

UNPROFESSIONAL CONDUCT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael J. Petersen

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies and enacts provisions relating to the provision of conversion therapy to minors.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits certain health care professionals from providing conversion therapy to a minor;
- ▶ clarifies that verbal or written communication by itself does not fall within the definition of conversion therapy; and
- ▶ makes technical and conforming changes.

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 2020, Chapters 289, 339

58-1-502, as last amended by Laws of Utah 2020, Chapter 339

58-31b-102, as last amended by Laws of Utah 2022, Chapter 277



- 28 **58-31b-502**, as last amended by Laws of Utah 2022, Chapter 290
- 29 **58-55-402**, as last amended by Laws of Utah 2011, Chapter 195
- 30 **58-60-102**, as last amended by Laws of Utah 2021, Chapter 313
- 31 **58-60-110**, as last amended by Laws of Utah 2019, Chapter 419
- 32 **58-61-102**, as last amended by Laws of Utah 2013, Chapters 16, 123
- 33 **58-61-502**, as last amended by Laws of Utah 2001, Chapter 281
- 34 **58-67-102**, as last amended by Laws of Utah 2022, Chapter 233
- 35 **58-67-502**, as last amended by Laws of Utah 2021, Chapter 337
- 36 **58-68-102**, as last amended by Laws of Utah 2022, Chapter 233
- 37 **58-68-502**, as last amended by Laws of Utah 2021, Chapter 337
- 38 **58-70a-102**, as last amended by Laws of Utah 2021, Chapters 312, 313
- 39 **58-70a-503**, as last amended by Laws of Utah 2022, Chapter 290

40 ENACTS:

41 **58-1-511**, Utah Code Annotated 1953



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

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

45 **58-1-501. Unlawful and unprofessional conduct.**

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

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

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

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

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

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

59 the division;

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

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

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

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

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

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

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

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

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

86 [~~(a)~~] (i) violating any statute, rule, or order regulating an occupation or profession
87 under this title;

88 [~~(b)~~] (ii) violating, or aiding or abetting any other person to violate, any generally
89 accepted professional or ethical standard applicable to an occupation or profession regulated

90 under this title;

91 ~~(e)~~ (iii) subject to the provisions of Subsection (4), engaging in conduct that results in
92 conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere that is held in
93 abeyance pending the successful completion of probation with respect to a crime of moral
94 turpitude or any other crime that, when considered with the functions and duties of the
95 occupation or profession for which the license was issued or is to be issued, bears a substantial
96 relationship to the licensee's or applicant's ability to safely or competently practice the
97 occupation or profession;

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

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

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

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

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

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

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

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

121 ~~(f)~~ (xii) acting as a supervisor without meeting the qualification requirements for that
122 position that are defined by statute or rule;

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

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

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

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

134 ~~(o)~~ (xv) violating the terms of an order governing a license[-]; or

135 (xvi) violating Section [58-1-511](#).

136 (b) "Unprofessional conduct" does not include verbal or written communication by
137 itself, except where a verbal or written communication by itself constitutes conduct defined as
138 unprofessional conduct in this title.

139 (c) A rule adopted under this title that defines "unprofessional conduct" shall be
140 consistent with Subsection (2)(b).

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

145 (4) The following are not evidence of engaging in unprofessional conduct under
146 Subsection ~~(2)(c)~~ (2)(a)(iii):

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

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

150 (i) after the incarceration the individual has engaged in additional conduct that results
151 in another conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere that is

152 held in abeyance pending the successful completion of probation; or

153 (ii) the conviction was for:

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

155 (B) a felony related to a criminal sexual act pursuant to Title 76, Chapter 5, Part 4,
156 Sexual Offenses, or Title 76, Chapter 5b, Sexual Exploitation Act; or

157 (C) a felony related to criminal fraud or embezzlement, including a felony pursuant to
158 Title 76, Chapter 6, Part 5, Fraud, or Title 76, Chapter 6, Part 4, Theft.

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

160 **58-1-502. Unlawful and unprofessional conduct -- Penalties.**

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

163 (b) Unless a specific fine amount is specified elsewhere in this title, the director or the
164 director's designee may assess an administrative fine of up to \$1,000 for each instance of
165 unprofessional or unlawful conduct defined in this title.

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

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

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

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

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

179 (A) an uncontested citation;

180 (B) a stipulated settlement; or

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

182 (ii) The division may, in addition to or in lieu of a fine under Subsection (2)(b)(i),

183 order the person to cease and desist from violating Subsection 58-1-501(1)(a), (1)(c), (1)(g), or
184 [~~(2)~~ (2)(a)(xv)], or a rule or order issued with respect to those subsections.

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

187 (d) A citation shall:

188 (i) be in writing;

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

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

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

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

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

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

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

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

205 (i) Subject to the time limitations described in Subsection 58-1-401(6), the division
206 may not issue a citation under this section after the expiration of one year following the date on
207 which the violation that is the subject of the citation is reported to the division.

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

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

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

211 and

212 (iii) for each subsequent offense handled pursuant to Subsection (2)(a), a fine of up to
213 \$2,000 for each day of continued offense.

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

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

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

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

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

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

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

228 Section 3. Section **58-1-511** is enacted to read:

229 **58-1-511. Prohibition on providing conversion therapy to a minor.**

230 (1) As used in this section:

231 (a) (i) "Conversion therapy" means a practice or treatment intended to influence or
232 change sexual orientation or gender identity that:

233 (A) subjects a patient or client to physical discomfort through aversive treatment that
234 causes nausea, vomiting, or other unpleasant physical sensation;

235 (B) provides electric shock or other electrical therapy, including electroconvulsive
236 therapy or transcranial magnet stimulation;

237 (C) subjects a patient to touching themselves or another individual as part of the therapy;

238 or

239 (D) causes the patient to engage in physical self-harm or physical self-inflicted pain.

240 (ii) "Conversion therapy" does not include verbal or written communication by itself.

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

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

- 245 (ii) Chapter 60, Mental Health Professional Practice Act;
246 (iii) Chapter 61, Psychologist Licensing Act;
247 (iv) Chapter 67, Utah Medical Practice Act;
248 (v) Chapter 68, Utah Osteopathic Medical Practice Act; or
249 (vi) Chapter 70a, Utah Physician Assistant Act.

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

252 (3) A violation of this section is unprofessional conduct.

253 Section 4. Section **58-31b-102** is amended to read:

254 **58-31b-102. Definitions.**

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

256 (1) "Administrative penalty" means a monetary fine or citation imposed by the division
257 for acts or omissions determined to be unprofessional or unlawful conduct in accordance with a
258 fine schedule established by division rule made in accordance with Title 63G, Chapter 3, Utah
259 Administrative Rulemaking Act, and as a result of an adjudicative proceeding conducted in
260 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

261 (2) "Applicant" means an individual who applies for licensure or certification under
262 this chapter by submitting a completed application for licensure or certification and the
263 required fees to the department.

264 (3) "Approved education program" means a nursing education program that is
265 accredited by an accrediting body for nursing education that is approved by the United States
266 Department of Education.

267 (4) "Board" means the Board of Nursing created in Section **58-31b-201**.

268 (5) "Diagnosis" means the identification of and discrimination between physical and
269 psychosocial signs and symptoms essential to the effective execution and management of
270 health care.

271 (6) "Examinee" means an individual who applies to take or does take any examination
272 required under this chapter for licensure.

273 (7) "Licensee" means an individual who is licensed or certified under this chapter.

274 (8) "Long-term care facility" means any of the following facilities licensed by the
275 Department of Health and Human Services pursuant to Title 26, Chapter 21, Health Care

276 Facility Licensing and Inspection Act:

- 277 (a) a nursing care facility;
- 278 (b) a small health care facility;
- 279 (c) an intermediate care facility for people with an intellectual disability;
- 280 (d) an assisted living facility Type I or II; or
- 281 (e) a designated swing bed unit in a general hospital.

282 (9) "Medication aide certified" means a certified nurse aide who:

- 283 (a) has a minimum of 2,000 hours experience working as a certified nurse aide;
- 284 (b) has received a minimum of 60 hours of classroom and 40 hours of practical training
- 285 that is approved by the division in collaboration with the board, in administering routine
- 286 medications to patients or residents of long-term care facilities; and
- 287 (c) is certified by the division as a medication aide certified.

288 (10) (a) "Practice as a medication aide certified" means the limited practice of nursing
289 under the supervision, as defined by the division by rule made in accordance with Title 63G,
290 Chapter 3, Utah Administrative Rulemaking Act, of a licensed nurse, involving routine patient
291 care that requires minimal or limited specialized or general knowledge, judgment, and skill, to
292 an individual who:

- 293 (i) is ill, injured, infirm, has a physical, mental, developmental, or intellectual
- 294 disability; and
- 295 (ii) is in a regulated long-term care facility.

296 (b) "Practice as a medication aide certified":

- 297 (i) includes:
 - 298 (A) providing direct personal assistance or care; and
 - 299 (B) administering routine medications to patients in accordance with a formulary and
 - 300 protocols to be defined by the division by rule made in accordance with Title 63G, Chapter 3,
 - 301 Utah Administrative Rulemaking Act; and

302 (ii) does not include assisting a resident of an assisted living facility, a long term care
303 facility, or an intermediate care facility for people with an intellectual disability to self
304 administer a medication, as regulated by the Department of Health and Human Services by rule
305 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

306 (11) "Practice of advanced practice registered nursing" means the practice of nursing

307 within the generally recognized scope and standards of advanced practice registered nursing as
308 defined by rule and consistent with professionally recognized preparation and education
309 standards of an advanced practice registered nurse by a person licensed under this chapter as an
310 advanced practice registered nurse. "Practice of advanced practice registered nursing" includes:

- 311 (a) maintenance and promotion of health and prevention of disease;
- 312 (b) diagnosis, treatment, correction, consultation, and referral;
- 313 (c) prescription or administration of prescription drugs or devices including:
 - 314 (i) local anesthesia;
 - 315 (ii) Schedule III-V controlled substances; and
 - 316 (iii) Subject to Section 58-31b-803, Schedule II controlled substances; or
- 317 (d) the provision of preoperative, intraoperative, and postoperative anesthesia care and
318 related services upon the request of a licensed health care professional by an advanced practice
319 registered nurse specializing as a certified registered nurse anesthetist, including:
 - 320 (i) preanesthesia preparation and evaluation including:
 - 321 (A) performing a preanesthetic assessment of the patient;
 - 322 (B) ordering and evaluating appropriate lab and other studies to determine the health of
323 the patient; and
 - 324 (C) selecting, ordering, or administering appropriate medications;
 - 325 (ii) anesthesia induction, maintenance, and emergence, including:
 - 326 (A) selecting and initiating the planned anesthetic technique;
 - 327 (B) selecting and administering anesthetics and adjunct drugs and fluids; and
 - 328 (C) administering general, regional, and local anesthesia;
 - 329 (iii) postanesthesia follow-up care, including:
 - 330 (A) evaluating the patient's response to anesthesia and implementing corrective
331 actions; and
 - 332 (B) selecting, ordering, or administering the medications and studies listed in this
333 Subsection (11)(d);
 - 334 (iv) other related services within the scope of practice of a certified registered nurse
335 anesthetist, including:
 - 336 (A) emergency airway management;
 - 337 (B) advanced cardiac life support; and

338 (C) the establishment of peripheral, central, and arterial invasive lines; and
339 (v) for purposes of this Subsection (11)(d), "upon the request of a licensed health care
340 professional":

341 (A) means a health care professional practicing within the scope of the health care
342 professional's license, requests anesthesia services for a specific patient; and

343 (B) does not require an advanced practice registered nurse specializing as a certified
344 registered nurse anesthetist to obtain additional authority to select, administer, or provide
345 preoperative, intraoperative, or postoperative anesthesia care and services.

346 (12) "Practice of nursing" means assisting individuals or groups to maintain or attain
347 optimal health, implementing a strategy of care to accomplish defined goals and evaluating
348 responses to care and treatment, and requires substantial specialized or general knowledge,
349 judgment, and skill based upon principles of the biological, physical, behavioral, and social
350 sciences. "Practice of nursing" includes:

- 351 (a) initiating and maintaining comfort measures;
- 352 (b) promoting and supporting human functions and responses;
- 353 (c) establishing an environment conducive to well-being;
- 354 (d) providing health counseling and teaching;
- 355 (e) collaborating with health care professionals on aspects of the health care regimen;
- 356 (f) performing delegated procedures only within the education, knowledge, judgment,
357 and skill of the licensee;
- 358 (g) delegating nursing tasks that may be performed by others, including an unlicensed
359 assistive personnel; and
- 360 (h) supervising an individual to whom a task is delegated under Subsection (12)(g) as
361 the individual performs the task.

362 (13) "Practice of practical nursing" means the performance of nursing acts in the
363 generally recognized scope of practice of licensed practical nurses as defined by division rule
364 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and as
365 provided in this Subsection (13) by an individual licensed under this chapter as a licensed
366 practical nurse and under the direction of a registered nurse, licensed physician, or other
367 specified health care professional as defined by division rule made in accordance with Title
368 63G, Chapter 3, Utah Administrative Rulemaking Act. Practical nursing acts include:

- 369 (a) contributing to the assessment of the health status of individuals and groups;
370 (b) participating in the development and modification of the strategy of care;
371 (c) implementing appropriate aspects of the strategy of care;
372 (d) maintaining safe and effective nursing care rendered to a patient directly or
373 indirectly; and
374 (e) participating in the evaluation of responses to interventions.

375 (14) "Practice of registered nursing" means performing acts of nursing as provided in
376 this Subsection (14) by an individual licensed under this chapter as a registered nurse within
377 the generally recognized scope of practice of registered nurses as defined by division rule made
378 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Registered
379 nursing acts include:

- 380 (a) assessing the health status of individuals and groups;
381 (b) identifying health care needs;
382 (c) establishing goals to meet identified health care needs;
383 (d) planning a strategy of care;
384 (e) prescribing nursing interventions to implement the strategy of care;
385 (f) implementing the strategy of care;
386 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
387 indirectly;
388 (h) evaluating responses to interventions;
389 (i) teaching the theory and practice of nursing; and
390 (j) managing and supervising the practice of nursing.

391 (15) "Registered nurse apprentice" means an individual licensed under Subsection
392 [58-31b-301\(2\)\(b\)](#) who is learning and engaging in the practice of registered nursing under the
393 indirect supervision of an individual licensed under:

- 394 (a) Subsection [58-31b-301\(2\)\(c\)](#), (e), or (f);
395 (b) Chapter 67, Utah Medical Practice Act; or
396 (c) Chapter 68, Utah Osteopathic Medical Practice Act.

397 (16) "Routine medications":

- 398 (a) means established medications administered to a medically stable individual as
399 determined by a licensed health care practitioner or in consultation with a licensed medical

400 practitioner; and

401 (b) is limited to medications that are administered by the following routes:

402 (i) oral;

403 (ii) sublingual;

404 (iii) buccal;

405 (iv) eye;

406 (v) ear;

407 (vi) nasal;

408 (vii) rectal;

409 (viii) vaginal;

410 (ix) skin ointments, topical including patches and transdermal;

411 (x) premeasured medication delivered by aerosol/nebulizer; and

412 (xi) medications delivered by metered hand-held inhalers.

413 (17) "Unlawful conduct" means the same as that term is defined in Sections [58-1-501](#)
414 and [58-31b-501](#).

415 (18) "Unlicensed assistive personnel" means any unlicensed individual, regardless of
416 title, who is delegated a task by a licensed nurse as permitted by division rule made in
417 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the standards
418 of the profession.

419 (19) "Unprofessional conduct" means the same as that term is defined in Sections
420 [58-1-501](#) and [58-31b-502](#) and as may be further defined by division rule made in accordance
421 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to Subsections
422 [58-1-501\(2\)\(b\)](#) and [58-31b-502\(2\)\(b\)](#).

423 Section 5. Section **58-31b-502** is amended to read:

424 **58-31b-502. Unprofessional conduct.**

425 (1) "Unprofessional conduct" includes:

426 (a) failure to safeguard a patient's right to privacy as to the patient's person, condition,
427 diagnosis, personal effects, or any other matter about which the licensee is privileged to know
428 because of the licensee's or person with a certification's position or practice as a nurse or
429 practice as a medication aide certified;

430 (b) failure to provide nursing service or service as a medication aide certified in a

431 manner that demonstrates respect for the patient's human dignity and unique personal character
432 and needs without regard to the patient's race, religion, ethnic background, socioeconomic
433 status, age, sex, or the nature of the patient's health problem;

434 (c) engaging in sexual relations with a patient during any:

435 (i) period when a generally recognized professional relationship exists between the
436 person licensed or certified under this chapter and the patient; or

437 (ii) extended period when a patient has reasonable cause to believe a professional
438 relationship exists between the person licensed or certified under the provisions of this chapter
439 and the patient;

440 (d) (i) as a result of any circumstance under Subsection (1)(c), exploiting or using
441 information about a patient or exploiting the licensee's or the person with a certification's
442 professional relationship between the licensee or holder of a certification under this chapter and
443 the patient; or

444 (ii) exploiting the patient by use of the licensee's or person with a certification's
445 knowledge of the patient obtained while acting as a nurse or a medication aide certified;

446 (e) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;

447 (f) unauthorized taking or personal use of nursing supplies from an employer;

448 (g) unauthorized taking or personal use of a patient's personal property;

449 (h) unlawful or inappropriate delegation of nursing care;

450 (i) failure to exercise appropriate supervision of persons providing patient care services
451 under supervision of the licensed nurse;

452 (j) employing or aiding and abetting the employment of an unqualified or unlicensed
453 person to practice as a nurse;

454 (k) failure to file or record any medical report as required by law, impeding or
455 obstructing the filing or recording of such a report, or inducing another to fail to file or record
456 such a report;

457 (l) breach of a statutory, common law, regulatory, or ethical requirement of
458 confidentiality with respect to a person who is a patient, unless ordered by a court;

459 (m) failure to pay a penalty imposed by the division;

460 (n) prescribing a Schedule II controlled substance without complying with the
461 requirements in Section [58-31b-803](#), if applicable;

462 (o) violating Section 58-31b-801;

463 (p) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b, Part
464 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if
465 applicable;

466 (q) falsely making an entry in, or altering, a medical record with the intent to conceal:

467 (i) a wrongful or negligent act or omission of an individual licensed under this chapter
468 or an individual under the direction or control of an individual licensed under this chapter; or

469 (ii) conduct described in Subsections (1)(a) through (o) or Subsection 58-1-501(1); [or]

470 (r) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act[;];

471 or

472 (s) violating Section 58-1-511.

473 (2) "Unprofessional conduct" does not include[;]:

474 (a) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act, when
475 registered as a qualified medical provider, or acting as a limited medical provider, as those
476 terms are defined in Section 26-61a-102, recommending the use of medical cannabis[;]; or

477 (b) verbal or written communication by itself, except where a verbal or written
478 communication by itself constitutes conduct described in Section 58-1-501 or Subsection
479 (1)(a).

480 (3) Notwithstanding Subsection (2), the division, in consultation with the board and in
481 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define
482 unprofessional conduct for an advanced practice registered nurse described in Subsection (2).

483 Section 6. Section 58-55-402 is amended to read:

484 **58-55-402. Investigation of regulated activity.**

485 (1) The division shall be responsible for the investigation of persons and activities in
486 violation of the provisions of this chapter.

487 (2) (a) Investigation by the division shall include investigations of:

488 (i) licensees engaged in unlawful or unprofessional conduct; and

489 (ii) unlicensed persons engaged in the conduct of activity or work regulated under this
490 chapter and for which a license is required.

491 (b) (i) As used in this Subsection (2)(b), "sign contractor":

492 (A) means a sign installation contractor or nonelectrical outdoor advertising sign

493 contractor, as classified and defined in division rules; and

494 (B) does not include a sign installation contractor or nonelectrical outdoor advertising
495 sign contractor, as classified and defined in division rules, that is subject to Title 72, Chapter 7,
496 Part 5, Utah Outdoor Advertising Act.

497 (ii) The division shall maintain a record of the number of unlicensed persons found to
498 have engaged each year in the conduct of activity or work regulated under this chapter for
499 which a license as a sign contractor is required, including the location where a violation
500 occurred.

501 (3) The division shall decline to proceed with investigation of the violation of any
502 provisions of this chapter if the division finds there is no apparent material jeopardy to the
503 public health, safety, and welfare.

504 (4) The division shall have no responsibility for the inspection of construction work
505 performed in the state to determine compliance with applicable codes, or industry and
506 workmanship standards, except as provided in Subsections [~~58-1-501(2)(g)~~]
507 [58-1-501\(2\)\(a\)\(vii\)](#), [58-55-502\(2\)](#), (3), and (4), and [58-55-501\(16\)](#).

508 (5) Authorized representatives of the division shall be permitted to enter upon the
509 premises or site of work regulated under this chapter for the purpose of determining
510 compliance with the provisions of this chapter.

511 Section 7. Section **58-60-102** is amended to read:

512 **58-60-102. Definitions.**

513 In addition to the definitions in Section [58-1-102](#), as used in this chapter:

514 (1) "Client" or "patient" means an individual who consults or is examined or
515 interviewed by an individual licensed under this chapter who is acting in the individual's
516 professional capacity.

517 (2) "Confidential communication" means information obtained by an individual
518 licensed under this chapter, including information obtained by the individual's examination of
519 the client or patient, which is:

520 (a) (i) transmitted between the client or patient and an individual licensed under this
521 chapter in the course of that relationship; or

522 (ii) transmitted among the client or patient, an individual licensed under this chapter,
523 and individuals who are participating in the diagnosis or treatment under the direction of an

524 individual licensed under this chapter, including members of the client's or patient's family; and

525 (b) made in confidence, for the diagnosis or treatment of the client or patient by the
526 individual licensed under this chapter, and by a means not intended to be disclosed to third
527 persons other than those individuals:

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

530 (ii) reasonably necessary for the transmission of the communications; or

531 (iii) participating in the diagnosis and treatment of the client or patient under the
532 direction of the mental health therapist.

533 (3) "Hypnosis" means, when referring to individuals exempted from licensure under
534 this chapter, a process by which an individual induces or assists another individual into a
535 hypnotic state without the use of drugs or other substances and for the purpose of increasing
536 motivation or to assist the individual to alter lifestyles or habits.

537 (4) "Individual" means a natural person.

538 (5) "Mental health therapist" means an individual who is practicing within the scope of
539 practice defined in the individual's respective licensing act and is licensed under this title as:

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

542 (b) an advanced practice registered nurse, specializing in psychiatric mental health
543 nursing;

544 (c) an advanced practice registered nurse intern, specializing in psychiatric mental
545 health nursing;

546 (d) a psychologist qualified to engage in the practice of mental health therapy;

547 (e) a certified psychology resident qualifying to engage in the practice of mental health
548 therapy;

549 (f) a physician assistant specializing in mental health care under Section [58-70a-501.1](#);

550 (g) a clinical social worker;

551 (h) a certified social worker;

552 (i) a marriage and family therapist;

553 (j) an associate marriage and family therapist;

554 (k) a clinical mental health counselor; or

555 (1) an associate clinical mental health counselor.

556 (6) "Mental illness" means a mental or emotional condition defined in an approved
557 diagnostic and statistical manual for mental disorders generally recognized in the professions of
558 mental health therapy listed under Subsection (5).

559 (7) "Practice of mental health therapy" means treatment or prevention of mental illness,
560 whether in person or remotely, including:

561 (a) conducting a professional evaluation of an individual's condition of mental health,
562 mental illness, or emotional disorder consistent with standards generally recognized in the
563 professions of mental health therapy listed under Subsection (5);

564 (b) establishing a diagnosis in accordance with established written standards generally
565 recognized in the professions of mental health therapy listed under Subsection (5);

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

568 (d) engaging in the conduct of professional intervention, including psychotherapy by
569 the application of established methods and procedures generally recognized in the professions
570 of mental health therapy listed under Subsection (5).

571 (8) "Remotely" means communicating via Internet, telephone, or other electronic
572 means that facilitate real-time audio or visual interaction between individuals when they are not
573 physically present in the same room at the same time.

574 (9) "Unlawful conduct" is as defined in Sections [58-1-501](#) and [58-60-109](#).

575 (10) "Unprofessional conduct" is as defined in Sections [58-1-501](#) and [58-60-110](#), and
576 may be further defined by division rule subject to Subsections [58-1-501\(2\)\(b\)](#) and
577 [58-60-110\(1\)\(b\)](#).

578 Section 8. Section **58-60-110** is amended to read:

579 **58-60-110. Unprofessional conduct.**

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

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

584 ~~(b)~~ (ii) failure to confine practice conduct to those acts or practices:

585 ~~(c)~~ (A) in which the individual is competent by education, training, and experience

586 within limits of education, training, and experience; and
 587 ~~[(ii)]~~ (B) which are within applicable scope of practice laws of this chapter;
 588 ~~[(c)]~~ (iii) disclosing or refusing to disclose any confidential communication under
 589 Section [58-60-114](#) or [58-60-509](#); ~~[and]~~
 590 ~~[(d)]~~ (iv) a pattern of failing to offer a patient the opportunity to waive the patient's
 591 privacy rights under the Standards for Privacy of Individually Identifiable Health Information,
 592 45 C.F.R., Parts 160 and 164[-]; and

593 (v) a violation of Section [58-1-511](#).

594 (b) "Unprofessional conduct" does not include verbal or written communication by
 595 itself, except where a verbal or written communication by itself constitutes conduct described
 596 in Section [58-1-501](#) or Subsection (1)(a).

597 (2) ~~["Unprofessional"]~~ Subject to Subsection (1)(b), "unprofessional conduct" under this
 598 chapter may be further defined by division rule.

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

601 Section 9. Section **58-61-102** is amended to read:

602 **58-61-102. Definitions.**

603 In addition to the definitions in Section [58-1-102](#), as used in this chapter:

604 (1) "Board" means the Psychologist Licensing Board created in Section [58-61-201](#).

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

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

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

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

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

- 617 (i) present to further the interest of the client or patient in the consultation,
618 examination, or interview;
- 619 (ii) reasonably necessary for the transmission of the communications; or
620 (iii) participating in the diagnosis and treatment of the client or patient under the
621 direction of the psychologist.
- 622 (4) "Hypnosis" means, regarding individuals exempted from licensure under this
623 chapter, a process by which one individual induces or assists another individual into a hypnotic
624 state without the use of drugs or other substances and for the purpose of increasing motivation
625 or to assist the individual to alter lifestyles or habits.
- 626 (5) "Individual" means a natural person.
- 627 (6) "Mental health therapist" means an individual licensed under this title as a:
- 628 (a) physician and surgeon, or osteopathic physician engaged in the practice of mental
629 health therapy;
- 630 (b) an advanced practice registered nurse, specializing in psychiatric mental health
631 nursing;
- 632 (c) an advanced practice registered nurse intern, specializing in psychiatric mental
633 health nursing;
- 634 (d) psychologist qualified to engage in the practice of mental health therapy;
- 635 (e) a certified psychology resident qualifying to engage in the practice of mental health
636 therapy;
- 637 (f) clinical social worker;
- 638 (g) certified social worker;
- 639 (h) marriage and family therapist;
- 640 (i) an associate marriage and family therapist;
- 641 (j) a clinical mental health counselor; or
642 (k) an associate clinical mental health counselor.
- 643 (7) "Mental illness" means a mental or emotional condition defined in an approved
644 diagnostic and statistical manual for mental disorders generally recognized in the professions of
645 mental health therapy listed under Subsection (6).
- 646 (8) "Practice of mental health therapy" means the treatment or prevention of mental
647 illness, whether in person or remotely, including:

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

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

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

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

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

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

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

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

672 (iv) counseling, marriage and family therapy, psychoanalysis, psychotherapy, hypnosis,
673 and behavior analysis and therapy;

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

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

678 (b) An individual practicing psychology may provide services to individuals, couples,

679 families, groups of individuals, members of the public, and individuals or groups within
680 organizations or institutions.

681 (10) "Remotely" means communicating via Internet, telephone, or other electronic
682 means that facilitate real-time audio or visual interaction between individuals when they are not
683 physically present in the same room at the same time.

684 (11) "Unlawful conduct" is as defined in Sections [58-1-501](#) and [58-61-501](#).

685 (12) "Unprofessional conduct" is as defined in Sections [58-1-501](#) and [58-61-502](#), and
686 may be further defined by division rule subject to Subsections [58-1-501\(2\)\(b\)](#) and
687 [58-61-502\(1\)\(b\)](#).

688 Section 10. Section **58-61-502** is amended to read:

689 **58-61-502. Unprofessional conduct.**

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

691 ~~[(a)]~~ (i) using or employing the services of any individual to assist a licensee in any
692 manner not in accordance with the generally recognized practices, standards, or ethics of the
693 profession for which the individual is licensed, or the laws of the state;

694 ~~[(b)]~~ (ii) failure to confine practice conduct to those acts or practices:

695 ~~[(i)]~~ (A) in which the individual is competent by education, training, and experience
696 within limits of education, training, and experience; and

697 ~~[(ii)]~~ (B) which are within applicable scope of practice laws of this chapter; ~~[and]~~

698 ~~[(c)]~~ (iii) disclosing or refusing to disclose any confidential communication under

699 Section [58-61-602](#)~~[-]; and~~

700 (iv) a violation of Section [58-1-511](#).

701 (b) "Unprofessional conduct" does not include verbal or written communication by
702 itself, except where a verbal or written communication by itself constitutes conduct described
703 in Section [58-1-501](#) or Subsection (1)(a).

704 (2) "Unprofessional conduct" under this chapter may be further defined by division rule
705 subject to Subsection (1)(b).

706 Section 11. Section **58-67-102** is amended to read:

707 **58-67-102. Definitions.**

708 In addition to the definitions in Section [58-1-102](#), as used in this chapter:

709 (1) (a) "Ablative procedure" means a procedure that is expected to excise, vaporize,

710 disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium:
711 YAG lasers.

712 (b) "Ablative procedure" does not include hair removal.

713 (2) "ACGME" means the Accreditation Council for Graduate Medical Education of the
714 American Medical Association.

715 (3) "Administrative penalty" means a monetary fine or citation imposed by the division
716 for acts or omissions determined to constitute unprofessional or unlawful conduct, in
717 accordance with a fine schedule established by the division in collaboration with the board, as a
718 result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4,
719 Administrative Procedures Act.

720 (4) "Associate physician" means an individual licensed under Section [58-67-302.8](#).

721 (5) "Board" means the Physicians Licensing Board created in Section [58-67-201](#).

722 (6) "Collaborating physician" means an individual licensed under Section [58-67-302](#)
723 who enters into a collaborative practice arrangement with an associate physician.

724 (7) "Collaborative practice arrangement" means the arrangement described in Section
725 [58-67-807](#).

726 (8) (a) "Cosmetic medical device" means tissue altering energy based devices that have
727 the potential for altering living tissue and that are used to perform ablative or nonablative
728 procedures, such as American National Standards Institute (ANSI) designated Class IIIb and
729 Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices, and
730 excludes ANSI designated Class IIIa and lower powered devices.

731 (b) Notwithstanding Subsection (8)(a), if an ANSI designated Class IIIa and lower
732 powered device is being used to perform an ablative procedure, the device is included in the
733 definition of cosmetic medical device under Subsection (8)(a).

734 (9) "Cosmetic medical procedure":

735 (a) includes the use of cosmetic medical devices to perform ablative or nonablative
736 procedures; and

737 (b) does not include a treatment of the ocular globe such as refractive surgery.

738 (10) "Diagnose" means:

739 (a) to examine in any manner another person, parts of a person's body, substances,
740 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's

741 body, to determine the source, nature, kind, or extent of a disease or other physical or mental
742 condition;

743 (b) to attempt to conduct an examination or determination described under Subsection
744 (10)(a);

745 (c) to hold oneself out as making or to represent that one is making an examination or
746 determination as described in Subsection (10)(a); or

747 (d) to make an examination or determination as described in Subsection (10)(a) upon
748 or from information supplied directly or indirectly by another person, whether or not in the
749 presence of the person making or attempting the diagnosis or examination.

750 (11) "LCME" means the Liaison Committee on Medical Education of the American
751 Medical Association.

752 (12) "Medical assistant" means an unlicensed individual who may perform tasks as
753 described in Subsection 58-67-305(6).

754 (13) "Medically underserved area" means a geographic area in which there is a
755 shortage of primary care health services for residents, as determined by the Department of
756 Health and Human Services.

757 (14) "Medically underserved population" means a specified group of people living in a
758 defined geographic area with a shortage of primary care health services, as determined by the
759 Department of Health and Human Services.

760 (15) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to
761 alter living tissue, but is not intended or expected to excise, vaporize, disintegrate, or remove
762 living tissue.

763 (ii) Notwithstanding Subsection (15)(a)(i), nonablative procedure includes hair
764 removal.

765 (b) "Nonablative procedure" does not include:

766 (i) a superficial procedure as defined in Section 58-1-102;

767 (ii) the application of permanent make-up; or

768 (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are
769 performed by an individual licensed under this title who is acting within the individual's scope
770 of practice.

771 (16) "Physician" means both physicians and surgeons licensed under Section

772 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
773 Section 58-68-301, Utah Osteopathic Medical Practice Act.

774 (17) (a) "Practice of medicine" means:

775 (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
776 disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real
777 or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any
778 means or instrumentality, and by an individual in Utah or outside the state upon or for any
779 human within the state;

780 (ii) when a person not licensed as a physician directs a licensee under this chapter to
781 withhold or alter the health care services that the licensee has ordered;

782 (iii) to maintain an office or place of business for the purpose of doing any of the acts
783 described in Subsection (17)(a) whether or not for compensation; or

784 (iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
785 treatment of human diseases or conditions in any printed material, stationery, letterhead,
786 envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine,"
787 "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these
788 designations in any manner which might cause a reasonable person to believe the individual
789 using the designation is a licensed physician and surgeon, and if the party using the designation
790 is not a licensed physician and surgeon, the designation must additionally contain the
791 description of the branch of the healing arts for which the person has a license, provided that an
792 individual who has received an earned degree of doctor of medicine degree but is not a licensed
793 physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not
794 Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

795 (b) The practice of medicine does not include:

796 (i) except for an ablative medical procedure as provided in Subsection (17)(b)(ii), the
797 conduct described in Subsection (17)(a)(i) that is performed in accordance with a license issued
798 under another chapter of this title;

799 (ii) an ablative cosmetic medical procedure if the scope of practice for the person
800 performing the ablative cosmetic medical procedure includes the authority to operate or
801 perform a surgical procedure; or

802 (iii) conduct under Subsection 58-67-501(2).

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

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

810 (20) "SPEX" means the Special Purpose Examination of the Federation of State
811 Medical Boards.

812 (21) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501
813 and 58-67-501.

814 (22) "Unprofessional conduct" means the same as that term is defined in Sections
815 58-1-501 and 58-67-502, and as may be further defined by division rule subject to Subsections
816 58-1-501(2)(b) and 58-67-502(2)(c).

817 Section 12. Section 58-67-502 is amended to read:

818 **58-67-502. Unprofessional conduct.**

819 (1) "Unprofessional conduct" includes, in addition to the definition in Section
820 58-1-501:

821 (a) using or employing the services of any individual to assist a licensee in any manner
822 not in accordance with the generally recognized practices, standards, or ethics of the
823 profession, state law, or division rule;

824 (b) making a material misrepresentation regarding the qualifications for licensure under
825 Section 58-67-302.7 or Section 58-67-302.8;

826 (c) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical
827 Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

828 (d) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act;

829 [or]

830 (e) falsely making an entry in, or altering, a medical record with the intent to conceal:

831 (i) a wrongful or negligent act or omission of an individual licensed under this chapter
832 or an individual under the direction or control of an individual licensed under this chapter; or

833 (ii) conduct described in Subsections (1)(a) through (d) or Subsection 58-1-501(1)[-];

834 or

835 (f) a violation of Section [58-1-511](#).

836 (2) "Unprofessional conduct" does not include:

837 (a) in compliance with Section [58-85-103](#):

838 (i) obtaining an investigational drug or investigational device;

839 (ii) administering the investigational drug to an eligible patient; or

840 (iii) treating an eligible patient with the investigational drug or investigational device;

841 [~~or~~]

842 (b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:

843 (i) when registered as a qualified medical provider or acting as a limited medical
844 provider, as those terms are defined in Section [26-61a-102](#), recommending the use of medical
845 cannabis;

846 (ii) when registered as a pharmacy medical provider, as that term is defined in Section
847 [26-61a-102](#), providing pharmacy medical provider services in a medical cannabis pharmacy; or

848 (iii) when registered as a state central patient portal medical provider, as that term is
849 defined in Section [26-61a-102](#), providing state central patient portal medical provider
850 services[~~;~~]; or

851 (c) verbal or written communication by itself, except where a verbal or written
852 communication by itself constitutes conduct described in Section [58-1-501](#) or Subsection (1).

853 (3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and
854 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define
855 unprofessional conduct for a physician described in Subsection (2)(b).

856 Section 13. Section **58-68-102** is amended to read:

857 **58-68-102. Definitions.**

858 In addition to the definitions in Section [58-1-102](#), as used in this chapter:

859 (1) (a) "Ablative procedure" means a procedure that is expected to excise, vaporize,
860 disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium:
861 YAG lasers.

862 (b) "Ablative procedure" does not include hair removal.

863 (2) "ACGME" means the Accreditation Council for Graduate Medical Education of the
864 American Medical Association.

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

869 (4) "AOA" means the American Osteopathic Association.

870 (5) "Associate physician" means an individual licensed under Section 58-68-302.5.

871 (6) "Board" means the Osteopathic Physician and Surgeon's Licensing Board created in
872 Section 58-68-201.

873 (7) "Collaborating physician" means an individual licensed under Section 58-68-302
874 who enters into a collaborative practice arrangement with an associate physician.

875 (8) "Collaborative practice arrangement" means the arrangement described in Section
876 58-68-807.

877 (9) (a) "Cosmetic medical device" means tissue altering energy based devices that have
878 the potential for altering living tissue and that are used to perform ablative or nonablative
879 procedures, such as American National Standards Institute (ANSI) designated Class IIIb and
880 Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices and
881 excludes ANSI designated Class IIIa and lower powered devices.

882 (b) Notwithstanding Subsection (9)(a), if an ANSI designated Class IIIa and lower
883 powered device is being used to perform an ablative procedure, the device is included in the
884 definition of cosmetic medical device under Subsection (9)(a).

885 (10) "Cosmetic medical procedure":

886 (a) includes the use of cosmetic medical devices to perform ablative or nonablative
887 procedures; and

888 (b) does not include a treatment of the ocular globe such as refractive surgery.

889 (11) "Diagnose" means:

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

894 (b) to attempt to conduct an examination or determination described under Subsection
895 (11)(a);

896 (c) to hold oneself out as making or to represent that one is making an examination or
897 determination as described in Subsection (11)(a); or

898 (d) to make an examination or determination as described in Subsection (11)(a) upon
899 or from information supplied directly or indirectly by another person, whether or not in the
900 presence of the person making or attempting the diagnosis or examination.

901 (12) "Medical assistant" means an unlicensed individual who may perform tasks as
902 described in Subsection 58-68-305(6).

903 (13) "Medically underserved area" means a geographic area in which there is a
904 shortage of primary care health services for residents, as determined by the Department of
905 Health and Human Services.

906 (14) "Medically underserved population" means a specified group of people living in a
907 defined geographic area with a shortage of primary care health services, as determined by the
908 Department of Health and Human Services.

909 (15) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to
910 alter living tissue, but is not expected or intended to excise, vaporize, disintegrate, or remove
911 living tissue.

912 (ii) Notwithstanding Subsection (15)(a)(i), nonablative procedure includes hair
913 removal.

914 (b) "Nonablative procedure" does not include:

915 (i) a superficial procedure as defined in Section 58-1-102;

916 (ii) the application of permanent make-up; or

917 (iii) the use of photo therapy lasers for neuromusculoskeletal treatments that are
918 performed by an individual licensed under this title who is acting within the individual's scope
919 of practice.

920 (16) "Physician" means both physicians and surgeons licensed under Section
921 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
922 Section 58-68-301, Utah Osteopathic Medical Practice Act.

923 (17) (a) "Practice of osteopathic medicine" means:

924 (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
925 disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real
926 or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part

927 is based upon emphasis of the importance of the musculoskeletal system and manipulative
928 therapy in the maintenance and restoration of health, by an individual in Utah or outside of the
929 state upon or for any human within the state;

930 (ii) when a person not licensed as a physician directs a licensee under this chapter to
931 withhold or alter the health care services that the licensee has ordered;

932 (iii) to maintain an office or place of business for the purpose of doing any of the acts
933 described in Subsection (17)(a) whether or not for compensation; or

934 (iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
935 treatment of human diseases or conditions, in any printed material, stationery, letterhead,
936 envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine,"
937 "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.,"
938 "D.O.," or any combination of these designations in any manner which might cause a
939 reasonable person to believe the individual using the designation is a licensed osteopathic
940 physician, and if the party using the designation is not a licensed osteopathic physician, the
941 designation must additionally contain the description of the branch of the healing arts for which
942 the person has a license, provided that an individual who has received an earned degree of
943 doctor of osteopathic medicine but is not a licensed osteopathic physician and surgeon in Utah
944 may use the designation "D.O." if it is followed by "Not Licensed" or "Not Licensed in Utah"
945 in the same size and style of lettering.

946 (b) The practice of osteopathic medicine does not include:

947 (i) except for an ablative medical procedure as provided in Subsection (17)(b)(ii), the
948 conduct described in Subsection (17)(a)(i) that is performed in accordance with a license issued
949 under another chapter of this title;

950 (ii) an ablative cosmetic medical procedure if the scope of practice for the person
951 performing the ablative cosmetic medical procedure includes the authority to operate or
952 perform a surgical procedure; or

953 (iii) conduct under Subsection 58-68-501(2).

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

958 licensure under this chapter.

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

961 (20) "SPEX" means the Special Purpose Examination of the Federation of State
962 Medical Boards.

963 (21) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501
964 and 58-68-501.

965 (22) "Unprofessional conduct" means the same as that term is defined in Sections
966 58-1-501 and 58-68-502 and as may be further defined by division rule subject to Subsections
967 58-1-501(2)(b) and 58-68-502(2)(c).

968 Section 14. Section 58-68-502 is amended to read:

969 **58-68-502. Unprofessional conduct.**

970 (1) "Unprofessional conduct" includes, in addition to the definition in Section
971 58-1-501:

972 (a) using or employing the services of any individual to assist a licensee in any manner
973 not in accordance with the generally recognized practices, standards, or ethics of the
974 profession, state law, or division rule;

975 (b) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical
976 Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

977 (c) making a material misrepresentation regarding the qualifications for licensure under
978 Section 58-68-302.5;

979 (d) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act;

980 [or]

981 (e) falsely making an entry in, or altering, a medical record with the intent to conceal:

982 (i) a wrongful or negligent act or omission of an individual licensed under this chapter
983 or an individual under the direction or control of an individual licensed under this chapter; or

984 (ii) conduct described in Subsections (1)(a) through (d) or Subsection 58-1-501(1)[=];

985 or

986 (f) a violation of Section 58-1-511.

987 (2) "Unprofessional conduct" does not include:

988 (a) in compliance with Section 58-85-103:

- 989 (i) obtaining an investigational drug or investigational device;
- 990 (ii) administering the investigational drug to an eligible patient; or
- 991 (iii) treating an eligible patient with the investigational drug or investigational device;

992 [or]

993 (b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:

994 (i) when registered as a qualified medical provider or acting as a limited medical
995 provider, as those terms are defined in Section 26-61a-102, recommending the use of medical
996 cannabis;

997 (ii) when registered as a pharmacy medical provider, as that term is defined in Section
998 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

999 (iii) when registered as a state central patient portal medical provider, as that term is
1000 defined in Section 26-61a-102, providing state central patient portal medical provider
1001 services[-]; or

1002 (c) verbal or written communication by itself, except where a verbal or written
1003 communication by itself constitutes conduct described in Section 58-1-501 or Subsection (1).

1004 (3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and
1005 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define
1006 unprofessional conduct for a physician described in Subsection (2)(b).

1007 Section 15. Section 58-70a-102 is amended to read:

1008 **58-70a-102. Definitions.**

1009 In addition to the definitions in Section 58-1-102, as used in this chapter:

1010 (1) "Board" means the Physician Assistant Licensing Board created in Section
1011 58-70a-201.

1012 (2) "Competence" means possessing the requisite cognitive, non-cognitive, and
1013 communicative abilities and qualities to perform effectively within the scope of practice of the
1014 physician assistant's practice while adhering to professional and ethical standards.

1015 (3) "Health care facility" means the same as that term is defined in Section 26-21-2.

1016 (4) "Mental health therapist" means the same as that term is defined in Section
1017 58-60-102.

1018 (5) "Physician" means the same as that term is defined in Section 58-67-102.

1019 (6) "Physician assistant" means an individual who is licensed to practice under this

1020 chapter.

1021 (7) "Practice as a physician assistant" means the professional activities and conduct of
1022 a physician assistant, also known as a PA, in diagnosing, treating, advising, or prescribing for
1023 any human disease, ailment, injury, infirmity, deformity, pain, or other condition under the
1024 provisions of this chapter.

1025 (8) "Practice of mental health therapy" means the same as that term is defined in
1026 Section [58-60-102](#).

1027 (9) "Unlawful conduct" means the same as that term is defined in Sections [58-1-501](#)
1028 and [58-70a-502](#).

1029 (10) "Unprofessional conduct" means "unprofessional conduct":

1030 (a) as defined in Sections [58-1-501](#) and [58-70a-503](#); and

1031 (b) as further defined by the division by rule subject to Subsections [58-1-501\(2\)\(b\)](#) and
1032 [58-70a-503\(3\)](#).

1033 Section 16. Section **58-70a-503** is amended to read:

1034 **58-70a-503. Unprofessional conduct.**

1035 (1) "Unprofessional conduct" includes:

1036 (a) violation of a patient confidence to any person who does not have a legal right and a
1037 professional need to know the information concerning the patient;

1038 (b) knowingly prescribing, selling, giving away, or directly or indirectly administering,
1039 or offering to prescribe, sell, furnish, give away, or administer any prescription drug except for
1040 a legitimate medical purpose upon a proper diagnosis indicating use of that drug in the amounts
1041 prescribed or provided;

1042 (c) prescribing prescription drugs for oneself or administering prescription drugs to
1043 oneself, except those that have been legally prescribed for the physician assistant by a licensed
1044 practitioner and that are used in accordance with the prescription order for the condition
1045 diagnosed;

1046 (d) in a practice that has physician assistant ownership interests, failure to allow a
1047 physician the independent final decision making authority on treatment decisions for the
1048 physician's patient;

1049 (e) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical
1050 Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

1051 (f) falsely making an entry in, or altering, a medical record with the intent to conceal:

1052 (i) a wrongful or negligent act or omission of an individual licensed under this chapter
1053 or an individual under the direction or control of an individual licensed under this chapter; or

1054 (ii) conduct described in Subsections (1)(a) through (e) or Subsection 58-1-501(1);

1055 [~~and~~]

1056 (g) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act[?];

1057 and

1058 (h) a violation of Section 58-1-511.

1059 (2) (a) "Unprofessional conduct" does not include, in accordance with Title 26, Chapter
1060 61a, Utah Medical Cannabis Act, when registered as a qualified medical provider or acting as a
1061 limited medical provider, as those terms are defined in Section 26-61a-102, recommending the
1062 use of medical cannabis.

1063 (b) Notwithstanding Subsection (2)(a), the division, in consultation with the board and
1064 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define
1065 unprofessional conduct for a physician assistant described in Subsection (2)(a).

1066 (3) "Unprofessional conduct" does not include verbal or written communication by
1067 itself, except where a verbal or written communication by itself constitutes conduct described
1068 in Section 58-1-501 or Subsection (1).