accordance with Subsection (5); or

(ii) in claims against only hospitals or their employees, one member who is an individual currently serving in a hospital administration position directly related to hospital operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, and who is appointed by the division; and

(c) a lay panelist who is not a lawyer, doctor, hospital employee, or other health care provider, and who is a responsible citizen of the state, selected and appointed by the division from among individuals who have completed division training with respect to panel hearings.

(5) (a) Each person listed as a health care provider in Section 78B-3-403 and practicing under a license issued by the state, is obligated as a condition of holding that license to

participate as a member of a medical liability prelitigation panel at reasonable times, places, and intervals, upon issuance, with advance notice given in a reasonable time frame, by the division of an Order to Participate as a Medical Liability Prelitigation Panel Member.

(b) A licensee may be excused from appearance and participation as a panel member upon the division finding participation by the licensee will create an unreasonable burden or hardship upon the licensee.

(c) A licensee whom the division finds failed to appear and participate as a panel member when so ordered, without adequate explanation or justification and without being excused for cause by the division, may be assessed an administrative fine not to exceed $5,000.

(d) A licensee whom the division finds intentionally or repeatedly failed to appear and participate as a panel member when so ordered, without adequate explanation or justification and without being excused for cause by the division, may be assessed an administrative fine not to exceed $5,000, and is guilty of unprofessional conduct.

(e) All fines collected under Subsections (5)(c) and (d) shall be deposited in the Physicians Education Fund created in Section 58-67a-1.

(f) The director of the division may collect a fine that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(g) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a fine.

(h) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a fine.

(6) Each person selected as a panel member shall certify, under oath, that he has no bias or conflict of interest with respect to any matter under consideration.

(7) A member of the prelitigation hearing panel may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

63A-3-107.

(8) (a) In addition to the actual cost of administering the licensure of health care providers, the division may set license fees of health care providers within the limits established by law equal to their proportionate costs of administering prelitigation panels.

(b) The claimant bears none of the costs of administering the prelitigation panel except under Section 78B-3-420.

Section 52. **Effective date.**

(1) Except as provided in Subsection (2), this bill takes effect on May 8, 2018.

(2) The amendments to the following sections take effect on July 1, 2018:

(a) Section 58-67-302.8 (Effective 07/01/18);

(b) Section 58-67-304 (Effective 07/01/18);

(c) Section 58-68-302.5 (Effective 07/01/18); and

(d) Section 58-68-304 (Effective 07/01/18).