

Representative Craig Hall proposes the following substitute bill:

PROHIBITION OF THE PRACTICE OF CONVERSION

THERAPY UPON MINORS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig Hall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions relating to conversion therapy for minors.

Highlighted Provisions:

This bill:

▶ prohibits certain health care professionals from providing conversion therapy to a minor; and

▶ adds a violation of the prohibition to the list of conduct that constitutes unprofessional conduct for licensing purposes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-501, as last amended by Laws of Utah 2018, Chapter 318

58-1-502, as last amended by Laws of Utah 2018, Chapter 318

ENACTS:



26 **58-1-509**, Utah Code Annotated 1953



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

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

30 **58-1-501. Unlawful and unprofessional conduct.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 (n) violating a provision of Section [58-1-501.5](#); ~~or~~

115 ~~(o) violating the prohibition in Section [58-1-509](#); or~~

116 ~~[(o)]~~ (p) violating the terms of an order governing a license.

117 (3) Unless otherwise specified by statute or administrative rule, in a civil or
118 administrative proceeding commenced by the division under this title, a person subject to any

119 of the unlawful and unprofessional conduct provisions of this title is strictly liable for each
120 violation.

121 Section 2. Section **58-1-502** is amended to read:

122 **58-1-502. Unlawful and unprofessional conduct -- Penalties.**

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

125 (2) (a) In addition to any other statutory penalty for a violation related to a specific
126 occupation or profession regulated by this title, if upon inspection or investigation, the division
127 concludes that a person has violated Subsection **58-1-501**(1)(a), (1)(c), or (2)[~~(t)~~](p), or a rule
128 or order issued with respect to those subsections, and that disciplinary action is appropriate, the
129 director or the director's designee from within the division shall promptly:

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

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

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

134 (b) (i) The division may assess a fine under this Subsection (2) against a person who
135 violates Subsection **58-1-501**(1)(a), (1)(c), or (2)[~~(t)~~](p), or a rule or order issued with respect
136 to those subsections, as evidenced by:

137 (A) an uncontested citation;

138 (B) a stipulated settlement; or

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

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

143 (c) Except for a cease and desist order, the division may not assess the licensure
144 sanctions cited in Section **58-1-401** through a citation.

145 (d) A citation shall:

146 (i) be in writing;

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

149 (iii) clearly state that the recipient must notify the division in writing within 20

150 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
151 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

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

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

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

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

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

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

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

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

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

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

168 and

169 (iii) for each subsequent offense handled pursuant to Subsection (2)(a), a fine of up to
170 \$2,000 for each day of continued offense.

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

174 (b) The final order on a subsequent action is considered a second or subsequent
175 offense, respectively, provided the preceding action resulted in a first or second offense,
176 respectively.

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

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

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

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

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

185 Section 3. Section **58-1-509** is enacted to read:

186 **58-1-509. Prohibition on providing conversion therapy to a minor.**

187 (1) As used in this section:

188 (a) (i) "Conversion therapy" means any practice or treatment that seeks to change the
189 sexual orientation or gender identity of a patient or client, including mental health therapy that
190 seeks to change, eliminate, or reduce behaviors, expressions, attractions, or feelings related to a
191 patient or client's sexual orientation or gender identity.

192 (ii) "Conversion therapy" does not mean a practice or treatment that does not seek to
193 change a patient or client's sexual orientation or gender identity, including mental health
194 therapy that:

195 (A) is neutral with respect to sexual orientation and gender identity;

196 (B) provides assistance to a patient or client undergoing gender transition;

197 (C) provides acceptance, support, and understanding of a patient or client;

198 (D) facilitates a patient or client's ability to cope, social support, and identity
199 exploration and development;

200 (E) addresses unlawful, unsafe, premarital, or extramarital sexual activities in a manner
201 that is neutral with respect to sexual orientation; or

202 (F) discusses with a patient or client the patient or client's moral or religious beliefs or
203 practices.

204 (b) "Health care professional" means an individual who is licensed, or an individual
205 who provides mental health therapy as part of the individual's training for a profession that is
206 licensed, under:

207 (i) Chapter 31b, Nurse Practice Act;

208 (ii) Chapter 60, Mental Health Professional Practice Act;

209 (iii) Chapter 61, Psychologist Licensing Act;

210 (iv) Chapter 67, Utah Medical Practice Act; or

211 (v) Chapter 68, Utah Osteopathic Medical Practice Act.

212 (2) A health care professional may not provide conversion therapy to a patient or client
213 who is younger than 18 years old.

214 (3) Subsection (2) does not apply to:

215 (a) a clergy member or religious counselor who is acting substantially in a pastoral or
216 religious capacity and not in the capacity of a health care professional; or

217 (b) a parent or grandparent who is a health care professional and who is acting
218 substantially in the capacity of a parent or grandparent and not in the capacity of a health care
219 professional.