

Senator Curtis S. Bramble proposes the following substitute bill:

OCCUPATIONAL AND PROFESSIONAL LICENSING AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 58-1-106, as last amended by Laws of Utah 2016, Chapter 238
- 31 58-1-301.5, as last amended by Laws of Utah 2013, Chapter 262
- 32 58-1-501, as last amended by Laws of Utah 2014, Chapter 408
- 33 58-1-502, as last amended by Laws of Utah 2016, Chapter 238
- 34 58-3a-502, as last amended by Laws of Utah 2013, Chapter 278
- 35 58-11a-304, as last amended by Laws of Utah 2013, Chapter 13
- 36 58-11a-306, as last amended by Laws of Utah 2016, Chapter 274
- 37 58-11a-503, as last amended by Laws of Utah 2014, Chapter 100
- 38 58-17b-307, as last amended by Laws of Utah 2012, Chapter 93
- 39 58-17b-504, as last amended by Laws of Utah 2011, Chapter 23
- 40 58-22-503, as last amended by Laws of Utah 2017, Chapter 218
- 41 58-24b-302, as last amended by Laws of Utah 2017, Chapter 164
- 42 58-24b-303, as last amended by Laws of Utah 2016, Chapter 238
- 43 58-28-503, as last amended by Laws of Utah 2008, Chapter 382
- 44 58-31b-201, as last amended by Laws of Utah 2010, Chapter 372
- 45 58-31b-302, as last amended by Laws of Utah 2014, Chapter 316
- 46 58-31b-503, as last amended by Laws of Utah 2011, Chapter 340
- 47 58-37-6, as last amended by Laws of Utah 2017, Chapter 237
- 48 58-37-6.5, as last amended by Laws of Utah 2017, Chapter 180
- 49 58-37f-401, as last amended by Laws of Utah 2011, Chapter 23
- 50 58-37f-402, as last amended by Laws of Utah 2013, Chapter 450
- 51 58-44a-402, as last amended by Laws of Utah 2008, Chapter 382
- 52 58-47b-501, as last amended by Laws of Utah 2000, Chapter 309
- 53 58-53-502, as last amended by Laws of Utah 2008, Chapter 382
- 54 58-55-305, as last amended by Laws of Utah 2013, Chapters 430 and 449
- 55 58-55-501, as last amended by Laws of Utah 2014, Chapter 188
- 56 58-55-503, as last amended by Laws of Utah 2017, Chapter 339

- 57 **58-56-9.5**, as last amended by Laws of Utah 2010, Chapter 278
- 58 **58-60-117**, as last amended by Laws of Utah 2015, Chapter 197
- 59 **58-63-503**, as last amended by Laws of Utah 2008, Chapters 246 and 382
- 60 **58-67-302**, as last amended by Laws of Utah 2012, Chapters 162 and 225
- 61 **58-67-302.5**, as last amended by Laws of Utah 2011, Chapter 214
- 62 **58-67-302.7**, as last amended by Laws of Utah 2015, Chapter 258
- 63 **58-67-302.8 (Effective 07/01/18)**, as enacted by Laws of Utah 2017, Chapter 299
- 64 **58-67-304 (Superseded 07/01/18)**, as last amended by Laws of Utah 2011, Chapters
- 65 161 and 214
- 66 **58-67-304 (Effective 07/01/18)**, as last amended by Laws of Utah 2017, Chapter 299
- 67 **58-67-403**, as last amended by Laws of Utah 2011, Chapter 214
- 68 **58-67-503**, as last amended by Laws of Utah 2012, Chapter 369
- 69 **58-68-302**, as last amended by Laws of Utah 2012, Chapters 162 and 225
- 70 **58-68-302.5 (Effective 07/01/18)**, as enacted by Laws of Utah 2017, Chapter 299
- 71 **58-68-304 (Superseded 07/01/18)**, as last amended by Laws of Utah 2011, Chapters
- 72 161 and 214
- 73 **58-68-304 (Effective 07/01/18)**, as last amended by Laws of Utah 2017, Chapter 299
- 74 **58-68-403**, as last amended by Laws of Utah 2011, Chapter 214
- 75 **58-68-503**, as last amended by Laws of Utah 2012, Chapter 369
- 76 **58-71-503**, as enacted by Laws of Utah 1996, Chapter 282
- 77 **58-76-502**, as last amended by Laws of Utah 2008, Chapter 382
- 78 **58-79-201**, as enacted by Laws of Utah 2009, Chapter 52
- 79 **78B-3-416**, as last amended by Laws of Utah 2010, Chapters 97 and 286

80 ENACTS:

- 81 **58-24b-302.1**, Utah Code Annotated 1953
- 82 **58-67-302.1**, Utah Code Annotated 1953
- 83 **58-68-302.1**, Utah Code Annotated 1953



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

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

87 **58-1-106. Division -- Duties, functions, and responsibilities.**

- 88 (1) The duties, functions, and responsibilities of the division include the following:
- 89 (a) prescribing, adopting, and enforcing rules to administer this title;
- 90 (b) investigating the activities of any person whose occupation or profession is
- 91 regulated or governed by the laws and rules administered and enforced by the division;
- 92 (c) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum
- 93 the production of any books, papers, documents, records, contracts, recordings, tapes,
- 94 correspondence, or information relevant to an investigation upon a finding of sufficient need by
- 95 the director or by the director's designee;
- 96 (d) taking administrative and judicial action against persons in violation of the laws
- 97 and rules administered and enforced by the division, including the issuance of cease and desist
- 98 orders;
- 99 (e) seeking injunctions and temporary restraining orders to restrain unauthorized
- 100 activity;
- 101 (f) complying with Title 52, Chapter 4, Open and Public Meetings Act;
- 102 (g) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew, or
- 103 otherwise acting upon any license;
- 104 (h) preparing and submitting to the governor and the Legislature an annual report of the
- 105 division's operations, activities, and goals;
- 106 (i) preparing and submitting to the executive director a budget of the expenses for the
- 107 division;
- 108 (j) establishing the time and place for the administration of examinations; and
- 109 (k) preparing lists of licensees and making these lists available to the public at cost
- 110 upon request unless otherwise prohibited by state or federal law.
- 111 (2) The division may not include home telephone numbers or home addresses of
- 112 licensees on the lists prepared under Subsection (1)(k), except as otherwise provided by rules
- 113 of the division made in accordance with Title 63G, Chapter 3, Utah Administrative
- 114 Rulemaking Act.
- 115 (3) (a) The division may provide the home address or home telephone number of a
- 116 licensee on a list prepared under Subsection (1) upon the request of an individual who provides
- 117 proper identification and the reason for the request, in writing, to the division.
- 118 (b) A request under Subsection (3)(a) is limited to providing information on only one

119 licensee per request.

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

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

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

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

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

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

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

132 **58-1-301.5. Division access to Bureau of Criminal Identification records.**

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

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

138 (b) Sections [58-24b-302](#) and [58-24b-302.1](#) of Title 58, Chapter 24b, Physical Therapy
139 Practice Act;

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

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

142 ~~(d)~~ (e) Section [58-55-302](#) of Title 58, Chapter 55, Utah Construction Trades

143 Licensing Act, as it applies to alarm companies and alarm company agents;

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

145 ~~and~~

146 ~~(f)~~ (g) Section [58-64-302](#) of Title 58, Chapter 64, Deception Detection Examiners

147 Licensing Act~~[-];~~

148 (h) Sections [58-67-302](#) and [58-67-302.1](#) of Title 58, Chapter 67, Utah Medical Practice
149 Act; and

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

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

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

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

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

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

161 **58-1-501. Unlawful and unprofessional conduct.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

252 **58-1-502. Unlawful and unprofessional conduct -- Penalties.**

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

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

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

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

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

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

267 (A) an uncontested citation;

268 (B) a stipulated settlement; or

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

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

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

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

275 (d) A citation shall:

276 (i) be in writing;

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

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

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

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

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

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

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

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

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

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

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

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

298 and

299 (iii) for each subsequent offense handled pursuant to Subsection (2)(a), a fine of up to
300 \$2,000 for each day of continued offense.

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

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

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

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

312 ——— ~~[(4)] (5)~~ (4) ← ~~§~~ (a) The director may collect a penalty that is not paid by:

313 (i) [either] referring the matter to a collection agency; or
 314 (ii) bringing an action in the district court of the county where the person against whom
 315 the penalty is imposed resides or in the county where the office of the director is located.

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

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

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

322 **58-3a-502. Penalty for unlawful conduct.**

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

330 (i) A person who violates Subsections **58-1-501**(1)(a) through (d) or Section **58-3a-501**
 331 or any rule or order issued with respect to Section **58-3a-501**, as evidenced by an uncontested
 332 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may
 333 be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be
 334 ordered to cease and desist from violating Subsections **58-1-501**(1)(a) through (d) or Section
 335 **58-3a-501** or any rule or order issued with respect to this section.

- 336 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
337 58-3a-401 may not be assessed through a citation.
- 338 (b) A citation shall:
- 339 (i) be in writing;
- 340 (ii) describe with particularity the nature of the violation, including a reference to the
341 provision of the chapter, rule, or order alleged to have been violated;
- 342 (iii) clearly state that the recipient must notify the division in writing within 20
343 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
344 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
- 345 (iv) clearly explain the consequences of failure to timely contest the citation or to make
346 payment of any fines assessed by the citation within the time specified in the citation.
- 347 (c) The division may issue a notice in lieu of a citation.
- 348 (d) Each citation issued under this section, or a copy of each citation, may be served
349 upon a person upon whom a summons may be served in accordance with the Utah Rules of
350 Civil Procedure and may be made personally or upon the person's agent by a division
351 investigator or by any person specially designated by the director or by mail.
- 352 (e) If within 20 calendar days from the service of the citation, the person to whom the
353 citation was issued fails to request a hearing to contest the citation, the citation becomes the
354 final order of the division and is not subject to further agency review. The period to contest a
355 citation may be extended by the division for cause.
- 356 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
357 the license of a licensee who fails to comply with a citation after it becomes final.
- 358 (g) The failure of an applicant for licensure to comply with a citation after it becomes
359 final is a ground for denial of license.
- 360 (h) No citation may be issued under this section after the expiration of six months
361 following the occurrence of any violation.
- 362 (i) The director or the director's designee shall assess fines according to the following:
- 363 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;
- 364 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;
- 365 and
- 366 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to

367 \$2,000 for each day of continued offense.

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

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

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

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

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

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

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

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

389 **58-11a-304. Exemptions from licensure.**

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

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

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

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

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

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

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

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

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

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

413 (ii) the instructor receives no compensation;

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

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

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

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

429 (11) a person who:

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

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

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

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

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

438 (12) a person who:

439 (a) engages in hair braiding; and

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

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

443 **58-11a-306. Apprenticeship.**

444 (1) An approved barber apprenticeship shall:

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

446 (b) be conducted by a supervisor who:

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

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

451 (2) An approved cosmetologist/barber apprenticeship shall:

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

453 (b) be conducted by a supervisor who:

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

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

457 (3) An approved esthetician apprenticeship shall:

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

459 (b) be conducted by a supervisor who:

- 460 (i) is licensed under this chapter as an esthetician instructor; and
461 (ii) provides one-on-one direct supervision of the esthetician apprentice during the
462 apprenticeship program.
- 463 (4) An approved master esthetician apprenticeship shall:
464 (a) consist of not less than 1,500 hours of training in not less than 10 months; and
465 (b) be conducted by a supervisor who:
466 (i) is licensed under this chapter as a master-level esthetician instructor; and
467 (ii) provides one-on-one direct supervision of the master esthetician apprentice during
468 the apprenticeship program.
- 469 (5) An approved nail technician apprenticeship shall:
470 (a) consist of not less than 375 hours of training in not less than three months; and
471 (b) be conducted by a supervisor who:
472 (i) is licensed under this chapter as a nail technician instructor or a cosmetology/barber
473 instructor; [~~and~~]
474 (ii) provides [~~one-on-one~~] direct supervision of the nail technician apprentice during
475 the apprenticeship program[:]; and
476 (iii) provides direct supervision to no more than two nail technician apprentices during
477 the apprentice program.
- 478 (6) A person seeking to qualify for licensure by apprenticing in an approved
479 apprenticeship under this chapter shall:
480 (a) register with the division before beginning the training requirements by:
481 (i) submitting a form prescribed by the division, which includes the name of the
482 licensed supervisor; and
483 (ii) paying a fee determined by the department under Section [63J-1-504](#);
484 (b) complete the apprenticeship within five years of the date on which the division
485 approves the registration; and
486 (c) notify the division within 30 days if the licensed supervisor changes after the
487 registration is approved by the division.
- 488 (7) Notwithstanding Subsection (6), if a person seeking to qualify for licensure by
489 apprenticing in an approved apprenticeship under this chapter registers with the division before
490 January 1, 2017, any training requirements completed by the person as an apprentice in an

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

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

494 **58-11a-503. Penalties.**

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

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

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

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

509 (i) A person who is in violation of Subsection **58-11a-502**(1), (2), (4), (5), (6), or (7),
510 as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in
511 an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in
512 addition to or in lieu of, be ordered to cease and desist from violating Subsection
513 **58-11a-502**(1), (2), (4), (5), (6), or (7).

514 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
515 **58-11a-401** may not be assessed through a citation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

573 **58-17b-307. Qualification for licensure -- Criminal background checks.**

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

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

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

580 (i) Utah Bureau of Criminal Identification; and

581 (ii) Federal Bureau of Investigation.

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

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

585 (2) The division shall:

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

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

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

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

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

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

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

603 ~~[(3)]~~ (4) For purposes of conducting the criminal background check required in
604 Subsection (1), the division shall have direct access to criminal background information
605 maintained under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

606 ~~[(4)]~~ (5) (a) A new pharmacist, pharmacy intern, or pharmacy technician license issued
607 under this section is conditional, pending completion of the criminal background check.

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

612 ~~[(5)]~~ (6) (a) A person whose conditional license has been revoked under Subsection (4)
613 is entitled to a postrevocation hearing to challenge the revocation.

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

615 63G, Chapter 4, Administrative Procedures Act.

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

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

621 **58-17b-504. Penalty for unlawful or unprofessional conduct -- Fines -- Citations.**

622 (1) Any person who violates any of the unlawful conduct provisions of Subsection
623 **58-1-501(1)(a)(i)** and Subsections **58-17b-501(7)** and (11) is guilty of a third degree felony.

624 (2) Any person who violates any of the unlawful conduct provisions of Subsection
625 **58-1-501(1)(a)(ii)**, Subsections **58-1-501(1)(b)** through (e), and Section **58-17b-501**, except
626 Subsections **58-17b-501(7)** and (11), is guilty of a class A misdemeanor.

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

629 (i) assess administrative penalties; and

630 (ii) take any other appropriate administrative action.

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

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

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

646 Administrative Procedures Act.

647 (b) Any person who is in violation of the provisions of Section 58-17b-501 or
648 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance
649 Database Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule
650 or order issued with respect to these provisions, as evidenced by an uncontested citation, a
651 stipulated settlement, or a finding of violation in an adjudicative proceeding, may be assessed a
652 fine pursuant to this Subsection (5) of up to \$10,000 per single violation or up to \$2,000 per
653 day of ongoing violation, whichever is greater, in accordance with a fine schedule established
654 by rule, and may, in addition to or in lieu of, be ordered to cease and desist from violating the
655 provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act,
656 Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued
657 with respect to these provisions.

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

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

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

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

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

672 (iii) by mail.

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

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

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

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

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

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

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

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

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

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

692 **58-22-503. Penalties and administrative actions for unlawful or unprofessional**
693 **conduct.**

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

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

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

708 58-22-401 may not be assessed through a citation.

709 (b) A citation shall:

710 (i) be in writing;

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

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

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

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

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

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

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

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

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

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

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

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

736 and

737 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to
738 \$2,000 for each day of continued offense.

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

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

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

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

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

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

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

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

760 **58-24b-302. Licensure.**

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

762 (a) be of good moral character;

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

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

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

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

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

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

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

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

777 (a) be of good moral character;

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

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

783 (d) after complying with Subsection (2)(c), pass a licensing examination approved by
784 division rule made in collaboration with the board and in accordance with Title 63G, Chapter
785 3, Utah Administrative Rulemaking Act;

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

788 (f) submit to, and pass, a criminal background check, in accordance with Section
789 58-24b-302.1 and standards established by rule made in accordance with Title 63G, Chapter 3,
790 Utah Administrative Rulemaking Act; and

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

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

795 (a) be of good moral character;

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

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

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

801 therapy, without restriction;

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

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

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

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

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

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

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

820 (a) is of good moral character;

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

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

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

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

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

832 internship in physical therapy, unless the person is:

833 (i) certified by the division; or

834 (ii) exempt from licensure under Section [58-24b-304](#).

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

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

839 **58-24b-302.1. Criminal background check.**

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

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

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

846 (2) The division shall:

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

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

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

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

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

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

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

863 background checks to the division.

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

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

871 (6) (a) A new physical therapist assistant license issued under Subsection
872 58-24b-302(2) is conditional pending completion of the criminal background check.

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

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

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

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

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

885 **58-24b-303. Term of license -- Renewal -- Temporary license for physical**
886 **therapist assistant.**

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

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

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

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

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

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

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

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

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

905 **58-28-503. Penalty for unlawful or unprofessional conduct.**

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

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

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

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

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

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

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

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

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

923 **58-31b-201. Board.**

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

- 925 (a) nine nurses in a manner as may be further defined in division rule; and
926 (b) two members of the public.
927 (2) The board shall be appointed and serve in accordance with Section 58-1-201.
928 (3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and
929 58-1-203 and shall:

- 930 (a) (i) recommend to the division minimum standards for educational programs
931 qualifying a person for licensure or certification under this chapter;
932 (ii) recommend to the division denial, approval, or withdrawal of approval regarding
933 educational programs that meet or fail to meet the established minimum standards; and
934 (iii) designate one of its members on a permanent or rotating basis to:
935 (A) assist the division in reviewing complaints concerning the unlawful or
936 unprofessional conduct of a licensee; and
937 (B) advise the division in its investigation of these complaints.
938 (b) A board member who has, under Subsection (3)(a)(iii), reviewed a complaint or
939 advised in its investigation may be disqualified from participating with the board when the
940 board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

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

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

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

947 **58-31b-302. Qualifications for licensure or certification -- Criminal background**
948 **checks.**

- 949 (1) An applicant for certification as a medication aide shall:
950 (a) submit an application to the division on a form prescribed by the division;
951 (b) pay a fee to the division as determined under Section 63J-1-504;
952 (c) have a high school diploma or its equivalent;
953 (d) have a current certification as a nurse aide, in good standing, from the Department
954 of Health;
955 (e) have a minimum of 2,000 hours of experience within the two years prior to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

987 with the board; and

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

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

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

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

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

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

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

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

999 (B) a related area of specialized knowledge as determined appropriate by the division
1000 in collaboration with the board; or

1001 (ii) have completed a nurse anesthesia program in accordance with Subsection
1002 (4)(f)(ii);

1003 (f) have completed:

1004 (i) course work in patient assessment, diagnosis and treatment, and
1005 pharmacotherapeutics from an education program approved by the division in collaboration
1006 with the board; or

1007 (ii) a nurse anesthesia program which is approved by the Council on Accreditation of
1008 Nurse Anesthesia Educational Programs;

1009 (g) to practice within the psychiatric mental health nursing specialty, demonstrate, as
1010 described in division rule, that the applicant, after completion of a doctorate or master's degree
1011 required for licensure, is in the process of completing the applicant's clinical practice
1012 requirements in psychiatric mental health nursing, including in psychotherapy;

1013 (h) have passed the examinations as required by division rule made in collaboration
1014 with the board;

1015 (i) be currently certified by a program approved by the division in collaboration with
1016 the board and submit evidence satisfactory to the division of the certification; and

1017 (j) meet with the board, if requested, to determine the applicant's qualifications for

1018 licensure.

1019 (5) For each applicant for licensure or certification under this chapter:

1020 (a) the applicant shall:

1021 (i) submit fingerprint cards in a form acceptable to the division at the time the
1022 application is filed; and

1023 (ii) consent to a fingerprint background check conducted by the [Utah] Bureau of
1024 Criminal Identification and the Federal Bureau of Investigation regarding the application; ~~[and]~~

1025 ~~[(b) the division shall request the Department of Public Safety to complete a Federal~~
1026 ~~Bureau of Investigation criminal background check through the national criminal history~~
1027 ~~system (NCIC) or any successor system.]~~

1028 (b) the division shall:

1029 (i) in addition to other fees authorized by this chapter, collect from each applicant
1030 submitting fingerprints in accordance with this section the fee that the Bureau of Criminal
1031 Identification is authorized to collect for the services provided under Section 53-10-108 and the
1032 fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of
1033 obtaining federal criminal history record information;

1034 (ii) submit from each applicant the fingerprint card and the fees described in this
1035 Subsection (5)(b) to the Bureau of Criminal Identification; and

1036 (iii) obtain and retain in division records a signed waiver approved by the Bureau of
1037 Criminal Identification in accordance with Section 53-10-108 for each applicant; and

1038 (c) the Bureau of Criminal Identification shall, in accordance with the requirements of
1039 Section 53-10-108:

1040 (i) check the fingerprints submitted under Subsection (5)(b) against the applicable state
1041 and regional criminal records databases;

1042 (ii) forward the fingerprints to the Federal Bureau of Investigation for a national
1043 criminal history background check; and

1044 (iii) provide the results from the state, regional, and nationwide criminal history
1045 background checks to the division.

1046 (6) For purposes of conducting the criminal background checks required in Subsection
1047 (5), the division shall have direct access to criminal background information maintained
1048 pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

1049 (7) (a) (i) Any new nurse license or certification issued under this section shall be
1050 conditional, pending completion of the criminal background check.

1051 (ii) ~~[H]~~ Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, if the
1052 criminal background check discloses the applicant has failed to accurately disclose a criminal
1053 history, the license or certification shall be immediately and automatically revoked upon notice
1054 to the licensee by the division.

1055 (b) (i) ~~[Any]~~ A person whose conditional license or certification has been revoked
1056 under Subsection (7)(a) ~~[shall be]~~ is entitled to a postrevocation hearing to challenge the
1057 revocation.

1058 (ii) ~~[The]~~ A postrevocation hearing shall be conducted in accordance with Title 63G,
1059 Chapter 4, Administrative Procedures Act.

1060 (8) ~~[(a)]~~ If a person has been charged with a violent felony, as defined in Subsection
1061 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of guilty or
1062 nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance pending the
1063 successful completion of probation~~[-(i)]~~, the person is disqualified for licensure under this
1064 chapter~~[-];~~ and:

1065 ~~[(ii)-(A)]~~ (a) if the person is licensed under this chapter, the division:

1066 ~~[(H)]~~ (i) shall act upon the license as required under Section 58-1-401; and

1067 ~~[(H)]~~ (ii) may not renew or subsequently issue a license to the person under this
1068 chapter; and

1069 ~~[(B)]~~ (b) if the person is not licensed under this chapter, the division may not issue a
1070 license to the person under this chapter.

1071 ~~[(b)]~~ (9) If a person has been charged with a felony other than a violent felony, as
1072 defined in Subsection 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered
1073 a plea of guilty or nolo contendere, or entered a plea of guilty or nolo contendere held in
1074 abeyance pending the successful completion of probation~~[-(i) if the person is licensed under~~
1075 ~~this chapter]~~, the division shall determine whether the felony disqualifies the person for
1076 licensure under this chapter and act upon the license, as required, in accordance with Section
1077 58-1-401~~[-and]~~.

1078 ~~[(ii) if the person is not licensed under this chapter, the person may not file an~~
1079 ~~application for licensure under this chapter any sooner than five years after having completed~~

1080 ~~the conditions of the sentence or plea agreement.]~~

1081 (10) The division may not disseminate outside of the division any criminal history
1082 record information that the division obtains from the Bureau of Criminal Identification or the
1083 Federal Bureau of Investigation under the criminal background check requirements of this
1084 section.

1085 Section 18. Section **58-31b-503** is amended to read:

1086 **58-31b-503. Penalties and administrative actions for unlawful conduct and**
1087 **unprofessional conduct.**

1088 (1) Any person who violates the unlawful conduct provision specifically defined in
1089 Subsection **58-1-501**(1)(a) is guilty of a third degree felony.

1090 (2) Any person who violates any of the unlawful conduct provisions specifically
1091 defined in Subsections **58-1-501**(1)(b) through (f) and **58-31b-501**(1)(d) is guilty of a class A
1092 misdemeanor.

1093 (3) Any person who violates any of the unlawful conduct provisions specifically
1094 defined in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B
1095 misdemeanor.

1096 (4) (a) Subject to Subsection (6) and in accordance with Section **58-31b-401**, for acts
1097 of unprofessional or unlawful conduct, the division may:

1098 (i) assess administrative penalties; and

1099 (ii) take any other appropriate administrative action.

1100 (b) An administrative penalty imposed pursuant to this section shall be deposited in the
1101 "Nurse Education and Enforcement Account" as provided in Section **58-31b-103**.

1102 (5) If a licensee has been convicted of violating Section **58-31b-501** prior to an
1103 administrative finding of a violation of the same section, the licensee may not be assessed an
1104 administrative fine under this chapter for the same offense for which the conviction was
1105 obtained.

1106 (6) (a) If upon inspection or investigation, the division concludes that a person has
1107 violated the provisions of Section **58-31b-401**, **58-31b-501**, or **58-31b-502**, Chapter 1, Division
1108 of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act,
1109 or any rule or order issued with respect to these provisions, and that disciplinary action is
1110 appropriate, the director or the director's designee from within the division shall:

1111 (i) promptly issue a citation to the person according to this chapter and any pertinent
1112 administrative rules;

1113 (ii) attempt to negotiate a stipulated settlement; or

1114 (iii) notify the person to appear before an adjudicative proceeding conducted under
1115 Title 63G, Chapter 4, Administrative Procedures Act.

1116 (b) Any person who is in violation of a provision described in Subsection (6)(a), as
1117 evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an
1118 adjudicative proceeding may be assessed a fine:

1119 (i) pursuant to this Subsection (6) of up to \$10,000 per single violation or up to \$2,000
1120 per day of ongoing violation, whichever is greater, in accordance with a fine schedule
1121 established by rule; and

1122 (ii) in addition to or in lieu of the fine imposed under Subsection (6)(b)(i), be ordered
1123 to cease and desist from violating a provision of Sections 58-31b-501 and 58-31b-502, Chapter
1124 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled
1125 Substances Act, or any rule or order issued with respect to those provisions.

1126 (c) Except for an administrative fine and a cease and desist order, the licensure
1127 sanctions cited in Section 58-31b-401 may not be assessed through a citation.

1128 (d) Each citation issued under this section shall:

1129 (i) be in writing; and

1130 (ii) clearly describe or explain:

1131 (A) the nature of the violation, including a reference to the provision of the chapter,
1132 rule, or order alleged to have been violated;

1133 (B) that the recipient must notify the division in writing within 20 calendar days of
1134 service of the citation in order to contest the citation at a hearing conducted under Title 63G,
1135 Chapter 4, Administrative Procedures Act; and

1136 (C) the consequences of failure to timely contest the citation or to make payment of
1137 any fines assessed by the citation within the time specified in the citation; and

1138 (iii) be served upon any person upon whom a summons may be served:

1139 (A) in accordance with the Utah Rules of Civil Procedure;

1140 (B) personally or upon the person's agent by a division investigator or by any person
1141 specially designated by the director; or

1142 (C) by mail.

1143 (e) If within 20 calendar days from the service of a citation, the person to whom the
1144 citation was issued fails to request a hearing to contest the citation, the citation becomes the
1145 final order of the division and is not subject to further agency review. The period to contest the
1146 citation may be extended by the division for cause.

1147 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
1148 the license of a licensee who fails to comply with the citation after it becomes final.

1149 (g) The failure of an applicant for licensure to comply with a citation after it becomes
1150 final is a ground for denial of license.

1151 (h) No citation may be issued under this section after the expiration of six months
1152 following the occurrence of any violation.

1153 (7) (a) The director may collect a penalty that is not paid by:

1154 (i) referring the matter to a collection agency; or

1155 (ii) bringing an action in the district court of the county where the person against whom
1156 the penalty is imposed resides or in the county where the office of the director is located.

1157 (b) A county attorney or the attorney general of the state shall provide legal assistance
1158 and advice to the director in an action to collect a penalty.

1159 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
1160 action brought by the division to collect a penalty.

1161 Section 19. Section **58-37-6** is amended to read:

1162 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**
1163 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**
1164 **required -- Prescriptions.**

1165 (1) (a) The division may adopt rules relating to the licensing and control of the
1166 manufacture, distribution, production, prescription, administration, dispensing, conducting of
1167 research with, and performing of laboratory analysis upon controlled substances within this
1168 state.

1169 (b) The division may assess reasonable fees to defray the cost of issuing original and
1170 renewal licenses under this chapter pursuant to Section **63J-1-504**.

1171 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,
1172 administers, conducts research with, or performs laboratory analysis upon any controlled

1173 substance in Schedules I through V within this state, or who proposes to engage in
1174 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting
1175 research with, or performing laboratory analysis upon controlled substances included in
1176 Schedules I through V within this state shall obtain a license issued by the division.

1177 (ii) The division shall issue each license under this chapter in accordance with a
1178 two-year renewal cycle established by rule. The division may by rule extend or shorten a
1179 renewal period by as much as one year to stagger the renewal cycles it administers.

1180 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,
1181 administer, conduct research with, or perform laboratory analysis upon controlled substances in
1182 Schedules I through V within this state may possess, manufacture, produce, distribute,
1183 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon
1184 those substances to the extent authorized by their license and in conformity with this chapter.

1185 (c) The following persons are not required to obtain a license and may lawfully possess
1186 controlled substances included in Schedules II through V under this section:

1187 (i) an agent or employee, except a sales representative, of any registered manufacturer,
1188 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the
1189 usual course of the person's business or employment; however, nothing in this subsection shall
1190 be interpreted to permit an agent, employee, sales representative, or detail man to maintain an
1191 inventory of controlled substances separate from the location of the person's employer's
1192 registered and licensed place of business;

1193 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or
1194 warehouseman, who possesses any controlled substance in the usual course of the person's
1195 business or employment; and

1196 (iii) an ultimate user, or any person who possesses any controlled substance pursuant to
1197 a lawful order of a practitioner.

1198 (d) The division may enact rules waiving the license requirement for certain
1199 manufacturers, producers, distributors, prescribers, dispensers, administrators, research
1200 practitioners, or laboratories performing analysis if consistent with the public health and safety.

1201 (e) A separate license is required at each principal place of business or professional
1202 practice where the applicant manufactures, produces, distributes, dispenses, conducts research
1203 with, or performs laboratory analysis upon controlled substances.

1204 (f) The division may enact rules providing for the inspection of a licensee or applicant's
1205 establishment, and may inspect the establishment according to those rules.

1206 (3) (a) (i) Upon proper application, the division shall license a qualified applicant to
1207 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon
1208 controlled substances included in Schedules I through V, unless it determines that issuance of a
1209 license is inconsistent with the public interest.

1210 (ii) The division may not issue a license to any person to prescribe, dispense, or
1211 administer a Schedule I controlled substance except under Subsection (3)(a)(i).

1212 (iii) In determining public interest under this Subsection (3)(a), the division shall
1213 consider whether or not the applicant has:

1214 (A) maintained effective controls against diversion of controlled substances and any
1215 Schedule I or II substance compounded from any controlled substance into other than
1216 legitimate medical, scientific, or industrial channels;

1217 (B) complied with applicable state and local law;

1218 (C) been convicted under federal or state laws relating to the manufacture, distribution,
1219 or dispensing of substances;

1220 (D) past experience in the manufacture of controlled dangerous substances;

1221 (E) established effective controls against diversion; and

1222 (F) complied with any other factors that the division establishes that promote the public
1223 health and safety.

1224 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,
1225 produce, distribute, conduct research with, or perform laboratory analysis upon controlled
1226 substances in Schedule I other than those specified in the license.

1227 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with
1228 substances in Schedules II through V if they are authorized to administer, dispense, or conduct
1229 research under the laws of this state.

1230 (ii) The division need not require a separate license for practitioners engaging in
1231 research with nonnarcotic controlled substances in Schedules II through V where the licensee is
1232 already licensed under this chapter in another capacity.

1233 (iii) With respect to research involving narcotic substances in Schedules II through V,
1234 or where the division by rule requires a separate license for research of nonnarcotic substances

1235 in Schedules II through V, a practitioner shall apply to the division prior to conducting
1236 research.

1237 (iv) Licensing for purposes of bona fide research with controlled substances by a
1238 practitioner considered qualified may be denied only on a ground specified in Subsection (4),
1239 or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard
1240 adequately the practitioner's supply of substances against diversion from medical or scientific
1241 use.

1242 (v) Practitioners registered under federal law to conduct research in Schedule I
1243 substances may conduct research in Schedule I substances within this state upon furnishing the
1244 division evidence of federal registration.

1245 (d) Compliance by manufacturers, producers, and distributors with the provisions of
1246 federal law respecting registration, excluding fees, entitles them to be licensed under this
1247 chapter.

1248 (e) The division shall initially license those persons who own or operate an
1249 establishment engaged in the manufacture, production, distribution, dispensation, or
1250 administration of controlled substances prior to April 3, 1980, and who are licensed by the
1251 state.

1252 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed
1253 on probation, or revoked by the division upon finding that the applicant or licensee has:

1254 (i) materially falsified any application filed or required pursuant to this chapter;

1255 (ii) been convicted of an offense under this chapter or any law of the United States, or
1256 any state, relating to any substance defined as a controlled substance;

1257 (iii) been convicted of a felony under any other law of the United States or any state
1258 within five years of the date of the issuance of the license;

1259 (iv) had a federal registration or license denied, suspended, or revoked by competent
1260 federal authority and is no longer authorized to manufacture, distribute, prescribe, or dispense
1261 controlled substances;

1262 (v) had the licensee's license suspended or revoked by competent authority of another
1263 state for violation of laws or regulations comparable to those of this state relating to the
1264 manufacture, distribution, or dispensing of controlled substances;

1265 (vi) violated any division rule that reflects adversely on the licensee's reliability and

1266 integrity with respect to controlled substances;

1267 (vii) refused inspection of records required to be maintained under this chapter by a
1268 person authorized to inspect them; or

1269 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the
1270 purpose of manipulating human hormonal structure so as to:

1271 (A) increase muscle mass, strength, or weight without medical necessity and without a
1272 written prescription by any practitioner in the course of the practitioner's professional practice;
1273 or

1274 (B) improve performance in any form of human exercise, sport, or game.

1275 (b) The division may limit revocation or suspension of a license to a particular
1276 controlled substance with respect to which grounds for revocation or suspension exist.

1277 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to
1278 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of
1279 Occupational and Professional Licensing Act, and conducted in conjunction with the
1280 appropriate representative committee designated by the director of the department.

1281 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and
1282 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,
1283 except where the division is designated by law to perform those functions, or, when not
1284 designated by law, is designated by the executive director of the Department of Commerce to
1285 conduct the proceedings.

1286 (d) (i) The division may suspend any license simultaneously with the institution of
1287 proceedings under this section if it finds there is an imminent danger to the public health or
1288 safety.

1289 (ii) Suspension shall continue in effect until the conclusion of proceedings, including
1290 judicial review, unless withdrawn by the division or dissolved by a court of competent
1291 jurisdiction.

1292 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled
1293 substances owned or possessed by the licensee may be placed under seal in the discretion of the
1294 division.

1295 (ii) Disposition may not be made of substances under seal until the time for taking an
1296 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,

1297 orders the sale of perishable substances and the proceeds deposited with the court.

1298 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

1299 (f) The division shall notify promptly the Drug Enforcement Administration of all
1300 orders suspending or revoking a license and all forfeitures of controlled substances.

1301 (g) If an individual's Drug Enforcement Administration registration is denied, revoked,
1302 surrendered, or suspended, the division shall immediately suspend the individual's controlled
1303 substance license, which shall only be reinstated by the division upon reinstatement of the
1304 federal registration, unless the division has taken further administrative action under
1305 Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled
1306 substance license.

1307 (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and
1308 inventories in conformance with the record keeping and inventory requirements of federal and
1309 state law and any additional rules issued by the division.

1310 (b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or
1311 other person who is authorized to administer or professionally use a controlled substance shall
1312 keep a record of the drugs received by him and a record of all drugs administered, dispensed, or
1313 professionally used by him otherwise than by a prescription.

1314 (ii) A person using small quantities or solutions or other preparations of those drugs for
1315 local application has complied with this Subsection (5)(b) if the person keeps a record of the
1316 quantity, character, and potency of those solutions or preparations purchased or prepared by
1317 him, and of the dates when purchased or prepared.

1318 (6) Controlled substances in Schedules I through V may be distributed only by a
1319 licensee and pursuant to an order form prepared in compliance with division rules or a lawful
1320 order under the rules and regulations of the United States.

1321 (7) (a) A person may not write or authorize a prescription for a controlled substance
1322 unless the person is:

1323 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state
1324 or under the laws of another state having similar standards; and

1325 (ii) licensed under this chapter or under the laws of another state having similar
1326 standards.

1327 (b) A person other than a pharmacist licensed under the laws of this state, or the

1328 pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not
1329 dispense a controlled substance.

1330 (c) (i) A controlled substance may not be dispensed without the written prescription of
1331 a practitioner, if the written prescription is required by the federal Controlled Substances Act.

1332 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in
1333 conformity with Subsection (7)(d).

1334 (iii) In emergency situations, as defined by division rule, controlled substances may be
1335 dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms
1336 designated by the division and filed by the pharmacy.

1337 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with
1338 Subsection (7)(d).

1339 (d) Except for emergency situations designated by the division, a person may not issue,
1340 fill, compound, or dispense a prescription for a controlled substance unless the prescription is
1341 signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of
1342 the prescriber as authorized by division rule, and contains the following information:

1343 (i) the name, address, and registry number of the prescriber;

1344 (ii) the name, address, and age of the person to whom or for whom the prescription is
1345 issued;

1346 (iii) the date of issuance of the prescription; and

1347 (iv) the name, quantity, and specific directions for use by the ultimate user of the
1348 controlled substance.

1349 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I
1350 controlled substance unless:

1351 (i) the person who writes the prescription is licensed under Subsection (2); and

1352 (ii) the prescribed controlled substance is to be used in research.

1353 (f) Except when administered directly to an ultimate user by a licensed practitioner,
1354 controlled substances are subject to the restrictions of this Subsection (7)(f).

1355 (i) A prescription for a Schedule II substance may not be refilled.

1356 (ii) A Schedule II controlled substance may not be filled in a quantity to exceed a
1357 one-month's supply, as directed on the daily dosage rate of the prescriptions.

1358 (iii) (A) Except as provided in Subsection (7)(f)(iii)(B), a prescription for a Schedule II

1359 or Schedule III controlled substance that is an opiate and that is issued for an acute condition
1360 shall be completely or partially filled in a quantity not to exceed a seven-day supply as directed
1361 on the daily dosage rate of the prescription.

1362 (B) Subsection (7)(f)(iii)(A) does not apply to a prescription issued for a surgery when
1363 the practitioner determined that a quantity exceeding seven days is needed, in which case the
1364 practitioner may prescribe up to a 30-day supply, with a partial fill at the discretion of the
1365 practitioner.

1366 (C) Subsection (7)(f)(iii)(A) does not apply to prescriptions issued for complex or
1367 chronic conditions which are documented as being complex or chronic in the medical record.

1368 (D) A pharmacist is not required to verify that a prescription is in compliance with
1369 Subsection (7)(f)(iii).

1370 (iv) A Schedule III or IV controlled substance may be filled only within six months of
1371 issuance, and may not be refilled more than six months after the date of its original issuance or
1372 be refilled more than five times after the date of the prescription unless renewed by the
1373 practitioner.

1374 (v) All other controlled substances in Schedule V may be refilled as the prescriber's
1375 prescription directs, but they may not be refilled one year after the date the prescription was
1376 issued unless renewed by the practitioner.

1377 (vi) Any prescription for a Schedule II substance may not be dispensed if it is not
1378 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days
1379 after the date the prescription was issued, or 30 days after the dispensing date, if that date is
1380 specified separately from the date of issue.

1381 (vii) A practitioner may issue more than one prescription at the same time for the same
1382 Schedule II controlled substance, but only under the following conditions:

1383 (A) no more than three prescriptions for the same Schedule II controlled substance may
1384 be issued at the same time;

1385 (B) no one prescription may exceed a 30-day supply; and

1386 (C) a second or third prescription shall include the date of issuance and the date for
1387 dispensing.

1388 (g) An order for a controlled substance in Schedules II through V for use by an
1389 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this

1390 Subsection (7) if the order is:

1391 (i) issued or made by a prescribing practitioner who holds an unrestricted registration
1392 with the federal Drug Enforcement Administration, and an active Utah controlled substance
1393 license in good standing issued by the division under this section, or a medical resident who is
1394 exempted from licensure under Subsection 58-1-307(1)(c);

1395 (ii) authorized by the prescribing practitioner treating the patient and the prescribing
1396 practitioner designates the quantity ordered;

1397 (iii) entered upon the record of the patient, the record is signed by the prescriber
1398 affirming the prescriber's authorization of the order within 48 hours after filling or
1399 administering the order, and the patient's record reflects the quantity actually administered; and

1400 (iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within
1401 the physical structure of the hospital, or the order is taken from a supply lawfully maintained by
1402 the hospital and the amount taken from the supply is administered directly to the patient
1403 authorized to receive it.

1404 (h) A practitioner licensed under this chapter may not prescribe, administer, or
1405 dispense a controlled substance to a child, without first obtaining the consent required in
1406 Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except
1407 in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same
1408 meaning as defined in Section 78A-6-105, and "emergency" means any physical condition
1409 requiring the administration of a controlled substance for immediate relief of pain or suffering.

1410 (i) A practitioner licensed under this chapter may not prescribe or administer dosages
1411 of a controlled substance in excess of medically recognized quantities necessary to treat the
1412 ailment, malady, or condition of the ultimate user.

1413 (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense
1414 any controlled substance to another person knowing that the other person is using a false name,
1415 address, or other personal information for the purpose of securing the controlled substance.

1416 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense
1417 a controlled substance may not manufacture, distribute, or dispense a controlled substance to
1418 another licensee or any other authorized person not authorized by this license.

1419 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a
1420 symbol required by this chapter or by a rule issued under this chapter.

1421 (m) A person licensed under this chapter may not refuse or fail to make, keep, or
1422 furnish any record notification, order form, statement, invoice, or information required under
1423 this chapter.

1424 (n) A person licensed under this chapter may not refuse entry into any premises for
1425 inspection as authorized by this chapter.

1426 (o) A person licensed under this chapter may not furnish false or fraudulent material
1427 information in any application, report, or other document required to be kept by this chapter or
1428 willfully make any false statement in any prescription, order, report, or record required by this
1429 chapter.

1430 (8) (a) (i) Any person licensed under this chapter who is found by the division to have
1431 violated any of the provisions of Subsections (7)(k) through (o) or Subsection (10) is subject to
1432 a penalty not to exceed \$5,000. The division shall determine the procedure for adjudication of
1433 any violations in accordance with Sections [58-1-106](#) and [58-1-108](#).

1434 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the
1435 General Fund as a dedicated credit to be used by the division under Subsection [58-37f-502\(1\)](#).

1436 (iii) The director may collect a penalty that is not paid by:

1437 (A) referring the matter to a collection agency; or

1438 (B) bringing an action in the district court of the county where the person against
1439 whom the penalty is imposed resides or in the county where the office of the director is located.

1440 (iv) A county attorney or the attorney general of the state shall provide legal assistance
1441 and advice to the director in an action to collect a penalty.

1442 (v) A court shall award reasonable attorney fees and costs to the prevailing party in an
1443 action brought by the division to collect a penalty.

1444 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j)
1445 or Subsection (10) is:

1446 (i) upon first conviction, guilty of a class B misdemeanor;

1447 (ii) upon second conviction, guilty of a class A misdemeanor; and

1448 (iii) on third or subsequent conviction, guilty of a third degree felony.

1449 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through
1450 (o) shall upon conviction be guilty of a third degree felony.

1451 (9) Any information communicated to any licensed practitioner in an attempt to

1452 unlawfully procure, or to procure the administration of, a controlled substance is not considered
1453 to be a privileged communication.

1454 (10) A person holding a valid license under this chapter who is engaged in medical
1455 research may produce, possess, administer, prescribe, or dispense a controlled substance for
1456 research purposes as licensed under Subsection (2) but may not otherwise prescribe or dispense
1457 a controlled substance listed in Section [58-37-4.2](#).

1458 Section 20. Section **58-37-6.5** is amended to read:

1459 **58-37-6.5. Continuing education for controlled substance prescribers.**

1460 (1) For the purposes of this section:

1461 (a) "Controlled substance prescriber" means an individual, other than a veterinarian,
1462 who:

1463 (i) is licensed to prescribe a controlled substance under Title 58, Chapter 37, Utah
1464 Controlled Substances Act; and

1465 (ii) possesses the authority, in accordance with the individual's scope of practice, to
1466 prescribe schedule II controlled substances and schedule III controlled substances that are
1467 applicable to opioid narcotics, hypnotic depressants, or psychostimulants.

1468 (b) "D.O." means an osteopathic physician and surgeon licensed under Title 58,
1469 Chapter 68, Utah Osteopathic Medical Practice Act.

1470 (c) "FDA" means the United States Food and Drug Administration.

1471 (d) "M.D." means a physician and surgeon licensed under Title 58, Chapter 67, Utah
1472 Medical Practice Act.

1473 (e) "SBIRT" means the Screening, Brief Intervention, and Referral to Treatment
1474 approach used by the federal Substance Abuse and Mental Health Services Administration or
1475 defined by the division, in consultation with the Division of Substance Abuse and Mental
1476 Health, by administrative rule, in accordance with Title 63G, Chapter 3, Utah Administrative
1477 Rulemaking Act.

1478 (2) (a) Beginning with the licensing period that begins after January 1, 2014, as a
1479 condition precedent for license renewal, each controlled substance prescriber shall complete at
1480 least ~~four~~ 3.5 continuing education hours per licensing period that satisfy the requirements of
1481 ~~[Subsections]~~ Subsection (3) ~~[and (4)]~~.

1482 (b) (i) Beginning with the licensing period that begins after January 1, 2024, as a

1483 condition precedent for license renewal, each controlled substance prescriber shall complete at
1484 least 3.5 continuing education hours in an SBIRT-training class that satisfies the requirements
1485 of Subsection ~~[(5)]~~ (4).

1486 (ii) Completion of the SBIRT-training class, in compliance with Subsection (2)(b)(i),
1487 fulfills the continuing education hours requirement in Subsection ~~[(4)]~~ (3) for the licensing
1488 period in which the class was completed.

1489 (iii) A controlled substance prescriber:

1490 (A) need only take the SBIRT-training class once during the controlled substance
1491 prescriber's licensure in the state; and

1492 (B) shall provide a completion record of the SBIRT-training class in order to be
1493 reimbursed for SBIRT services to patients, in accordance with Section 26-18-22 and Section
1494 49-20-416.

1495 ~~[(3) As provided in Subsection 58-37f-402(8), the online tutorial and passing the
1496 online test described in Section 58-37f-402 shall count as 1/2 hour of continuing professional
1497 education under Subsection (2) per licensing period.]~~

1498 ~~[(4)]~~ (3) A controlled substance prescriber shall complete at least 3.5 hours of
1499 continuing education in one or more controlled substance prescribing classes, except dentists
1500 who shall complete at least two hours, that satisfy the requirements of Subsections ~~[(5)]~~ (4) and
1501 ~~[(7)]~~ (6).

1502 ~~[(5)]~~ (4) A controlled substance prescribing class shall:

1503 (a) satisfy the division's requirements for the continuing education required for the
1504 renewal of the controlled substance prescriber's respective license type;

1505 (b) be delivered by an accredited or approved continuing education provider
1506 recognized by the division as offering continuing education appropriate for the controlled
1507 substance prescriber's respective license type; and

1508 (c) include a postcourse knowledge assessment.

1509 ~~[(6)]~~ (5) An M.D. or D.O. completing continuing professional education hours under
1510 Subsection (4) shall complete those hours in classes that qualify for the American Medical
1511 Association Physician's Recognition Award Category 1 Credit.

1512 ~~[(7)]~~ (6) The 3.5 hours of the controlled substance prescribing classes under Subsection
1513 (4) shall include educational content covering the following:

1514 (a) the scope of the controlled substance abuse problem in Utah and the nation;

1515 (b) all elements of the FDA Blueprint for Prescriber Education under the FDA's
1516 Extended-Release and Long-Acting Opioid Analgesics Risk Evaluation and Mitigation
1517 Strategy, as published July 9, 2012, or as it may be subsequently revised;

1518 (c) the national and Utah-specific resources available to prescribers to assist in
1519 appropriate controlled substance and opioid prescribing;

1520 (d) patient record documentation for controlled substance and opioid prescribing; and

1521 (e) office policies, procedures, and implementation.

1522 [~~(8)~~] (7) (a) The division, in consultation with the Utah Medical Association
1523 Foundation, shall determine whether a particular controlled substance prescribing class satisfies
1524 the educational content requirements of Subsections [~~(5)~~] (4) and [~~(7)~~] (6) for an M.D. or D.O.

1525 (b) The division, in consultation with the applicable professional licensing boards,
1526 shall determine whether a particular controlled substance prescribing class satisfies the
1527 educational content requirements of Subsections [~~(5)~~] (4) and [~~(7)~~] (6) for a controlled
1528 substance prescriber other than an M.D. or D.O.

1529 (c) The division may by rule establish a committee that may audit compliance with the
1530 Utah Risk Evaluation and Mitigation Strategy (REMS) Educational Programming Project
1531 grant, that satisfies the educational content requirements of Subsections [~~(5)~~] (4) and [~~(7)~~] (6)
1532 for a controlled substance prescriber.

1533 [~~(9)~~] (8) A controlled substance prescribing class required under this section:

1534 (a) may be held:

1535 (i) in conjunction with other continuing professional education programs; and

1536 (ii) online; and

1537 (b) does not increase the total number of state-required continuing professional
1538 education hours required for prescriber licensing.

1539 [~~(10)~~] (9) The division may establish rules, in accordance with Title 63G, Chapter 3,
1540 Utah Administrative Rulemaking Act, to implement this section.

1541 [~~(H)~~] (10) A controlled substance prescriber who, on or after July 1, 2017, obtains a
1542 waiver to treat opioid dependency with narcotic medications, in accordance with the Drug
1543 Addiction Treatment Act of 2000, 21 U.S.C. Sec. 823 et seq., may use the waiver to satisfy the
1544 3.5 hours of the continuing education requirement under Subsection [~~(4)~~] (3) for two

1545 consecutive licensing periods.

1546 Section 21. Section **58-37f-401** is amended to read:

1547 **58-37f-401. Database registration required -- Penalties for failure to register.**

1548 (1) Each individual, other than a veterinarian, who, on June 30, 2010, has a license to
1549 prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, but is not
1550 registered with the division to use the database shall, on or before September 30, 2010, register
1551 with the division to use the database.

1552 [~~(2) Each individual who, on November 1, 2012, is registered with the division to use~~
1553 ~~the database shall, on or before January 1, 2013, participate in the online tutorial and pass the~~
1554 ~~online test described in Section 58-37f-402.~~]

1555 [(~~3~~)] (2) (a) An individual who is not a veterinarian, who obtains a new license to
1556 prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, shall,
1557 within 30 days after the day on which the individual obtains a license to prescribe a controlled
1558 substance from the Drug Enforcement Administration, register with the division to use the
1559 database.

1560 (b) An individual who is not a veterinarian may not renew a license to prescribe a
1561 controlled substance under Chapter 37, Utah Controlled Substances Act, unless the individual
1562 registers with the division to use the database.

1563 [(~~4~~)] (3) Beginning on November 2, 2012, in order to register to use the database, the
1564 individual registering must participate in the online tutorial and pass the online test described
1565 in Section 58-37f-402.

1566 [(~~5~~)] (4) Failure by an individual to comply with the requirements of this section is
1567 grounds for the division to take the following actions in accordance with Section 58-1-401:

- 1568 (a) refuse to issue a license to the individual;
1569 (b) refuse to renew the individual's license; or
1570 (c) revoke, suspend, restrict, or place on probation the license.

1571 [(~~6~~)] (5) Beginning on July 1, 2010, the division shall, in accordance with Section
1572 63J-1-504, impose an annual database registration fee on an individual who registers to use the
1573 database, to pay the startup and ongoing costs of the division for complying with the
1574 requirements of this section [~~and Section 58-37f-402~~].

1575 Section 22. Section **58-37f-402** is amended to read:

1576 **58-37f-402. Online tutorial and test relating to the database -- Fees -- Rulemaking**
1577 **authority -- Continuing professional education credit.**

1578 (1) The division shall develop an online tutorial and an online test for registration to
1579 use the database that provides instruction regarding, and tests, the following:

1580 (a) the purpose of the database;

1581 (b) how to access and use the database;

1582 (c) the law relating to:

1583 (i) the use of the database; and

1584 (ii) the information submitted to, and obtained from, the database; and

1585 (d) basic knowledge that is important for all people who prescribe controlled
1586 substances to know in order to help ensure the health and safety of an individual to whom a
1587 controlled substance is prescribed.

1588 (2) The division shall design the test described in this section as follows:

1589 (a) an individual shall answer all of the questions correctly in order to pass the test;

1590 (b) an individual shall be permitted to immediately retake the portion of the test that
1591 the individual answers incorrectly as many times as necessary for the individual to pass the test;
1592 and

1593 (c) after an individual takes the test, the test software shall:

1594 (i) immediately inform the individual of the number of questions that were answered
1595 incorrectly;

1596 (ii) provide the correct answers;

1597 (iii) replay the portion of the tutorial that relates to the incorrectly answered questions;
1598 and

1599 (iv) ask the individual the incorrectly answered questions again.

1600 (3) The division shall design the tutorial and test so that it is possible to take the
1601 tutorial and complete the test in 20 minutes or less, if the individual answers all of the
1602 questions correctly on the first attempt.

1603 (4) The division shall ensure that the tutorial and test described in this section are fully
1604 functional and available for use online on or before November 1, 2010.

1605 (5) The division shall impose a fee, in accordance with Section [63J-1-504](#), on an
1606 individual who takes the test described in this section, to pay the costs incurred by the division

1607 to:

1608 (a) develop, implement, and administer the tutorial and test described in this section;

1609 and

1610 (b) fulfill the other duties imposed on the division under this part.

1611 (6) The division may make rules, in accordance with Title 63G, Chapter 3, Utah

1612 Administrative Rulemaking Act, to:

1613 (a) develop, implement, and administer the tutorial and test described in this section;

1614 and

1615 (b) fulfill the other duties imposed on the division under this part.

1616 (7) The Department of Health shall assist the division in developing the portion of the

1617 test described in Subsection (1)(d).

1618 ~~[(8) Completing the online tutorial and passing the online test described in this section~~

1619 ~~shall count as 1/2 hour of continuing professional education under Subsection 58-37-6.5(2).]~~

1620 Section 23. Section **58-44a-402** is amended to read:

1621 **58-44a-402. Authority to assess penalty.**

1622 (1) After a proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures
1623 Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the
1624 division may impose an administrative penalty of up to \$10,000 for unprofessional or unlawful
1625 conduct under this chapter in accordance with a fine schedule established by rule.

1626 (2) The assessment of a penalty under this section does not affect any other action the
1627 division is authorized to take regarding a license issued under this chapter.

1628 (3) The division may impose an administrative penalty of up to \$500 for any violation
1629 of Subsection 58-44a-501(2), (3), or (4), consistent with Section 58-44a-503.

1630 (4) (a) The director may collect a penalty that is not paid by:

1631 (i) referring the matter to a collection agency; or

1632 (ii) bringing an action in the district court of the county where the person against whom
1633 the penalty is imposed resides or in the county where the office of the director is located.

1634 (b) A county attorney or the attorney general of the state shall provide legal assistance
1635 and advice to the director in an action to collect a penalty.

1636 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
1637 action brought by the division to collect a penalty.

1638 Section 24. Section **58-47b-501** is amended to read:

1639 **58-47b-501. Unlawful conduct.**

1640 "Unlawful conduct" includes:

1641 (1) practicing, engaging in, or attempting to practice or engage in massage therapy
1642 without holding a current license as a massage therapist or a massage apprentice under this
1643 chapter;

1644 (2) advertising or representing himself as practicing massage therapy when not licensed
1645 to do so; and

1646 (3) massaging, touching, or applying any instrument or device by a licensee in the
1647 course of practicing or engaging in massage therapy to the:

1648 (a) genitals [~~or~~];

1649 (b) anus; [~~and~~] or

1650 [~~(b)~~] (c) breasts of a female patron, except when a female patron requests breast
1651 massage, as may be further defined by division rule, and signs a written consent form, which
1652 must also include the signature of a parent or legal guardian if the patron is a minor,
1653 authorizing the procedure and outlining the reason for it before the procedure is performed.

1654 Section 25. Section **58-53-502** is amended to read:

1655 **58-53-502. Citations -- Penalty for unlawful conduct.**

1656 (1) (a) If upon inspection or investigation, the division concludes that a person has
1657 violated Subsections **58-1-501**(1)(a) through (d), Section **58-53-501**, or Section **58-53-603** or
1658 any rule or order issued with respect to Section **58-53-501**, and that disciplinary action is
1659 appropriate, the director or the director's designee from within the division for each alternative
1660 respectively, shall promptly issue a citation to the person according to this chapter and any
1661 pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear
1662 before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative
1663 Procedures Act.

1664 (i) A person who violates Subsections **58-1-501**(1)(a) through (d) or Section **58-53-501**
1665 or any rule or order issued with respect to Section **58-53-501**, as evidenced by an uncontested
1666 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may
1667 be assessed a fine pursuant to Subsection (1)(i) and may, in addition to or in lieu of, be ordered
1668 to cease and desist from violating Subsections **58-1-501**(1)(a) through (d) or Section **58-53-501**

1669 or any rule or order issued with respect to Section 58-53-501.

1670 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
1671 58-53-401 may not be assessed through a citation.

1672 (b) A citation shall:

1673 (i) be in writing;

1674 (ii) describe with particularity the nature of the violation, including a reference to the
1675 provision of the chapter, rule, or order alleged to have been violated;

1676 (iii) clearly state that the recipient must notify the division in writing within 20
1677 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
1678 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

1679 (iv) clearly explain the consequences of failure to timely contest the citation or to make
1680 payment of any fines assessed by the citation within the time specified in the citation.

1681 (c) The division may issue a notice in lieu of a citation.

1682 (d) Each citation issued under this section, or a copy of each citation, may be served
1683 upon any person whom a summons may be served in accordance with the Utah Rules of Civil
1684 Procedure and may be made personally or upon the person's agent by a division investigator or
1685 by any person specially designated by the director or by mail.

1686 (e) If within 20 calendar days from the service of the citation, the person to whom the
1687 citation was issued fails to request a hearing to contest the citation, the citation becomes the
1688 final order of the division and is not subject to further agency review. The period to contest a
1689 citation may be extended by the division for cause.

1690 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
1691 the license of a licensee who fails to comply with a citation after it becomes final.

1692 (g) The failure of an applicant for licensure to comply with a citation after it becomes
1693 final is a ground for denial of license.

1694 (h) No citation may be issued under this section after the expiration of six months
1695 following the occurrence of any violation.

1696 (i) The director or the director's designee shall assess fines according to the following:

1697 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

1698 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

1699 and

1700 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to
1701 \$2,000 for each day of continued offense.

1702 (2) An action initiated for a first or second offense which has not yet resulted in a final
1703 order of the division does not preclude initiation of any subsequent action for a second or
1704 subsequent offense during the pendency of any preceding action. The final order on a
1705 subsequent action shall be considered a second or subsequent offense, respectively, provided
1706 the preceding action resulted in a first or second offense, respectively.

1707 ~~[(3) Any penalty which is not paid may be collected by the director by either referring~~
1708 ~~the matter to a collection agency or bringing an action in the district court of the county in~~
1709 ~~which the person against whom the penalty is imposed resides or in the county where the office~~
1710 ~~of the director is located. Any county attorney or the attorney general of the state shall provide~~
1711 ~~legal assistance and advice to the director in any action to collect the penalty. In any action~~
1712 ~~brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be~~
1713 ~~awarded to the division.]~~

1714 (3) (a) The director may collect a penalty that is not paid by:

1715 (i) referring the matter to a collection agency; or

1716 (ii) bringing an action in the district court of the county where the person against whom
1717 the penalty is imposed resides or in the county where the office of the director is located.

1718 (b) A county attorney or the attorney general of the state shall provide legal assistance
1719 and advice to the director in an action to collect a penalty.

1720 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
1721 action brought by the division to collect a penalty.

1722 Section 26. Section **58-55-305** is amended to read:

1723 **58-55-305. Exemptions from licensure.**

1724 (1) In addition to the exemptions from licensure in Section **58-1-307**, the following
1725 persons may engage in acts or practices included within the practice of construction trades,
1726 subject to the stated circumstances and limitations, without being licensed under this chapter:

1727 (a) an authorized representative of the United States government or an authorized
1728 employee of the state or any of its political subdivisions when working on construction work of
1729 the state or the subdivision, and when acting within the terms of the person's trust, office, or
1730 employment;

1731 (b) a person engaged in construction or operation incidental to the construction and
1732 repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation
1733 districts, and drainage districts or construction and repair relating to farming, dairying,
1734 agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel
1735 excavations, well drilling, as defined in Section 73-3-25, hauling to and from construction
1736 sites, and lumbering;

1737 (c) public utilities operating under the rules of the Public Service Commission on work
1738 incidental to their own business;

1739 (d) sole owners of property engaged in building:

1740 (i) no more than one residential structure per year and no more than three residential
1741 structures per five years on their property for their own noncommercial, nonpublic use; except,
1742 a person other than the property owner or individuals described in Subsection (1)(e), who
1743 engages in building the structure must be licensed under this chapter if the person is otherwise
1744 required to be licensed under this chapter; or

1745 (ii) structures on their property for their own noncommercial, nonpublic use which are
1746 incidental to a residential structure on the property, including sheds, carports, or detached
1747 garages;

1748 (e) (i) a person engaged in construction or renovation of a residential building for
1749 noncommercial, nonpublic use if that person:

1750 (A) works without compensation other than token compensation that is not considered
1751 salary or wages; and

1752 (B) works under the direction of the property owner who engages in building the
1753 structure; and

1754 (ii) as used in this Subsection (1)(e), "token compensation" means compensation paid
1755 by a sole owner of property exempted from licensure under Subsection (1)(d) to a person
1756 exempted from licensure under this Subsection (1)(e), that is:

1757 (A) minimal in value when compared with the fair market value of the services
1758 provided by the person;

1759 (B) not related to the fair market value of the services provided by the person; and

1760 (C) is incidental to the providing of services by the person including paying for or
1761 providing meals or refreshment while services are being provided, or paying reasonable

1762 transportation costs incurred by the person in travel to the site of construction;

1763 (f) a person engaged in the sale or merchandising of personal property that by its design
1764 or manufacture may be attached, installed, or otherwise affixed to real property who has
1765 contracted with a person, firm, or corporation licensed under this chapter to install, affix, or
1766 attach that property;

1767 (g) a contractor submitting a bid on a federal aid highway project, if, before
1768 undertaking construction under that bid, the contractor is licensed under this chapter;

1769 (h) (i) subject to Subsection 58-1-401(2) and Sections 58-55-501 and 58-55-502, a
1770 person engaged in the alteration, repair, remodeling, or addition to or improvement of a
1771 building with a contracted or agreed value of less than \$3,000, including both labor and
1772 materials, and including all changes or additions to the contracted or agreed upon work; and

1773 (ii) notwithstanding Subsection (1)(h)(i) and except as otherwise provided in this
1774 section:

1775 (A) work in the plumbing and electrical trades on a Subsection (1)(h)(i) project within
1776 any six month period of time:

1777 (I) must be performed by a licensed electrical or plumbing contractor, if the project
1778 involves an electrical or plumbing system; and

1779 (II) may be performed by a licensed journeyman electrician or plumber or an individual
1780 referred to in Subsection (1)(h)(ii)(A)(I), if the project involves a component of the system
1781 such as a faucet, toilet, fixture, device, outlet, or electrical switch;

1782 (B) installation, repair, or replacement of a residential or commercial gas appliance or a
1783 combustion system on a Subsection (1)(h)(i) project must be performed by a person who has
1784 received certification under Subsection 58-55-308(2) except as otherwise provided in
1785 Subsection 58-55-308(2)(d) or 58-55-308(3);

1786 (C) installation, repair, or replacement of water-based fire protection systems on a
1787 Subsection (1)(h)(i) project must be performed by a licensed fire suppression systems
1788 contractor or a licensed journeyman plumber;

1789 (D) work as an alarm business or company or as an alarm company agent shall be
1790 performed by a licensed alarm business or company or a licensed alarm company agent, except
1791 as otherwise provided in this chapter;

1792 (E) installation, repair, or replacement of an alarm system on a Subsection (1)(h)(i)

1793 project must be performed by a licensed alarm business or company or a licensed alarm
1794 company agent;

1795 (F) installation, repair, or replacement of a heating, ventilation, or air conditioning
1796 system (HVAC) on a Subsection (1)(h)(i) project must be performed by an HVAC contractor
1797 licensed by the division;

1798 (G) installation, repair, or replacement of a radon mitigation system or a soil
1799 depressurization system must be performed by a licensed contractor; and

1800 (H) if the total value of the project is greater than \$1,000, the person shall file with the
1801 division a one-time affirmation, subject to periodic reaffirmation as established by division
1802 rule, that the person has:

1803 (I) public liability insurance in coverage amounts and form established by division
1804 rule; and

1805 (II) if applicable, workers compensation insurance which would cover an employee of
1806 the person if that employee worked on the construction project;

1807 (i) a person practicing a specialty contractor classification or construction trade which
1808 the director does not classify by administrative rule as significantly impacting the public's
1809 health, safety, and welfare;

1810 (j) owners and lessees of property and persons regularly employed for wages by owners
1811 or lessees of property or their agents for the purpose of maintaining the property, are exempt
1812 from this chapter when doing work upon the property;

1813 (k) (i) a person engaged in minor plumbing work that is incidental, as defined by the
1814 division by rule, to the replacement or repair of a fixture or an appliance in a residential or
1815 small commercial building, or structure used for agricultural use, as defined in Section
1816 [15A-1-202](#), provided that no modification is made to:

1817 (A) existing culinary water, soil, waste, or vent piping; or

1818 (B) a gas appliance or combustion system; and

1819 (ii) except as provided in Subsection (1)(e), installation for the first time of a fixture or
1820 an appliance is not included in the exemption provided under Subsection (1)(k)(i);

1821 (l) a person who ordinarily would be subject to the plumber licensure requirements
1822 under this chapter when installing or repairing a water conditioner or other water treatment
1823 apparatus if the conditioner or apparatus:

- 1824 (i) meets the appropriate state construction codes or local plumbing standards; and
1825 (ii) is installed or repaired under the direction of a person authorized to do the work
1826 under an appropriate specialty contractor license;
- 1827 (m) a person who ordinarily would be subject to the electrician licensure requirements
1828 under this chapter when employed by:
- 1829 (i) railroad corporations, telephone corporations or their corporate affiliates, elevator
1830 contractors or constructors, or street railway systems; or
- 1831 (ii) public service corporations, rural electrification associations, or municipal utilities
1832 who generate, distribute, or sell electrical energy for light, heat, or power;
- 1833 (n) a person involved in minor electrical work incidental to a mechanical or service
1834 installation, including the outdoor installation of an above-ground, prebuilt hot tub;
- 1835 (o) a person who ordinarily would be subject to the electrician licensure requirements
1836 under this chapter but who during calendar years 2009, 2010, or 2011 was issued a specialty
1837 contractor license for the electrical work associated with the installation, repair, or maintenance
1838 of solar energy panels, may continue the limited electrical work for solar energy panels under a
1839 specialty contractor license;
- 1840 (p) a student participating in construction trade education and training programs
1841 approved by the commission with the concurrence of the director under the condition that:
- 1842 (i) all work intended as a part of a finished product on which there would normally be
1843 an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed
1844 building inspector; and
- 1845 (ii) a licensed contractor obtains the necessary building permits;
- 1846 (q) a delivery person when replacing any of the following existing equipment with a
1847 new gas appliance, provided there is an existing gas shutoff valve at the appliance:
- 1848 (i) gas range;
- 1849 (ii) gas dryer;
- 1850 (iii) outdoor gas barbeque; or
- 1851 (iv) outdoor gas patio heater;
- 1852 (r) a person performing maintenance on an elevator as defined in Subsection
1853 58-55-102(14), if the maintenance is not related to the operating integrity of the elevator; and
- 1854 (s) an apprentice or helper of an elevator mechanic licensed under this chapter when

1855 working under the general direction of the licensed elevator mechanic.

1856 (2) A compliance agency as defined in Section 15A-1-202 that issues a building permit
1857 to a person requesting a permit as a sole owner of property referred to in Subsection (1)(d) shall
1858 notify the division, in writing or through electronic transmission, of the issuance of the permit.

1859 Section 27. Section 58-55-501 is amended to read:

1860 **58-55-501. Unlawful conduct.**

1861 Unlawful conduct includes:

1862 (1) engaging in a construction trade, acting as a contractor, an alarm business or
1863 company, or an alarm company agent, or representing oneself to be engaged in a construction
1864 trade or to be acting as a contractor in a construction trade requiring licensure, unless the
1865 person doing any of these is appropriately licensed or exempted from licensure under this
1866 chapter;

1867 (2) acting in a construction trade, as an alarm business or company, or as an alarm
1868 company agent beyond the scope of the license held;

1869 (3) hiring or employing a person who is not licensed under this chapter to perform
1870 work on a project, unless the person:

1871 (a) is an employee of a person licensed under this chapter for wages; and

1872 (b) is not required to be licensed under this chapter;

1873 (4) applying for or obtaining a building permit either for oneself or another when not
1874 licensed or exempted from licensure as a contractor under this chapter;

1875 (5) issuing a building permit to any person for whom there is no evidence of a current
1876 license or exemption from licensure as a contractor under this chapter;

1877 (6) applying for or obtaining a building permit for the benefit of or on behalf of any
1878 other person who is required to be licensed under this chapter but who is not licensed or is
1879 otherwise not entitled to obtain or receive the benefit of the building permit;

1880 (7) failing to obtain a building permit when required by law or rule;

1881 (8) submitting a bid for any work for which a license is required under this chapter by a
1882 person not licensed or exempted from licensure as a contractor under this chapter;

1883 (9) willfully or deliberately misrepresenting or omitting a material fact in connection
1884 with an application to obtain or renew a license under this chapter;

1885 (10) allowing one's license to be used by another except as provided by statute or rule;

1886 (11) doing business under a name other than the name appearing on the license, except
1887 as permitted by statute or rule;

1888 (12) if licensed as a [~~specialty~~] contractor in the electrical trade or plumbing trade,
1889 journeyman plumber, residential journeyman plumber, journeyman electrician, master
1890 electrician, or residential electrician, failing to directly supervise an apprentice under one's
1891 supervision or exceeding the number of apprentices one is allowed to have under the
1892 [~~specialty~~] contractor's supervision;

1893 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
1894 funds in payment for a specific project from an owner or any other person, which funds are to
1895 pay for work performed or materials and services furnished for that specific project, and after
1896 receiving the funds to exercise unauthorized control over the funds by failing to pay the full
1897 amounts due and payable to persons who performed work or furnished materials or services
1898 within a reasonable period of time;

1899 (14) employing an unlicensed alarm business or company or an unlicensed individual
1900 as an alarm company agent, except as permitted under the exemption from licensure provisions
1901 under Section 58-1-307;

1902 (15) if licensed as an alarm company or alarm company agent, filing with the division
1903 fingerprint cards for an applicant which are not those of the applicant, or are in any other way
1904 false or fraudulent and intended to mislead the division in its consideration of the applicant for
1905 licensure;

1906 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

1907 (a) the building or construction laws of this state or any political subdivision;

1908 (b) the safety and labor laws applicable to a project;

1909 (c) any provision of the health laws applicable to a project;

1910 (d) the workers' compensation insurance laws of the state applicable to a project;

1911 (e) the laws governing withholdings for employee state and federal income taxes,
1912 unemployment taxes, Social Security payroll taxes, or other required withholdings; or

1913 (f) reporting, notification, and filing laws of this state or the federal government;

1914 (17) aiding or abetting any person in evading the provisions of this chapter or rules
1915 established under the authority of the division to govern this chapter;

1916 (18) engaging in the construction trade or as a contractor for the construction of

1917 residences of up to two units when not currently registered or exempt from registration as a
1918 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
1919 Fund Act;

1920 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
1921 written contract the notification required in Section 38-11-108;

1922 (20) wrongfully filing a preconstruction or construction lien in violation of Section
1923 38-1a-308;

1924 (21) if licensed as a contractor, not completing the approved continuing education
1925 required under Section 58-55-302.5;

1926 (22) an alarm company allowing an employee with a temporary license under Section
1927 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
1928 license, as provided in Subsection 58-55-312(3)(a)(ii);

1929 (23) an alarm company agent under a temporary license under Section 58-55-312
1930 engaging in conduct outside the scope of the temporary license, as provided in Subsection
1931 58-55-312(3)(a)(ii);

1932 (24) (a) an unincorporated entity licensed under this chapter having an individual who
1933 owns an interest in the unincorporated entity engage in a construction trade in Utah while not
1934 lawfully present in the United States; or

1935 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
1936 providing an individual who owns an interest in the unincorporated entity to engage in a
1937 construction trade in Utah while not lawfully present in the United States;

1938 (25) an unincorporated entity failing to provide the following for an individual who
1939 engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an
1940 individual who engages, or will engage, in a construction trade in Utah for a separate entity for
1941 which the unincorporated entity provides the individual as labor:

1942 (a) workers' compensation coverage:

1943 (i) to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and
1944 Title 34A, Chapter 3, Utah Occupational Disease Act; or

1945 (ii) that would be required under the chapters listed in Subsection (25)(a)(i) if the
1946 unincorporated entity were licensed under this chapter; and

1947 (b) unemployment compensation in accordance with Title 35A, Chapter 4,

1948 Employment Security Act, for an individual who owns, directly or indirectly, less than an 8%
1949 interest in the unincorporated entity, as defined by rule made by the division in accordance with
1950 Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1951 (26) the failure of a sign installation contractor or nonelectrical outdoor advertising
1952 sign contractor, as classified and defined in division rules, to:

1953 (a) display the contractor's license number prominently on a vehicle that:

1954 (i) the contractor uses; and

1955 (ii) displays the contractor's business name; or

1956 (b) carry a copy of the contractor's license in any other vehicle that the contractor uses
1957 at a job site, whether or not the vehicle is owned by the contractor;

1958 (27) (a) an unincorporated entity licensed under this chapter having an individual who
1959 owns an interest in the unincorporated entity engage in a construction trade in the state while
1960 the individual is using a Social Security number that does not belong to that individual; or

1961 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
1962 providing an individual, who owns an interest in the unincorporated entity, to engage in a
1963 construction trade in the state while the individual is using a Social Security number that does
1964 not belong to that individual;

1965 (28) a contractor failing to comply with a requirement imposed by a political
1966 subdivision, state agency, or board of education under Section 58-55-310; or

1967 (29) failing to timely comply with the requirements described in Section 58-55-605.

1968 Section 28. Section 58-55-503 is amended to read:

1969 **58-55-503. Penalty for unlawful conduct -- Citations.**

1970 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
1971 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), (26), (27), (28), or
1972 (29), or Subsection 58-55-504(2), or who fails to comply with a citation issued under this
1973 section after it is final, is guilty of a class A misdemeanor.

1974 (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an
1975 individual and does not include a sole proprietorship, joint venture, corporation, limited
1976 liability company, association, or organization of any type.

1977 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be
1978 awarded and may not accept a contract for the performance of the work.

1979 (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an
1980 infraction unless the violator did so with the intent to deprive the person to whom money is to
1981 be paid of the money received, in which case the violator is guilty of theft, as classified in
1982 Section 76-6-412.

1983 (3) Grounds for immediate suspension of a licensee's license by the division and the
1984 commission include:

1985 (a) the issuance of a citation for violation of Subsection 58-55-308(2), Section
1986 58-55-501, or Subsection 58-55-504(2); and

1987 (b) the failure by a licensee to make application to, report to, or notify the division with
1988 respect to any matter for which application, notification, or reporting is required under this
1989 chapter or rules adopted under this chapter, including:

1990 (i) applying to the division for a new license to engage in a new specialty classification
1991 or to do business under a new form of organization or business structure;

1992 (ii) filing a current financial statement with the division; and

1993 (iii) notifying the division concerning loss of insurance coverage or change in qualifier.

1994 (4) (a) If upon inspection or investigation, the division concludes that a person has
1995 violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
1996 (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), (28), or (29), Subsection
1997 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary
1998 action is appropriate, the director or the director's designee from within the division shall
1999 promptly issue a citation to the person according to this chapter and any pertinent rules, attempt
2000 to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
2001 proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

2002 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
2003 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26),
2004 (27), (28), or (29), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a
2005 stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be
2006 assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered
2007 to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3),
2008 (9), (10), (12), (14), (19), (21), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2).

2009 (ii) Except for a cease and desist order, the licensure sanctions cited in Section

2010 58-55-401 may not be assessed through a citation.

2011 (b) (i) A citation shall be in writing and describe with particularity the nature of the
2012 violation, including a reference to the provision of the chapter, rule, or order alleged to have
2013 been violated.

2014 (ii) A citation shall clearly state that the recipient must notify the division in writing
2015 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
2016 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

2017 (iii) A citation shall clearly explain the consequences of failure to timely contest the
2018 citation or to make payment of any fines assessed by the citation within the time specified in
2019 the citation.

2020 (c) A citation issued under this section, or a copy of a citation, may be served upon a
2021 person upon whom a summons may be served:

2022 (i) in accordance with the Utah Rules of Civil Procedure;

2023 (ii) personally or upon the person's agent by a division investigator or by a person
2024 specially designated by the director; or

2025 (iii) by mail.

2026 (d) (i) If within 20 calendar days after the day on which a citation is served, the person
2027 to whom the citation was issued fails to request a hearing to contest the citation, the citation
2028 becomes the final order of the division and is not subject to further agency review.

2029 (ii) The period to contest a citation may be extended by the division for cause.

2030 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation
2031 the license of a licensee who fails to comply with a citation after it becomes final.

2032 (f) The failure of an applicant for licensure to comply with a citation after it becomes
2033 final is a ground for denial of license.

2034 (g) A citation may not be issued under this section after the expiration of six months
2035 following the occurrence of a violation.

2036 (h) Except as provided in Subsection (5), the director or the director's designee shall
2037 assess a fine in accordance with the following:

2038 (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;

2039 (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;

2040 and

2041 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
2042 \$2,000 for each day of continued offense.

2043 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
2044 Subsection (4)(h), an offense constitutes a second or subsequent offense if:

2045 (A) the division previously issued a final order determining that a person committed a
2046 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
2047 (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2);
2048 or

2049 (B) (I) the division initiated an action for a first or second offense;

2050 (II) a final order has not been issued by the division in the action initiated under
2051 Subsection (4)(i)(i)(B)(I);

2052 (III) the division determines during an investigation that occurred after the initiation of
2053 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
2054 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
2055 (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2); and

2056 (IV) after determining that the person committed a second or subsequent offense under
2057 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under
2058 Subsection (4)(i)(i)(B)(I).

2059 (ii) In issuing a final order for a second or subsequent offense under Subsection
2060 (4)(i)(i), the division shall comply with the requirements of this section.

2061 (j) In addition to any other licensure sanction or fine imposed under this section, the
2062 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)
2063 two or more times within a 12-month period, unless, with respect to a violation of Subsection
2064 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal
2065 legal working status of the individual who was the subject of the violation using a status
2066 verification system, as defined in Section 13-47-102.

2067 (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25)
2068 for each individual is considered a separate violation.

2069 (5) If a person violates Section 58-55-501, the division may not treat the violation as a
2070 subsequent violation of a previous violation if the violation occurs five years or more after the
2071 day on which the person committed the previous violation.

2072 (6) If, after an investigation, the division determines that a person has committed
2073 multiple of the same type of violation of Section 58-55-501, the division may treat each
2074 violation as a separate violation of Section 58-55-501 and apply a penalty under this section to
2075 each violation.

2076 (7) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
2077 into the Commerce Service Account created by Section 13-1-2.

2078 (b) A penalty that is not paid may be collected by the director by either referring the
2079 matter to a collection agency or bringing an action in the district court of the county in which
2080 the person against whom the penalty is imposed resides or in the county where the office of the
2081 director is located.

2082 (c) A county attorney or the attorney general of the state ~~[is to]~~ shall provide legal
2083 assistance and advice to the director in ~~[any]~~ an action to collect ~~[the]~~ a penalty.

2084 (d) In an action brought to ~~[enforce the provisions of this section]~~ collect a penalty, the
2085 court shall award reasonable attorney fees and costs to the prevailing party.

2086 Section 29. Section 58-56-9.5 is amended to read:

2087 **58-56-9.5. Penalty for unlawful conduct -- Citations.**

2088 (1) A person who violates a provision of Section 58-56-9.1 or who fails to comply with
2089 a citation issued under this section after it is final is guilty of a class A misdemeanor.

2090 (2) Grounds for immediate suspension of a licensee's license by the division under this
2091 chapter include:

2092 (a) the issuance of a citation for violation of a provision of Section 58-56-9.1; and

2093 (b) failure by a licensee to make application to, report to, or notify the division with
2094 respect to a matter for which application, notification, or reporting is required under this
2095 chapter or rules made under this chapter by the division.

2096 (3) (a) If upon inspection or investigation, the division concludes that a person has
2097 violated a provision of Section 58-56-9.1, or a rule or order issued with respect to that section,
2098 and that disciplinary action is appropriate, the director or the director's designee from within
2099 the division shall:

2100 (i) promptly issue a citation to the person according to this chapter and any pertinent
2101 rules;

2102 (ii) attempt to negotiate a stipulated settlement; or

2103 (iii) notify the person to appear before an adjudicative proceeding conducted under
2104 Title 63G, Chapter 4, Administrative Procedures Act.

2105 (b) (i) A person who violates a provision of Section 58-56-9.1, as evidenced by an
2106 uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative
2107 proceeding, may be assessed a fine under this Subsection (3)(b) and may, in addition to or
2108 instead of the fine, be ordered by the division to cease from violating the provision.

2109 (ii) Except as otherwise provided in Subsection (2)(a), the division may not assess
2110 licensure sanctions referred to in Subsection 58-56-9(1)(c) through a citation.

2111 (c) (i) Each citation shall be in writing and describe with particularity the nature of the
2112 violation, including a reference to the provision of the chapter, rule, or order alleged to have
2113 been violated.

2114 (ii) The citation shall clearly state that the recipient must notify the division in writing
2115 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
2116 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

2117 (iii) The citation shall clearly explain the consequences of failure to timely contest the
2118 citation or to make payment of any fines assessed by the citation within the time specified in
2119 the citation.

2120 (d) Each citation issued under this section, or a copy of each citation, may be served
2121 upon any person upon whom a summons may be served:

2122 (i) in accordance with the Utah Rules of Civil Procedure;

2123 (ii) personally or upon the person's agent by a division investigator or by any person
2124 specially designated by the director; or

2125 (iii) by mail.

2126 (e) (i) If within 20 calendar days from the service of a citation, the person to whom the
2127 citation was issued fails to request a hearing to contest the citation, the citation becomes the
2128 final order of the division and is not subject to further agency review.

2129 (ii) The period to contest a citation may be extended by the division for cause.

2130 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
2131 the license of a licensee who fails to comply with a citation after it becomes final.

2132 (g) The failure of an applicant for licensure to comply with a citation after it becomes
2133 final is a ground for denial of a license.

2134 (h) No citation may be issued under this section after the expiration of six months
2135 following the occurrence of the violation.

2136 (i) The director or the director's designee may assess fines for violations of Section
2137 58-56-9.1 as follows:

2138 (i) for a first offense determined under this Subsection (3), a fine of up to \$1,000;

2139 (ii) for a second offense, a fine of up to \$2,000; and

2140 (iii) for any subsequent offense, a fine of up to \$2,000 for each day of continued
2141 offense.

2142 (j) For the purposes of issuing a final order under this section and assessing a fine
2143 under Subsection (3)(i), an offense constitutes a second or subsequent offense if:

2144 (i) the division previously issued a final order determining that a person committed a
2145 first or second offense in violation of a provision of Section 58-56-9.1; or

2146 (ii) (A) the division initiated an action for a first or second offense;

2147 (B) no final order has been issued by the division in the action initiated under
2148 Subsection (3)(j)(ii)(A);

2149 (C) the division determines during an investigation that occurred after the initiation of
2150 the action under Subsection (3)(j)(ii)(A) that the person committed a second or subsequent
2151 violation of a provision of Section 58-56-9.1; and

2152 (D) after determining that the person committed a second or subsequent offense under
2153 Subsection (3)(j)(ii)(C), the division issues a final order on the action initiated under
2154 Subsection (3)(j)(ii)(A).

2155 (k) In issuing a final order for a second or subsequent offense under Subsection (3)(j),
2156 the division shall comply with the requirements of this section.

2157 (4) (a) Proceeds from a fine imposed under Subsection (3)(i) shall be deposited in the
2158 Commerce Service Account created by Section 13-1-2.

2159 ~~[(b) The director may collect an unpaid fine by:]~~

2160 ~~[(i) referring the matter to a collection agency; or]~~

2161 ~~[(ii) bringing an action in the district court of the county in which the person resides or~~
2162 ~~in the county where the director's office is located.]~~

2163 ~~[(c) (i) The state's attorney general or a county attorney shall provide legal assistance~~
2164 ~~and advice to the director in an action brought under Subsection (4)(b).]~~

2165 ~~[(ii) Reasonable attorney fees and costs shall be awarded in an action brought to~~
2166 ~~enforce the provisions of this section.]~~

2167 (b) The director may collect a fine that is not paid by:

2168 (i) referring the matter to a collection agency; or

2169 (ii) bringing an action in the district court of the county where the person against whom
2170 the penalty is imposed resides or in the county where the office of the director is located.

2171 (c) A county attorney or the attorney general of the state shall provide legal assistance
2172 and advice to the director in an action to collect a penalty.

2173 (d) A court shall award reasonable attorney fees and costs to the prevailing party in an
2174 action brought by the division to collect a penalty.

2175 Section 30. Section **58-60-117** is amended to read:

2176 **58-60-117. Externship licenses.**

2177 (1) The division shall issue a temporary license under Part 2, Social Worker Licensing
2178 Act, Part 3, Marriage and Family Therapist Licensing Act, or Part 4, Clinical Mental Health
2179 Counselor Licensing Act, of this chapter to a person who:

2180 (a) submits an application for licensure under Part 2, Social Worker Licensing Act,
2181 Part 3, Marriage and Family Therapist Licensing Act, or Part 4, Clinical Mental Health
2182 Counselor Licensing Act;

2183 (b) pays a fee determined by the department under Section [63J-1-504](#);

2184 (c) holds an earned doctoral degree or master's degree in a discipline that is a
2185 prerequisite for practice as a mental health therapist;

2186 (d) has a deficiency, as defined by division rule, in course work;

2187 (e) provides mental health therapy as an employee of a public or private organization,
2188 which provides mental health therapy, while under the supervision of a person licensed under
2189 this chapter; and

2190 (f) is of good moral character and has no disciplinary action pending or in effect
2191 against the applicant in connection with the practice of mental health therapy, in any
2192 jurisdiction.

2193 (2) A temporary license issued under this section shall expire upon the earlier of:

2194 (a) issuance of the license applied for; or

2195 (b) unless the deadline is extended for good cause as determined by the division, three

2196 years from the date the temporary license was issued.

2197 (3) The temporary license issued under this section is an externship license.

2198 Section 31. Section **58-63-503** is amended to read:

2199 **58-63-503. Penalties.**

2200 (1) Unless Subsection (2) applies, an individual who commits an act of unlawful
2201 conduct under Section **58-63-501** or who fails to comply with a citation issued under this
2202 section after it becomes final is guilty of a class A misdemeanor.

2203 (2) The division may immediately suspend a license issued under this chapter of a
2204 person who is given a citation for violating Subsection **58-63-501**(1), (2), (4), or (5).

2205 (3) (a) If upon inspection or investigation, the division determines that a person has
2206 violated Subsection **58-63-501**(1), (2), (4), or (5) or any rule made or order issued under those
2207 subsections, and that disciplinary action is warranted, the director or the director's designee
2208 within the division shall promptly issue a citation to the person and:

2209 (i) attempt to negotiate a stipulated settlement; or

2210 (ii) notify the person to appear for an adjudicative proceeding conducted under Title
2211 63G, Chapter 4, Administrative Procedures Act.

2212 (b) (i) The division may fine a person who violates Subsection **58-63-501**(1), (2), (4),
2213 or (5), as evidenced by an uncontested citation, a stipulated settlement, or a finding of a
2214 violation in an adjudicative proceeding held under Subsection (3)(a)(ii), or order the person to
2215 cease and desist from the violation, or do both.

2216 (ii) Except for a cease and desist order, the division may not impose the licensure
2217 sanctions listed in Section **58-63-401** through the issuance of a citation under this section.

2218 (c) The written citation shall:

2219 (i) describe the nature of the violation, including a reference to the allegedly violated
2220 statute, rule, or order;

2221 (ii) state the recipient must notify the division in writing within 20 calendar days of
2222 issuance of the citation if the recipient wants to contest the citation at the adjudicative
2223 proceeding referred to in Subsection (3)(a)(ii); and

2224 (iii) explain the consequences of failure to timely contest the citation or to make
2225 payment of a fine assessed under the citation with the time specified in the citation.

2226 (d) (i) The division may serve a citation issued under this section, or a copy of the

2227 citation, upon an individual who is subject to service of a summons under the Utah Rules of
2228 Civil Procedure.

2229 (ii) (A) The division may serve the individual personally or serve the individual's
2230 agent.

2231 (B) The division may serve the summons by a division investigator, by a person
2232 designated by the director, or by mail.

2233 (e) (i) If within 20 days from the service of a citation the person to whom the citation
2234 was issued fails to request a hearing to contest the citation, the citation becomes the final order
2235 of the division and is not subject to further agency review.

2236 (ii) The division may grant an extension of the 20-day period for cause.

2237 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
2238 the license of a licensee who fails to comply with a citation after it becomes final.

2239 (g) The division may not issue a citation for an alleged violation under this section
2240 after the expiration of six months following the occurrence of the alleged violation.

2241 (h) The director or the director's designee may assess fines under this section as
2242 follows:

2243 (i) for a first offense under Subsection (3)(a), a fine of up to \$1,000;

2244 (ii) for a second offense under Subsection (3)(a), a fine of up to \$2,000; and

2245 (iii) for a subsequent offense under Subsection (3)(a), a fine of up to \$2,000 for each
2246 day of continued violation.

2247 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
2248 Subsection (3)(h), an offense is a second or subsequent offense if:

2249 (A) the division previously issued a final order determining that a person committed a
2250 first or second offense in violation of Subsection 58-63-501(1) or (4); or

2251 (B) (I) the division initiated an action for a first or second offense;

2252 (II) no final order has been issued by the division in an action initiated under
2253 Subsection (3)(i)(i)(B)(I);

2254 (III) the division determines during an investigation that occurred after the initiation of
2255 the action under Subsection (3)(i)(i)(B)(I) that the person committed a second or subsequent
2256 violation of Subsection 58-63-501(1) or (4); and

2257 (IV) after determining that the person committed a second or subsequent offense under

2258 Subsection (3)(i)(i)(B)(III), the division issues a final order on the action initiated under
2259 Subsection (3)(i)(i)(B)(I).

2260 (ii) In issuing a final order for a second or subsequent offense under Subsection
2261 (3)(i)(i), the division shall comply with the requirements of this section.

2262 (4) (a) The division shall deposit a fine imposed by the director under Subsection (3)(h)
2263 in the General Fund as a dedicated credit for use by the division for the purposes listed in
2264 Section 58-63-103.

2265 [~~(b) The director may collect a Subsection (3)(h) fine which is not paid by:~~]

2266 [~~(i) referring the matter to the Office of State Debt Collection or a collection agency;~~
2267 ~~or]~~

2268 [~~(ii) bringing an action in the district court of the county in which the person resides or~~
2269 ~~in the county where the office of the director is located.]~~

2270 [~~(c) The director may seek legal assistance from the attorney general or the county or~~
2271 ~~district attorney of the district in which the action is brought to collect the fine.]~~

2272 [~~(d) The court shall award reasonable attorney fees and costs to the division for~~
2273 ~~successful actions under Subsection (4)(b)(ii).]~~

2274 (b) The director may collect a fine that is not paid by:

2275 (i) referring the matter to a collection agency; or

2276 (ii) bringing an action in the district court of the county where the person against whom
2277 the penalty is imposed resides or in the county where the office of the director is located.

2278 (c) A county attorney or the attorney general of the state shall provide legal assistance
2279 and advice to the director in an action to collect a penalty.

2280 (d) A court shall award reasonable attorney fees and costs to the prevailing party in an
2281 action brought by the division to collect a penalty.

2282 Section 32. Section **58-67-302** is amended to read:

2283 **58-67-302. Qualifications for licensure.**

2284 (1) An applicant for licensure as a physician and surgeon, except as set forth in
2285 Subsection (2), shall:

2286 (a) submit an application in a form prescribed by the division, which may include:

2287 (i) submissions by the applicant of information maintained by practitioner data banks,
2288 as designated by division rule, with respect to the applicant;

- 2289 (ii) a record of professional liability claims made against the applicant and settlements
2290 paid by or on behalf of the applicant; and
- 2291 (iii) authorization to use a record coordination and verification service approved by the
2292 division in collaboration with the board;
- 2293 (b) pay a fee determined by the department under Section [63J-1-504](#);
- 2294 (c) be of good moral character;
- 2295 (d) if the applicant is applying to participate in the Interstate Medical Licensure
2296 Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal
2297 background check in accordance with Section [58-67-302.1](#) and any requirements established by
2298 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 2299 [~~(d)~~] (e) provide satisfactory documentation of having successfully completed a
2300 program of professional education preparing an individual as a physician and surgeon, as
2301 evidenced by:
- 2302 (i) having received an earned degree of doctor of medicine from an LCME accredited
2303 medical school or college; or
- 2304 (ii) if the applicant graduated from a medical school or college located outside the
2305 United States or its territories, submitting a current certification by the Educational
2306 Commission for Foreign Medical Graduates or any successor organization approved by the
2307 division in collaboration with the board;
- 2308 [~~(e)~~] (f) satisfy the division and board that the applicant:
- 2309 (i) has successfully completed 24 months of progressive resident training in a program
2310 approved by the ACGME, the Royal College of Physicians and Surgeons, the College of
2311 Family Physicians of Canada, or any similar body in the United States or Canada approved by
2312 the division in collaboration with the board; or
- 2313 (ii) (A) has successfully completed 12 months of resident training in an ACGME
2314 approved program after receiving a degree of doctor of medicine as required under Subsection
2315 (1)[~~(d)~~](e);
- 2316 (B) has been accepted in and is successfully participating in progressive resident
2317 training in an ACGME approved program within Utah, in the applicant's second or third year
2318 of postgraduate training; and
- 2319 (C) has agreed to surrender to the division the applicant's license as a physician and

2320 surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act,
2321 and has agreed the applicant's license as a physician and surgeon will be automatically revoked
2322 by the division if the applicant fails to continue in good standing in an ACGME approved
2323 progressive resident training program within the state;

2324 ~~[(f)]~~ (g) pass the licensing examination sequence required by division rule made in
2325 collaboration with the board;

2326 ~~[(g)]~~ (h) be able to read, write, speak, understand, and be understood in the English
2327 language and demonstrate proficiency to the satisfaction of the board if requested by the board;

2328 ~~[(h)]~~ (i) meet with the board and representatives of the division, if requested, for the
2329 purpose of evaluating the applicant's qualifications for licensure;

2330 ~~[(i)]~~ (j) designate:

2331 (i) a contact person for access to medical records in accordance with the federal Health
2332 Insurance Portability and Accountability Act; and

2333 (ii) an alternate contact person for access to medical records, in the event the original
2334 contact person is unable or unwilling to serve as the contact person for access to medical
2335 records; and

2336 ~~[(j)]~~ (k) establish a method for notifying patients of the identity and location of the
2337 contact person and alternate contact person, if the applicant will practice in a location with no
2338 other persons licensed under this chapter.

2339 (2) An applicant for licensure as a physician and surgeon by endorsement who is
2340 currently licensed to practice medicine in any state other than Utah, a district or territory of the
2341 United States, or Canada shall:

2342 (a) be currently licensed with a full unrestricted license in good standing in any state,
2343 district, or territory of the United States, or Canada;

2344 (b) have been actively engaged in the legal practice of medicine in any state, district, or
2345 territory of the United States, or Canada for not less than 6,000 hours during the five years
2346 immediately preceding the date of application for licensure in Utah;

2347 (c) comply with the requirements for licensure under Subsections (1)(a) through ~~[(d)]~~
2348 (e), (1)~~[(e)]~~~~[(f)]~~(i), and (1)~~[(g)]~~~~[(h)]~~ through ~~[(j)]~~ (k);

2349 (d) have passed the licensing examination sequence required in Subsection (1)(f) or
2350 another medical licensing examination sequence in another state, district or territory of the

2351 United States, or Canada that the division in collaboration with the board by rulemaking
2352 determines is equivalent to its own required examination;

2353 (e) not have any investigation or action pending against any health care license of the
2354 applicant, not have a health care license that was suspended or revoked in any state, district or
2355 territory of the United States, or Canada, and not have surrendered a health care license in lieu
2356 of a disciplinary action, unless:

2357 (i) the license was subsequently reinstated as a full unrestricted license in good
2358 standing; or

2359 (ii) the division in collaboration with the board determines to its satisfaction, after full
2360 disclosure by the applicant, that:

2361 (A) the conduct has been corrected, monitored, and resolved; or

2362 (B) a mitigating circumstance exists that prevents its resolution, and the division in
2363 collaboration with the board is satisfied that, but for the mitigating circumstance, the license
2364 would be reinstated;

2365 (f) submit to a records review, a practice history review, and comprehensive
2366 assessments, if requested by the division in collaboration with the board; and

2367 (g) produce satisfactory evidence that the applicant meets the requirements of this
2368 Subsection (2) to the satisfaction of the division in collaboration with the board.

2369 (3) An applicant for licensure by endorsement may engage in the practice of medicine
2370 under a temporary license while the applicant's application for licensure is being processed by
2371 the division, provided:

2372 (a) the applicant submits a complete application required for temporary licensure to the
2373 division;

2374 (b) the applicant submits a written document to the division from:

2375 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
2376 Licensing and Inspection Act, stating that the applicant is practicing under the:

2377 (A) invitation of the health care facility; and

2378 (B) the general supervision of a physician practicing at the facility; or

2379 (ii) two individuals licensed under this chapter, whose license is in good standing and
2380 who practice in the same clinical location, both stating that:

2381 (A) the applicant is practicing under the invitation and general supervision of the

2382 individual; and

2383 (B) the applicant will practice at the same clinical location as the individual;

2384 (c) the applicant submits a signed certification to the division that the applicant meets
2385 the requirements of Subsection (2);

2386 (d) the applicant does not engage in the practice of medicine until the division has
2387 issued a temporary license;

2388 (e) the temporary license is only issued for and may not be extended or renewed
2389 beyond the duration of one year from issuance; and

2390 (f) the temporary license expires immediately and prior to the expiration of one year
2391 from issuance, upon notification from the division that the applicant's application for licensure
2392 by endorsement is denied.

2393 (4) The division shall issue a temporary license under Subsection (3) within 15
2394 business days after the applicant satisfies the requirements of Subsection (3).

2395 (5) The division may not require a post-residency board certification as a requirement
2396 for licensure.

2397 Section 33. Section **58-67-302.1** is enacted to read:

2398 **58-67-302.1. Qualifications for licensure -- Criminal background check.**

2399 (1) An applicant for participation in the Interstate Medical Licensure Compact under
2400 Chapter 67b, Interstate Medical Licensure Compact, shall:

2401 (a) submit fingerprint cards in a form acceptable to the division at the time the license
2402 application is filed; and

2403 (b) consent to a fingerprint background check conducted by the Bureau of Criminal
2404 Identification and the Federal Bureau of Investigation.

2405 (2) The division shall:

2406 (a) in addition to other fees authorized by this chapter, collect from each applicant
2407 submitting fingerprints in accordance with this section the fee that the Bureau of Criminal
2408 Identification is authorized to collect for the services provided under Section 53-10-108 and the
2409 fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of
2410 obtaining federal criminal history record information;

2411 (b) submit from each applicant the fingerprint card and the fees described in
2412 Subsection (2)(a) to the Bureau of Criminal Identification; and

2413 (c) obtain and retain in division records a signed waiver approved by the Bureau of
2414 Criminal Identification in accordance with Section 53-10-108 for each applicant.

2415 (3) The Bureau of Criminal Identification shall, in accordance with the requirements of
2416 Section 53-10-108:

2417 (a) check the fingerprints submitted under Subsection (2)(b) against the applicable state
2418 and regional criminal records databases;

2419 (b) forward the fingerprints to the Federal Bureau of Investigation for a national
2420 criminal history background check; and

2421 (c) provide the results from the state, regional, and nationwide criminal history
2422 background checks to the division.

2423 (4) For purposes of conducting a criminal background check required under this
2424 section, the division shall have direct access to criminal background information maintained
2425 under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

2426 (5) The division may not disseminate outside of the division any criminal history
2427 record information that the division obtains from the Bureau of Criminal Identification or the
2428 Federal Bureau of Investigation under the criminal background check requirements of this
2429 section.

2430 (6) The division may not issue a letter of qualification to participate in the Interstate
2431 Medical Licensure Compact until the criminal background check described in this section is
2432 completed.

2433 Section 34. Section **58-67-302.5** is amended to read:

2434 **58-67-302.5. Licensing of graduates of foreign medical schools.**

2435 (1) Notwithstanding any other provision of law to the contrary, an individual enrolled
2436 in a medical school outside the United States, its territories, the District of Columbia, or
2437 Canada is eligible for licensure as a physician and surgeon in this state if the individual has
2438 satisfied the following requirements:

2439 (a) meets all the requirements of Subsection 58-67-302(1), except for Subsection
2440 58-67-302(1)(~~d~~)(e);

2441 (b) has studied medicine in a medical school located outside the United States which is
2442 recognized by an organization approved by the division;

2443 (c) has completed all of the formal requirements of the foreign medical school except

2444 internship or social service;

2445 (d) has attained a passing score on the educational commission for foreign medical
2446 graduates examination or other qualifying examinations such as the United States Medical
2447 Licensing Exam parts I and II, which are approved by the division or a medical school
2448 approved by the division;

2449 (e) has satisfactorily completed one calendar year of supervised clinical training under
2450 the direction of a United States medical education setting accredited by the liaison committee
2451 for graduate medical education and approved by the division;

2452 (f) has completed the postgraduate hospital training required by Subsection
2453 58-67-302(1)[(e)](f)(i); and

2454 (g) has passed the examination required by the division of all applicants for licensure.

2455 (2) Satisfaction of the requirements of Subsection (1) is in lieu of:

2456 (a) the completion of any foreign internship or social service requirements; and

2457 (b) the certification required by Subsection 58-67-302(1)[(d)](e).

2458 (3) Individuals who satisfy the requirements of Subsections (1)(a) through [(f)] (g)
2459 shall be eligible for admission to graduate medical education programs within the state,
2460 including internships and residencies, which are accredited by the liaison committee for
2461 graduate medical education.

2462 (4) A document issued by a medical school located outside the United States shall be
2463 considered the equivalent of a degree of doctor of medicine for the purpose of licensure as a
2464 physician and surgeon in this state if:

2465 (a) the foreign medical school is recognized by an organization approved by the
2466 division;

2467 (b) the document granted by the foreign medical school is issued after the completion
2468 of all formal requirements of the medical school except internship or social service; and

2469 (c) the foreign medical school certifies that the person to whom the document was
2470 issued has satisfactorily completed the requirements of Subsection (1)(c).

2471 (5) The provisions for licensure under this section shall be known as the "fifth pathway
2472 program."

2473 Section 35. Section 58-67-302.7 is amended to read:

2474 **58-67-302.7. Licensing of physician-educators.**

2475 (1) As used in this section:

2476 (a) "Foreign country" means a country other than the United States, its territories, or
2477 Canada.

2478 (b) "Foreign medical school" means a medical school that is outside the United States,
2479 its territories, and Canada.

2480 (2) Notwithstanding any provision of law to the contrary, an individual may receive a
2481 type I foreign teaching license if the individual:

2482 (a) submits an application in a form prescribed by the division, which may include:

2483 (i) submission by the applicant of information maintained in a practitioner data bank,
2484 as designated by division rule, with respect to the applicant;

2485 (ii) a record of professional liability claims made against the applicant and settlements
2486 paid by or on behalf of the applicant; and

2487 (iii) the applicant's curriculum vitae;

2488 (b) is a graduate of a foreign medical school that is accepted for certification by the
2489 Educational Commission for Foreign Medical Graduates;

2490 (c) is licensed in good standing in a foreign country, the United States, its territories, or
2491 Canada;

2492 (d) does not have an investigation or action pending against the physician's healthcare
2493 license, does not have a healthcare license that was suspended or revoked, and has not
2494 surrendered a healthcare license in lieu of disciplinary action, unless:

2495 (i) the license was subsequently reinstated in good standing; or

2496 (ii) the division in collaboration with the board determines to its satisfaction, after full
2497 disclosure by the applicant and full consideration by the division in collaboration with the
2498 board, that:

2499 (A) the conduct has been corrected, monitored, and resolved; or

2500 (B) a mitigating circumstance exists that prevents resolution, and the division in
2501 collaboration with the board is satisfied that but for the mitigating circumstance, the license
2502 would be reinstated;

2503 (e) submits documentation of legal status to work in the United States;

2504 (f) meets at least three of the following qualifications:

2505 (i) (A) published original results of clinical research, within 10 years before the day on

2506 which the application is submitted, in a medical journal listed in the Index Medicus or an
2507 equivalent scholarly publication; and

2508 (B) submits the publication to the Board in English or in a foreign language with a
2509 verifiable, certified English translation;

2510 (ii) held an appointment at a medical school approved by the LCME or at any medical
2511 school listed in the World Health Organization directory at the level of associate or full
2512 professor, or its equivalent, for at least five years;

2513 (iii) (A) developed a treatment modality, surgical technique, or other verified original
2514 contribution to the field of medicine within 10 years before the day on which the application is
2515 submitted; and

2516 (B) has the treatment modality, surgical technique, or other verified original
2517 contribution attested to by the dean of an LCME accredited school of medicine in Utah;

2518 (iv) actively practiced medicine cumulatively for 10 years; or

2519 (v) is board certified in good standing of a board of the American Board of Medical
2520 Specialities or equivalent specialty board;

2521 (g) is of good moral character;

2522 (h) is able to read, write, speak, understand, and be understood in the English language
2523 and demonstrates proficiency to the satisfaction of the division in collaboration with the board,
2524 if requested;

2525 (i) is invited by an LCME accredited medical school in Utah to serve as a full-time
2526 member of the medical school's academic faculty, as evidenced by written certification from:

2527 (i) the dean of the medical school, stating that the applicant has been appointed to a
2528 full-time faculty position, that because the applicant has unique expertise in a specific field of
2529 medicine the medical school considers the applicant to be a valuable member of the faculty,
2530 and that the applicant is qualified by knowledge, skill, and ability to practice medicine in the
2531 state; and

2532 (ii) the head of the department to which the applicant is to be appointed, stating that the
2533 applicant will be under the direction of the head of the department and will be permitted to
2534 practice medicine only as a necessary part of the applicant's duties, providing detailed evidence
2535 of the applicant's qualifications and competence, including the nature and location of the
2536 applicant's proposed responsibilities, reasons for any limitations of the applicant's practice

2537 responsibilities, and the degree of supervision, if any, under which the applicant will function;

2538 (j) pays a licensing fee set by the division under Section 63J-1-504; and

2539 (k) has practiced medicine for at least 10 years as an attending physician.

2540 (3) Notwithstanding any provision of law to the contrary, an individual may receive a

2541 type II foreign teaching license if the individual:

2542 (a) satisfies the requirements of Subsections (2)(a) through (e) and (g) through (j);

2543 (b) has delivered clinical care to patients cumulatively for five years after graduation
2544 from medical school; and

2545 (c) (i) will be completing a clinical fellowship while employed at the medical school
2546 described in Subsection (2)(i); or

2547 (ii) has already completed a medical residency accredited by the Royal College of
2548 Physicians and Surgeons of Canada, the United Kingdom, Australia, or New Zealand, or a
2549 comparable accreditation organization as determined by the division in collaboration with the
2550 board.

2551 (4) After an initial term of one year, a type I license may be renewed for periods of two
2552 years if the licensee continues to satisfy the requirements described in Subsection (2) and
2553 completes the division's continuing education renewal requirements established under Section
2554 58-67-303.

2555 (5) A type II license may be renewed on an annual basis, up to four times, if the
2556 licensee continues to satisfy the requirements described in Subsection (3) and completes the
2557 division's continuing education renewal requirements established under Section 58-67-303.

2558 (6) A license issued under this section:

2559 (a) authorizes the licensee to practice medicine:

2560 (i) within the scope of the licensee's employment at the medical school described in
2561 Subsection (2)(i) and the licensee's academic position; and

2562 (ii) at a hospital or clinic affiliated with the medical school described in Subsection
2563 (2)(i) for the purpose of teaching, clinical care, or pursuing research;

2564 (b) shall list the limitations described in Subsection (6)(a); and

2565 (c) shall expire on the earlier of:

2566 (i) one year after the day on which the type I or type II license is initially issued, unless
2567 the license is renewed;

2568 (ii) for a type I license, two years after the day on which the license is renewed;
2569 (iii) for a type II license, one year after the day on which the license is renewed; or
2570 (iv) the day on which employment at the medical school described in Subsection (2)(i)
2571 ends.

2572 (7) A person who holds a type I license for five consecutive years may apply for
2573 licensure as a physician and surgeon in this state and shall be licensed if the individual satisfies
2574 the requirements described in Subsection (8). If the person fails to obtain licensure as a
2575 physician and surgeon in this state, the person may apply for a renewal of the type I license
2576 under Subsection (2).

2577 (8) An individual who holds a type I or type II license for five consecutive years is
2578 eligible for licensure as a physician and surgeon in this state if the individual:

2579 (a) worked an average of at least 40 hours per month at the level of an attending
2580 physician during the time the individual held the type I or type II license;

2581 (b) holds the rank of associate professor or higher at the medical school described in
2582 Subsection (2)(i);

2583 (c) obtains certification from the Educational Commission for Foreign Medical
2584 Graduates or any successor organization approved by the division in collaboration with the
2585 board;

2586 (d) spent a cumulative 20 hours per year while holding a type I or type II license:

2587 (i) teaching or lecturing to medical students or house staff;

2588 (ii) participating in educational department meetings or conferences that are not
2589 certified to meet the continuing medical education license renewal requirement; or

2590 (iii) attending continuing medical education classes in addition to the requirements for
2591 continuing education described in Subsections (4) and (5);

2592 (e) obtains a passing score on the final step of the licensing examination sequence
2593 required by division rule made in collaboration with the board; and

2594 (f) satisfies the requirements described in Subsections 58-67-302(1)(a) through ~~(e)~~;
2595 ~~(h), and (i)~~ (d), (i), and (j).

2596 (9) If a person who holds a type II license fails to obtain licensure as a physician and
2597 surgeon in this state after applying under the procedures described in Subsection (8), the person
2598 may not:

2599 (a) reapply for or renew a type II license; or

2600 (b) apply for a type I license.

2601 (10) The division or the board may require an applicant for licensure under this section
2602 to meet with the board and representatives of the division for the purpose of evaluating the
2603 applicant's qualifications for licensure.

2604 (11) The division in collaboration with the board may withdraw a license under this
2605 section at any time for material misrepresentation or unlawful or unprofessional conduct.

2606 Section 36. Section **58-67-302.8 (Effective 07/01/18)** is amended to read:

2607 **58-67-302.8 (Effective 07/01/18). Restricted licensing of an associate physician.**

2608 (1) An individual may apply for a restricted license as an associate physician if the
2609 individual:

2610 (a) meets the requirements described in Subsections **58-67-302(1)(a)** through ~~[(c)]~~ **(d)**,
2611 ~~(1)[(d)](e)(i)~~, and ~~(1)[(g)](h)~~ through ~~[(j)]~~ **(k)**;

2612 (b) successfully completes Step 1 and Step 2 of the United States Medical Licensing
2613 Examination or the equivalent steps of another board-approved medical licensing examination:

2614 (i) within three years after the day on which the applicant graduates from a program
2615 described in Subsection **58-67-302(1)[(d)](e)(i)**; and

2616 (ii) within two years before applying for a restricted license as an associate physician;
2617 and

2618 (c) is not currently enrolled in and has not completed a residency program.

2619 (2) Before a licensed associate physician may engage in the practice of medicine as
2620 described in Subsection (3), the licensed associate physician shall:

2621 (a) enter into a collaborative practice arrangement described in Section **58-67-807**
2622 within six months after the associate physician's initial licensure; and

2623 (b) receive division approval of the collaborative practice arrangement.

2624 (3) An associate physician's scope of practice is limited to primary care services to
2625 medically underserved populations or in medically underserved areas within the state.

2626 Section 37. Section **58-67-304 (Superseded 07/01/18)** is amended to read:

2627 **58-67-304 (Superseded 07/01/18). License renewal requirements.**

2628 (1) As a condition precedent for license renewal, each licensee shall, during each
2629 two-year licensure cycle or other cycle defined by division rule:

2630 (a) complete qualified continuing professional education requirements in accordance
2631 with the number of hours and standards defined by division rule made in collaboration with the
2632 board;

2633 (b) appoint a contact person for access to medical records and an alternate contact
2634 person for access to medical records in accordance with Subsection 58-67-302(1)(~~h~~)(j); and

2635 (c) if the licensee practices medicine in a location with no other persons licensed under
2636 this chapter, provide some method of notice to the licensee's patients of the identity and
2637 location of the contact person and alternate contact person for the licensee.

2638 (2) If a renewal period is extended or shortened under Section 58-67-303, the
2639 continuing education hours required for license renewal under this section are increased or
2640 decreased proportionally.

2641 (3) An application to renew a license under this chapter shall:

2642 (a) require a physician to answer the following question: "Do you perform elective
2643 abortions in Utah in a location other than a hospital?"; and

2644 (b) immediately following the question, contain the following statement: "For purposes
2645 of the immediately preceding question, elective abortion means an abortion other than one of
2646 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
2647 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
2648 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
2649 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
2650 the woman is pregnant as a result of rape or incest."

2651 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
2652 to the licensing of an abortion clinic, if a physician responds positively to the question
2653 described in Subsection (3)(a), the division shall, within 30 days after the day on which it
2654 renews the physician's license under this chapter, inform the Department of Health in writing:

2655 (a) of the name and business address of the physician; and

2656 (b) that the physician responded positively to the question described in Subsection
2657 (3)(a).

2658 Section 38. Section 58-67-304 (Effective 07/01/18) is amended to read:

2659 **58-67-304 (Effective 07/01/18). License renewal requirements.**

2660 (1) As a condition precedent for license renewal, each licensee shall, during each

2661 two-year licensure cycle or other cycle defined by division rule:

2662 (a) complete qualified continuing professional education requirements in accordance
2663 with the number of hours and standards defined by division rule made in collaboration with the
2664 board;

2665 (b) appoint a contact person for access to medical records and an alternate contact
2666 person for access to medical records in accordance with Subsection 58-67-302(1)(~~+~~)(j);

2667 (c) if the licensee practices medicine in a location with no other persons licensed under
2668 this chapter, provide some method of notice to the licensee's patients of the identity and
2669 location of the contact person and alternate contact person for the licensee; and

2670 (d) if the licensee is an associate physician licensed under Section 58-67-302.8,
2671 successfully complete the educational methods and programs described in Subsection
2672 58-67-807(4).

2673 (2) If a renewal period is extended or shortened under Section 58-67-303, the
2674 continuing education hours required for license renewal under this section are increased or
2675 decreased proportionally.

2676 (3) An application to renew a license under this chapter shall:

2677 (a) require a physician to answer the following question: "Do you perform elective
2678 abortions in Utah in a location other than a hospital?"; and

2679 (b) immediately following the question, contain the following statement: "For purposes
2680 of the immediately preceding question, elective abortion means an abortion other than one of
2681 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
2682 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
2683 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
2684 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
2685 the woman is pregnant as a result of rape or incest."

2686 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
2687 to the licensing of an abortion clinic, if a physician responds positively to the question
2688 described in Subsection (3)(a), the division shall, within 30 days after the day on which it
2689 renews the physician's license under this chapter, inform the Department of Health in writing:

2690 (a) of the name and business address of the physician; and

2691 (b) that the physician responded positively to the question described in Subsection

2692 (3)(a).

2693 Section 39. Section **58-67-403** is amended to read:

2694 **58-67-403. Revocation of license -- Nondisciplinary.**

2695 Revocation by the division of a license under Subsection **58-67-302(1)(~~e~~)(f)** for
2696 failure to continue on a resident training program for reasons other than unprofessional or
2697 unlawful conduct is a nondisciplinary action and may not be reported by the division as a
2698 disciplinary action against the licensee.

2699 Section 40. Section **58-67-503** is amended to read:

2700 **58-67-503. Penalties and administrative actions for unlawful and unprofessional**
2701 **conduct.**

2702 (1) Any person who violates the unlawful conduct provisions of Section **58-67-501** or
2703 Section **58-1-501** is guilty of a third degree felony.

2704 (2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful
2705 conduct by:

- 2706 (i) assessing administrative penalties; or
- 2707 (ii) taking other appropriate administrative action.

2708 (b) A monetary administrative penalty imposed under this section shall be deposited in
2709 the Physician Education Fund created in Section **58-67a-1**.

2710 (3) If a licensee has been convicted of unlawful conduct, described in Section
2711 **58-67-501**, before an administrative proceeding regarding the same conduct, the division may
2712 not assess an additional administrative fine under this chapter for the same conduct.

2713 (4) (a) If the division concludes that an individual has violated provisions of Section
2714 **58-67-501**, Section **58-67-502**, Chapter 1, Division of Occupational and Professional Licensing
2715 Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to
2716 these provisions, and disciplinary action is appropriate, the director or director's designee shall:

- 2717 (i) issue a citation to the individual;
- 2718 (ii) attempt to negotiate a stipulated settlement; or
- 2719 (iii) notify the individual that an adjudicative proceeding conducted under Title 63G,
2720 Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to
2721 appear.

2722 (b) The division may take the following action against an individual who is in violation

2723 of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a
2724 stipulated settlement, or a finding of violation in an adjudicative proceeding:

2725 (i) assess a fine of up to \$10,000 per single violation or up to \$2,000 per day of
2726 ongoing violation, whichever is greater, in accordance with a fine schedule established by rule;
2727 or

2728 (ii) order to cease and desist from the behavior that constitutes a violation of the
2729 provisions described in Subsection (4)(a).

2730 (c) An individual's license may not be suspended or revoked through a citation.

2731 (d) Each citation issued under this section shall:

2732 (i) be in writing;

2733 (ii) clearly describe or explain:

2734 (A) the nature of the violation, including a reference to the provision of the chapter,
2735 rule, or order alleged to have been violated;

2736 (B) that the recipient must notify the division in writing within 20 calendar days from
2737 the day on which the citation is served if the recipient wishes to contest the citation at a hearing
2738 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

2739 (C) the consequences of failure to timely contest the citation or pay the fine assessed by
2740 the citation within the time specified in the citation; and

2741 (iii) be served in accordance with the Utah Rules of Civil Procedure.

2742 (e) If the individual to whom the citation is issued fails to request a hearing to contest
2743 the citation within 20 calendar days from the day on which the citation is served, the citation
2744 becomes the final order of the division and is not subject to further agency review. The period
2745 to contest the citation may be extended by the division for cause.

2746 (f) The division may refuse to issue or renew or suspend, revoke, or place on probation
2747 the license of an individual who fails to comply with a citation after the citation becomes final.

2748 (g) The failure of an applicant for licensure to comply with a citation after it becomes
2749 final is a ground for denial of license.

2750 (h) No citation may be issued under this section after six months from the day on
2751 which the violation last occurred.

2752 (5) (a) The director may collect a penalty imposed under this section that is not paid by:

2753 (i) referring the matter to a collection agency; or

2754 (ii) bringing an action in the district court of the county where the person against whom
2755 the penalty is imposed resides or in the county where the office of the director is located.

2756 (b) A county attorney or the attorney general of the state shall provide legal assistance
2757 and advice to the director in an action to collect a penalty.

2758 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
2759 action brought by the division to collect a penalty.

2760 Section 41. Section **58-68-302** is amended to read:

2761 **58-68-302. Qualifications for licensure.**

2762 (1) An applicant for licensure as an osteopathic physician and surgeon, except as set
2763 forth in Subsection (2), shall:

2764 (a) submit an application in a form prescribed by the division, which may include:

2765 (i) submissions by the applicant of information maintained by practitioner data banks,
2766 as designated by division rule, with respect to the applicant;

2767 (ii) a record of professional liability claims made against the applicant and settlements
2768 paid by or on behalf of the applicant; and

2769 (iii) authorization to use a record coordination and verification service approved by the
2770 division in collaboration with the board;

2771 (b) pay a fee determined by the department under Section [63J-1-504](#);

2772 (c) be of good moral character;

2773 (d) if the applicant is applying to participate in the Interstate Medical Licensure

2774 Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal

2775 background check in accordance with Section [58-68-302.1](#) and any requirements established by

2776 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

2777 [~~(d)~~] (e) provide satisfactory documentation of having successfully completed a

2778 program of professional education preparing an individual as an osteopathic physician and
2779 surgeon, as evidenced by:

2780 (i) having received an earned degree of doctor of osteopathic medicine from an AOA
2781 approved medical school or college; or

2782 (ii) submitting a current certification by the Educational Commission for Foreign
2783 Medical Graduates or any successor organization approved by the division in collaboration
2784 with the board, if the applicant is graduated from an osteopathic medical school or college

2785 located outside of the United States or its territories which at the time of the applicant's
2786 graduation, met criteria for accreditation by the AOA;

2787 ~~(e)~~ (f) satisfy the division and board that the applicant:

2788 (i) has successfully completed 24 months of progressive resident training in an
2789 ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine
2790 required under Subsection (1)~~(d)~~(e); or

2791 (ii) (A) has successfully completed 12 months of resident training in an ACGME or
2792 AOA approved program after receiving a degree of doctor of osteopathic medicine as required
2793 under Subsection (1)~~(d)~~(e);

2794 (B) has been accepted in and is successfully participating in progressive resident
2795 training in an ACGME or AOA approved program within Utah, in the applicant's second or
2796 third year of postgraduate training; and

2797 (C) has agreed to surrender to the division the applicant's license as an osteopathic
2798 physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative
2799 Procedures Act, and has agreed the applicant's license as an osteopathic physician and surgeon
2800 will be automatically revoked by the division if the applicant fails to continue in good standing
2801 in an ACGME or AOA approved progressive resident training program within the state;

2802 ~~(f)~~ (g) pass the licensing examination sequence required by division rule, as made in
2803 collaboration with the board;

2804 ~~(g)~~ (h) be able to read, write, speak, understand, and be understood in the English
2805 language and demonstrate proficiency to the satisfaction of the board, if requested by the board;

2806 ~~(h)~~ (i) meet with the board and representatives of the division, if requested for the
2807 purpose of evaluating the applicant's qualifications for licensure;

2808 ~~(i)~~ (j) designate:

2809 (i) a contact person for access to medical records in accordance with the federal Health
2810 Insurance Portability and Accountability Act; and

2811 (ii) an alternate contact person for access to medical records, in the event the original
2812 contact person is unable or unwilling to serve as the contact person for access to medical
2813 records; and

2814 ~~(j)~~ (k) establish a method for notifying patients of the identity and location of the
2815 contact person and alternate contact person, if the applicant will practice in a location with no

2816 other persons licensed under this chapter.

2817 (2) An applicant for licensure as an osteopathic physician and surgeon by endorsement
2818 who is currently licensed to practice osteopathic medicine in any state other than Utah, a
2819 district or territory of the United States, or Canada shall:

2820 (a) be currently licensed with a full unrestricted license in good standing in any state,
2821 district or territory of the United States, or Canada;

2822 (b) have been actively engaged in the legal practice of osteopathic medicine in any
2823 state, district or territory of the United States, or Canada for not less than 6,000 hours during
2824 the five years immediately preceding the day on which the applicant applied for licensure in
2825 Utah;

2826 (c) comply with the requirements for licensure under Subsections (1)(a) through [~~(d)~~]
2827 (e), (1)[~~(e)~~](f)(i), and (1)[~~(g)~~](h) through [~~(j)~~] (k);

2828 (d) have passed the licensing examination sequence required in Subsection (1)[~~(f)~~](g)
2829 or another medical licensing examination sequence in another state, district or territory of the
2830 United States, or Canada that the division in collaboration with the board by rulemaking
2831 determines is equivalent to its own required examination;

2832 (e) not have any investigation or action pending against any health care license of the
2833 applicant, not have a health care license that was suspended or revoked in any state, district or
2834 territory of the United States, or Canada, and not have surrendered a health care license in lieu
2835 of a disciplinary action, unless:

2836 (i) the license was subsequently reinstated as a full unrestricted license in good
2837 standing; or

2838 (ii) the division in collaboration with the board determines, after full disclosure by the
2839 applicant, that:

2840 (A) the conduct has been corrected, monitored, and resolved; or

2841 (B) a mitigating circumstance exists that prevents its resolution, and the division in
2842 collaboration with the board is satisfied that, but for the mitigating circumstance, the license
2843 would be reinstated;

2844 (f) submit to a records review, a practice review history, and physical and
2845 psychological assessments, if requested by the division in collaboration with the board; and

2846 (g) produce evidence that the applicant meets the requirements of this Subsection (2) to

2847 the satisfaction of the division in collaboration with the board.

2848 (3) An applicant for licensure by endorsement may engage in the practice of medicine
2849 under a temporary license while the applicant's application for licensure is being processed by
2850 the division, provided:

2851 (a) the applicant submits a complete application required for temporary licensure to the
2852 division;

2853 (b) the applicant submits a written document to the division from:

2854 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility

2855 Licensing and Inspection Act, stating that the applicant is practicing under the:

2856 (A) invitation of the health care facility; and

2857 (B) the general supervision of a physician practicing at the health care facility; or

2858 (ii) two individuals licensed under this chapter, whose license is in good standing and

2859 who practice in the same clinical location, both stating that:

2860 (A) the applicant is practicing under the invitation and general supervision of the
2861 individual; and

2862 (B) the applicant will practice at the same clinical location as the individual;

2863 (c) the applicant submits a signed certification to the division that the applicant meets
2864 the requirements of Subsection (2);

2865 (d) the applicant does not engage in the practice of medicine until the division has
2866 issued a temporary license;

2867 (e) the temporary license is only issued for and may not be extended or renewed
2868 beyond the duration of one year from issuance; and

2869 (f) the temporary license expires immediately and prior to the expiration of one year
2870 from issuance, upon notification from the division that the applicant's application for licensure
2871 by endorsement is denied.

2872 (4) The division shall issue a temporary license under Subsection (3) within 15
2873 business days after the applicant satisfies the requirements of Subsection (3).

2874 (5) The division may not require a post-residency board certification as a requirement
2875 for licensure.

2876 Section 42. Section **58-68-302.1** is enacted to read:

2877 **58-68-302.1. Qualifications for licensure -- Criminal background check.**

2878 (1) An applicant for participation in the Interstate Medical Licensure Compact under
2879 Chapter 67b, Interstate Medical Licensure Compact, shall:

2880 (a) submit fingerprint cards in a form acceptable to the division at the time the license
2881 application is filed; and

2882 (b) consent to a fingerprint background check conducted by the Bureau of Criminal
2883 Identification and the Federal Bureau of Investigation.

2884 (2) The division shall:

2885 (a) in addition to other fees authorized by this chapter, collect from each applicant
2886 submitting fingerprints in accordance with this section the fee that the Bureau of Criminal
2887 Identification is authorized to collect for the services provided under Section 53-10-108 and the
2888 fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of
2889 obtaining federal criminal history record information;

2890 (b) submit from each applicant the fingerprint card and the fees described in
2891 Subsection (2)(a) to the Bureau of Criminal Identification; and

2892 (c) obtain and retain in division records a signed waiver approved by the Bureau of
2893 Criminal Identification in accordance with Section 53-10-108 for each applicant.

2894 (3) The Bureau of Criminal Identification shall, in accordance with the requirements of
2895 Section 53-10-108:

2896 (a) check the fingerprints submitted under Subsection (2)(b) against the applicable state
2897 and regional criminal records databases;

2898 (b) forward the fingerprints to the Federal Bureau of Investigation for a national
2899 criminal history background check; and

2900 (c) provide the results from the state, regional, and nationwide criminal history
2901 background checks to the division.

2902 (4) For purposes of conducting a criminal background check required under this
2903 section, the division shall have direct access to criminal background information maintained
2904 under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

2905 (5) The division may not disseminate outside of the division any criminal history
2906 record information that the division obtains from the Bureau of Criminal Identification or the
2907 Federal Bureau of Investigation under the criminal background check requirements of this
2908 section.

2909 (6) The division may not issue a letter of qualification to participate in the Interstate
2910 Medical Licensure Compact until the criminal background check described in this section is
2911 completed.

2912 Section 43. Section **58-68-302.5 (Effective 07/01/18)** is amended to read:

2913 **58-68-302.5 (Effective 07/01/18). Restricted licensing of an associate physician.**

2914 (1) An individual may apply for a restricted license as an associate physician if the
2915 individual:

2916 (a) meets the requirements described in Subsections **58-68-302(1)(a)** through ~~[(e)]~~ **(d)**,
2917 **(1)[(d)](e)(i)**, and **(1)[(g)](h)** through **[(j)] (k)**;

2918 (b) successfully completes Step 1 and Step 2 of the United States Medical Licensing
2919 Examination or the equivalent steps of another board-approved medical licensing examination:

2920 (i) within three years after the day on which the applicant graduates from a program
2921 described in Subsection **58-68-302(1)[(d)](e)(i)**; and

2922 (ii) within two years before applying for a restricted license as an associate physician;

2923 and

2924 (c) is not currently enrolled in and has not completed a residency program.

2925 (2) Before a licensed associate physician may engage in the practice of medicine as
2926 described in Subsection (3), the licensed associate physician shall:

2927 (a) enter into a collaborative practice arrangement described in Section **58-68-807**
2928 within six months after the associate physician's initial licensure; and

2929 (b) receive division approval of the collaborative practice arrangement.

2930 (3) An associate physician's scope of practice is limited to primary care services to
2931 medically underserved populations or in medically underserved areas within the state.

2932 Section 44. Section **58-68-304 (Superseded 07/01/18)** is amended to read:

2933 **58-68-304 (Superseded 07/01/18). License renewal requirements.**

2934 (1) As a condition precedent for license renewal, each licensee shall, during each
2935 two-year licensure cycle or other cycle defined by division rule:

2936 (a) complete qualified continuing professional education requirements in accordance
2937 with the number of hours and standards defined by division rule in collaboration with the
2938 board;

2939 (b) appoint a contact person for access to medical records and an alternate contact

2940 person for access to medical records in accordance with Subsection 58-68-302(1)(~~(i)~~)(j); and

2941 (c) if the licensee practices osteopathic medicine in a location with no other persons
2942 licensed under this chapter, provide some method of notice to the licensee's patients of the
2943 identity and location of the contact person and alternate contact person for access to medical
2944 records for the licensee in accordance with Subsection 58-68-302(1)(~~(j)~~)(k).

2945 (2) If a renewal period is extended or shortened under Section 58-68-303, the
2946 continuing education hours required for license renewal under this section are increased or
2947 decreased proportionally.

2948 (3) An application to renew a license under this chapter shall:

2949 (a) require a physician to answer the following question: "Do you perform elective
2950 abortions in Utah in a location other than a hospital?"; and

2951 (b) immediately following the question, contain the following statement: "For purposes
2952 of the immediately preceding question, elective abortion means an abortion other than one of
2953 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
2954 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
2955 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
2956 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
2957 the woman is pregnant as a result of rape or incest."

2958 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
2959 to the licensing of an abortion clinic, if a physician responds positively to the question
2960 described in Subsection (3)(a), the division shall, within 30 days after the day on which it
2961 renews the physician's license under this chapter, inform the Department of Health in writing:

2962 (a) of the name and business address of the physician; and

2963 (b) that the physician responded positively to the question described in Subsection
2964 (3)(a).

2965 Section 45. Section 58-68-304 (Effective 07/01/18) is amended to read:

2966 **58-68-304 (Effective 07/01/18). License renewal requirements.**

2967 (1) As a condition precedent for license renewal, each licensee shall, during each
2968 two-year licensure cycle or other cycle defined by division rule:

2969 (a) complete qualified continuing professional education requirements in accordance
2970 with the number of hours and standards defined by division rule in collaboration with the

2971 board;

2972 (b) appoint a contact person for access to medical records and an alternate contact
2973 person for access to medical records in accordance with Subsection 58-68-302(1)(~~†~~)(j);

2974 (c) if the licensee practices osteopathic medicine in a location with no other persons
2975 licensed under this chapter, provide some method of notice to the licensee's patients of the
2976 identity and location of the contact person and alternate contact person for access to medical
2977 records for the licensee in accordance with Subsection 58-68-302(1)(~~†~~)(k); and

2978 (d) if the licensee is an associate physician licensed under Section 58-68-302.5,
2979 successfully complete the educational methods and programs described in Subsection
2980 58-68-807(4).

2981 (2) If a renewal period is extended or shortened under Section 58-68-303, the
2982 continuing education hours required for license renewal under this section are increased or
2983 decreased proportionally.

2984 (3) An application to renew a license under this chapter shall:

2985 (a) require a physician to answer the following question: "Do you perform elective
2986 abortions in Utah in a location other than a hospital?"; and

2987 (b) immediately following the question, contain the following statement: "For purposes
2988 of the immediately preceding question, elective abortion means an abortion other than one of
2989 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
2990 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
2991 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
2992 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
2993 the woman is pregnant as a result of rape or incest."

2994 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
2995 to the licensing of an abortion clinic, if a physician responds positively to the question
2996 described in Subsection (3)(a), the division shall, within 30 days after the day on which it
2997 renews the physician's license under this chapter, inform the Department of Health in writing:

2998 (a) of the name and business address of the physician; and

2999 (b) that the physician responded positively to the question described in Subsection
3000 (3)(a).

3001 Section 46. Section 58-68-403 is amended to read:

3002 **58-68-403. Revocation of license -- Nondisciplinary.**

3003 Revocation by the division of a license under Subsection 58-68-302(1)(~~e~~)(f) for
3004 failure to continue on a resident training program for reasons other than unprofessional or
3005 unlawful conduct is a nondisciplinary action and may not be reported by the division as a
3006 disciplinary action against the licensee.

3007 Section 47. Section 58-68-503 is amended to read:

3008 **58-68-503. Penalties and administrative actions for unlawful and unprofessional**
3009 **conduct.**

3010 (1) Any person who violates the unlawful conduct provisions of Section 58-68-501 or
3011 Section 58-1-501 is guilty of a third degree felony.

3012 (2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful
3013 conduct by:

3014 (i) assessing administrative penalties; or

3015 (ii) taking any other appropriate administrative action.

3016 (b) A monetary administrative penalty imposed under this section shall be deposited in
3017 the Physician Education Fund described in Section 58-67a-1.

3018 (3) If a licensee is convicted of unlawful conduct, described in Section 58-68-501,
3019 before an administrative proceeding regarding the same conduct, the licensee may not be
3020 assessed an administrative fine under this chapter for the same conduct.

3021 (4) (a) If the division concludes that an individual has violated the provisions of
3022 Section 58-68-501, Section 58-68-502, Chapter 1, Division of Occupational and Professional
3023 Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with
3024 respect to these provisions, and disciplinary action is appropriate, the director or director's
3025 designee shall:

3026 (i) issue a citation to the individual;

3027 (ii) attempt to negotiate a stipulated settlement; or

3028 (iii) notify the individual that an adjudicative proceeding conducted under Title 63G,
3029 Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to
3030 appear.

3031 (b) The division may take the following action against an individual who is in violation
3032 of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a

3033 stipulated settlement, or a finding of violation in an adjudicative proceeding:

3034 (i) assess a fine of up to \$10,000 per single violation or \$2,000 per day of ongoing
3035 violation, whichever is greater, in accordance with a fine schedule established by rule; or

3036 (ii) order to cease and desist from the behavior that constitutes a violation of provisions
3037 described in Subsection (4)(a).

3038 (c) Except for an administrative fine and a cease and desist order, the licensure
3039 sanctions cited in Section 58-1-401 may not be assessed through a citation.

3040 (d) Each citation issued under this section shall:

3041 (i) be in writing;

3042 (ii) clearly describe or explain:

3043 (A) the nature of the violation, including a reference to the provision of the chapter,
3044 rule, or order alleged to have been violated;

3045 (B) that the recipient must notify the division in writing within 20 calendar days from
3046 the day on which the citation is served if the recipient wishes to contest the citation at a hearing
3047 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

3048 (C) the consequences of failure to timely contest the citation or pay the fine assessed by
3049 the citation within the time specified in the citation; and

3050 (iii) be served in accordance with the requirements of the Utah Rules of Civil
3051 Procedure.

3052 (e) If the individual to whom the citation is issued fails to request a hearing to contest
3053 the citation within 20 calendar days from the day on which the citation is served, the citation
3054 becomes the final order of the division and is not subject to further agency review. The period
3055 to contest the citation may be extended by the division for cause.

3056 (f) The division may refuse to issue or renew or suspend, revoke, or place on probation
3057 the license of an individual who fails to comply with a citation after the citation becomes final.

3058 (g) The failure of an applicant for licensure to comply with a citation after it becomes
3059 final is a ground for denial of a license.

3060 (h) No citation may be issued under this section after six months from the day on
3061 which the last violation occurred.

3062 (5) (a) The director may collect a penalty imposed under this section that is not paid by:

3063 (i) referring the matter to a collection agency; or

3064 (ii) bringing an action in the district court of the county where the person against whom
3065 the penalty is imposed resides or in the county where the office of the director is located.

3066 (b) A county attorney or the attorney general of the state shall provide legal assistance
3067 and advice to the director in an action to collect a penalty.

3068 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
3069 action brought by the division to collect a penalty.

3070 Section 48. Section **58-71-503** is amended to read:

3071 **58-71-503. Penalty for unlawful conduct.**

3072 (1) Any person who violates the unlawful conduct provisions of Section **58-71-501**,
3073 Subsection **58-1-501**(1)(a), or **58-1-501**(1)(c) is guilty of a third degree felony.

3074 (2) The division may assess administrative penalties in accordance with the provisions
3075 of Section **58-71-402**, for acts of unlawful conduct.

3076 (3) (a) The director may collect a penalty that is not paid by:

3077 (i) referring the matter to a collection agency; or

3078 (ii) bringing an action in the district court of the county where the person against whom
3079 the penalty is imposed resides or in the county where the office of the director is located.

3080 (b) A county attorney or the attorney general of the state shall provide legal assistance
3081 and advice to the director in an action to collect a penalty.

3082 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
3083 action brought by the division to collect a penalty.

3084 Section 49. Section **58-76-502** is amended to read:

3085 **58-76-502. Penalty for unlawful conduct.**

3086 (1) (a) If, upon inspection or investigation, the division concludes that a person has
3087 violated Section **58-76-501** or any rule or order issued with respect to Section **58-76-501**, and
3088 that disciplinary action is appropriate, the director or the director's designee from within the
3089 division shall promptly issue a citation to the person according to this chapter and any pertinent
3090 rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an
3091 adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

3092 (i) A person who violates Subsections **58-1-501**(1)(a) through (d) or Section **58-76-501**
3093 or any rule or order issued with respect to Section **58-76-501**, as evidenced by an uncontested
3094 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may

3095 be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be
3096 ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section
3097 58-76-501 or any rule or order issued with respect to this section.

3098 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
3099 58-76-401 may not be assessed through a citation.

3100 (b) A citation shall:

3101 (i) be in writing;

3102 (ii) describe with particularity the nature of the violation, including a reference to the
3103 provision of the chapter, rule, or order alleged to have been violated;

3104 (iii) clearly state that the recipient must notify the division in writing within 20
3105 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
3106 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

3107 (iv) clearly explain the consequences of failure to timely contest the citation or to make
3108 payment of any fines assessed by the citation within the time specified in the citation.

3109 (c) The division may issue a notice in lieu of a citation.

3110 (d) Each citation issued under this section, or a copy of each citation, may be served
3111 upon any person upon whom a summons may be served in accordance with the Utah Rules of
3112 Civil Procedure and may be made personally or upon the person's agent by a division
3113 investigator or by any person specially designated by the director or by mail.

3114 (e) If within 20 calendar days from the service of the citation, the person to whom the
3115 citation was issued fails to request a hearing to contest the citation, the citation becomes the
3116 final order of the division and is not subject to further agency review. The period to contest a
3117 citation may be extended by the division for cause.

3118 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
3119 the license of a licensee who fails to comply with a citation after it becomes final.

3120 (g) The failure of an applicant for licensure to comply with a citation after it becomes
3121 final is a ground for denial of license.

3122 (h) No citation may be issued under this section after the expiration of six months
3123 following the occurrence of any violation.

3124 (i) The director or the director's designee shall assess fines according to the following:

3125 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

3126 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;
3127 and

3128 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to
3129 \$2,000 for each day of continued offense.

3130 (2) An action initiated for a first or second offense which has not yet resulted in a final
3131 order of the division shall not preclude initiation of any subsequent action for a second or
3132 subsequent offense during the pendency of any preceding action. The final order on a
3133 subsequent action shall be considered a second or subsequent offense, respectively, provided
3134 the preceding action resulted in a first or second offense, respectively.

3135 ~~[(3) Any penalty which is not paid may be collected by the director by either referring~~
3136 ~~the matter to a collection agency or bringing an action in the district court of the county in~~
3137 ~~which the person against whom the penalty is imposed resides or in the county where the office~~
3138 ~~of the director is located. Any county attorney or the attorney general of the state shall provide~~
3139 ~~legal assistance and advice to the director in any action to collect the penalty. In any action~~
3140 ~~brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be~~
3141 ~~awarded to the division.]~~

3142 (3) (a) The director may collect a penalty that is not paid by:

3143 (i) referring the matter to a collection agency; or

3144 (ii) bringing an action in the district court of the county where the person against whom
3145 the penalty is imposed resides or in the county where the office of the director is located.

3146 (b) A county attorney or the attorney general of the state shall provide legal assistance
3147 and advice to the director in an action to collect a penalty.

3148 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
3149 action brought by the division to collect a penalty.

3150 Section 50. Section **58-79-201** is amended to read:

3151 **58-79-201. Board.**

3152 (1) There is created the Hunting Guides and Outfitters Licensing Board consisting of
3153 ~~[three persons licensed in accordance with this chapter,]~~ five members as follows:

3154 (a) three persons licensed as a hunting guide or an outfitter in accordance with this
3155 chapter;

3156 (b) one member of the Wildlife Board, created in Section [23-14-2](#), selected by the

3157 Wildlife Board^[5]; and

3158 (c) one person appointed by the Wildlife Board.

3159 (2) Except for the two members selected by the Wildlife Board, the board shall be
3160 appointed and serve in accordance with Section 58-1-201.

3161 (3) The two members selected by the Wildlife Board may not hold a license regulated
3162 by this chapter.

3163 ~~[(3)]~~ (4) (a) The duties and responsibilities of the board shall be in accordance with
3164 Sections 58-1-202 and 58-1-203.

3165 (b) The board shall also:

3166 (i) designate one of its members on a permanent or rotating basis to assist the division
3167 in reviewing complaints concerning the unlawful or unprofessional conduct of hunting guides
3168 and outfitters; and

3169 (ii) advise the division in its investigations of these complaints.

3170 ~~[(4)]~~ (5) A board member who has, under Subsection ~~[(3)]~~ (4)(b), reviewed a complaint
3171 or advised in its investigation may be disqualified from participating with the board when the
3172 board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

3173 Section 51. Section 78B-3-416 is amended to read:

3174 **78B-3-416. Division to provide panel -- Exemption -- Procedures -- Statute of**
3175 **limitations tolled -- Composition of panel -- Expenses -- Division authorized to set license**
3176 **fees.**

3177 (1) (a) The division shall provide a hearing panel in alleged medical liability cases
3178 against health care providers as defined in Section 78B-3-403, except dentists.

3179 (b) (i) The division shall establish procedures for prelitigation consideration of medical
3180 liability claims for damages arising out of the provision of or alleged failure to provide health
3181 care.

3182 (ii) The division may establish rules necessary to administer the process and
3183 procedures related to prelitigation hearings and the conduct of prelitigation hearings in
3184 accordance with Sections 78B-3-416 through 78B-3-420.

3185 (c) The proceedings are informal, nonbinding, and are not subject to Title 63G, Chapter
3186 4, Administrative Procedures Act, but are compulsory as a condition precedent to commencing
3187 litigation.

3188 (d) Proceedings conducted under authority of this section are confidential, privileged,
3189 and immune from civil process.

3190 (2) (a) The party initiating a medical liability action shall file a request for prelitigation
3191 panel review with the division within 60 days after the service of a statutory notice of intent to
3192 commence action under Section 78B-3-412.

3193 (b) The request shall include a copy of the notice of intent to commence action. The
3194 request shall be mailed to all health care providers named in the notice and request.

3195 (3) (a) The filing of a request for prelitigation panel review under this section tolls the
3196 applicable statute of limitations until the later of:

3197 (i) 60 days following the division's issuance of:

3198 (A) an opinion by the prelitigation panel; or

3199 (B) a certificate of compliance under Section 78B-3-418; or

3200 (ii) the expiration of the time for holding a hearing under Subsection (3)(b)(ii).

3201 (b) The division shall:

3202 (i) send any opinion issued by the panel to all parties by regular mail; and

3203 (ii) complete a prelitigation hearing under this section within:

3204 (A) 180 days after the filing of the request for prelitigation panel review; or

3205 (B) any longer period as agreed upon in writing by all parties to the review.

3206 (c) If the prelitigation hearing has not been completed within the time limits
3207 established in Subsection (3)(b)(ii), the claimant shall:

3208 (i) file an affidavit of merit under the provisions of Section 78B-3-423; or

3209 (ii) file an affidavit with the division within 180 days of the request for pre-litigation
3210 review, in accordance with Subsection (3)(d), alleging that the respondent has failed to
3211 reasonably cooperate in scheduling the hearing.

3212 (d) If the claimant files an affidavit under Subsection (3)(c)(ii):

3213 (i) within 15 days of the filing of the affidavit under Subsection (3)(c)(ii), the division
3214 shall determine whether either the respondent or the claimant failed to reasonably cooperate in
3215 the scheduling of a pre-litigation hearing; and

3216 (ii) (A) if the determination is that the respondent failed to reasonably cooperate in the
3217 scheduling of a hearing, and the claimant did not fail to reasonably cooperate, the division
3218 shall, issue a certificate of compliance for the claimant in accordance with Section 78B-3-418;

3219 or

3220 (B) if the division makes a determination other than the determination in Subsection
3221 (3)(d)(ii)(A), the claimant shall file an affidavit of merit in accordance with Section 78B-3-423,
3222 within 30 days of the determination of the division under this Subsection (3).

3223 (e) (i) The claimant and any respondent may agree by written stipulation that no useful
3224 purpose would be served by convening a prelitigation panel under this section.

3225 (ii) When the stipulation is filed with the division, the division shall within 10 days
3226 after receipt issue a certificate of compliance under Section 78B-3-418, as it concerns the
3227 stipulating respondent, and stating that the claimant has complied with all conditions precedent
3228 to the commencement of litigation regarding the claim.

3229 (4) The division shall provide for and appoint an appropriate panel or panels to hear
3230 complaints of medical liability and damages, made by or on behalf of any patient who is an
3231 alleged victim of medical liability. The panels are composed of:

3232 (a) one member who is a resident lawyer currently licensed and in good standing to
3233 practice law in this state and who shall serve as chairman of the panel, who is appointed by the
3234 division from among qualified individuals who have registered with the division indicating a
3235 willingness to serve as panel members, and a willingness to comply with the rules of
3236 professional conduct governing lawyers in the state, and who has completed division training
3237 regarding conduct of panel hearings;

3238 (b) (i) one member who is a licensed health care provider listed under Section
3239 78B-3-403, who is practicing and knowledgeable in the same specialty as the proposed
3240 defendant, and who is appointed by the division in accordance with Subsection (5); or

3241 (ii) in claims against only hospitals or their employees, one member who is an
3242 individual currently serving in a hospital administration position directly related to hospital
3243 operations or conduct that includes responsibility for the area of practice that is the subject of
3244 the liability claim, and who is appointed by the division; and

3245 (c) a lay panelist who is not a lawyer, doctor, hospital employee, or other health care
3246 provider, and who is a responsible citizen of the state, selected and appointed by the division
3247 from among individuals who have completed division training with respect to panel hearings.

3248 (5) (a) Each person listed as a health care provider in Section 78B-3-403 and practicing
3249 under a license issued by the state, is obligated as a condition of holding that license to

3250 participate as a member of a medical liability prelitigation panel at reasonable times, places,
3251 and intervals, upon issuance, with advance notice given in a reasonable time frame, by the
3252 division of an Order to Participate as a Medical Liability Prelitigation Panel Member.

3253 (b) A licensee may be excused from appearance and participation as a panel member
3254 upon the division finding participation by the licensee will create an unreasonable burden or
3255 hardship upon the licensee.

3256 (c) A licensee whom the division finds failed to appear and participate as a panel
3257 member when so ordered, without adequate explanation or justification and without being
3258 excused for cause by the division, may be assessed an administrative fine not to exceed \$5,000.

3259 (d) A licensee whom the division finds intentionally or repeatedly failed to appear and
3260 participate as a panel member when so ordered, without adequate explanation or justification
3261 and without being excused for cause by the division, may be assessed an administrative fine not
3262 to exceed \$5,000, and is guilty of unprofessional conduct.

3263 (e) All fines collected under Subsections (5)(c) and (d) shall be deposited in the
3264 Physicians Education Fund created in Section 58-67a-1.

3265 (f) The director of the division may collect a fine that is not paid by:

3266 (i) referring the matter to a collection agency; or

3267 (ii) bringing an action in the district court of the county where the person against whom
3268 the penalty is imposed resides or in the county where the office of the director is located.

3269 (g) A county attorney or the attorney general of the state shall provide legal assistance
3270 and advice to the director in an action to collect a fine.

3271 (h) A court shall award reasonable attorney fees and costs to the prevailing party in an
3272 action brought by the division to collect a fine.

3273 (6) Each person selected as a panel member shall certify, under oath, that he has no
3274 bias or conflict of interest with respect to any matter under consideration.

3275 (7) A member of the prelitigation hearing panel may not receive compensation or
3276 benefits for the member's service, but may receive per diem and travel expenses in accordance
3277 with:

3278 (a) Section 63A-3-106;

3279 (b) Section 63A-3-107; and

3280 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

3281 [63A-3-107](#).

3282 (8) (a) In addition to the actual cost of administering the licensure of health care
3283 providers, the division may set license fees of health care providers within the limits
3284 established by law equal to their proportionate costs of administering prelitigation panels.

3285 (b) The claimant bears none of the costs of administering the prelitigation panel except
3286 under Section [78B-3-420](#).

3287 Section 52. **Effective date.**

3288 (1) Except as provided in Subsection (2), this bill takes effect on May 8, 2018.

3289 (2) The amendments to the following sections take effect on July 1, 2018:

3290 (a) Section [58-67-302.8](#) (Effective 07/01/18);

3291 (b) Section [58-67-304](#) (Effective 07/01/18);

3292 (c) Section [58-68-302.5](#) (Effective 07/01/18); and

3293 (d) Section [58-68-304](#) (Effective 07/01/18).