

Representative Marsha Judkins proposes the following substitute bill:

FORMER OFFENDER EMPLOYMENT AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses employment and licensing of a former offender as a mental health professional.

Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ when hiring a mental health professional, prohibits a public or private employer from:
 - considering certain arrests or criminal convictions;
 - denying employment based on certain criminal convictions; and
 - denying certain employment based on the mental health professional's participation in substance use treatment;
- ▶ prohibits the Division of Occupational and Professional Licensing from:
 - considering certain criminal convictions when taking certain actions regarding a mental health professional's license; and
 - refusing certain mental health professionals' licenses based on participation in substance use treatment; and
- ▶ makes technical and conforming changes.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **34-52-102**, as last amended by Laws of Utah 2019, Chapter 371

33 **34-52-201**, as last amended by Laws of Utah 2019, Chapters 371 and 479

34 **58-1-401**, as last amended by Laws of Utah 2021, Chapter 404

35 **58-1-501**, as last amended by Laws of Utah 2020, Chapters 289 and 339

36 **58-60-108**, as last amended by Laws of Utah 2021, Chapter 404

37 **58-60-110**, as last amended by Laws of Utah 2019, Chapter 419

38 ENACTS:

39 **34-52-302**, Utah Code Annotated 1953



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

42 Section 1. Section **34-52-102** is amended to read:

43 **34-52-102. Definitions.**

44 As used in this chapter:

45 (1) "Applicant" means an individual who provides information to a public employer or
46 private employer for the purpose of obtaining employment.

47 (2) (a) "Criminal conviction" means a verdict or finding of guilt after a criminal trial or
48 a plea of guilty or nolo contendere to a criminal charge.

49 (b) "Criminal conviction" does not include an expunged criminal conviction.

50 (3) "Juvenile adjudication" means:

51 (a) a finding by a court that the facts in a petition or criminal information alleging an
52 individual committed an offense when the individual was younger than 18 years old have been
53 proved; or

54 (b) an admission or plea of no contest under Section **80-6-306**.

55 (4) "Mental health professional applicant" means an individual who:

56 (a) is licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; and

57 (b) provides information to a public employer or private employer for the purpose of
58 obtaining employment that requires a license under Title 58, Chapter 60, Mental Health
59 Professional Practice Act.

60 [~~3~~] (5) (a) "Private employer" means a person who has one or more employees
61 employed in the same business, or in or about the same establishment, under any contract of
62 hire, express or implied, oral or written.

63 (b) "Private employer" does not include a public employer.

64 [~~4~~] (6) "Public employer" means an employer that is:

65 (a) the state or any administrative subunit of the state, including a department, division,
66 board, council, committee, institution, office, bureau, or other similar administrative unit of
67 state government;

68 (b) a state institution of higher education; or

69 (c) a municipal corporation, county, municipality, school district, local district, special
70 service district, or other political subdivision of the state.

71 Section 2. Section **34-52-201** is amended to read:

72 **34-52-201. Public employer requirements -- Exceptions for hiring a mental health**
73 **professional.**

74 (1) [~~A~~] Except as provided in Subsections (3) and (6), a public employer may not:

75 (a) exclude an applicant from an initial interview because of a past criminal
76 conviction[-], or, if the applicant is a mental health professional applicant, because of a past
77 juvenile adjudication or an arrest that occurred when the mental health professional applicant
78 was younger than 18 years old;

79 (b) make an inquiry related to an applicant's expunged criminal history;

80 (c) when making a hiring decision regarding a mental health professional applicant,
81 consider:

82 (i) an arrest described in Subsection (1)(a);

83 (ii) an arrest not followed by a criminal conviction or juvenile adjudication;

84 (iii) a juvenile adjudication;

85 (iv) a past criminal conviction if the mental health professional applicant was not
86 incarcerated for the criminal conviction and the mental health professional applicant's sentence
87 for the criminal conviction terminates; or

88 (v) a past criminal conviction if the mental health professional applicant was
89 incarcerated for the criminal conviction and at least three years have passed since the later of:

90 (A) the day on which the incarceration for the criminal conviction terminates; or

91 (B) the day on which the incarceration for a supervision violation related to the
92 criminal conviction terminates; or

93 (d) deny a mental health professional applicant employment based on a past criminal
94 conviction that does not bear a direct relationship to the mental health professional applicant's
95 ability to safely or competently perform the duties of employment.

96 (2) A public employer excludes an applicant from an initial interview under Subsection
97 (1)(a) if the public employer:

98 (a) requires an applicant to disclose, on an employment application, a criminal
99 conviction, or, if the applicant is a mental health professional applicant, a juvenile adjudication
100 or an arrest described in Subsection (1)(a);

101 (b) requires an applicant to disclose, before an initial interview, a criminal conviction,
102 or, if the applicant is a mental health professional applicant, a juvenile adjudication or an arrest
103 described in Subsection (1)(a); or

104 (c) if no interview is conducted, requires an applicant to disclose, before making a
105 conditional offer of employment, a criminal conviction[-], or, if the applicant is a mental health
106 professional, a juvenile adjudication or an arrest described in Subsection (1)(a).

107 (3) Notwithstanding Subsection (1)(d), a public employer may not deny a mental health
108 professional applicant employment that requires the mental health professional applicant to
109 provide substance use treatment based on:

110 (a) the mental health professional applicant's participation in substance use treatment;

111 (b) a past criminal conviction for a nonviolent drug offense if the mental health
112 professional applicant was not incarcerated for the criminal conviction and the mental health
113 professional applicant's sentence for the criminal conviction terminates; or

114 (c) a past criminal conviction for a nonviolent drug offense if the mental health
115 professional applicant was incarcerated for the criminal conviction and at least three years have
116 passed since the later of:

117 (i) the day on which the incarceration for the criminal conviction terminates; or

118 (ii) the day on which the incarceration for a supervision violation related to the

119 criminal conviction terminates.

120 ~~[(3) (a) A public employer may not make any inquiry related to an applicant's~~
121 ~~expunged criminal history.]~~

122 ~~[(b)]~~ (4) An applicant seeking employment from a public employer may answer a
123 question related to an expunged criminal record as though the action underlying the expunged
124 criminal record never occurred.

125 ~~[(4) Subject to]~~ (5) Except as provided in Subsections (1) through (3), [nothing in this
126 section prevents] this section does not prevent a public employer from:

127 (a) asking an applicant for information about an applicant's criminal conviction history
128 during an initial interview or after an initial interview; or

129 (b) considering an applicant's criminal conviction history when making a hiring
130 decision.

131 ~~[(5)]~~ (6) (a) Subsections (1) through ~~[(3)]~~ (4) do not apply:

132 ~~[(a)]~~ (i) if federal, state, or local law, including corresponding administrative rules,
133 requires the consideration of an applicant's criminal conviction history;

134 ~~[(b)]~~ (ii) to a public employer that is a law enforcement agency;

135 ~~[(c)]~~ (iii) to a public employer that is part of the criminal or juvenile justice system;

136 ~~[(d)]~~ (iv) to a public employer seeking a nonemployee volunteer;

137 ~~[(e)]~~ (v) to a public employer that works with children or vulnerable adults;

138 ~~[(f)]~~ (vi) to the Department of Alcoholic Beverage Control created in Section

139 [32B-2-203](#);

140 ~~[(g)]~~ (vii) to the State Tax Commission;

141 ~~[(h)]~~ (viii) to a public employer whose primary purpose is performing financial or
142 fiduciary functions; ~~[and]~~ or

143 ~~[(i)]~~ (ix) to a public transit district hiring or promoting an individual for a safety
144 sensitive position described in Section [17B-2a-825](#).

145 (b) Subsections (1)(c)(iv), (1)(c)(v), and (1)(d) do not apply to a criminal conviction
146 for:

147 (i) a violent felony as defined in Section [76-3-203.5](#); or

148 (ii) a felony related to a criminal sexual act under Title 76, Chapter 5, Part 4, Sexual
149 Offenses, or Title 76, Chapter 5b, Sexual Exploitation Act.

150 Section 3. Section 34-52-302 is enacted to read:

151 **34-52-302. Private employer requirements when hiring a mental health**

152 **professional.**

153 (1) Except as provided in Subsections (3) and (5), a private employer may not:

154 (a) exclude a mental health professional applicant from an initial interview because of
155 a past criminal conviction, juvenile adjudication, or an arrest that occurred when the mental
156 health professional applicant was younger than 18 years old;

157 (b) make an inquiry related to a mental health professional applicant's expunged
158 criminal history;

159 (c) when making a hiring decision regarding a mental health professional applicant,
160 consider:

161 (i) an arrest described in Subsection (1)(a);

162 (ii) an arrest not followed by a criminal conviction or juvenile adjudication;

163 (iii) a juvenile adjudication;

164 (iv) a past criminal conviction if the mental health professional applicant was not
165 incarcerated for the criminal conviction and the mental health professional applicant's sentence
166 for the criminal conviction terminates; or

167 (v) a past criminal conviction if the mental health professional applicant was
168 incarcerated for the criminal conviction and at least three years have passed since the later of:

169 (A) the day on which the incarceration for the criminal conviction terminates; or

170 (B) the day on which the incarceration for a supervision violation related to the
171 criminal conviction terminates; or

172 (d) deny a mental health professional applicant employment based on a past criminal
173 conviction that does not bear a direct relationship to the mental health professional applicant's
174 ability to safely or competently perform the employment requirements.

175 (2) A private employer excludes a mental health professional applicant from an initial
176 interview under Subsection (1)(a) if the private employer:

177 (a) requires the mental health professional applicant to disclose, on an employment
178 application, a criminal conviction, a juvenile adjudication, or an arrest described in Subsection
179 (1)(a);

180 (b) requires the mental health professional applicant to disclose, before an initial

181 interview, a criminal conviction, a juvenile adjudication, or an arrest described in Subsection
182 (1)(a); or

183 (c) if no interview is conducted, requires the mental health professional applicant to
184 disclose, before making a conditional offer of employment, a criminal conviction, a juvenile
185 adjudication, or an arrest described in Subsection (1)(a).

186 (3) Notwithstanding Subsection (1)(d), a private employer may not deny a mental
187 health professional applicant employment that requires the mental health professional applicant
188 to provide substance use treatment based on:

189 (a) the mental health professional applicant's participation in substance use treatment;

190 (b) a past criminal conviction for a nonviolent drug offense if the mental health
191 professional applicant was not incarcerated for the criminal conviction and the mental health
192 professional applicant's sentence for the criminal conviction terminates; or

193 (c) a past criminal conviction for a nonviolent drug offense if the mental health
194 professional applicant was incarcerated for the criminal conviction and at least three years have
195 passed since the later of:

196 (A) the day on which the incarceration for the criminal conviction terminates; or

197 (B) the day on which the incarceration for a supervision violation related to the
198 criminal conviction terminates.

199 (4) Except as provided in Subsections (1) through (3), this section does not prevent a
200 private employer from:

201 (a) asking a mental health professional applicant for information about the mental
202 health professional applicant's criminal conviction history during an initial interview or after an
203 initial interview; or

204 (b) considering a mental health professional applicant's criminal conviction history
205 when making a hiring decision.

206 (5) (a) Subsections (1) through (3) do not apply:

207 (i) if federal, state, or local law, including corresponding administrative rules, requires
208 the consideration of an applicant's criminal conviction history;

209 (ii) to a private employer that is part of the criminal or juvenile justice system;

210 (iii) to a private employer seeking a nonemployee volunteer;

211 (iv) to a private employer that works with children or vulnerable adults; or

212 (v) to a private employer whose primary purpose is performing financial or fiduciary
213 functions.

214 (b) Subsections (1)(c)(iv), (1)(c)(v), and (1)(d) do not apply to a criminal conviction
215 for:

216 (i) a violent felony as defined in Section [76-3-203.5](#); or

217 (ii) a felony related to a criminal sexual act under Title 76, Chapter 5, Part 4, Sexual
218 Offenses, or Title 76, Chapter 5b, Sexual Exploitation Act.

219 Section 4. Section **58-1-401** is amended to read:

220 **58-1-401. Grounds for denial of license -- Disciplinary proceedings -- Time**
221 **limitations -- Sanctions.**

222 (1) The division shall refuse to issue a license to an applicant and shall refuse to renew
223 or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a
224 licensee who does not meet the qualifications for licensure under this title.

225 (2) The division may refuse to issue a license to an applicant and may refuse to renew
226 or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise
227 act upon the license of a licensee for the following reasons:

228 (a) subject to ~~[the provisions of]~~ Subsection (7), the applicant or licensee has engaged
229 in unprofessional conduct, as defined by statute or rule under this title;

230 (b) the applicant or licensee has engaged in unlawful conduct as defined by statute
231 under this title;

232 (c) the applicant or licensee has been determined to be mentally incompetent by a court
233 of competent jurisdiction; or

234 (d) subject to Subsections [58-31b-401\(7\)](#), [58-60-108\(2\)](#), [58-61-401\(2\)](#), [58-67-401\(2\)](#),
235 [58-68-401\(2\)](#), [58-70a-401\(2\)](#), and Section [58-81-105](#), the applicant or licensee is unable to
236 practice the occupation or profession with reasonable skill and safety because of illness,
237 drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material, or as a
238 result of a mental or physical condition, when the condition demonstrates a threat or potential
239 threat to the public health, safety, or welfare.

240 (3) A licensee whose license to practice an occupation or profession regulated by this
241 title has been suspended, revoked, placed on probation, or restricted may apply for
242 reinstatement of the license at reasonable intervals and upon compliance with conditions

243 imposed upon the licensee by statute, rule, or terms of the license suspension, revocation,
244 probation, or restriction.

245 (4) The division may issue cease and desist orders to:

246 (a) a licensee or applicant who may be disciplined under Subsection (1) or (2);

247 (b) a person who engages in or represents that the person is engaged in an occupation
248 or profession regulated under this title; and

249 (c) a person who otherwise violates this title or a rule adopted under this title.

250 (5) The division may impose an administrative penalty in accordance with Section

251 [58-1-502](#).

252 (6) (a) The division may not take disciplinary action against a person for
253 unprofessional or unlawful conduct under this title, unless the division enters into a stipulated
254 agreement or initiates an adjudicative proceeding regarding the conduct within four years after
255 the conduct is reported to the division, except under Subsection (6)(b).

256 (b) (i) The division may not take disciplinary action against a person for unprofessional
257 or unlawful conduct more than 10 years after the occurrence of the conduct, unless the
258 proceeding is in response to a civil or criminal judgment or settlement and the proceeding is
259 initiated within one year following the judgment or settlement.

260 (ii) Notwithstanding Subsection (6)(b)(i), the division may refuse to issue a license due
261 to unprofessional or unlawful conduct that occurred more than 10 years before a request or
262 application for licensure is made.

263 (7) When the division is determining whether to refuse to issue a license to an
264 applicant, or to refuse to renew the license of a licensee, based solely on the criminal
265 conviction of an applicant or licensee, the division shall:

266 (a) provide individualized consideration to the applicant or licensee;

267 (b) except as provided in Subsection [58-60-108\(2\)](#), determine whether the criminal
268 conviction bears a substantial relationship to the applicant's or licensee's ability to safely or
269 competently practice the occupation or profession; and

270 (c) consider the applicant's or licensee's current circumstances, which may include any
271 of the following:

272 (i) the age of the applicant or licensee when the applicant or licensee committed the
273 offense;

274 (ii) the time that has elapsed since the applicant or licensee committed the offense;

275 (iii) whether the applicant or licensee has completed the applicant's or licensee's
276 criminal sentence;

277 (iv) whether the applicant has completed or is actively participating in rehabilitative
278 drug or alcohol treatment;

279 (v) any testimonials or recommendations from other individuals provided by the
280 applicant or licensee, including a progress report from the applicant's or licensee's probation or
281 parole officer;

282 (vi) other evidence of rehabilitation provided by the applicant or licensee;

283 (vii) the education and training of the applicant or licensee;

284 (viii) the employment history of the applicant or licensee; and

285 (ix) other relevant information provided by the applicant or licensee.

286 Section 5. Section **58-1-501** is amended to read:

287 **58-1-501. Unlawful and unprofessional conduct.**

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

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

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

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

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

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

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

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

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

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

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

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

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

323 (g) aiding or abetting any other person to violate any statute, rule, or order regulating
324 an occupation or profession under this title.

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

328 (a) violating any statute, rule, or order regulating an occupation or profession under this
329 title;

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

333 (c) subject to [~~the provisions of Subsection (4);~~] Subsections (4) and [58-60-110\(4\)](#),
334 engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or
335 nolo contendere that is held in abeyance pending the successful completion of probation with

336 respect to a crime of moral turpitude or any other crime that, when considered with the
337 functions and duties of the occupation or profession for which the license was issued or is to be
338 issued, bears a substantial relationship to the licensee's or applicant's ability to safely or
339 competently practice the occupation or profession;

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

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

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

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

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

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

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

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

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

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

366 (i) without first obtaining information in the usual course of professional practice, that

367 is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to
368 the proposed treatment; or

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

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

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

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

380 (4) The following are not evidence of engaging in unprofessional conduct under
381 Subsection (2)(c):

382 (a) an arrest not followed by a conviction; or

383 (b) a conviction for which an individual's incarceration has ended more than seven
384 years before the date of the division's consideration, unless:

385 (i) after the incarceration the individual has engaged in additional conduct that results
386 in another conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere that is
387 held in abeyance pending the successful completion of probation; or

388 (ii) the conviction was for:

389 (A) a violent felony as defined in Section 76-3-203.5;

390 (B) a felony related to a criminal sexual act [~~pursuant to~~] under Title 76, Chapter 5,
391 Part 4, Sexual Offenses, or Title 76, Chapter 5b, Sexual Exploitation Act; or

392 (C) a felony related to criminal fraud or embezzlement, including a felony [~~pursuant to~~]
393 under Title 76, Chapter 6, Part 5, Fraud, or Title 76, Chapter 6, Part 4, Theft.

394 Section 6. Section 58-60-108 is amended to read:

395 **58-60-108. Grounds for action regarding license -- Disciplinary proceedings.**

396 (1) Subject to Subsection (2), the division's grounds for refusing to issue a license to an
397 applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting,

398 or placing on probation the license of a licensee, for issuing a public or private reprimand to a
399 licensee, and for issuing a cease and desist order are under Section 58-1-401.

400 (2) The division may not:

401 (a) refuse, revoke, suspend, or in any way restrict an [applicant] applicant's or
402 licensee's license under this chapter solely because the applicant or licensee seeks or
403 participates in mental health or substance abuse treatment[-];

404 (b) refuse an applicant's license under Part 5, Substance Use Disorder Counselor Act,
405 because the applicant was convicted of a nonviolent drug offense if:

406 (i) the applicant's incarceration for the offense ended more than three years before the
407 day on which the applicant sought licensure under Part 5, Substance Use Disorder Counselor
408 Act; or

409 (ii) in the case the applicant was not incarcerated for the offense, the conviction
410 occurred more than three years before the day on which the applicant sought licensure under
411 Part 5, Substance Use Disorder Counselor Act.

412 Section 7. Section 58-60-110 is amended to read:

413 **58-60-110. Unprofessional conduct.**

414 (1) As used in this chapter, "unprofessional conduct" includes:

415 (a) using or employing the services of any individual to assist a licensee in any manner
416 not in accordance with the generally recognized practices, standards, or ethics of the profession
417 for which the individual is licensed, or the laws of the state;

418 (b) failure to confine practice conduct to those acts or practices:

419 (i) in which the individual is competent by education, training, and experience within
420 limits of education, training, and experience; and

421 (ii) which are within applicable scope of practice laws of this chapter;

422 (c) disclosing or refusing to disclose any confidential communication under Section
423 58-60-114 or 58-60-509; and

424 (d) a pattern of failing to offer a patient the opportunity to waive the patient's privacy
425 rights under the Standards for Privacy of Individually Identifiable Health Information, 45
426 C.F.R., Parts 160 and 164.

427 (2) "Unprofessional conduct" under this chapter may be further defined by division
428 rule.

429 (3) Notwithstanding Section [58-1-401](#), the division may not act upon the license of a
430 licensee for unprofessional conduct under Subsection (1)(d).

431 (4) (a) Except as provided in Subsection (4)(b), the following are not evidence of
432 engaging in unprofessional conduct under Subsection [58-1-501](#)(2)(c):

433 (i) a conviction for which an applicant's incarceration ended more than three years
434 before the date of the division's consideration; or

435 (ii) a conviction for which the applicant was not incarcerated that occurred more than
436 three years before the date of the division's consideration.

437 (b) Subsection (4)(a) does not apply to a conviction described in Subsection
438 [58-1-501](#)(4)(b)(ii).