

1 **OCCUPATIONAL AND PROFESSIONAL LICENSING AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies DOPL's authority to share certain licensee information;
 - 14 ▶ modifies provisions related to unlawful and unprofessional conduct;
 - 15 ▶ modifies provisions related to unpaid penalties;
 - 16 ▶ modifies the exemptions from licensure and other requirements related to
- 17 cosmetology and associated professions;
- 18 ▶ modifies background check requirements and other requirements for certain medical
- 19 professions;
- 20 ▶ modifies certain contractor licensing requirements;
 - 21 ▶ modifies the membership of the Hunting Guides and Outfitters Licensing Board;

22 and

- 23 ▶ makes technical changes.

24 **Money Appropriated in this Bill:**

25 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

84

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

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

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

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

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

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

317 **58-3a-502. Penalty for unlawful conduct.**

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

325 (i) A person who violates Subsections **58-1-501**(1)(a) through (d) or Section **58-3a-501**

326 or any rule or order issued with respect to Section 58-3a-501, as evidenced by an uncontested
327 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may
328 be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be
329 ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section
330 58-3a-501 or any rule or order issued with respect to this section.

331 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
332 58-3a-401 may not be assessed through a citation.

333 (b) A citation shall:

334 (i) be in writing;

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

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

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

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

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

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

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

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

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

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

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

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

360 and

361 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to
362 \$2,000 for each day of continued offense.

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

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

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

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

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

379 (b) A county attorney or the attorney general of the state shall provide legal assistance

380 and advice to the director in an action to collect a penalty.

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

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

384 **58-11a-304. Exemptions from licensure.**

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

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

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

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

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

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

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

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

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

- 407 (c) (i) the instructor is properly licensed; or
408 (ii) the instructor receives no compensation;
- 409 (7) a person providing instruction in workshops, seminars, training meetings, or other
410 educational programs whose purpose is to provide continuing professional development to
411 licensed barbers, cosmetologists/barbers, hair designers, estheticians, master estheticians,
412 electrologists, or nail technicians;
- 413 (8) a person enrolled in a licensed barber or cosmetology/barber school when
414 participating in an on the job training internship under the direct supervision of a licensed
415 barber or cosmetologist/barber upon completion of a basic program under the standards
416 established by rule by the division in collaboration with the board;
- 417 (9) a person enrolled in an approved apprenticeship pursuant to Section [58-11a-306](#);
- 418 (10) an employee of a company that is primarily engaged in the business of selling
419 products used in the practice of barbering, cosmetology/barbering, esthetics, master-level
420 esthetics, electrology, or nail technology when demonstrating the company's products to a
421 potential customer, provided the employee makes no representation to a potential customer that
422 attending such a demonstration will certify or qualify the attendee to perform a service for
423 compensation that requires licensure under this chapter;
- 424 (11) a person who:
- 425 (a) is qualified to engage in the practice of barbering, cosmetology/barbering, esthetics,
426 master-level esthetics, electrology, or nail technology in another jurisdiction as evidenced by
427 licensure, certification, or lawful practice in the other jurisdiction;
- 428 (b) is employed by, or under contract with, a motion picture company; and
- 429 (c) engages in the practice of barbering, cosmetology/barbering, esthetics, master-level
430 esthetics, electrology, or nail technology in the state:
- 431 (i) solely to assist in the production of a motion picture; and
432 (ii) for no more than 120 days per calendar year; and
- 433 (12) a person who:

434 (a) engages in hair braiding; and
435 (b) unless it is expressly exempted under this section or Section 58-1-307, does not
436 engage in other activity requiring licensure under this chapter.

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

438 **58-11a-306. Apprenticeship.**

439 (1) An approved barber apprenticeship shall:

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

441 (b) be conducted by a supervisor who:

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

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

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

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

448 (b) be conducted by a supervisor who:

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

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

452 (3) An approved esthetician apprenticeship shall:

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

454 (b) be conducted by a supervisor who:

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

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

458 (4) An approved master esthetician apprenticeship shall:

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

460 (b) be conducted by a supervisor who:

461 (i) is licensed under this chapter as a master-level esthetician instructor; and
462 (ii) provides one-on-one direct supervision of the master esthetician apprentice during
463 the apprenticeship program.

464 (5) An approved nail technician apprenticeship shall:

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

466 (b) be conducted by a supervisor who:

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

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

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

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

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

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

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

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

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

483 (7) Notwithstanding Subsection (6), if a person seeking to qualify for licensure by
484 apprenticing in an approved apprenticeship under this chapter registers with the division before
485 January 1, 2017, any training requirements completed by the person as an apprentice in an
486 approved apprenticeship before registration may be applied to successful completion of the
487 approved apprenticeship.

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

489 **58-11a-503. Penalties.**

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

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

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

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

504 (i) A person who is in violation of Subsection **58-11a-502**(1), (2), (4), (5), (6), or (7),
505 as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in
506 an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in
507 addition to or in lieu of, be ordered to cease and desist from violating Subsection
508 **58-11a-502**(1), (2), (4), (5), (6), or (7).

509 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
510 **58-11a-401** may not be assessed through a citation.

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

514 (ii) The citation shall clearly state that the recipient must notify the division in writing

515 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
516 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

547 (III) the division determines during an investigation that occurred after the initiation of
548 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
549 violation of Subsection 58-11a-502(1), (2), (4), (5), (6), or (7); and

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

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

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

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

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

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

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

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

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

568 **58-17b-307. Qualification for licensure -- Criminal background checks.**

569 (1) An applicant for licensure under this chapter shall:
570 (a) submit fingerprint cards in a form acceptable to the division at the time the license
571 application is filed; and
572 (b) in accordance with this section and requirements established by rule made in
573 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consent to a
574 fingerprint background check regarding the application conducted by the:
575 (i) Utah Bureau of Criminal Identification; and
576 (ii) Federal Bureau of Investigation.
577 ~~[(2) The division shall request the Department of Public Safety to complete a Federal~~
578 ~~Bureau of Investigation criminal background check for each applicant through the National~~
579 ~~Criminal History System (NCIC) or any successor system.]~~
580 (2) The division shall:
581 (a) in addition to other fees authorized by this chapter, collect from each applicant
582 submitting fingerprints in accordance with this section the fee that the Bureau of Criminal
583 Identification is authorized to collect for the services provided under Section 53-10-108 and the
584 fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of
585 obtaining federal criminal history record information;
586 (b) submit from each applicant the fingerprint card and the fees described in
587 Subsection (2)(a) to the Bureau of Criminal Identification; and
588 (c) obtain and retain in division records, a signed waiver approved by the Bureau of
589 Criminal Identification in accordance with Section 53-10-108 for each applicant.
590 (3) The Bureau of Criminal Identification shall, in accordance with the requirements of
591 Section 53-10-108:
592 (a) check the fingerprints submitted under Subsection (2)(b) against the applicable state
593 and regional criminal records databases;
594 (b) forward the fingerprints to the Federal Bureau of Investigation for a national
595 criminal history background check; and

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

598 [~~3~~] (4) For purposes of conducting the criminal background check required in
599 Subsection (1), the division shall have direct access to criminal background information
600 maintained under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

601 [~~4~~] (5) (a) A new pharmacist, pharmacy intern, or pharmacy technician license issued
602 under this section is conditional, pending completion of the criminal background check.

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

607 [~~5~~] (6) (a) A person whose conditional license has been revoked under Subsection
608 [~~4~~] (5) is entitled to a postrevocation hearing to challenge the revocation.

609 (b) The division shall conduct ~~the~~ a postrevocation hearing in accordance with Title
610 63G, Chapter 4, Administrative Procedures Act.

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

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

616 **58-17b-504. Penalty for unlawful or unprofessional conduct -- Fines -- Citations.**

617 (1) Any person who violates any of the unlawful conduct provisions of Subsection
618 **58-1-501(1)(a)(i)** and Subsections **58-17b-501(7)** and (11) is guilty of a third degree felony.

619 (2) Any person who violates any of the unlawful conduct provisions of Subsection
620 **58-1-501(1)(a)(ii)**, Subsections **58-1-501(1)(b)** through (e), and Section **58-17b-501**, except
621 Subsections **58-17b-501(7)** and (11), is guilty of a class A misdemeanor.

622 (3) (a) Subject to Subsection (5) and in accordance with Section **58-17b-401**, for acts

623 of unprofessional or unlawful conduct, the division may:

624 (i) assess administrative penalties; and

625 (ii) take any other appropriate administrative action.

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

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

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

642 (b) Any person who is in violation of the provisions of Section 58-17b-501 or
643 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance
644 Database Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule
645 or order issued with respect to these provisions, as evidenced by an uncontested citation, a
646 stipulated settlement, or a finding of violation in an adjudicative proceeding, may be assessed a
647 fine pursuant to this Subsection (5) of up to \$10,000 per single violation or up to \$2,000 per
648 day of ongoing violation, whichever is greater, in accordance with a fine schedule established
649 by rule, and may, in addition to or in lieu of, be ordered to cease and desist from violating the

650 provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act,
651 Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued
652 with respect to these provisions.

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

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

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

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

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

667 (iii) by mail.

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

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

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

676 (i) No citation may be issued under this section after the expiration of six months

677 following the occurrence of any violation.

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

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

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

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

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

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

687 **58-22-503. Penalties and administrative actions for unlawful or unprofessional**
688 **conduct.**

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

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

702 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
703 **58-22-401** may not be assessed through a citation.

- 704 (b) A citation shall:
- 705 (i) be in writing;
- 706 (ii) describe with particularity the nature of the violation, including a reference to the
- 707 provision of the chapter, rule, or order alleged to have been violated;
- 708 (iii) clearly state that the recipient must notify the division in writing within 20
- 709 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
- 710 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
- 711 (iv) clearly explain the consequences of failure to timely contest the citation or to make
- 712 payment of any fines assessed by the citation within the time specified in the citation.
- 713 (c) The division may issue a notice in lieu of a citation.
- 714 (d) Each citation issued under this section, or a copy of each citation, may be served
- 715 upon a person upon whom a summons may be served in accordance with the Utah Rules of
- 716 Civil Procedure and may be made personally or upon the person's agent by a division
- 717 investigator or by any person specially designated by the director or by mail.
- 718 (e) If within 20 calendar days from the service of the citation, the person to whom the
- 719 citation was issued fails to request a hearing to contest the citation, the citation becomes the
- 720 final order of the division and is not subject to further agency review. The period to contest a
- 721 citation may be extended by the division for cause.
- 722 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
- 723 the license of a licensee who fails to comply with a citation after it becomes final.
- 724 (g) The failure of an applicant for licensure to comply with a citation after it becomes
- 725 final is a ground for denial of license.
- 726 (h) No citation may be issued under this section after the expiration of six months
- 727 following the occurrence of any violation.
- 728 (i) The director or the director's designee shall assess fines according to the following:
- 729 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;
- 730 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

731 and

732 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to
733 \$2,000 for each day of continued offense.

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

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

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

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

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

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

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

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

755 **58-24b-302. Licensure.**

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

757 (a) be of good moral character;

- 758 (b) complete the application process, including payment of fees;
- 759 (c) submit proof of graduation from a professional physical therapist education
760 program that is accredited by a recognized accreditation agency;
- 761 (d) after complying with Subsection (1)(c), pass a licensing examination;
- 762 (e) be able to read, write, speak, understand, and be understood in the English language
763 and demonstrate proficiency to the satisfaction of the board if requested by the board; [~~and~~]
- 764 (f) if the applicant is applying to participate in the Physical Therapy Licensure
765 Compact under Chapter 24c, Physical Therapy Licensure Compact, consent to a criminal
766 background check in accordance with Section 58-24b-302.1 and any requirements established
767 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
768 and
- 769 [~~(f)~~] (g) meet any other requirements established by the division, by rule made in
770 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 771 (2) An applicant for a license as a physical therapist assistant shall:
- 772 (a) be of good moral character;
- 773 (b) complete the application process, including payment of fees set by the division, in
774 accordance with Section 63J-1-504, to recover the costs of administering the licensing
775 requirements relating to physical therapist assistants;
- 776 (c) submit proof of graduation from a physical therapist assistant education program
777 that is accredited by a recognized accreditation agency;
- 778 (d) after complying with Subsection (2)(c), pass a licensing examination approved by
779 division rule made in collaboration with the board and in accordance with Title 63G, Chapter
780 3, Utah Administrative Rulemaking Act;
- 781 (e) be able to read, write, speak, understand, and be understood in the English language
782 and demonstrate proficiency to the satisfaction of the board if requested by the board;
- 783 (f) submit to, and pass, a criminal background check, in accordance with Section
784 58-24b-302.1 and standards established by rule made in accordance with Title 63G, Chapter 3,

785 Utah Administrative Rulemaking Act; and

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

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

790 (a) be of good moral character;

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

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

794 (ii) (A) provide satisfactory evidence that the applicant graduated from a physical
795 therapist education program that prepares the applicant to engage in the practice of physical
796 therapy, without restriction;

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

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

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

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

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

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

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

- 815 (a) is of good moral character;
- 816 (b) completes the application process, including payment of fees; [~~and~~]
- 817 (c) is able to read, write, speak, understand, and be understood in the English language
 818 and demonstrate proficiency to the satisfaction of the board if requested by the board[-];

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

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

826 (5) (a) Notwithstanding Subsection 58-1-307(1)(c), an individual may not engage in an
 827 internship in physical therapy, unless the person is:

- 828 (i) certified by the division; or
- 829 (ii) exempt from licensure under Section 58-24b-304.

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

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

834 **58-24b-302.1. Criminal background check.**

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

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

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

841 (2) The division shall:

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

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

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

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

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

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

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

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

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

866 (6) (a) A new physical therapist assistant license issued under Subsection
867 58-24b-302(2) is conditional pending completion of the criminal background check.

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

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

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

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

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

880 **58-24b-303. Term of license -- Renewal -- Temporary license for physical**
881 **therapist assistant.**

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

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

888 (3) If a license renewal cycle is shortened or extended under Subsection (1), the
889 division shall increase or reduce the required continuing education competency requirements
890 accordingly.

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

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

896 ~~[(a) was working as a physical therapist assistant in Utah before July 1, 2009; and]~~
897 ~~[(b) complies with the requirements described in Subsections 58-24b-302(2)(a), (b),~~
898 ~~(c), (e), and (f);]~~

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

900 **58-28-503. Penalty for unlawful or unprofessional conduct.**

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

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

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

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

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

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

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

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

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

918 **58-31b-201. Board.**

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

- 920 (a) nine nurses in a manner as may be further defined in division rule; and
- 921 (b) two members of the public.
- 922 (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- 923 (3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and
- 924 58-1-203 and shall:

- 925 (a) (i) recommend to the division minimum standards for educational programs
- 926 qualifying a person for licensure or certification under this chapter;
- 927 (ii) recommend to the division denial, approval, or withdrawal of approval regarding
- 928 educational programs that meet or fail to meet the established minimum standards; and
- 929 (iii) designate one of its members on a permanent or rotating basis to:
 - 930 (A) assist the division in reviewing complaints concerning the unlawful or
 - 931 unprofessional conduct of a licensee; and
 - 932 (B) advise the division in its investigation of these complaints.

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

936 ~~[(4)(a) The director shall appoint an individual to serve as an ex officio member of the~~

937 ~~Board of Nursing to represent the position of the division in matters considered by the board.]~~

938 ~~[(b) The ex officio member shall be a licensed registered nurse, shall have earned a~~

939 ~~masters degree in nursing, and shall have a minimum of five years of experience working in~~

940 ~~nursing administration or nursing education.]~~

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

942 **58-31b-302. Qualifications for licensure or certification -- Criminal background**

943 **checks.**

- 944 (1) An applicant for certification as a medication aide shall:
 - 945 (a) submit an application to the division on a form prescribed by the division;
 - 946 (b) pay a fee to the division as determined under Section 63J-1-504;

- 947 (c) have a high school diploma or its equivalent;
- 948 (d) have a current certification as a nurse aide, in good standing, from the Department
949 of Health;
- 950 (e) have a minimum of 2,000 hours of experience within the two years prior to
951 application, working as a certified nurse aide in a long-term care facility;
- 952 (f) obtain letters of recommendation from a long-term care facility administrator and
953 one licensed nurse familiar with the applicant's work practices as a certified nurse aide;
- 954 (g) be in a condition of physical and mental health that will permit the applicant to
955 practice safely as a medication aide certified;
- 956 (h) have completed an approved education program or an equivalent as determined by
957 the division in collaboration with the board;
- 958 (i) have passed the examinations as required by division rule made in collaboration
959 with the board; and
- 960 (j) meet with the board, if requested, to determine the applicant's qualifications for
961 certification.
- 962 (2) An applicant for licensure as a licensed practical nurse shall:
- 963 (a) submit to the division an application in a form prescribed by the division;
- 964 (b) pay to the division a fee determined under Section [63J-1-504](#);
- 965 (c) have a high school diploma or its equivalent;
- 966 (d) be in a condition of physical and mental health that will permit the applicant to
967 practice safely as a licensed practical nurse;
- 968 (e) have completed an approved practical nursing education program or an equivalent
969 as determined by the board;
- 970 (f) have passed the examinations as required by division rule made in collaboration
971 with the board; and
- 972 (g) meet with the board, if requested, to determine the applicant's qualifications for
973 licensure.

- 974 (3) An applicant for licensure as a registered nurse shall:
- 975 (a) submit to the division an application form prescribed by the division;
- 976 (b) pay to the division a fee determined under Section 63J-1-504;
- 977 (c) have a high school diploma or its equivalent;
- 978 (d) be in a condition of physical and mental health that will allow the applicant to
- 979 practice safely as a registered nurse;
- 980 (e) have completed an approved registered nursing education program;
- 981 (f) have passed the examinations as required by division rule made in collaboration
- 982 with the board; and
- 983 (g) meet with the board, if requested, to determine the applicant's qualifications for
- 984 licensure.
- 985 (4) Applicants for licensure as an advanced practice registered nurse shall:
- 986 (a) submit to the division an application on a form prescribed by the division;
- 987 (b) pay to the division a fee determined under Section 63J-1-504;
- 988 (c) be in a condition of physical and mental health which will allow the applicant to
- 989 practice safely as an advanced practice registered nurse;
- 990 (d) hold a current registered nurse license in good standing issued by the state or be
- 991 qualified at the time for licensure as a registered nurse;
- 992 (e) (i) have earned a graduate degree in:
- 993 (A) an advanced practice registered nurse nursing education program; or
- 994 (B) a related area of specialized knowledge as determined appropriate by the division
- 995 in collaboration with the board; or
- 996 (ii) have completed a nurse anesthesia program in accordance with Subsection
- 997 (4)(f)(ii);
- 998 (f) have completed:
- 999 (i) course work in patient assessment, diagnosis and treatment, and
- 1000 pharmacotherapeutics from an education program approved by the division in collaboration

1001 with the board; or

1002 (ii) a nurse anesthesia program which is approved by the Council on Accreditation of
1003 Nurse Anesthesia Educational Programs;

1004 (g) to practice within the psychiatric mental health nursing specialty, demonstrate, as
1005 described in division rule, that the applicant, after completion of a doctorate or master's degree
1006 required for licensure, is in the process of completing the applicant's clinical practice
1007 requirements in psychiatric mental health nursing, including in psychotherapy;

1008 (h) have passed the examinations as required by division rule made in collaboration
1009 with the board;

1010 (i) be currently certified by a program approved by the division in collaboration with
1011 the board and submit evidence satisfactory to the division of the certification; and

1012 (j) meet with the board, if requested, to determine the applicant's qualifications for
1013 licensure.

1014 (5) For each applicant for licensure or certification under this chapter:

1015 (a) the applicant shall:

1016 (i) submit fingerprint cards in a form acceptable to the division at the time the
1017 application is filed; and

1018 (ii) consent to a fingerprint background check conducted by the [Utah] Bureau of
1019 Criminal Identification and the Federal Bureau of Investigation regarding the application; ~~and~~

1020 ~~[(b) the division shall request the Department of Public Safety to complete a Federal~~
1021 ~~Bureau of Investigation criminal background check through the national criminal history~~
1022 ~~system (NCIC) or any successor system.]~~

1023 (b) the division shall:

1024 (i) in addition to other fees authorized by this chapter, collect from each applicant
1025 submitting fingerprints in accordance with this section the fee that the Bureau of Criminal
1026 Identification is authorized to collect for the services provided under Section 53-10-108 and the
1027 fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of

1028 obtaining federal criminal history record information;
1029 (ii) submit from each applicant the fingerprint card and the fees described in this
1030 Subsection (5)(b) to the Bureau of Criminal Identification; and
1031 (iii) obtain and retain in division records a signed waiver approved by the Bureau of
1032 Criminal Identification in accordance with Section 53-10-108 for each applicant; and
1033 (c) the Bureau of Criminal Identification shall, in accordance with the requirements of
1034 Section 53-10-108:
1035 (i) check the fingerprints submitted under Subsection (5)(b) against the applicable state
1036 and regional criminal records databases;
1037 (ii) forward the fingerprints to the Federal Bureau of Investigation for a national
1038 criminal history background check; and
1039 (iii) provide the results from the state, regional, and nationwide criminal history
1040 background checks to the division.
1041 (6) For purposes of conducting the criminal background checks required in Subsection
1042 (5), the division shall have direct access to criminal background information maintained
1043 pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.
1044 (7) (a) (i) Any new nurse license or certification issued under this section shall be
1045 conditional, pending completion of the criminal background check.
1046 (ii) [H] Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, if the
1047 criminal background check discloses the applicant has failed to accurately disclose a criminal
1048 history, the license or certification shall be immediately and automatically revoked upon notice
1049 to the licensee by the division.
1050 (b) (i) [~~Any~~] A person whose conditional license or certification has been revoked
1051 under Subsection (7)(a) [~~shall be~~] is entitled to a postrevocation hearing to challenge the
1052 revocation.
1053 (ii) [~~The~~] A postrevocation hearing shall be conducted in accordance with Title 63G,
1054 Chapter 4, Administrative Procedures Act.

1055 (8) ~~[(a)]~~ If a person has been charged with a violent felony, as defined in Subsection
1056 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of guilty or
1057 nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance pending the
1058 successful completion of probation~~[-(i)]~~, the person is disqualified for licensure under this
1059 chapter~~;~~ and:

1060 ~~[(ii)-(A)]~~ (a) if the person is licensed under this chapter, the division:

1061 ~~[(F)]~~ (i) shall act upon the license as required under Section 58-1-401; and

1062 ~~[(H)]~~ (ii) may not renew or subsequently issue a license to the person under this
1063 chapter; and

1064 ~~[(B)]~~ (b) if the person is not licensed under this chapter, the division may not issue a
1065 license to the person under this chapter.

1066 ~~[(b)]~~ (9) If a person has been charged with a felony other than a violent felony, as
1067 defined in Subsection 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered
1068 a plea of guilty or nolo contendere, or entered a plea of guilty or nolo contendere held in
1069 abeyance pending the successful completion of probation~~[-(i) if the person is licensed under~~
1070 ~~this chapter]~~, the division shall determine whether the felony disqualifies the person for
1071 licensure under this chapter and act upon the license, as required, in accordance with Section
1072 58-1-401~~[-and]~~.

1073 ~~[(ii) if the person is not licensed under this chapter, the person may not file an~~
1074 ~~application for licensure under this chapter any sooner than five years after having completed~~
1075 ~~the conditions of the sentence or plea agreement.]~~

1076 (10) The division may not disseminate outside of the division any criminal history
1077 record information that the division obtains from the Bureau of Criminal Identification or the
1078 Federal Bureau of Investigation under the criminal background check requirements of this
1079 section.

1080 Section 18. Section 58-31b-503 is amended to read:

1081 **58-31b-503. Penalties and administrative actions for unlawful conduct and**

1082 **unprofessional conduct.**

1083 (1) Any person who violates the unlawful conduct provision specifically defined in
1084 Subsection 58-1-501(1)(a) is guilty of a third degree felony.

1085 (2) Any person who violates any of the unlawful conduct provisions specifically
1086 defined in Subsections 58-1-501(1)(b) through (f) and 58-31b-501(1)(d) is guilty of a class A
1087 misdemeanor.

1088 (3) Any person who violates any of the unlawful conduct provisions specifically
1089 defined in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B
1090 misdemeanor.

1091 (4) (a) Subject to Subsection (6) and in accordance with Section 58-31b-401, for acts
1092 of unprofessional or unlawful conduct, the division may:

- 1093 (i) assess administrative penalties; and
- 1094 (ii) take any other appropriate administrative action.

1095 (b) An administrative penalty imposed pursuant to this section shall be deposited in the
1096 "Nurse Education and Enforcement Account" as provided in Section 58-31b-103.

1097 (5) If a licensee has been convicted of violating Section 58-31b-501 prior to an
1098 administrative finding of a violation of the same section, the licensee may not be assessed an
1099 administrative fine under this chapter for the same offense for which the conviction was
1100 obtained.

1101 (6) (a) If upon inspection or investigation, the division concludes that a person has
1102 violated the provisions of Section 58-31b-401, 58-31b-501, or 58-31b-502, Chapter 1, Division
1103 of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act,
1104 or any rule or order issued with respect to these provisions, and that disciplinary action is
1105 appropriate, the director or the director's designee from within the division shall:

- 1106 (i) promptly issue a citation to the person according to this chapter and any pertinent
1107 administrative rules;
- 1108 (ii) attempt to negotiate a stipulated settlement; or

1109 (iii) notify the person to appear before an adjudicative proceeding conducted under
1110 Title 63G, Chapter 4, Administrative Procedures Act.

1111 (b) Any person who is in violation of a provision described in Subsection (6)(a), as
1112 evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an
1113 adjudicative proceeding may be assessed a fine:

1114 (i) pursuant to this Subsection (6) of up to \$10,000 per single violation or up to \$2,000
1115 per day of ongoing violation, whichever is greater, in accordance with a fine schedule
1116 established by rule; and

1117 (ii) in addition to or in lieu of the fine imposed under Subsection (6)(b)(i), be ordered
1118 to cease and desist from violating a provision of Sections 58-31b-501 and 58-31b-502, Chapter
1119 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled
1120 Substances Act, or any rule or order issued with respect to those provisions.

1121 (c) Except for an administrative fine and a cease and desist order, the licensure
1122 sanctions cited in Section 58-31b-401 may not be assessed through a citation.

1123 (d) Each citation issued under this section shall:

1124 (i) be in writing; and

1125 (ii) clearly describe or explain:

1126 (A) the nature of the violation, including a reference to the provision of the chapter,
1127 rule, or order alleged to have been violated;

1128 (B) that the recipient must notify the division in writing within 20 calendar days of
1129 service of the citation in order to contest the citation at a hearing conducted under Title 63G,
1130 Chapter 4, Administrative Procedures Act; and

1131 (C) the consequences of failure to timely contest the citation or to make payment of
1132 any fines assessed by the citation within the time specified in the citation; and

1133 (iii) be served upon any person upon whom a summons may be served:

1134 (A) in accordance with the Utah Rules of Civil Procedure;

1135 (B) personally or upon the person's agent by a division investigator or by any person

1136 specially designated by the director; or

1137 (C) by mail.

1138 (e) If within 20 calendar days from the service of a citation, the person to whom the
1139 citation was issued fails to request a hearing to contest the citation, the citation becomes the
1140 final order of the division and is not subject to further agency review. The period to contest the
1141 citation may be extended by the division for cause.

1142 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
1143 the license of a licensee who fails to comply with the citation after it becomes final.

1144 (g) The failure of an applicant for licensure to comply with a citation after it becomes
1145 final is a ground for denial of license.

1146 (h) No citation may be issued under this section after the expiration of six months
1147 following the occurrence of any violation.

1148 (7) (a) The director may collect a penalty that is not paid by:

1149 (i) referring the matter to a collection agency; or

1150 (ii) bringing an action in the district court of the county where the person against whom
1151 the penalty is imposed resides or in the county where the office of the director is located.

1152 (b) A county attorney or the attorney general of the state shall provide legal assistance
1153 and advice to the director in an action to collect a penalty.

1154 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
1155 action brought by the division to collect a penalty.

1156 Section 19. Section **58-37-6** is amended to read:

1157 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**
1158 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**
1159 **required -- Prescriptions.**

1160 (1) (a) The division may adopt rules relating to the licensing and control of the
1161 manufacture, distribution, production, prescription, administration, dispensing, conducting of
1162 research with, and performing of laboratory analysis upon controlled substances within this

1163 state.

1164 (b) The division may assess reasonable fees to defray the cost of issuing original and
1165 renewal licenses under this chapter pursuant to Section 63J-1-504.

1166 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,
1167 administers, conducts research with, or performs laboratory analysis upon any controlled
1168 substance in Schedules I through V within this state, or who proposes to engage in
1169 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting
1170 research with, or performing laboratory analysis upon controlled substances included in
1171 Schedules I through V within this state shall obtain a license issued by the division.

1172 (ii) The division shall issue each license under this chapter in accordance with a
1173 two-year renewal cycle established by rule. The division may by rule extend or shorten a
1174 renewal period by as much as one year to stagger the renewal cycles it administers.

1175 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,
1176 administer, conduct research with, or perform laboratory analysis upon controlled substances in
1177 Schedules I through V within this state may possess, manufacture, produce, distribute,
1178 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon
1179 those substances to the extent authorized by their license and in conformity with this chapter.

1180 (c) The following persons are not required to obtain a license and may lawfully possess
1181 controlled substances included in Schedules II through V under this section:

1182 (i) an agent or employee, except a sales representative, of any registered manufacturer,
1183 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the
1184 usual course of the person's business or employment; however, nothing in this subsection shall
1185 be interpreted to permit an agent, employee, sales representative, or detail man to maintain an
1186 inventory of controlled substances separate from the location of the person's employer's
1187 registered and licensed place of business;

1188 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or
1189 warehouseman, who possesses any controlled substance in the usual course of the person's

1190 business or employment; and

1191 (iii) an ultimate user, or any person who possesses any controlled substance pursuant to
1192 a lawful order of a practitioner.

1193 (d) The division may enact rules waiving the license requirement for certain
1194 manufacturers, producers, distributors, prescribers, dispensers, administrators, research
1195 practitioners, or laboratories performing analysis if consistent with the public health and safety.

1196 (e) A separate license is required at each principal place of business or professional
1197 practice where the applicant manufactures, produces, distributes, dispenses, conducts research
1198 with, or performs laboratory analysis upon controlled substances.

1199 (f) The division may enact rules providing for the inspection of a licensee or applicant's
1200 establishment, and may inspect the establishment according to those rules.

1201 (3) (a) (i) Upon proper application, the division shall license a qualified applicant to
1202 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon
1203 controlled substances included in Schedules I through V, unless it determines that issuance of a
1204 license is inconsistent with the public interest.

1205 (ii) The division may not issue a license to any person to prescribe, dispense, or
1206 administer a Schedule I controlled substance except under Subsection (3)(a)(i).

1207 (iii) In determining public interest under this Subsection (3)(a), the division shall
1208 consider whether or not the applicant has:

1209 (A) maintained effective controls against diversion of controlled substances and any
1210 Schedule I or II substance compounded from any controlled substance into other than
1211 legitimate medical, scientific, or industrial channels;

1212 (B) complied with applicable state and local law;

1213 (C) been convicted under federal or state laws relating to the manufacture, distribution,
1214 or dispensing of substances;

1215 (D) past experience in the manufacture of controlled dangerous substances;

1216 (E) established effective controls against diversion; and

1217 (F) complied with any other factors that the division establishes that promote the public
1218 health and safety.

1219 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,
1220 produce, distribute, conduct research with, or perform laboratory analysis upon controlled
1221 substances in Schedule I other than those specified in the license.

1222 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with
1223 substances in Schedules II through V if they are authorized to administer, dispense, or conduct
1224 research under the laws of this state.

1225 (ii) The division need not require a separate license for practitioners engaging in
1226 research with nonnarcotic controlled substances in Schedules II through V where the licensee is
1227 already licensed under this chapter in another capacity.

1228 (iii) With respect to research involving narcotic substances in Schedules II through V,
1229 or where the division by rule requires a separate license for research of nonnarcotic substances
1230 in Schedules II through V, a practitioner shall apply to the division prior to conducting
1231 research.

1232 (iv) Licensing for purposes of bona fide research with controlled substances by a
1233 practitioner considered qualified may be denied only on a ground specified in Subsection (4),
1234 or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard
1235 adequately the practitioner's supply of substances against diversion from medical or scientific
1236 use.

1237 (v) Practitioners registered under federal law to conduct research in Schedule I
1238 substances may conduct research in Schedule I substances within this state upon furnishing the
1239 division evidence of federal registration.

1240 (d) Compliance by manufacturers, producers, and distributors with the provisions of
1241 federal law respecting registration, excluding fees, entitles them to be licensed under this
1242 chapter.

1243 (e) The division shall initially license those persons who own or operate an

1244 establishment engaged in the manufacture, production, distribution, dispensation, or
1245 administration of controlled substances prior to April 3, 1980, and who are licensed by the
1246 state.

1247 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed
1248 on probation, or revoked by the division upon finding that the applicant or licensee has:

1249 (i) materially falsified any application filed or required pursuant to this chapter;

1250 (ii) been convicted of an offense under this chapter or any law of the United States, or
1251 any state, relating to any substance defined as a controlled substance;

1252 (iii) been convicted of a felony under any other law of the United States or any state
1253 within five years of the date of the issuance of the license;

1254 (iv) had a federal registration or license denied, suspended, or revoked by competent
1255 federal authority and is no longer authorized to manufacture, distribute, prescribe, or dispense
1256 controlled substances;

1257 (v) had the licensee's license suspended or revoked by competent authority of another
1258 state for violation of laws or regulations comparable to those of this state relating to the
1259 manufacture, distribution, or dispensing of controlled substances;

1260 (vi) violated any division rule that reflects adversely on the licensee's reliability and
1261 integrity with respect to controlled substances;

1262 (vii) refused inspection of records required to be maintained under this chapter by a
1263 person authorized to inspect them; or

1264 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the
1265 purpose of manipulating human hormonal structure so as to:

1266 (A) increase muscle mass, strength, or weight without medical necessity and without a
1267 written prescription by any practitioner in the course of the practitioner's professional practice;

1268 or

1269 (B) improve performance in any form of human exercise, sport, or game.

1270 (b) The division may limit revocation or suspension of a license to a particular

1271 controlled substance with respect to which grounds for revocation or suspension exist.

1272 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to
1273 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of
1274 Occupational and Professional Licensing Act, and conducted in conjunction with the
1275 appropriate representative committee designated by the director of the department.

1276 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and
1277 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,
1278 except where the division is designated by law to perform those functions, or, when not
1279 designated by law, is designated by the executive director of the Department of Commerce to
1280 conduct the proceedings.

1281 (d) (i) The division may suspend any license simultaneously with the institution of
1282 proceedings under this section if it finds there is an imminent danger to the public health or
1283 safety.

1284 (ii) Suspension shall continue in effect until the conclusion of proceedings, including
1285 judicial review, unless withdrawn by the division or dissolved by a court of competent
1286 jurisdiction.

1287 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled
1288 substances owned or possessed by the licensee may be placed under seal in the discretion of the
1289 division.

1290 (ii) Disposition may not be made of substances under seal until the time for taking an
1291 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,
1292 orders the sale of perishable substances and the proceeds deposited with the court.

1293 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

1294 (f) The division shall notify promptly the Drug Enforcement Administration of all
1295 orders suspending or revoking a license and all forfeitures of controlled substances.

1296 (g) If an individual's Drug Enforcement Administration registration is denied, revoked,
1297 surrendered, or suspended, the division shall immediately suspend the individual's controlled

1298 substance license, which shall only be reinstated by the division upon reinstatement of the
1299 federal registration, unless the division has taken further administrative action under
1300 Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled
1301 substance license.

1302 (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and
1303 inventories in conformance with the record keeping and inventory requirements of federal and
1304 state law and any additional rules issued by the division.

1305 (b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or
1306 other person who is authorized to administer or professionally use a controlled substance shall
1307 keep a record of the drugs received by him and a record of all drugs administered, dispensed, or
1308 professionally used by him otherwise than by a prescription.

1309 (ii) A person using small quantities or solutions or other preparations of those drugs for
1310 local application has complied with this Subsection (5)(b) if the person keeps a record of the
1311 quantity, character, and potency of those solutions or preparations purchased or prepared by
1312 him, and of the dates when purchased or prepared.

1313 (6) Controlled substances in Schedules I through V may be distributed only by a
1314 licensee and pursuant to an order form prepared in compliance with division rules or a lawful
1315 order under the rules and regulations of the United States.

1316 (7) (a) A person may not write or authorize a prescription for a controlled substance
1317 unless the person is:

1318 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state
1319 or under the laws of another state having similar standards; and

1320 (ii) licensed under this chapter or under the laws of another state having similar
1321 standards.

1322 (b) A person other than a pharmacist licensed under the laws of this state, or the
1323 pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not
1324 dispense a controlled substance.

1325 (c) (i) A controlled substance may not be dispensed without the written prescription of
1326 a practitioner, if the written prescription is required by the federal Controlled Substances Act.

1327 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in
1328 conformity with Subsection (7)(d).

1329 (iii) In emergency situations, as defined by division rule, controlled substances may be
1330 dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms
1331 designated by the division and filed by the pharmacy.

1332 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with
1333 Subsection (7)(d).

1334 (d) Except for emergency situations designated by the division, a person may not issue,
1335 fill, compound, or dispense a prescription for a controlled substance unless the prescription is
1336 signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of
1337 the prescriber as authorized by division rule, and contains the following information:

1338 (i) the name, address, and registry number of the prescriber;

1339 (ii) the name, address, and age of the person to whom or for whom the prescription is
1340 issued;

1341 (iii) the date of issuance of the prescription; and

1342 (iv) the name, quantity, and specific directions for use by the ultimate user of the
1343 controlled substance.

1344 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I
1345 controlled substance unless:

1346 (i) the person who writes the prescription is licensed under Subsection (2); and

1347 (ii) the prescribed controlled substance is to be used in research.

1348 (f) Except when administered directly to an ultimate user by a licensed practitioner,
1349 controlled substances are subject to the restrictions of this Subsection (7)(f).

1350 (i) A prescription for a Schedule II substance may not be refilled.

1351 (ii) A Schedule II controlled substance may not be filled in a quantity to exceed a

1352 one-month's supply, as directed on the daily dosage rate of the prescriptions.

1353 (iii) (A) Except as provided in Subsection (7)(f)(iii)(B), a prescription for a Schedule II
1354 or Schedule III controlled substance that is an opiate and that is issued for an acute condition
1355 shall be completely or partially filled in a quantity not to exceed a seven-day supply as directed
1356 on the daily dosage rate of the prescription.

1357 (B) Subsection (7)(f)(iii)(A) does not apply to a prescription issued for a surgery when
1358 the practitioner determined that a quantity exceeding seven days is needed, in which case the
1359 practitioner may prescribe up to a 30-day supply, with a partial fill at the discretion of the
1360 practitioner.

1361 (C) Subsection (7)(f)(iii)(A) does not apply to prescriptions issued for complex or
1362 chronic conditions which are documented as being complex or chronic in the medical record.

1363 (D) A pharmacist is not required to verify that a prescription is in compliance with
1364 Subsection (7)(f)(iii).

1365 (iv) A Schedule III or IV controlled substance may be filled only within six months of
1366 issuance, and may not be refilled more than six months after the date of its original issuance or
1367 be refilled more than five times after the date of the prescription unless renewed by the
1368 practitioner.

1369 (v) All other controlled substances in Schedule V may be refilled as the prescriber's
1370 prescription directs, but they may not be refilled one year after the date the prescription was
1371 issued unless renewed by the practitioner.

1372 (vi) Any prescription for a Schedule II substance may not be dispensed if it is not
1373 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days
1374 after the date the prescription was issued, or 30 days after the dispensing date, if that date is
1375 specified separately from the date of issue.

1376 (vii) A practitioner may issue more than one prescription at the same time for the same
1377 Schedule II controlled substance, but only under the following conditions:

1378 (A) no more than three prescriptions for the same Schedule II controlled substance may

1379 be issued at the same time;

1380 (B) no one prescription may exceed a 30-day supply; and

1381 (C) a second or third prescription shall include the date of issuance and the date for
1382 dispensing.

1383 (g) An order for a controlled substance in Schedules II through V for use by an
1384 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this
1385 Subsection (7) if the order is:

1386 (i) issued or made by a prescribing practitioner who holds an unrestricted registration
1387 with the federal Drug Enforcement Administration, and an active Utah controlled substance
1388 license in good standing issued by the division under this section, or a medical resident who is
1389 exempted from licensure under Subsection 58-1-307(1)(c);

1390 (ii) authorized by the prescribing practitioner treating the patient and the prescribing
1391 practitioner designates the quantity ordered;

1392 (iii) entered upon the record of the patient, the record is signed by the prescriber
1393 affirming the prescriber's authorization of the order within 48 hours after filling or
1394 administering the order, and the patient's record reflects the quantity actually administered; and

1395 (iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within
1396 the physical structure of the hospital, or the order is taken from a supply lawfully maintained by
1397 the hospital and the amount taken from the supply is administered directly to the patient
1398 authorized to receive it.

1399 (h) A practitioner licensed under this chapter may not prescribe, administer, or
1400 dispense a controlled substance to a child, without first obtaining the consent required in
1401 Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except
1402 in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same
1403 meaning as defined in Section 78A-6-105, and "emergency" means any physical condition
1404 requiring the administration of a controlled substance for immediate relief of pain or suffering.

1405 (i) A practitioner licensed under this chapter may not prescribe or administer dosages

1406 of a controlled substance in excess of medically recognized quantities necessary to treat the
1407 ailment, malady, or condition of the ultimate user.

1408 (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense
1409 any controlled substance to another person knowing that the other person is using a false name,
1410 address, or other personal information for the purpose of securing the controlled substance.

1411 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense
1412 a controlled substance may not manufacture, distribute, or dispense a controlled substance to
1413 another licensee or any other authorized person not authorized by this license.

1414 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a
1415 symbol required by this chapter or by a rule issued under this chapter.

1416 (m) A person licensed under this chapter may not refuse or fail to make, keep, or
1417 furnish any record notification, order form, statement, invoice, or information required under
1418 this chapter.

1419 (n) A person licensed under this chapter may not refuse entry into any premises for
1420 inspection as authorized by this chapter.

1421 (o) A person licensed under this chapter may not furnish false or fraudulent material
1422 information in any application, report, or other document required to be kept by this chapter or
1423 willfully make any false statement in any prescription, order, report, or record required by this
1424 chapter.

1425 (8) (a) (i) Any person licensed under this chapter who is found by the division to have
1426 violated any of the provisions of Subsections (7)(k) through (o) or Subsection (10) is subject to
1427 a penalty not to exceed \$5,000. The division shall determine the procedure for adjudication of
1428 any violations in accordance with Sections 58-1-106 and 58-1-108.

1429 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the
1430 General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

1431 (iii) The director may collect a penalty that is not paid by:

1432 (A) referring the matter to a collection agency; or

1433 (B) bringing an action in the district court of the county where the person against
1434 whom the penalty is imposed resides or in the county where the office of the director is located.

1435 (iv) A county attorney or the attorney general of the state shall provide legal assistance
1436 and advice to the director in an action to collect a penalty.

1437 (v) A court shall award reasonable attorney fees and costs to the prevailing party in an
1438 action brought by the division to collect a penalty.

1439 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j)
1440 or Subsection (10) is:

1441 (i) upon first conviction, guilty of a class B misdemeanor;

1442 (ii) upon second conviction, guilty of a class A misdemeanor; and

1443 (iii) on third or subsequent conviction, guilty of a third degree felony.

1444 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through
1445 (o) shall upon conviction be guilty of a third degree felony.

1446 (9) Any information communicated to any licensed practitioner in an attempt to
1447 unlawfully procure, or to procure the administration of, a controlled substance is not considered
1448 to be a privileged communication.

1449 (10) A person holding a valid license under this chapter who is engaged in medical
1450 research may produce, possess, administer, prescribe, or dispense a controlled substance for
1451 research purposes as licensed under Subsection (2) but may not otherwise prescribe or dispense
1452 a controlled substance listed in Section [58-37-4.2](#).

1453 Section 20. Section **58-37-6.5** is amended to read:

1454 **58-37-6.5. Continuing education for controlled substance prescribers.**

1455 (1) For the purposes of this section:

1456 (a) "Controlled substance prescriber" means an individual, other than a veterinarian,
1457 who:

1458 (i) is licensed to prescribe a controlled substance under Title 58, Chapter 37, Utah
1459 Controlled Substances Act; and

1460 (ii) possesses the authority, in accordance with the individual's scope of practice, to
1461 prescribe schedule II controlled substances and schedule III controlled substances that are
1462 applicable to opioid narcotics, hypnotic depressants, or psychostimulants.

1463 (b) "D.O." means an osteopathic physician and surgeon licensed under Title 58,
1464 Chapter 68, Utah Osteopathic Medical Practice Act.

1465 (c) "FDA" means the United States Food and Drug Administration.

1466 (d) "M.D." means a physician and surgeon licensed under Title 58, Chapter 67, Utah
1467 Medical Practice Act.

1468 (e) "SBIRT" means the Screening, Brief Intervention, and Referral to Treatment
1469 approach used by the federal Substance Abuse and Mental Health Services Administration or
1470 defined by the division, in consultation with the Division of Substance Abuse and Mental
1471 Health, by administrative rule, in accordance with Title 63G, Chapter 3, Utah Administrative
1472 Rulemaking Act.

1473 (2) (a) Beginning with the licensing period that begins after January 1, 2014, as a
1474 condition precedent for license renewal, each controlled substance prescriber shall complete at
1475 least ~~four~~ 3.5 continuing education hours per licensing period that satisfy the requirements of
1476 ~~[Subsections]~~ Subsection (3) ~~[and (4)]~~.

1477 (b) (i) Beginning with the licensing period that begins after January 1, 2024, as a
1478 condition precedent for license renewal, each controlled substance prescriber shall complete at
1479 least 3.5 continuing education hours in an SBIRT-training class that satisfies the requirements
1480 of Subsection ~~[(5)]~~ (4).

1481 (ii) Completion of the SBIRT-training class, in compliance with Subsection (2)(b)(i),
1482 fulfills the continuing education hours requirement in Subsection ~~[(4)]~~ (3) for the licensing
1483 period in which the class was completed.

1484 (iii) A controlled substance prescriber:

1485 (A) need only take the SBIRT-training class once during the controlled substance
1486 prescriber's licensure in the state; and

1487 (B) shall provide a completion record of the SBIRT-training class in order to be
1488 reimbursed for SBIRT services to patients, in accordance with Section 26-18-22 and Section
1489 49-20-416.

1490 [~~(3)~~ As provided in Subsection ~~58-37f-402~~(8), the online tutorial and passing the
1491 online test described in Section ~~58-37f-402~~ shall count as 1/2 hour of continuing professional
1492 education under Subsection (2) per licensing period.]

1493 [(4)] (3) A controlled substance prescriber shall complete at least 3.5 hours of
1494 continuing education in one or more controlled substance prescribing classes, except dentists
1495 who shall complete at least two hours, that satisfy the requirements of Subsections [~~(5)~~] (4) and
1496 [~~(7)~~] (6).

1497 [(5)] (4) A controlled substance prescribing class shall:

1498 (a) satisfy the division's requirements for the continuing education required for the
1499 renewal of the controlled substance prescriber's respective license type;

1500 (b) be delivered by an accredited or approved continuing education provider
1501 recognized by the division as offering continuing education appropriate for the controlled
1502 substance prescriber's respective license type; and

1503 (c) include a postcourse knowledge assessment.

1504 [(6)] (5) An M.D. or D.O. completing continuing professional education hours under
1505 Subsection (4) shall complete those hours in classes that qualify for the American Medical
1506 Association Physician's Recognition Award Category 1 Credit.

1507 [(7)] (6) The 3.5 hours of the controlled substance prescribing classes under Subsection
1508 (4) shall include educational content covering the following:

1509 (a) the scope of the controlled substance abuse problem in Utah and the nation;

1510 (b) all elements of the FDA Blueprint for Prescriber Education under the FDA's
1511 Extended-Release and Long-Acting Opioid Analgesics Risk Evaluation and Mitigation
1512 Strategy, as published July 9, 2012, or as it may be subsequently revised;

1513 (c) the national and Utah-specific resources available to prescribers to assist in

1514 appropriate controlled substance and opioid prescribing;

1515 (d) patient record documentation for controlled substance and opioid prescribing; and

1516 (e) office policies, procedures, and implementation.

1517 ~~[(8)]~~ (7) (a) The division, in consultation with the Utah Medical Association

1518 Foundation, shall determine whether a particular controlled substance prescribing class satisfies

1519 the educational content requirements of Subsections ~~[(5)]~~ (4) and ~~[(7)]~~ (6) for an M.D. or D.O.

1520 (b) The division, in consultation with the applicable professional licensing boards,

1521 shall determine whether a particular controlled substance prescribing class satisfies the

1522 educational content requirements of Subsections ~~[(5)]~~ (4) and ~~[(7)]~~ (6) for a controlled

1523 substance prescriber other than an M.D. or D.O.

1524 (c) The division may by rule establish a committee that may audit compliance with the

1525 Utah Risk Evaluation and Mitigation Strategy (REMS) Educational Programming Project

1526 grant, that satisfies the educational content requirements of Subsections ~~[(5)]~~ (4) and ~~[(7)]~~ (6)

1527 for a controlled substance prescriber.

1528 ~~[(9)]~~ (8) A controlled substance prescribing class required under this section:

1529 (a) may be held:

1530 (i) in conjunction with other continuing professional education programs; and

1531 (ii) online; and

1532 (b) does not increase the total number of state-required continuing professional

1533 education hours required for prescriber licensing.

1534 ~~[(10)]~~ (9) The division may establish rules, in accordance with Title 63G, Chapter 3,

1535 Utah Administrative Rulemaking Act, to implement this section.

1536 ~~[(11)]~~ (10) A controlled substance prescriber who, on or after July 1, 2017, obtains a

1537 waiver to treat opioid dependency with narcotic medications, in accordance with the Drug

1538 Addiction Treatment Act of 2000, 21 U.S.C. Sec. 823 et seq., may use the waiver to satisfy the

1539 3.5 hours of the continuing education requirement under Subsection ~~[(4)]~~ (3) for two

1540 consecutive licensing periods.

1541 Section 21. Section **58-37f-401** is amended to read:

1542 **58-37f-401. Database registration required -- Penalties for failure to register.**

1543 (1) Each individual, other than a veterinarian, who, on June 30, 2010, has a license to
1544 prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, but is not
1545 registered with the division to use the database shall, on or before September 30, 2010, register
1546 with the division to use the database.

1547 [~~(2)~~] Each individual who, on November 1, 2012, is registered with the division to use
1548 the database shall, on or before January 1, 2013, participate in the online tutorial and pass the
1549 online test described in Section ~~58-37f-402~~.]

1550 [~~(3)~~] (2) (a) An individual who is not a veterinarian, who obtains a new license to
1551 prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, shall,
1552 within 30 days after the day on which the individual obtains a license to prescribe a controlled
1553 substance from the Drug Enforcement Administration, register with the division to use the
1554 database.

1555 (b) An individual who is not a veterinarian may not renew a license to prescribe a
1556 controlled substance under Chapter 37, Utah Controlled Substances Act, unless the individual
1557 registers with the division to use the database.

1558 [~~(4)~~] (3) Beginning on November 2, 2012, in order to register to use the database, the
1559 individual registering must participate in the online tutorial and pass the online test described
1560 in Section ~~58-37f-402~~.

1561 [~~(5)~~] (4) Failure by an individual to comply with the requirements of this section is
1562 grounds for the division to take the following actions in accordance with Section ~~58-1-401~~:

- 1563 (a) refuse to issue a license to the individual;
- 1564 (b) refuse to renew the individual's license; or
- 1565 (c) revoke, suspend, restrict, or place on probation the license.

1566 [~~(6)~~] (5) Beginning on July 1, 2010, the division shall, in accordance with Section
1567 ~~63J-1-504~~, impose an annual database registration fee on an individual who registers to use the

1568 database, to pay the startup and ongoing costs of the division for complying with the
1569 requirements of this section [~~and Section 58-37f-402~~].

1570 Section 22. Section **58-37f-402** is amended to read:

1571 **58-37f-402. Online tutorial and test relating to the database -- Fees -- Rulemaking**
1572 **authority -- Continuing professional education credit.**

1573 (1) The division shall develop an online tutorial and an online test for registration to
1574 use the database that provides instruction regarding, and tests, the following:

1575 (a) the purpose of the database;

1576 (b) how to access and use the database;

1577 (c) the law relating to:

1578 (i) the use of the database; and

1579 (ii) the information submitted to, and obtained from, the database; and

1580 (d) basic knowledge that is important for all people who prescribe controlled
1581 substances to know in order to help ensure the health and safety of an individual to whom a
1582 controlled substance is prescribed.

1583 (2) The division shall design the test described in this section as follows:

1584 (a) an individual shall answer all of the questions correctly in order to pass the test;

1585 (b) an individual shall be permitted to immediately retake the portion of the test that
1586 the individual answers incorrectly as many times as necessary for the individual to pass the test;
1587 and

1588 (c) after an individual takes the test, the test software shall:

1589 (i) immediately inform the individual of the number of questions that were answered
1590 incorrectly;

1591 (ii) provide the correct answers;

1592 (iii) replay the portion of the tutorial that relates to the incorrectly answered questions;

1593 and

1594 (iv) ask the individual the incorrectly answered questions again.

1595 (3) The division shall design the tutorial and test so that it is possible to take the
1596 tutorial and complete the test in 20 minutes or less, if the individual answers all of the
1597 questions correctly on the first attempt.

1598 (4) The division shall ensure that the tutorial and test described in this section are fully
1599 functional and available for use online on or before November 1, 2010.

1600 (5) The division shall impose a fee, in accordance with Section 63J-1-504, on an
1601 individual who takes the test described in this section, to pay the costs incurred by the division
1602 to:

1603 (a) develop, implement, and administer the tutorial and test described in this section;

1604 and

1605 (b) fulfill the other duties imposed on the division under this part.

1606 (6) The division may make rules, in accordance with Title 63G, Chapter 3, Utah
1607 Administrative Rulemaking Act, 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 (7) The Department of Health shall assist the division in developing the portion of the
1612 test described in Subsection (1)(d).

1613 ~~[(8) Completing the online tutorial and passing the online test described in this section~~
1614 ~~shall count as 1/2 hour of continuing professional education under Subsection 58-37-6.5(2).]~~

1615 Section 23. Section **58-44a-402** is amended to read:

1616 **58-44a-402. Authority to assess penalty.**

1617 (1) After a proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures
1618 Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the
1619 division may impose an administrative penalty of up to \$10,000 for unprofessional or unlawful
1620 conduct under this chapter in accordance with a fine schedule established by rule.

1621 (2) The assessment of a penalty under this section does not affect any other action the

1622 division is authorized to take regarding a license issued under this chapter.

1623 (3) The division may impose an administrative penalty of up to \$500 for any violation
1624 of Subsection 58-44a-501(2), (3), or (4), consistent with Section 58-44a-503.

1625 (4) (a) The director may collect a penalty that is not paid by:

1626 (i) referring the matter to a collection agency; or

1627 (ii) bringing an action in the district court of the county where the person against whom
1628 the penalty is imposed resides or in the county where the office of the director is located.

1629 (b) A county attorney or the attorney general of the state shall provide legal assistance
1630 and advice to the director in an action to collect a penalty.

1631 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
1632 action brought by the division to collect a penalty.

1633 Section 24. Section 58-47b-501 is amended to read:

1634 **58-47b-501. Unlawful conduct.**

1635 "Unlawful conduct" includes:

1636 (1) practicing, engaging in, or attempting to practice or engage in massage therapy
1637 without holding a current license as a massage therapist or a massage apprentice under this
1638 chapter;

1639 (2) advertising or representing himself as practicing massage therapy when not licensed
1640 to do so; and

1641 (3) massaging, touching, or applying any instrument or device by a licensee in the
1642 course of practicing or engaging in massage therapy to the:

1643 (a) genitals [or];

1644 (b) anus; [and] or

1645 ~~(b)~~ (c) breasts of a female patron, except when a female patron requests breast
1646 massage, as may be further defined by division rule, and signs a written consent form, which
1647 must also include the signature of a parent or legal guardian if the patron is a minor,
1648 authorizing the procedure and outlining the reason for it before the procedure is performed.

1649 Section 25. Section **58-53-502** is amended to read:

1650 **58-53-502. Citations -- Penalty for unlawful conduct.**

1651 (1) (a) If upon inspection or investigation, the division concludes that a person has
1652 violated Subsections **58-1-501**(1)(a) through (d), Section **58-53-501**, or Section **58-53-603** or
1653 any rule or order issued with respect to Section **58-53-501**, and that disciplinary action is
1654 appropriate, the director or the director's designee from within the division for each alternative
1655 respectively, shall promptly issue a citation to the person according to this chapter and any
1656 pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear
1657 before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative
1658 Procedures Act.

1659 (i) A person who violates Subsections **58-1-501**(1)(a) through (d) or Section **58-53-501**
1660 or any rule or order issued with respect to Section **58-53-501**, as evidenced by an uncontested
1661 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may
1662 be assessed a fine pursuant to Subsection (1)(i) and may, in addition to or in lieu of, be ordered
1663 to cease and desist from violating Subsections **58-1-501**(1)(a) through (d) or Section **58-53-501**
1664 or any rule or order issued with respect to Section **58-53-501**.

1665 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
1666 **58-53-401** may not be assessed through a citation.

1667 (b) A citation shall:

1668 (i) be in writing;

1669 (ii) describe with particularity the nature of the violation, including a reference to the
1670 provision of the chapter, rule, or order alleged to have been violated;

1671 (iii) clearly state that the recipient must notify the division in writing within 20
1672 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
1673 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

1674 (iv) clearly explain the consequences of failure to timely contest the citation or to make
1675 payment of any fines assessed by the citation within the time specified in the citation.

1676 (c) The division may issue a notice in lieu of a citation.

1677 (d) Each citation issued under this section, or a copy of each citation, may be served
1678 upon any person whom a summons may be served in accordance with the Utah Rules of Civil
1679 Procedure and may be made personally or upon the person's agent by a division investigator or
1680 by any person specially designated by the director or by mail.

1681 (e) If within 20 calendar days from the service of the citation, the person to whom the
1682 citation was issued fails to request a hearing to contest the citation, the citation becomes the
1683 final order of the division and is not subject to further agency review. The period to contest a
1684 citation may be extended by the division for cause.

1685 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
1686 the license of a licensee who fails to comply with a citation after it becomes final.

1687 (g) The failure of an applicant for licensure to comply with a citation after it becomes
1688 final is a ground for denial of license.

1689 (h) No citation may be issued under this section after the expiration of six months
1690 following the occurrence of any violation.

1691 (i) The director or the director's designee shall assess fines according to the following:

1692 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

1693 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

1694 and

1695 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to
1696 \$2,000 for each day of continued offense.

1697 (2) An action initiated for a first or second offense which has not yet resulted in a final
1698 order of the division does not preclude initiation of any subsequent action for a second or
1699 subsequent offense during the pendency of any preceding action. The final order on a
1700 subsequent action shall be considered a second or subsequent offense, respectively, provided
1701 the preceding action resulted in a first or second offense, respectively.

1702 ~~[(3) Any penalty which is not paid may be collected by the director by either referring~~

1703 ~~the matter to a collection agency or bringing an action in the district court of the county in~~
1704 ~~which the person against whom the penalty is imposed resides or in the county where the office~~
1705 ~~of the director is located. Any county attorney or the attorney general of the state shall provide~~
1706 ~~legal assistance and advice to the director in any action to collect the penalty. In any action~~
1707 ~~brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be~~
1708 ~~awarded to the division.]~~

1709 (3) (a) The director may collect a penalty that is not paid by:

1710 (i) referring the matter to a collection agency; or

1711 (ii) bringing an action in the district court of the county where the person against whom
1712 the penalty is imposed resides or in the county where the office of the director is located.

1713 (b) A county attorney or the attorney general of the state shall provide legal assistance
1714 and advice to the director in an action to collect a penalty.

1715 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
1716 action brought by the division to collect a penalty.

1717 Section 26. Section **58-55-305** is amended to read:

1718 **58-55-305. Exemptions from licensure.**

1719 (1) In addition to the exemptions from licensure in Section **58-1-307**, the following
1720 persons may engage in acts or practices included within the practice of construction trades,
1721 subject to the stated circumstances and limitations, without being licensed under this chapter:

1722 (a) an authorized representative of the United States government or an authorized
1723 employee of the state or any of its political subdivisions when working on construction work of
1724 the state or the subdivision, and when acting within the terms of the person's trust, office, or
1725 employment;

1726 (b) a person engaged in construction or operation incidental to the construction and
1727 repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation
1728 districts, and drainage districts or construction and repair relating to farming, dairying,
1729 agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel

1730 excavations, well drilling, as defined in Section 73-3-25, hauling to and from construction
1731 sites, and lumbering;

1732 (c) public utilities operating under the rules of the Public Service Commission on work
1733 incidental to their own business;

1734 (d) sole owners of property engaged in building:

1735 (i) no more than one residential structure per year and no more than three residential
1736 structures per five years on their property for their own noncommercial, nonpublic use; except,
1737 a person other than the property owner or individuals described in Subsection (1)(e), who
1738 engages in building the structure must be licensed under this chapter if the person is otherwise
1739 required to be licensed under this chapter; or

1740 (ii) structures on their property for their own noncommercial, nonpublic use which are
1741 incidental to a residential structure on the property, including sheds, carports, or detached
1742 garages;

1743 (e) (i) a person engaged in construction or renovation of a residential building for
1744 noncommercial, nonpublic use if that person:

1745 (A) works without compensation other than token compensation that is not considered
1746 salary or wages; and

1747 (B) works under the direction of the property owner who engages in building the
1748 structure; and

1749 (ii) as used in this Subsection (1)(e), "token compensation" means compensation paid
1750 by a sole owner of property exempted from licensure under Subsection (1)(d) to a person
1751 exempted from licensure under this Subsection (1)(e), that is:

1752 (A) minimal in value when compared with the fair market value of the services
1753 provided by the person;

1754 (B) not related to the fair market value of the services provided by the person; and

1755 (C) is incidental to the providing of services by the person including paying for or
1756 providing meals or refreshment while services are being provided, or paying reasonable

1757 transportation costs incurred by the person in travel to the site of construction;

1758 (f) a person engaged in the sale or merchandising of personal property that by its design
1759 or manufacture may be attached, installed, or otherwise affixed to real property who has
1760 contracted with a person, firm, or corporation licensed under this chapter to install, affix, or
1761 attach that property;

1762 (g) a contractor submitting a bid on a federal aid highway project, if, before
1763 undertaking construction under that bid, the contractor is licensed under this chapter;

1764 (h) (i) subject to Subsection 58-1-401(2) and Sections 58-55-501 and 58-55-502, a
1765 person engaged in the alteration, repair, remodeling, or addition to or improvement of a
1766 building with a contracted or agreed value of less than \$3,000, including both labor and
1767 materials, and including all changes or additions to the contracted or agreed upon work; and

1768 (ii) notwithstanding Subsection (1)(h)(i) and except as otherwise provided in this
1769 section:

1770 (A) work in the plumbing and electrical trades on a Subsection (1)(h)(i) project within
1771 any six month period of time:

1772 (I) must be performed by a licensed electrical or plumbing contractor, if the project
1773 involves an electrical or plumbing system; and

1774 (II) may be performed by a licensed journeyman electrician or plumber or an individual
1775 referred to in Subsection (1)(h)(ii)(A)(I), if the project involves a component of the system
1776 such as a faucet, toilet, fixture, device, outlet, or electrical switch;

1777 (B) installation, repair, or replacement of a residential or commercial gas appliance or a
1778 combustion system on a Subsection (1)(h)(i) project must be performed by a person who has
1779 received certification under Subsection 58-55-308(2) except as otherwise provided in
1780 Subsection 58-55-308(2)(d) or 58-55-308(3);

1781 (C) installation, repair, or replacement of water-based fire protection systems on a
1782 Subsection (1)(h)(i) project must be performed by a licensed fire suppression systems
1783 contractor or a licensed journeyman plumber;

1784 (D) work as an alarm business or company or as an alarm company agent shall be
1785 performed by a licensed alarm business or company or a licensed alarm company agent, except
1786 as otherwise provided in this chapter;

1787 (E) installation, repair, or replacement of an alarm system on a Subsection (1)(h)(i)
1788 project must be performed by a licensed alarm business or company or a licensed alarm
1789 company agent;

1790 (F) installation, repair, or replacement of a heating, ventilation, or air conditioning
1791 system (HVAC) on a Subsection (1)(h)(i) project must be performed by an HVAC contractor
1792 licensed by the division;

1793 (G) installation, repair, or replacement of a radon mitigation system or a soil
1794 depressurization system must be performed by a licensed contractor; and

1795 (H) if the total value of the project is greater than \$1,000, the person shall file with the
1796 division a one-time affirmation, subject to periodic reaffirmation as established by division
1797 rule, that the person has:

1798 (I) public liability insurance in coverage amounts and form established by division
1799 rule; and

1800 (II) if applicable, workers compensation insurance which would cover an employee of
1801 the person if that employee worked on the construction project;

1802 (i) a person practicing a specialty contractor classification or construction trade which
1803 the director does not classify by administrative rule as significantly impacting the public's
1804 health, safety, and welfare;

1805 (j) owners and lessees of property and persons regularly employed for wages by owners
1806 or lessees of property or their agents for the purpose of maintaining the property, are exempt
1807 from this chapter when doing work upon the property;

1808 (k) (i) a person engaged in minor plumbing work that is incidental, as defined by the
1809 division by rule, to the replacement or repair of a fixture or an appliance in a residential or
1810 small commercial building, or structure used for agricultural use, as defined in Section

1811 15A-1-202, provided that no modification is made to:

1812 (A) existing culinary water, soil, waste, or vent piping; or

1813 (B) a gas appliance or combustion system; and

1814 (ii) except as provided in Subsection (1)(e), installation for the first time of a fixture or

1815 an appliance is not included in the exemption provided under Subsection (1)(k)(i);

1816 (l) a person who ordinarily would be subject to the plumber licensure requirements

1817 under this chapter when installing or repairing a water conditioner or other water treatment

1818 apparatus if the conditioner or apparatus:

1819 (i) meets the appropriate state construction codes or local plumbing standards; and

1820 (ii) is installed or repaired under the direction of a person authorized to do the work

1821 under an appropriate specialty contractor license;

1822 (m) a person who ordinarily would be subject to the electrician licensure requirements

1823 under this chapter when employed by:

1824 (i) railroad corporations, telephone corporations or their corporate affiliates, elevator

1825 contractors or constructors, or street railway systems; or

1826 (ii) public service corporations, rural electrification associations, or municipal utilities

1827 who generate, distribute, or sell electrical energy for light, heat, or power;

1828 (n) a person involved in minor electrical work incidental to a mechanical or service

1829 installation, including the outdoor installation of an above-ground, prebuilt hot tub;

1830 (o) a person who ordinarily would be subject to the electrician licensure requirements

1831 under this chapter but who during calendar years 2009, 2010, or 2011 was issued a specialty

1832 contractor license for the electrical work associated with the installation, repair, or maintenance

1833 of solar energy panels, may continue the limited electrical work for solar energy panels under a

1834 specialty contractor license;

1835 (p) a student participating in construction trade education and training programs

1836 approved by the commission with the concurrence of the director under the condition that:

1837 (i) all work intended as a part of a finished product on which there would normally be

1838 an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed
1839 building inspector; and

1840 (ii) a licensed contractor obtains the necessary building permits;

1841 (q) a delivery person when replacing any of the following existing equipment with a
1842 new gas appliance, provided there is an existing gas shutoff valve at the appliance:

1843 (i) gas range;

1844 (ii) gas dryer;

1845 (iii) outdoor gas barbeque; or

1846 (iv) outdoor gas patio heater;

1847 (r) a person performing maintenance on an elevator as defined in Subsection

1848 [58-55-102](#)(14), if the maintenance is not related to the operating integrity of the elevator; and

1849 (s) an apprentice or helper of an elevator mechanic licensed under this chapter when
1850 working under the general direction of the licensed elevator mechanic.

1851 (2) A compliance agency as defined in Section [15A-1-202](#) that issues a building permit
1852 to a person requesting a permit as a sole owner of property referred to in Subsection (1)(d) shall
1853 notify the division, in writing or through electronic transmission, of the issuance of the permit.

1854 Section 27. Section **58-55-501** is amended to read:

1855 **58-55-501. Unlawful conduct.**

1856 Unlawful conduct includes:

1857 (1) engaging in a construction trade, acting as a contractor, an alarm business or
1858 company, or an alarm company agent, or representing oneself to be engaged in a construction
1859 trade or to be acting as a contractor in a construction trade requiring licensure, unless the
1860 person doing any of these is appropriately licensed or exempted from licensure under this
1861 chapter;

1862 (2) acting in a construction trade, as an alarm business or company, or as an alarm
1863 company agent beyond the scope of the license held;

1864 (3) hiring or employing a person who is not licensed under this chapter to perform

- 1865 work on a project, unless the person:
- 1866 (a) is an employee of a person licensed under this chapter for wages; and
- 1867 (b) is not required to be licensed under this chapter;
- 1868 (4) applying for or obtaining a building permit either for oneself or another when not
- 1869 licensed or exempted from licensure as a contractor under this chapter;
- 1870 (5) issuing a building permit to any person for whom there is no evidence of a current
- 1871 license or exemption from licensure as a contractor under this chapter;
- 1872 (6) applying for or obtaining a building permit for the benefit of or on behalf of any
- 1873 other person who is required to be licensed under this chapter but who is not licensed or is
- 1874 otherwise not entitled to obtain or receive the benefit of the building permit;
- 1875 (7) failing to obtain a building permit when required by law or rule;
- 1876 (8) submitting a bid for any work for which a license is required under this chapter by a
- 1877 person not licensed or exempted from licensure as a contractor under this chapter;
- 1878 (9) willfully or deliberately misrepresenting or omitting a material fact in connection
- 1879 with an application to obtain or renew a license under this chapter;
- 1880 (10) allowing one's license to be used by another except as provided by statute or rule;
- 1881 (11) doing business under a name other than the name appearing on the license, except
- 1882 as permitted by statute or rule;
- 1883 (12) if licensed as a [specialty] contractor in the electrical trade or plumbing trade,
- 1884 journeyman plumber, residential journeyman plumber, journeyman electrician, master
- 1885 electrician, or residential electrician, failing to directly supervise an apprentice under one's
- 1886 supervision or exceeding the number of apprentices one is allowed to have under the
- 1887 [specialty] contractor's supervision;
- 1888 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
- 1889 funds in payment for a specific project from an owner or any other person, which funds are to
- 1890 pay for work performed or materials and services furnished for that specific project, and after
- 1891 receiving the funds to exercise unauthorized control over the funds by failing to pay the full

1892 amounts due and payable to persons who performed work or furnished materials or services
1893 within a reasonable period of time;

1894 (14) employing an unlicensed alarm business or company or an unlicensed individual
1895 as an alarm company agent, except as permitted under the exemption from licensure provisions
1896 under Section 58-1-307;

1897 (15) if licensed as an alarm company or alarm company agent, filing with the division
1898 fingerprint cards for an applicant which are not those of the applicant, or are in any other way
1899 false or fraudulent and intended to mislead the division in its consideration of the applicant for
1900 licensure;

1901 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

1902 (a) the building or construction laws of this state or any political subdivision;

1903 (b) the safety and labor laws applicable to a project;

1904 (c) any provision of the health laws applicable to a project;

1905 (d) the workers' compensation insurance laws of the state applicable to a project;

1906 (e) the laws governing withholdings for employee state and federal income taxes,
1907 unemployment taxes, Social Security payroll taxes, or other required withholdings; or

1908 (f) reporting, notification, and filing laws of this state or the federal government;

1909 (17) aiding or abetting any person in evading the provisions of this chapter or rules
1910 established under the authority of the division to govern this chapter;

1911 (18) engaging in the construction trade or as a contractor for the construction of
1912 residences of up to two units when not currently registered or exempt from registration as a
1913 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
1914 Fund Act;

1915 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
1916 written contract the notification required in Section 38-11-108;

1917 (20) wrongfully filing a preconstruction or construction lien in violation of Section
1918 38-1a-308;

1919 (21) if licensed as a contractor, not completing the approved continuing education
1920 required under Section 58-55-302.5;

1921 (22) an alarm company allowing an employee with a temporary license under Section
1922 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
1923 license, as provided in Subsection 58-55-312(3)(a)(ii);

1924 (23) an alarm company agent under a temporary license under Section 58-55-312
1925 engaging in conduct outside the scope of the temporary license, as provided in Subsection
1926 58-55-312(3)(a)(ii);

1927 (24) (a) an unincorporated entity licensed under this chapter having an individual who
1928 owns an interest in the unincorporated entity engage in a construction trade in Utah while not
1929 lawfully present in the United States; or

1930 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
1931 providing an individual who owns an interest in the unincorporated entity to engage in a
1932 construction trade in Utah while not lawfully present in the United States;

1933 (25) an unincorporated entity failing to provide the following for an individual who
1934 engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an
1935 individual who engages, or will engage, in a construction trade in Utah for a separate entity for
1936 which the unincorporated entity provides the individual as labor:

1937 (a) workers' compensation coverage:

1938 (i) to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and
1939 Title 34A, Chapter 3, Utah Occupational Disease Act; or

1940 (ii) that would be required under the chapters listed in Subsection (25)(a)(i) if the
1941 unincorporated entity were licensed under this chapter; and

1942 (b) unemployment compensation in accordance with Title 35A, Chapter 4,
1943 Employment Security Act, for an individual who owns, directly or indirectly, less than an 8%
1944 interest in the unincorporated entity, as defined by rule made by the division in accordance with
1945 Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1946 (26) the failure of a sign installation contractor or nonelectrical outdoor advertising
1947 sign contractor, as classified and defined in division rules, to:

1948 (a) display the contractor's license number prominently on a vehicle that:

1949 (i) the contractor uses; and

1950 (ii) displays the contractor's business name; or

1951 (b) carry a copy of the contractor's license in any other vehicle that the contractor uses
1952 at a job site, whether or not the vehicle is owned by the contractor;

1953 (27) (a) an unincorporated entity licensed under this chapter having an individual who
1954 owns an interest in the unincorporated entity engage in a construction trade in the state while
1955 the individual is using a Social Security number that does not belong to that individual; or

1956 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
1957 providing an individual, who owns an interest in the unincorporated entity, to engage in a
1958 construction trade in the state while the individual is using a Social Security number that does
1959 not belong to that individual;

1960 (28) a contractor failing to comply with a requirement imposed by a political
1961 subdivision, state agency, or board of education under Section 58-55-310; or

1962 (29) failing to timely comply with the requirements described in Section 58-55-605.
1963 Section 28. Section 58-55-503 is amended to read:

1964 **58-55-503. Penalty for unlawful conduct -- Citations.**

1965 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
1966 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), (26), (27), (28), or
1967 (29), or Subsection 58-55-504(2), or who fails to comply with a citation issued under this
1968 section after it is final, is guilty of a class A misdemeanor.

1969 (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an
1970 individual and does not include a sole proprietorship, joint venture, corporation, limited
1971 liability company, association, or organization of any type.

1972 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be

1973 awarded and may not accept a contract for the performance of the work.

1974 (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an
1975 infraction unless the violator did so with the intent to deprive the person to whom money is to
1976 be paid of the money received, in which case the violator is guilty of theft, as classified in
1977 Section 76-6-412.

1978 (3) Grounds for immediate suspension of a licensee's license by the division and the
1979 commission include:

1980 (a) the issuance of a citation for violation of Subsection 58-55-308(2), Section
1981 58-55-501, or Subsection 58-55-504(2); and

1982 (b) the failure by a licensee to make application to, report to, or notify the division with
1983 respect to any matter for which application, notification, or reporting is required under this
1984 chapter or rules adopted under this chapter, including:

1985 (i) applying to the division for a new license to engage in a new specialty classification
1986 or to do business under a new form of organization or business structure;

1987 (ii) filing a current financial statement with the division; and

1988 (iii) notifying the division concerning loss of insurance coverage or change in qualifier.

1989 (4) (a) If upon inspection or investigation, the division concludes that a person has
1990 violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
1991 (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), (28), or (29), Subsection
1992 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary
1993 action is appropriate, the director or the director's designee from within the division shall
1994 promptly issue a citation to the person according to this chapter and any pertinent rules, attempt
1995 to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
1996 proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

1997 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
1998 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26),
1999 (27), (28), or (29), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a

2000 stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be
2001 assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered
2002 to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3),
2003 (9), (10), (12), (14), (19), (21), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2).

2004 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
2005 58-55-401 may not be assessed through a citation.

2006 (b) (i) A citation shall be in writing and describe with particularity the nature of the
2007 violation, including a reference to the provision of the chapter, rule, or order alleged to have
2008 been violated.

2009 (ii) A citation shall clearly state that the recipient must notify the division in writing
2010 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
2011 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

2012 (iii) A citation shall clearly explain the consequences of failure to timely contest the
2013 citation or to make payment of any fines assessed by the citation within the time specified in
2014 the citation.

2015 (c) A citation issued under this section, or a copy of a citation, may be served upon a
2016 person upon whom a summons may be served:

2017 (i) in accordance with the Utah Rules of Civil Procedure;

2018 (ii) personally or upon the person's agent by a division investigator or by a person
2019 specially designated by the director; or

2020 (iii) by mail.

2021 (d) (i) If within 20 calendar days after the day on which a citation is served, the person
2022 to whom the citation was issued fails to request a hearing to contest the citation, the citation
2023 becomes the final order of the division and is not subject to further agency review.

2024 (ii) The period to contest a citation may be extended by the division for cause.

2025 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation
2026 the license of a licensee who fails to comply with a citation after it becomes final.

2027 (f) The failure of an applicant for licensure to comply with a citation after it becomes
2028 final is a ground for denial of license.

2029 (g) A citation may not be issued under this section after the expiration of six months
2030 following the occurrence of a violation.

2031 (h) Except as provided in Subsection (5), the director or the director's designee shall
2032 assess a fine in accordance with the following:

2033 (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;

2034 (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;

2035 and

2036 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
2037 \$2,000 for each day of continued offense.

2038 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
2039 Subsection (4)(h), an offense constitutes a second or subsequent offense if:

2040 (A) the division previously issued a final order determining that a person committed a
2041 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
2042 (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2);
2043 or

2044 (B) (I) the division initiated an action for a first or second offense;

2045 (II) a final order has not been issued by the division in the action initiated under
2046 Subsection (4)(i)(i)(B)(I);

2047 (III) the division determines during an investigation that occurred after the initiation of
2048 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
2049 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
2050 (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2); and

2051 (IV) after determining that the person committed a second or subsequent offense under
2052 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under
2053 Subsection (4)(i)(i)(B)(I).

2054 (ii) In issuing a final order for a second or subsequent offense under Subsection
2055 (4)(i)(i), the division shall comply with the requirements of this section.

2056 (j) In addition to any other licensure sanction or fine imposed under this section, the
2057 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)
2058 two or more times within a 12-month period, unless, with respect to a violation of Subsection
2059 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal
2060 legal working status of the individual who was the subject of the violation using a status
2061 verification system, as defined in Section 13-47-102.

2062 (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25)
2063 for each individual is considered a separate violation.

2064 (5) If a person violates Section 58-55-501, the division may not treat the violation as a
2065 subsequent violation of a previous violation if the violation occurs five years or more after the
2066 day on which the person committed the previous violation.

2067 (6) If, after an investigation, the division determines that a person has committed
2068 multiple of the same type of violation of Section 58-55-501, the division may treat each
2069 violation as a separate violation of Section 58-55-501 and apply a penalty under this section to
2070 each violation.

2071 (7) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
2072 into the Commerce Service Account created by Section 13-1-2.

2073 (b) A penalty that is not paid may be collected by the director by either referring the
2074 matter to a collection agency or bringing an action in the district court of the county in which
2075 the person against whom the penalty is imposed resides or in the county where the office of the
2076 director is located.

2077 (c) A county attorney or the attorney general of the state ~~[is to]~~ shall provide legal
2078 assistance and advice to the director in ~~[any]~~ an action to collect ~~[the]~~ a penalty.

2079 (d) In an action brought to ~~[enforce the provisions of this section]~~ collect a penalty, the
2080 court shall award reasonable attorney fees and costs to the prevailing party.

2081 Section 29. Section **58-56-9.5** is amended to read:

2082 **58-56-9.5. Penalty for unlawful conduct -- Citations.**

2083 (1) A person who violates a provision of Section **58-56-9.1** or who fails to comply with
2084 a citation issued under this section after it is final is guilty of a class A misdemeanor.

2085 (2) Grounds for immediate suspension of a licensee's license by the division under this
2086 chapter include:

2087 (a) the issuance of a citation for violation of a provision of Section **58-56-9.1**; and

2088 (b) failure by a licensee to make application to, report to, or notify the division with
2089 respect to a matter for which application, notification, or reporting is required under this
2090 chapter or rules made under this chapter by the division.

2091 (3) (a) If upon inspection or investigation, the division concludes that a person has
2092 violated a provision of Section **58-56-9.1**, or a rule or order issued with respect to that section,
2093 and that disciplinary action is appropriate, the director or the director's designee from within
2094 the division shall:

2095 (i) promptly issue a citation to the person according to this chapter and any pertinent
2096 rules;

2097 (ii) attempt to negotiate a stipulated settlement; or

2098 (iii) notify the person to appear before an adjudicative proceeding conducted under
2099 Title 63G, Chapter 4, Administrative Procedures Act.

2100 (b) (i) A person who violates a provision of Section **58-56-9.1**, as evidenced by an
2101 uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative
2102 proceeding, may be assessed a fine under this Subsection (3)(b) and may, in addition to or
2103 instead of the fine, be ordered by the division to cease from violating the provision.

2104 (ii) Except as otherwise provided in Subsection (2)(a), the division may not assess
2105 licensure sanctions referred to in Subsection **58-56-9(1)(c)** through a citation.

2106 (c) (i) Each citation shall be in writing and describe with particularity the nature of the
2107 violation, including a reference to the provision of the chapter, rule, or order alleged to have

2108 been violated.

2109 (ii) The citation shall clearly state that the recipient must notify the division in writing
2110 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
2111 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

2112 (iii) The citation shall clearly explain the consequences of failure to timely contest the
2113 citation or to make payment of any fines assessed by the citation within the time specified in
2114 the citation.

2115 (d) Each citation issued under this section, or a copy of each citation, may be served
2116 upon any person upon whom a summons may be served:

2117 (i) in accordance with the Utah Rules of Civil Procedure;

2118 (ii) personally or upon the person's agent by a division investigator or by any person
2119 specially designated by the director; or

2120 (iii) by mail.

2121 (e) (i) If within 20 calendar days from the service of a citation, the person to whom the
2122 citation was issued fails to request a hearing to contest the citation, the citation becomes the
2123 final order of the division and is not subject to further agency review.

2124 (ii) The period to contest a citation may be extended by the division for cause.

2125 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
2126 the license of a licensee who fails to comply with a citation after it becomes final.

2127 (g) The failure of an applicant for licensure to comply with a citation after it becomes
2128 final is a ground for denial of a license.

2129 (h) No citation may be issued under this section after the expiration of six months
2130 following the occurrence of the violation.

2131 (i) The director or the director's designee may assess fines for violations of Section
2132 [58-56-9.1](#) as follows:

2133 (i) for a first offense determined under this Subsection (3), a fine of up to \$1,000;

2134 (ii) for a second offense, a fine of up to \$2,000; and

2135 (iii) for any subsequent offense, a fine of up to \$2,000 for each day of continued
2136 offense.

2137 (j) For the purposes of issuing a final order under this section and assessing a fine
2138 under Subsection (3)(i), an offense constitutes a second or subsequent offense if:

2139 (i) the division previously issued a final order determining that a person committed a
2140 first or second offense in violation of a provision of Section 58-56-9.1; or

2141 (ii) (A) the division initiated an action for a first or second offense;

2142 (B) no final order has been issued by the division in the action initiated under
2143 Subsection (3)(j)(ii)(A);

2144 (C) the division determines during an investigation that occurred after the initiation of
2145 the action under Subsection (3)(j)(ii)(A) that the person committed a second or subsequent
2146 violation of a provision of Section 58-56-9.1; and

2147 (D) after determining that the person committed a second or subsequent offense under
2148 Subsection (3)(j)(ii)(C), the division issues a final order on the action initiated under
2149 Subsection (3)(j)(ii)(A).

2150 (k) In issuing a final order for a second or subsequent offense under Subsection (3)(j),
2151 the division shall comply with the requirements of this section.

2152 (4) (a) Proceeds from a fine imposed under Subsection (3)(i) shall be deposited in the
2153 Commerce Service Account created by Section 13-1-2.

2154 ~~[(b) The director may collect an unpaid fine by:]~~

2155 ~~[(i) referring the matter to a collection agency; or]~~

2156 ~~[(ii) bringing an action in the district court of the county in which the person resides or
2157 in the county where the director's office is located.]~~

2158 ~~[(c) (i) The state's attorney general or a county attorney shall provide legal assistance
2159 and advice to the director in an action brought under Subsection (4)(b).]~~

2160 ~~[(ii) Reasonable attorney fees and costs shall be awarded in an action brought to
2161 enforce the provisions of this section.]~~

2162 (b) The director may collect a fine that is not paid by:
2163 (i) referring the matter to a collection agency; or
2164 (ii) bringing an action in the district court of the county where the person against whom
2165 the penalty is imposed resides or in the county where the office of the director is located.

2166 (c) A county attorney or the attorney general of the state shall provide legal assistance
2167 and advice to the director in an action to collect a penalty.

2168 (d) A court shall award reasonable attorney fees and costs to the prevailing party in an
2169 action brought by the division to collect a penalty.

2170 Section 30. Section **58-60-117** is amended to read:

2171 **58-60-117. Externship licenses.**

2172 (1) The division shall issue a temporary license under Part 2, Social Worker Licensing
2173 Act, Part 3, Marriage and Family Therapist Licensing Act, or Part 4, Clinical Mental Health
2174 Counselor Licensing Act, of this chapter to a person who:

2175 (a) submits an application for licensure under Part 2, Social Worker Licensing Act,
2176 Part 3, Marriage and Family Therapist Licensing Act, or Part 4, Clinical Mental Health
2177 Counselor Licensing Act;

2178 (b) pays a fee determined by the department under Section [63J-1-504](#);

2179 (c) holds an earned doctoral degree or master's degree in a discipline that is a
2180 prerequisite for practice as a mental health therapist;

2181 (d) has a deficiency, as defined by division rule, in course work;

2182 (e) provides mental health therapy as an employee of a public or private organization,
2183 which provides mental health therapy, while under the supervision of a person licensed under
2184 this chapter; and

2185 (f) is of good moral character and has no disciplinary action pending or in effect
2186 against the applicant in connection with the practice of mental health therapy, in any
2187 jurisdiction.

2188 (2) A temporary license issued under this section shall expire upon the earlier of:

- 2189 (a) issuance of the license applied for; or
2190 (b) unless the deadline is extended for good cause as determined by the division, three
2191 years from the date the temporary license was issued.
- 2192 (3) The temporary license issued under this section is an externship license.
- 2193 Section 31. Section **58-63-503** is amended to read:
- 2194 **58-63-503. Penalties.**
- 2195 (1) Unless Subsection (2) applies, an individual who commits an act of unlawful
2196 conduct under Section **58-63-501** or who fails to comply with a citation issued under this
2197 section after it becomes final is guilty of a class A misdemeanor.
- 2198 (2) The division may immediately suspend a license issued under this chapter of a
2199 person who is given a citation for violating Subsection **58-63-501**(1), (2), (4), or (5).
- 2200 (3) (a) If upon inspection or investigation, the division determines that a person has
2201 violated Subsection **58-63-501**(1), (2), (4), or (5) or any rule made or order issued under those
2202 subsections, and that disciplinary action is warranted, the director or the director's designee
2203 within the division shall promptly issue a citation to the person and:
- 2204 (i) attempt to negotiate a stipulated settlement; or
2205 (ii) notify the person to appear for an adjudicative proceeding conducted under Title
2206 63G, Chapter 4, Administrative Procedures Act.
- 2207 (b) (i) The division may fine a person who violates Subsection **58-63-501**(1), (2), (4),
2208 or (5), as evidenced by an uncontested citation, a stipulated settlement, or a finding of a
2209 violation in an adjudicative proceeding held under Subsection (3)(a)(ii), or order the person to
2210 cease and desist from the violation, or do both.
- 2211 (ii) Except for a cease and desist order, the division may not impose the licensure
2212 sanctions listed in Section **58-63-401** through the issuance of a citation under this section.
- 2213 (c) The written citation shall:
- 2214 (i) describe the nature of the violation, including a reference to the allegedly violated
2215 statute, rule, or order;

2216 (ii) state the recipient must notify the division in writing within 20 calendar days of
2217 issuance of the citation if the recipient wants to contest the citation at the adjudicative
2218 proceeding referred to in Subsection (3)(a)(ii); and

2219 (iii) explain the consequences of failure to timely contest the citation or to make
2220 payment of a fine assessed under the citation with the time specified in the citation.

2221 (d) (i) The division may serve a citation issued under this section, or a copy of the
2222 citation, upon an individual who is subject to service of a summons under the Utah Rules of
2223 Civil Procedure.

2224 (ii) (A) The division may serve the individual personally or serve the individual's
2225 agent.

2226 (B) The division may serve the summons by a division investigator, by a person
2227 designated by the director, or by mail.

2228 (e) (i) If within 20 days from the service of a citation the person to whom the citation
2229 was issued fails to request a hearing to contest the citation, the citation becomes the final order
2230 of the division and is not subject to further agency review.

2231 (ii) The division may grant an extension of the 20-day period for cause.

2232 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
2233 the license of a licensee who fails to comply with a citation after it becomes final.

2234 (g) The division may not issue a citation for an alleged violation under this section
2235 after the expiration of six months following the occurrence of the alleged violation.

2236 (h) The director or the director's designee may assess fines under this section as
2237 follows:

2238 (i) for a first offense under Subsection (3)(a), a fine of up to \$1,000;

2239 (ii) for a second offense under Subsection (3)(a), a fine of up to \$2,000; and

2240 (iii) for a subsequent offense under Subsection (3)(a), a fine of up to \$2,000 for each
2241 day of continued violation.

2242 (i) (i) For purposes of issuing a final order under this section and assessing a fine under

2243 Subsection (3)(h), an offense is a second or subsequent offense if:

2244 (A) the division previously issued a final order determining that a person committed a
2245 first or second offense in violation of Subsection 58-63-501(1) or (4); or

2246 (B) (I) the division initiated an action for a first or second offense;

2247 (II) no final order has been issued by the division in an action initiated under

2248 Subsection (3)(i)(i)(B)(I);

2249 (III) the division determines during an investigation that occurred after the initiation of
2250 the action under Subsection (3)(i)(i)(B)(I) that the person committed a second or subsequent
2251 violation of Subsection 58-63-501(1) or (4); and

2252 (IV) after determining that the person committed a second or subsequent offense under
2253 Subsection (3)(i)(i)(B)(III), the division issues a final order on the action initiated under
2254 Subsection (3)(i)(i)(B)(I).

2255 (ii) In issuing a final order for a second or subsequent offense under Subsection
2256 (3)(i)(i), the division shall comply with the requirements of this section.

2257 (4) (a) The division shall deposit a fine imposed by the director under Subsection (3)(h)
2258 in the General Fund as a dedicated credit for use by the division for the purposes listed in
2259 Section 58-63-103.

2260 [~~(b) The director may collect a Subsection (3)(h) fine which is not paid by:~~]

2261 [~~(i) referring the matter to the Office of State Debt Collection or a collection agency;~~

2262 ~~or]~~

2263 [~~(ii) bringing an action in the district court of the county in which the person resides or
2264 in the county where the office of the director is located.]~~

2265 [~~(c) The director may seek legal assistance from the attorney general or the county or
2266 district attorney of the district in which the action is brought to collect the fine.]~~

2267 [~~(d) The court shall award reasonable attorney fees and costs to the division for
2268 successful actions under Subsection (4)(b)(ii).]~~

2269 (b) The director may collect a fine that is not paid by:

2270 (i) referring the matter to a collection agency; or
2271 (ii) bringing an action in the district court of the county where the person against whom
2272 the penalty is imposed resides or in the county where the office of the director is located.

2273 (c) A county attorney or the attorney general of the state shall provide legal assistance
2274 and advice to the director in an action to collect a penalty.

2275 (d) A court shall award reasonable attorney fees and costs to the prevailing party in an
2276 action brought by the division to collect a penalty.

2277 Section 32. Section **58-67-302** is amended to read:

2278 **58-67-302. Qualifications for licensure.**

2279 (1) An applicant for licensure as a physician and surgeon, except as set forth in
2280 Subsection (2), shall:

2281 (a) submit an application in a form prescribed by the division, which may include:

2282 (i) submissions by the applicant of information maintained by practitioner data banks,
2283 as designated by division rule, with respect to the applicant;

2284 (ii) a record of professional liability claims made against the applicant and settlements
2285 paid by or on behalf of the applicant; and

2286 (iii) authorization to use a record coordination and verification service approved by the
2287 division in collaboration with the board;

2288 (b) pay a fee determined by the department under Section [63J-1-504](#);

2289 (c) be of good moral character;

2290 (d) if the applicant is applying to participate in the Interstate Medical Licensure
2291 Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal
2292 background check in accordance with Section [58-67-302.1](#) and any requirements established by
2293 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

2294 [~~f~~] (e) provide satisfactory documentation of having successfully completed a
2295 program of professional education preparing an individual as a physician and surgeon, as
2296 evidenced by:

2297 (i) having received an earned degree of doctor of medicine from an LCME accredited
2298 medical school or college; or

2299 (ii) if the applicant graduated from a medical school or college located outside the
2300 United States or its territories, submitting a current certification by the Educational
2301 Commission for Foreign Medical Graduates or any successor organization approved by the
2302 division in collaboration with the board;

2303 [~~e~~] (f) satisfy the division and board that the applicant:

2304 (i) has successfully completed 24 months of progressive resident training in a program
2305 approved by the ACGME, the Royal College of Physicians and Surgeons, the College of
2306 Family Physicians of Canada, or any similar body in the United States or Canada approved by
2307 the division in collaboration with the board; or

2308 (ii) (A) has successfully completed 12 months of resident training in an ACGME
2309 approved program after receiving a degree of doctor of medicine as required under Subsection
2310 (1)~~(d)~~(e);

2311 (B) has been accepted in and is successfully participating in progressive resident
2312 training in an ACGME approved program within Utah, in the applicant's second or third year
2313 of postgraduate training; and

2314 (C) has agreed to surrender to the division the applicant's license as a physician and
2315 surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act,
2316 and has agreed the applicant's license as a physician and surgeon will be automatically revoked
2317 by the division if the applicant fails to continue in good standing in an ACGME approved
2318 progressive resident training program within the state;

2319 [~~f~~] (g) pass the licensing examination sequence required by division rule made in
2320 collaboration with the board;

2321 [~~g~~] (h) be able to read, write, speak, understand, and be understood in the English
2322 language and demonstrate proficiency to the satisfaction of the board if requested by the board;

2323 [~~h~~] (i) meet with the board and representatives of the division, if requested, for the

2324 purpose of evaluating the applicant's qualifications for licensure;
2325 ~~[(†)]~~ (j) designate:
2326 (i) a contact person for access to medical records in accordance with the federal Health
2327 Insurance Portability and Accountability Act; and
2328 (ii) an alternate contact person for access to medical records, in the event the original
2329 contact person is unable or unwilling to serve as the contact person for access to medical
2330 records; and
2331 ~~[(†)]~~ (k) establish a method for notifying patients of the identity and location of the
2332 contact person and alternate contact person, if the applicant will practice in a location with no
2333 other persons licensed under this chapter.
2334 (2) An applicant for licensure as a physician and surgeon by endorsement who is
2335 currently licensed to practice medicine in any state other than Utah, a district or territory of the
2336 United States, or Canada shall:
2337 (a) be currently licensed with a full unrestricted license in good standing in any state,
2338 district, or territory of the United States, or Canada;
2339 (b) have been actively engaged in the legal practice of medicine in any state, district, or
2340 territory of the United States, or Canada for not less than 6,000 hours during the five years
2341 immediately preceding the date of application for licensure in Utah;
2342 (c) comply with the requirements for licensure under Subsections (1)(a) through ~~[(†)]~~
2343 (e), (1)~~[(e)]~~(f)(i), and (1)~~[(g)]~~(h) through ~~[(†)]~~ (k);
2344 (d) have passed the licensing examination sequence required in Subsection (1)(f) or
2345 another medical licensing examination sequence in another state, district or territory of the
2346 United States, or Canada that the division in collaboration with the board by rulemaking
2347 determines is equivalent to its own required examination;
2348 (e) not have any investigation or action pending against any health care license of the
2349 applicant, not have a health care license that was suspended or revoked in any state, district or
2350 territory of the United States, or Canada, and not have surrendered a health care license in lieu

2351 of a disciplinary action, unless:

2352 (i) the license was subsequently reinstated as a full unrestricted license in good
2353 standing; or

2354 (ii) the division in collaboration with the board determines to its satisfaction, after full
2355 disclosure by the applicant, that:

2356 (A) the conduct has been corrected, monitored, and resolved; or

2357 (B) a mitigating circumstance exists that prevents its resolution, and the division in
2358 collaboration with the board is satisfied that, but for the mitigating circumstance, the license
2359 would be reinstated;

2360 (f) submit to a records review, a practice history review, and comprehensive
2361 assessments, if requested by the division in collaboration with the board; and

2362 (g) produce satisfactory evidence that the applicant meets the requirements of this
2363 Subsection (2) to the satisfaction of the division in collaboration with the board.

2364 (3) An applicant for licensure by endorsement may engage in the practice of medicine
2365 under a temporary license while the applicant's application for licensure is being processed by
2366 the division, provided:

2367 (a) the applicant submits a complete application required for temporary licensure to the
2368 division;

2369 (b) the applicant submits a written document to the division from:

2370 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
2371 Licensing and Inspection Act, stating that the applicant is practicing under the:

2372 (A) invitation of the health care facility; and

2373 (B) the general supervision of a physician practicing at the facility; or

2374 (ii) two individuals licensed under this chapter, whose license is in good standing and
2375 who practice in the same clinical location, both stating that:

2376 (A) the applicant is practicing under the invitation and general supervision of the
2377 individual; and

- 2378 (B) the applicant will practice at the same clinical location as the individual;
- 2379 (c) the applicant submits a signed certification to the division that the applicant meets
- 2380 the requirements of Subsection (2);
- 2381 (d) the applicant does not engage in the practice of medicine until the division has
- 2382 issued a temporary license;
- 2383 (e) the temporary license is only issued for and may not be extended or renewed
- 2384 beyond the duration of one year from issuance; and
- 2385 (f) the temporary license expires immediately and prior to the expiration of one year
- 2386 from issuance, upon notification from the division that the applicant's application for licensure
- 2387 by endorsement is denied.
- 2388 (4) The division shall issue a temporary license under Subsection (3) within 15
- 2389 business days after the applicant satisfies the requirements of Subsection (3).
- 2390 (5) The division may not require a post-residency board certification as a requirement
- 2391 for licensure.

2392 Section 33. Section **58-67-302.1** is enacted to read:

2393 **58-67-302.1. Qualifications for licensure -- Criminal background check.**

2394 (1) An applicant for participation in the Interstate Medical Licensure Compact under

2395 Chapter 67b, Interstate Medical Licensure Compact, shall:

- 2396 (a) submit fingerprint cards in a form acceptable to the division at the time the license
- 2397 application is filed; and
- 2398 (b) consent to a fingerprint background check conducted by the Bureau of Criminal
- 2399 Identification and the Federal Bureau of Investigation.

2400 (2) The division shall:

- 2401 (a) in addition to other fees authorized by this chapter, collect from each applicant
- 2402 submitting fingerprints in accordance with this section the fee that the Bureau of Criminal
- 2403 Identification is authorized to collect for the services provided under Section [53-10-108](#) and the
- 2404 fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of

2405 obtaining federal criminal history record information;

2406 (b) submit from each applicant the fingerprint card and the fees described in

2407 Subsection (2)(a) to the Bureau of Criminal Identification; and

2408 (c) obtain and retain in division records a signed waiver approved by the Bureau of

2409 Criminal Identification in accordance with Section 53-10-108 for each applicant.

2410 (3) The Bureau of Criminal Identification shall, in accordance with the requirements of

2411 Section 53-10-108:

2412 (a) check the fingerprints submitted under Subsection (2)(b) against the applicable state

2413 and regional criminal records databases;

2414 (b) forward the fingerprints to the Federal Bureau of Investigation for a national

2415 criminal history background check; and

2416 (c) provide the results from the state, regional, and nationwide criminal history

2417 background checks to the division.

2418 (4) For purposes of conducting a criminal background check required under this

2419 section, the division shall have direct access to criminal background information maintained

2420 under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

2421 (5) The division may not disseminate outside of the division any criminal history

2422 record information that the division obtains from the Bureau of Criminal Identification or the

2423 Federal Bureau of Investigation under the criminal background check requirements of this

2424 section.

2425 (6) The division may not issue a letter of qualification to participate in the Interstate

2426 Medical Licensure Compact until the criminal background check described in this section is

2427 completed.

2428 Section 34. Section **58-67-302.5** is amended to read:

2429 **58-67-302.5. Licensing of graduates of foreign medical schools.**

2430 (1) Notwithstanding any other provision of law to the contrary, an individual enrolled

2431 in a medical school outside the United States, its territories, the District of Columbia, or

2432 Canada is eligible for licensure as a physician and surgeon in this state if the individual has
2433 satisfied the following requirements:

2434 (a) meets all the requirements of Subsection 58-67-302(1), except for Subsection
2435 58-67-302(1)~~(d)~~(e);

2436 (b) has studied medicine in a medical school located outside the United States which is
2437 recognized by an organization approved by the division;

2438 (c) has completed all of the formal requirements of the foreign medical school except
2439 internship or social service;

2440 (d) has attained a passing score on the educational commission for foreign medical
2441 graduates examination or other qualifying examinations such as the United States Medical
2442 Licensing Exam parts I and II, which are approved by the division or a medical school
2443 approved by the division;

2444 (e) has satisfactorily completed one calendar year of supervised clinical training under
2445 the direction of a United States medical education setting accredited by the liaison committee
2446 for graduate medical education and approved by the division;

2447 (f) has completed the postgraduate hospital training required by Subsection
2448 58-67-302(1)~~(e)~~(f)(i); and

2449 (g) has passed the examination required by the division of all applicants for licensure.

2450 (2) Satisfaction of the requirements of Subsection (1) is in lieu of:

2451 (a) the completion of any foreign internship or social service requirements; and

2452 (b) the certification required by Subsection 58-67-302(1)~~(d)~~(e).

2453 (3) Individuals who satisfy the requirements of Subsections (1)(a) through ~~(f)~~ (g)
2454 shall be eligible for admission to graduate medical education programs within the state,
2455 including internships and residencies, which are accredited by the liaison committee for
2456 graduate medical education.

2457 (4) A document issued by a medical school located outside the United States shall be
2458 considered the equivalent of a degree of doctor of medicine for the purpose of licensure as a

2459 physician and surgeon in this state if:

2460 (a) the foreign medical school is recognized by an organization approved by the
2461 division;

2462 (b) the document granted by the foreign medical school is issued after the completion
2463 of all formal requirements of the medical school except internship or social service; and

2464 (c) the foreign medical school certifies that the person to whom the document was
2465 issued has satisfactorily completed the requirements of Subsection (1)(c).

2466 (5) The provisions for licensure under this section shall be known as the "fifth pathway
2467 program."

2468 Section 35. Section **58-67-302.7** is amended to read:

2469 **58-67-302.7. Licensing of physician-educators.**

2470 (1) As used in this section:

2471 (a) "Foreign country" means a country other than the United States, its territories, or
2472 Canada.

2473 (b) "Foreign medical school" means a medical school that is outside the United States,
2474 its territories, and Canada.

2475 (2) Notwithstanding any provision of law to the contrary, an individual may receive a
2476 type I foreign teaching license if the individual:

2477 (a) submits an application in a form prescribed by the division, which may include:

2478 (i) submission by the applicant of information maintained in a practitioner data bank,
2479 as designated by division rule, with respect to the applicant;

2480 (ii) a record of professional liability claims made against the applicant and settlements
2481 paid by or on behalf of the applicant; and

2482 (iii) the applicant's curriculum vitae;

2483 (b) is a graduate of a foreign medical school that is accepted for certification by the
2484 Educational Commission for Foreign Medical Graduates;

2485 (c) is licensed in good standing in a foreign country, the United States, its territories, or

2486 Canada;

2487 (d) does not have an investigation or action pending against the physician's healthcare
2488 license, does not have a healthcare license that was suspended or revoked, and has not
2489 surrendered a healthcare license in lieu of disciplinary action, unless:

2490 (i) the license was subsequently reinstated in good standing; or

2491 (ii) the division in collaboration with the board determines to its satisfaction, after full
2492 disclosure by the applicant and full consideration by the division in collaboration with the
2493 board, that:

2494 (A) the conduct has been corrected, monitored, and resolved; or

2495 (B) a mitigating circumstance exists that prevents resolution, and the division in
2496 collaboration with the board is satisfied that but for the mitigating circumstance, the license
2497 would be reinstated;

2498 (e) submits documentation of legal status to work in the United States;

2499 (f) meets at least three of the following qualifications:

2500 (i) (A) published original results of clinical research, within 10 years before the day on
2501 which the application is submitted, in a medical journal listed in the Index Medicus or an
2502 equivalent scholarly publication; and

2503 (B) submits the publication to the Board in English or in a foreign language with a
2504 verifiable, certified English translation;

2505 (ii) held an appointment at a medical school approved by the LCME or at any medical
2506 school listed in the World Health Organization directory at the level of associate or full
2507 professor, or its equivalent, for at least five years;

2508 (iii) (A) developed a treatment modality, surgical technique, or other verified original
2509 contribution to the field of medicine within 10 years before the day on which the application is
2510 submitted; and

2511 (B) has the treatment modality, surgical technique, or other verified original
2512 contribution attested to by the dean of an LCME accredited school of medicine in Utah;

- 2513 (iv) actively practiced medicine cumulatively for 10 years; or
2514 (v) is board certified in good standing of a board of the American Board of Medical
2515 Specialities or equivalent specialty board;
- 2516 (g) is of good moral character;
- 2517 (h) is able to read, write, speak, understand, and be understood in the English language
2518 and demonstrates proficiency to the satisfaction of the division in collaboration with the board,
2519 if requested;
- 2520 (i) is invited by an LCME accredited medical school in Utah to serve as a full-time
2521 member of the medical school's academic faculty, as evidenced by written certification from:
- 2522 (i) the dean of the medical school, stating that the applicant has been appointed to a
2523 full-time faculty position, that because the applicant has unique expertise in a specific field of
2524 medicine the medical school considers the applicant to be a valuable member of the faculty,
2525 and that the applicant is qualified by knowledge, skill, and ability to practice medicine in the
2526 state; and
- 2527 (ii) the head of the department to which the applicant is to be appointed, stating that the
2528 applicant will be under the direction of the head of the department and will be permitted to
2529 practice medicine only as a necessary part of the applicant's duties, providing detailed evidence
2530 of the applicant's qualifications and competence, including the nature and location of the
2531 applicant's proposed responsibilities, reasons for any limitations of the applicant's practice
2532 responsibilities, and the degree of supervision, if any, under which the applicant will function;
- 2533 (j) pays a licensing fee set by the division under Section [63J-1-504](#); and
- 2534 (k) has practiced medicine for at least 10 years as an attending physician.
- 2535 (3) Notwithstanding any provision of law to the contrary, an individual may receive a
2536 type II foreign teaching license if the individual:
- 2537 (a) satisfies the requirements of Subsections (2)(a) through (e) and (g) through (j);
2538 (b) has delivered clinical care to patients cumulatively for five years after graduation
2539 from medical school; and

2540 (c) (i) will be completing a clinical fellowship while employed at the medical school
2541 described in Subsection (2)(i); or

2542 (ii) has already completed a medical residency accredited by the Royal College of
2543 Physicians and Surgeons of Canada, the United Kingdom, Australia, or New Zealand, or a
2544 comparable accreditation organization as determined by the division in collaboration with the
2545 board.

2546 (4) After an initial term of one year, a type I license may be renewed for periods of two
2547 years if the licensee continues to satisfy the requirements described in Subsection (2) and
2548 completes the division's continuing education renewal requirements established under Section
2549 [58-67-303](#).

2550 (5) A type II license may be renewed on an annual basis, up to four times, if the
2551 licensee continues to satisfy the requirements described in Subsection (3) and completes the
2552 division's continuing education renewal requirements established under Section [58-67-303](#).

2553 (6) A license issued under this section:

2554 (a) authorizes the licensee to practice medicine:

2555 (i) within the scope of the licensee's employment at the medical school described in
2556 Subsection (2)(i) and the licensee's academic position; and

2557 (ii) at a hospital or clinic affiliated with the medical school described in Subsection
2558 (2)(i) for the purpose of teaching, clinical care, or pursuing research;

2559 (b) shall list the limitations described in Subsection (6)(a); and

2560 (c) shall expire on the earlier of:

2561 (i) one year after the day on which the type I or type II license is initially issued, unless
2562 the license is renewed;

2563 (ii) for a type I license, two years after the day on which the license is renewed;

2564 (iii) for a type II license, one year after the day on which the license is renewed; or

2565 (iv) the day on which employment at the medical school described in Subsection (2)(i)
2566 ends.

2567 (7) A person who holds a type I license for five consecutive years may apply for
2568 licensure as a physician and surgeon in this state and shall be licensed if the individual satisfies
2569 the requirements described in Subsection (8). If the person fails to obtain licensure as a
2570 physician and surgeon in this state, the person may apply for a renewal of the type I license
2571 under Subsection (2).

2572 (8) An individual who holds a type I or type II license for five consecutive years is
2573 eligible for licensure as a physician and surgeon in this state if the individual:

2574 (a) worked an average of at least 40 hours per month at the level of an attending
2575 physician during the time the individual held the type I or type II license;

2576 (b) holds the rank of associate professor or higher at the medical school described in
2577 Subsection (2)(i);

2578 (c) obtains certification from the Educational Commission for Foreign Medical
2579 Graduates or any successor organization approved by the division in collaboration with the
2580 board;

2581 (d) spent a cumulative 20 hours per year while holding a type I or type II license:

2582 (i) teaching or lecturing to medical students or house staff;

2583 (ii) participating in educational department meetings or conferences that are not
2584 certified to meet the continuing medical education license renewal requirement; or

2585 (iii) attending continuing medical education classes in addition to the requirements for
2586 continuing education described in Subsections (4) and (5);

2587 (e) obtains a passing score on the final step of the licensing examination sequence
2588 required by division rule made in collaboration with the board; and

2589 (f) satisfies the requirements described in Subsections [58-67-302\(1\)\(a\)](#) through ~~(e)~~;
2590 ~~(h)~~, and ~~(i)~~ (d), (i), and (j).

2591 (9) If a person who holds a type II license fails to obtain licensure as a physician and
2592 surgeon in this state after applying under the procedures described in Subsection (8), the person
2593 may not:

2594 (a) reapply for or renew a type II license; or

2595 (b) apply for a type I license.

2596 (10) The division or the board may require an applicant for licensure under this section
2597 to meet with the board and representatives of the division for the purpose of evaluating the
2598 applicant's qualifications for licensure.

2599 (11) The division in collaboration with the board may withdraw a license under this
2600 section at any time for material misrepresentation or unlawful or unprofessional conduct.

2601 Section 36. Section **58-67-302.8 (Effective 07/01/18)** is amended to read:

2602 **58-67-302.8 (Effective 07/01/18). Restricted licensing of an associate physician.**

2603 (1) An individual may apply for a restricted license as an associate physician if the
2604 individual:

2605 (a) meets the requirements described in Subsections **58-67-302(1)(a)** through ~~[(e)]~~ (d),
2606 ~~(1)[(d)](e)(i)~~, and ~~(1)[(g)](h)~~ through ~~[(j)]~~ (k);

2607 (b) successfully completes Step 1 and Step 2 of the United States Medical Licensing
2608 Examination or the equivalent steps of another board-approved medical licensing examination:

2609 (i) within three years after the day on which the applicant graduates from a program
2610 described in Subsection **58-67-302(1)[(d)](e)(i)**; and

2611 (ii) within two years before applying for a restricted license as an associate physician;
2612 and

2613 (c) is not currently enrolled in and has not completed a residency program.

2614 (2) Before a licensed associate physician may engage in the practice of medicine as
2615 described in Subsection (3), the licensed associate physician shall:

2616 (a) enter into a collaborative practice arrangement described in Section **58-67-807**
2617 within six months after the associate physician's initial licensure; and

2618 (b) receive division approval of the collaborative practice arrangement.

2619 (3) An associate physician's scope of practice is limited to primary care services to
2620 medically underserved populations or in medically underserved areas within the state.

2621 Section 37. Section **58-67-304 (Superseded 07/01/18)** is amended to read:

2622 **58-67-304 (Superseded 07/01/18). License renewal requirements.**

2623 (1) As a condition precedent for license renewal, each licensee shall, during each
2624 two-year licensure cycle or other cycle defined by division rule:

2625 (a) complete qualified continuing professional education requirements in accordance
2626 with the number of hours and standards defined by division rule made in collaboration with the
2627 board;

2628 (b) appoint a contact person for access to medical records and an alternate contact
2629 person for access to medical records in accordance with Subsection **58-67-302(1)(i)**; and

2630 (c) if the licensee practices medicine in a location with no other persons licensed under
2631 this chapter, provide some method of notice to the licensee's patients of the identity and
2632 location of the contact person and alternate contact person for the licensee.

2633 (2) If a renewal period is extended or shortened under Section **58-67-303**, the
2634 continuing education hours required for license renewal under this section are increased or
2635 decreased proportionally.

2636 (3) An application to renew a license under this chapter shall:

2637 (a) require a physician to answer the following question: "Do you perform elective
2638 abortions in Utah in a location other than a hospital?"; and

2639 (b) immediately following the question, contain the following statement: "For purposes
2640 of the immediately preceding question, elective abortion means an abortion other than one of
2641 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
2642 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
2643 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
2644 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
2645 the woman is pregnant as a result of rape or incest."

2646 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
2647 to the licensing of an abortion clinic, if a physician responds positively to the question

2648 described in Subsection (3)(a), the division shall, within 30 days after the day on which it
2649 renews the physician's license under this chapter, inform the Department of Health in writing:

- 2650 (a) of the name and business address of the physician; and
- 2651 (b) that the physician responded positively to the question described in Subsection
2652 (3)(a).

2653 Section 38. Section **58-67-304 (Effective 07/01/18)** is amended to read:

2654 **58-67-304 (Effective 07/01/18). License renewal requirements.**

2655 (1) As a condition precedent for license renewal, each licensee shall, during each
2656 two-year licensure cycle or other cycle defined by division rule:

- 2657 (a) complete qualified continuing professional education requirements in accordance
2658 with the number of hours and standards defined by division rule made in collaboration with the
2659 board;

- 2660 (b) appoint a contact person for access to medical records and an alternate contact
2661 person for access to medical records in accordance with Subsection **58-67-302(1)(~~†~~)(j)**;

- 2662 (c) if the licensee practices medicine in a location with no other persons licensed under
2663 this chapter, provide some method of notice to the licensee's patients of the identity and
2664 location of the contact person and alternate contact person for the licensee; and

- 2665 (d) if the licensee is an associate physician licensed under Section **58-67-302.8**,
2666 successfully complete the educational methods and programs described in Subsection
2667 **58-67-807(4)**.

2668 (2) If a renewal period is extended or shortened under Section **58-67-303**, the
2669 continuing education hours required for license renewal under this section are increased or
2670 decreased proportionally.

2671 (3) An application to renew a license under this chapter shall:

- 2672 (a) require a physician to answer the following question: "Do you perform elective
2673 abortions in Utah in a location other than a hospital?"; and

- 2674 (b) immediately following the question, contain the following statement: "For purposes

2675 of the immediately preceding question, elective abortion means an abortion other than one of
2676 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
2677 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
2678 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
2679 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
2680 the woman is pregnant as a result of rape or incest."

2681 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
2682 to the licensing of an abortion clinic, if a physician responds positively to the question
2683 described in Subsection (3)(a), the division shall, within 30 days after the day on which it
2684 renews the physician's license under this chapter, inform the Department of Health in writing:

2685 (a) of the name and business address of the physician; and

2686 (b) that the physician responded positively to the question described in Subsection
2687 (3)(a).

2688 Section 39. Section **58-67-403** is amended to read:

2689 **58-67-403. Revocation of license -- Nondisciplinary.**

2690 Revocation by the division of a license under Subsection **58-67-302(1)(e)(f)** for
2691 failure to continue on a resident training program for reasons other than unprofessional or
2692 unlawful conduct is a nondisciplinary action and may not be reported by the division as a
2693 disciplinary action against the licensee.

2694 Section 40. Section **58-67-503** is amended to read:

2695 **58-67-503. Penalties and administrative actions for unlawful and unprofessional**
2696 **conduct.**

2697 (1) Any person who violates the unlawful conduct provisions of Section **58-67-501** or
2698 Section **58-1-501** is guilty of a third degree felony.

2699 (2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful
2700 conduct by:

2701 (i) assessing administrative penalties; or

- 2702 (ii) taking other appropriate administrative action.
- 2703 (b) A monetary administrative penalty imposed under this section shall be deposited in
2704 the Physician Education Fund created in Section 58-67a-1.
- 2705 (3) If a licensee has been convicted of unlawful conduct, described in Section
2706 58-67-501, before an administrative proceeding regarding the same conduct, the division may
2707 not assess an additional administrative fine under this chapter for the same conduct.
- 2708 (4) (a) If the division concludes that an individual has violated provisions of Section
2709 58-67-501, Section 58-67-502, Chapter 1, Division of Occupational and Professional Licensing
2710 Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to
2711 these provisions, and disciplinary action is appropriate, the director or director's designee shall:
- 2712 (i) issue a citation to the individual;
- 2713 (ii) attempt to negotiate a stipulated settlement; or
- 2714 (iii) notify the individual that an adjudicative proceeding conducted under Title 63G,
2715 Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to
2716 appear.
- 2717 (b) The division may take the following action against an individual who is in violation
2718 of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a
2719 stipulated settlement, or a finding of violation in an adjudicative proceeding:
- 2720 (i) assess a fine of up to \$10,000 per single violation or up to \$2,000 per day of
2721 ongoing violation, whichever is greater, in accordance with a fine schedule established by rule;
2722 or
- 2723 (ii) order to cease and desist from the behavior that constitutes a violation of the
2724 provisions described in Subsection (4)(a).
- 2725 (c) An individual's license may not be suspended or revoked through a citation.
- 2726 (d) Each citation issued under this section shall:
- 2727 (i) be in writing;
- 2728 (ii) clearly describe or explain:

2729 (A) the nature of the violation, including a reference to the provision of the chapter,
2730 rule, or order alleged to have been violated;

2731 (B) that the recipient must notify the division in writing within 20 calendar days from
2732 the day on which the citation is served if the recipient wishes to contest the citation at a hearing
2733 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

2734 (C) the consequences of failure to timely contest the citation or pay the fine assessed by
2735 the citation within the time specified in the citation; and

2736 (iii) be served in accordance with the Utah Rules of Civil Procedure.

2737 (e) If the individual to whom the citation is issued fails to request a hearing to contest
2738 the citation within 20 calendar days from the day on which the citation is served, the citation
2739 becomes the final order of the division and is not subject to further agency review. The period
2740 to contest the citation may be extended by the division for cause.

2741 (f) The division may refuse to issue or renew or suspend, revoke, or place on probation
2742 the license of an individual who fails to comply with a citation after the citation becomes final.

2743 (g) The failure of an applicant for licensure to comply with a citation after it becomes
2744 final is a ground for denial of license.

2745 (h) No citation may be issued under this section after six months from the day on
2746 which the violation last occurred.

2747 (5) (a) The director may collect a penalty imposed under this section that is not paid by:

2748 (i) referring the matter to a collection agency; or

2749 (ii) bringing an action in the district court of the county where the person against whom
2750 the penalty is imposed resides or in the county where the office of the director is located.

2751 (b) A county attorney or the attorney general of the state shall provide legal assistance
2752 and advice to the director in an action to collect a penalty.

2753 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
2754 action brought by the division to collect a penalty.

2755 Section 41. Section **58-68-302** is amended to read:

2756 **58-68-302. Qualifications for licensure.**

2757 (1) An applicant for licensure as an osteopathic physician and surgeon, except as set
2758 forth in Subsection (2), shall:

2759 (a) submit an application in a form prescribed by the division, which may include:

2760 (i) submissions by the applicant of information maintained by practitioner data banks,
2761 as designated by division rule, with respect to the applicant;

2762 (ii) a record of professional liability claims made against the applicant and settlements
2763 paid by or on behalf of the applicant; and

2764 (iii) authorization to use a record coordination and verification service approved by the
2765 division in collaboration with the board;

2766 (b) pay a fee determined by the department under Section [63J-1-504](#);

2767 (c) be of good moral character;

2768 (d) if the applicant is applying to participate in the Interstate Medical Licensure

2769 Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal

2770 background check in accordance with Section [58-68-302.1](#) and any requirements established by

2771 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

2772 [~~(d)~~] (e) provide satisfactory documentation of having successfully completed a
2773 program of professional education preparing an individual as an osteopathic physician and
2774 surgeon, as evidenced by:

2775 (i) having received an earned degree of doctor of osteopathic medicine from an AOA
2776 approved medical school or college; or

2777 (ii) submitting a current certification by the Educational Commission for Foreign
2778 Medical Graduates or any successor organization approved by the division in collaboration
2779 with the board, if the applicant is graduated from an osteopathic medical school or college
2780 located outside of the United States or its territories which at the time of the applicant's
2781 graduation, met criteria for accreditation by the AOA;

2782 [~~(e)~~] (f) satisfy the division and board that the applicant:

2783 (i) has successfully completed 24 months of progressive resident training in an
2784 ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine
2785 required under Subsection (1)~~(f)~~(e); or

2786 (ii) (A) has successfully completed 12 months of resident training in an ACGME or
2787 AOA approved program after receiving a degree of doctor of osteopathic medicine as required
2788 under Subsection (1)~~(f)~~(e);

2789 (B) has been accepted in and is successfully participating in progressive resident
2790 training in an ACGME or AOA approved program within Utah, in the applicant's second or
2791 third year of postgraduate training; and

2792 (C) has agreed to surrender to the division the applicant's license as an osteopathic
2793 physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative
2794 Procedures Act, and has agreed the applicant's license as an osteopathic physician and surgeon
2795 will be automatically revoked by the division if the applicant fails to continue in good standing
2796 in an ACGME or AOA approved progressive resident training program within the state;

2797 ~~(f)~~ (g) pass the licensing examination sequence required by division rule, as made in
2798 collaboration with the board;

2799 ~~(g)~~ (h) be able to read, write, speak, understand, and be understood in the English
2800 language and demonstrate proficiency to the satisfaction of the board, if requested by the board;

2801 ~~(h)~~ (i) meet with the board and representatives of the division, if requested for the
2802 purpose of evaluating the applicant's qualifications for licensure;

2803 ~~(i)~~ (j) designate:

2804 (i) a contact person for access to medical records in accordance with the federal Health
2805 Insurance Portability and Accountability Act; and

2806 (ii) an alternate contact person for access to medical records, in the event the original
2807 contact person is unable or unwilling to serve as the contact person for access to medical
2808 records; and

2809 ~~(j)~~ (k) establish a method for notifying patients of the identity and location of the

2810 contact person and alternate contact person, if the applicant will practice in a location with no
2811 other persons licensed under this chapter.

2812 (2) An applicant for licensure as an osteopathic physician and surgeon by endorsement
2813 who is currently licensed to practice osteopathic medicine in any state other than Utah, a
2814 district or territory of the United States, or Canada shall:

2815 (a) be currently licensed with a full unrestricted license in good standing in any state,
2816 district or territory of the United States, or Canada;

2817 (b) have been actively engaged in the legal practice of osteopathic medicine in any
2818 state, district or territory of the United States, or Canada for not less than 6,000 hours during
2819 the five years immediately preceding the day on which the applicant applied for licensure in
2820 Utah;

2821 (c) comply with the requirements for licensure under Subsections (1)(a) through ~~[(d)]~~
2822 (e), (1)~~[(e)]~~(f)(i), and (1)~~[(g)]~~(h) through ~~[(j)]~~ (k);

2823 (d) have passed the licensing examination sequence required in Subsection (1)~~[(f)]~~(g)
2824 or another medical licensing examination sequence in another state, district or territory of the
2825 United States, or Canada that the division in collaboration with the board by rulemaking
2826 determines is equivalent to its own required examination;

2827 (e) not have any investigation or action pending against any health care license of the
2828 applicant, not have a health care license that was suspended or revoked in any state, district or
2829 territory of the United States, or Canada, and not have surrendered a health care license in lieu
2830 of a disciplinary action, unless:

2831 (i) the license was subsequently reinstated as a full unrestricted license in good
2832 standing; or

2833 (ii) the division in collaboration with the board determines, after full disclosure by the
2834 applicant, that:

2835 (A) the conduct has been corrected, monitored, and resolved; or

2836 (B) a mitigating circumstance exists that prevents its resolution, and the division in

2837 collaboration with the board is satisfied that, but for the mitigating circumstance, the license
2838 would be reinstated;

2839 (f) submit to a records review, a practice review history, and physical and
2840 psychological assessments, if requested by the division in collaboration with the board; and

2841 (g) produce evidence that the applicant meets the requirements of this Subsection (2) to
2842 the satisfaction of the division in collaboration with the board.

2843 (3) An applicant for licensure by endorsement may engage in the practice of medicine
2844 under a temporary license while the applicant's application for licensure is being processed by
2845 the division, provided:

2846 (a) the applicant submits a complete application required for temporary licensure to the
2847 division;

2848 (b) the applicant submits a written document to the division from:

2849 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
2850 Licensing and Inspection Act, stating that the applicant is practicing under the:

2851 (A) invitation of the health care facility; and

2852 (B) the general supervision of a physician practicing at the health care facility; or

2853 (ii) two individuals licensed under this chapter, whose license is in good standing and
2854 who practice in the same clinical location, both stating that:

2855 (A) the applicant is practicing under the invitation and general supervision of the
2856 individual; and

2857 (B) the applicant will practice at the same clinical location as the individual;

2858 (c) the applicant submits a signed certification to the division that the applicant meets
2859 the requirements of Subsection (2);

2860 (d) the applicant does not engage in the practice of medicine until the division has
2861 issued a temporary license;

2862 (e) the temporary license is only issued for and may not be extended or renewed
2863 beyond the duration of one year from issuance; and

2864 (f) the temporary license expires immediately and prior to the expiration of one year
2865 from issuance, upon notification from the division that the applicant's application for licensure
2866 by endorsement is denied.

2867 (4) The division shall issue a temporary license under Subsection (3) within 15
2868 business days after the applicant satisfies the requirements of Subsection (3).

2869 (5) The division may not require a post-residency board certification as a requirement
2870 for licensure.

2871 Section 42. Section **58-68-302.1** is enacted to read:

2872 **58-68-302.1. Qualifications for licensure -- Criminal background check.**

2873 (1) An applicant for participation in the Interstate Medical Licensure Compact under
2874 Chapter 67b, Interstate Medical Licensure Compact, shall:

2875 (a) submit fingerprint cards in a form acceptable to the division at the time the license
2876 application is filed; and

2877 (b) consent to a fingerprint background check conducted by the Bureau of Criminal
2878 Identification and the Federal Bureau of Investigation.

2879 (2) The division shall:

2880 (a) in addition to other fees authorized by this chapter, collect from each applicant
2881 submitting fingerprints in accordance with this section the fee that the Bureau of Criminal
2882 Identification is authorized to collect for the services provided under Section 53-10-108 and the
2883 fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of
2884 obtaining federal criminal history record information;

2885 (b) submit from each applicant the fingerprint card and the fees described in
2886 Subsection (2)(a) to the Bureau of Criminal Identification; and

2887 (c) obtain and retain in division records a signed waiver approved by the Bureau of
2888 Criminal Identification in accordance with Section 53-10-108 for each applicant.

2889 (3) The Bureau of Criminal Identification shall, in accordance with the requirements of
2890 Section 53-10-108:

2891 (a) check the fingerprints submitted under Subsection (2)(b) against the applicable state
2892 and regional criminal records databases;

2893 (b) forward the fingerprints to the Federal Bureau of Investigation for a national
2894 criminal history background check; and

2895 (c) provide the results from the state, regional, and nationwide criminal history
2896 background checks to the division.

2897 (4) For purposes of conducting a criminal background check required under this
2898 section, the division shall have direct access to criminal background information maintained
2899 under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

2900 (5) The division may not disseminate outside of the division any criminal history
2901 record information that the division obtains from the Bureau of Criminal Identification or the
2902 Federal Bureau of Investigation under the criminal background check requirements of this
2903 section.

2904 (6) The division may not issue a letter of qualification to participate in the Interstate
2905 Medical Licensure Compact until the criminal background check described in this section is
2906 completed.

2907 Section 43. Section **58-68-302.5 (Effective 07/01/18)** is amended to read:

2908 **58-68-302.5 (Effective 07/01/18). Restricted licensing of an associate physician.**

2909 (1) An individual may apply for a restricted license as an associate physician if the
2910 individual:

2911 (a) meets the requirements described in Subsections **58-68-302(1)(a)** through ~~[(e)]~~ **(d)**,
2912 **(1)[(d)](e)(i)**, and **(1)[(g)](h)** through **[(j)] (k)**;

2913 (b) successfully completes Step 1 and Step 2 of the United States Medical Licensing
2914 Examination or the equivalent steps of another board-approved medical licensing examination:

2915 (i) within three years after the day on which the applicant graduates from a program
2916 described in Subsection **58-68-302(1)[(d)](e)(i)**; and

2917 (ii) within two years before applying for a restricted license as an associate physician;

2918 and

2919 (c) is not currently enrolled in and has not completed a residency program.

2920 (2) Before a licensed associate physician may engage in the practice of medicine as
2921 described in Subsection (3), the licensed associate physician shall:

2922 (a) enter into a collaborative practice arrangement described in Section 58-68-807
2923 within six months after the associate physician's initial licensure; and

2924 (b) receive division approval of the collaborative practice arrangement.

2925 (3) An associate physician's scope of practice is limited to primary care services to
2926 medically underserved populations or in medically underserved areas within the state.

2927 Section 44. Section 58-68-304 (Superseded 07/01/18) is amended to read:

2928 **58-68-304 (Superseded 07/01/18). License renewal requirements.**

2929 (1) As a condition precedent for license renewal, each licensee shall, during each
2930 two-year licensure cycle or other cycle defined by division rule:

2931 (a) complete qualified continuing professional education requirements in accordance
2932 with the number of hours and standards defined by division rule in collaboration with the
2933 board;

2934 (b) appoint a contact person for access to medical records and an alternate contact
2935 person for access to medical records in accordance with Subsection 58-68-302(1)(~~h~~)(j); and

2936 (c) if the licensee practices osteopathic medicine in a location with no other persons
2937 licensed under this chapter, provide some method of notice to the licensee's patients of the
2938 identity and location of the contact person and alternate contact person for access to medical
2939 records for the licensee in accordance with Subsection 58-68-302(1)(~~h~~)(k).

2940 (2) If a renewal period is extended or shortened under Section 58-68-303, the
2941 continuing education hours required for license renewal under this section are increased or
2942 decreased proportionally.

2943 (3) An application to renew a license under this chapter shall:

2944 (a) require a physician to answer the following question: "Do you perform elective

2945 abortions in Utah in a location other than a hospital?"; and

2946 (b) immediately following the question, contain the following statement: "For purposes
2947 of the immediately preceding question, elective abortion means an abortion other than one of
2948 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
2949 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
2950 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
2951 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
2952 the woman is pregnant as a result of rape or incest."

2953 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
2954 to the licensing of an abortion clinic, if a physician responds positively to the question
2955 described in Subsection (3)(a), the division shall, within 30 days after the day on which it
2956 renews the physician's license under this chapter, inform the Department of Health in writing:

2957 (a) of the name and business address of the physician; and

2958 (b) that the physician responded positively to the question described in Subsection
2959 (3)(a).

2960 Section 45. Section **58-68-304 (Effective 07/01/18)** is amended to read:

2961 **58-68-304 (Effective 07/01/18). License renewal requirements.**

2962 (1) As a condition precedent for license renewal, each licensee shall, during each
2963 two-year licensure cycle or other cycle defined by division rule:

2964 (a) complete qualified continuing professional education requirements in accordance
2965 with the number of hours and standards defined by division rule in collaboration with the
2966 board;

2967 (b) appoint a contact person for access to medical records and an alternate contact
2968 person for access to medical records in accordance with Subsection **58-68-302(1)(~~+~~)(j)**;

2969 (c) if the licensee practices osteopathic medicine in a location with no other persons
2970 licensed under this chapter, provide some method of notice to the licensee's patients of the
2971 identity and location of the contact person and alternate contact person for access to medical

2972 records for the licensee in accordance with Subsection 58-68-302(1)~~(j)~~(k); and

2973 (d) if the licensee is an associate physician licensed under Section 58-68-302.5,
2974 successfully complete the educational methods and programs described in Subsection
2975 58-68-807(4).

2976 (2) If a renewal period is extended or shortened under Section 58-68-303, the
2977 continuing education hours required for license renewal under this section are increased or
2978 decreased proportionally.

2979 (3) An application to renew a license under this chapter shall:

2980 (a) require a physician to answer the following question: "Do you perform elective
2981 abortions in Utah in a location other than a hospital?"; and

2982 (b) immediately following the question, contain the following statement: "For purposes
2983 of the immediately preceding question, elective abortion means an abortion other than one of
2984 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
2985 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
2986 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
2987 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
2988 the woman is pregnant as a result of rape or incest."

2989 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
2990 to the licensing of an abortion clinic, if a physician responds positively to the question
2991 described in Subsection (3)(a), the division shall, within 30 days after the day on which it
2992 renews the physician's license under this chapter, inform the Department of Health in writing:

2993 (a) of the name and business address of the physician; and

2994 (b) that the physician responded positively to the question described in Subsection
2995 (3)(a).

2996 Section 46. Section 58-68-403 is amended to read:

2997 **58-68-403. Revocation of license -- Nondisciplinary.**

2998 Revocation by the division of a license under Subsection 58-68-302(1)~~(e)~~(f) for

2999 failure to continue on a resident training program for reasons other than unprofessional or
3000 unlawful conduct is a nondisciplinary action and may not be reported by the division as a
3001 disciplinary action against the licensee.

3002 Section 47. Section **58-68-503** is amended to read:

3003 **58-68-503. Penalties and administrative actions for unlawful and unprofessional**
3004 **conduct.**

3005 (1) Any person who violates the unlawful conduct provisions of Section **58-68-501** or
3006 Section **58-1-501** is guilty of a third degree felony.

3007 (2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful
3008 conduct by:

3009 (i) assessing administrative penalties; or

3010 (ii) taking any other appropriate administrative action.

3011 (b) A monetary administrative penalty imposed under this section shall be deposited in
3012 the Physician Education Fund described in Section **58-67a-1**.

3013 (3) If a licensee is convicted of unlawful conduct, described in Section **58-68-501**,
3014 before an administrative proceeding regarding the same conduct, the licensee may not be
3015 assessed an administrative fine under this chapter for the same conduct.

3016 (4) (a) If the division concludes that an individual has violated the provisions of
3017 Section **58-68-501**, Section **58-68-502**, Chapter 1, Division of Occupational and Professional
3018 Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with
3019 respect to these provisions, and disciplinary action is appropriate, the director or director's
3020 designee shall:

3021 (i) issue a citation to the individual;

3022 (ii) attempt to negotiate a stipulated settlement; or

3023 (iii) notify the individual that an adjudicative proceeding conducted under Title 63G,
3024 Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to
3025 appear.

3026 (b) The division may take the following action against an individual who is in violation
3027 of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a
3028 stipulated settlement, or a finding of violation in an adjudicative proceeding:

3029 (i) assess a fine of up to \$10,000 per single violation or \$2,000 per day of ongoing
3030 violation, whichever is greater, in accordance with a fine schedule established by rule; or

3031 (ii) order to cease and desist from the behavior that constitutes a violation of provisions
3032 described in Subsection (4)(a).

3033 (c) Except for an administrative fine and a cease and desist order, the licensure
3034 sanctions cited in Section 58-1-401 may not be assessed through a citation.

3035 (d) Each citation issued under this section shall:

3036 (i) be in writing;

3037 (ii) clearly describe or explain:

3038 (A) the nature of the violation, including a reference to the provision of the chapter,
3039 rule, or order alleged to have been violated;

3040 (B) that the recipient must notify the division in writing within 20 calendar days from
3041 the day on which the citation is served if the recipient wishes to contest the citation at a hearing
3042 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

3043 (C) the consequences of failure to timely contest the citation or pay the fine assessed by
3044 the citation within the time specified in the citation; and

3045 (iii) be served in accordance with the requirements of the Utah Rules of Civil
3046 Procedure.

3047 (e) If the individual to whom the citation is issued fails to request a hearing to contest
3048 the citation within 20 calendar days from the day on which the citation is served, the citation
3049 becomes the final order of the division and is not subject to further agency review. The period
3050 to contest the citation may be extended by the division for cause.

3051 (f) The division may refuse to issue or renew or suspend, revoke, or place on probation
3052 the license of an individual who fails to comply with a citation after the citation becomes final.

3053 (g) The failure of an applicant for licensure to comply with a citation after it becomes
3054 final is a ground for denial of a license.

3055 (h) No citation may be issued under this section after six months from the day on
3056 which the last violation occurred.

3057 (5) (a) The director may collect a penalty imposed under this section that is not paid by:

3058 (i) referring the matter to a collection agency; or

3059 (ii) bringing an action in the district court of the county where the person against whom

3060 the penalty is imposed resides or in the county where the office of the director is located.

3061 (b) A county attorney or the attorney general of the state shall provide legal assistance
3062 and advice to the director in an action to collect a penalty.

3063 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
3064 action brought by the division to collect a penalty.

3065 Section 48. Section **58-71-503** is amended to read:

3066 **58-71-503. Penalty for unlawful conduct.**

3067 (1) Any person who violates the unlawful conduct provisions of Section **58-71-501**,
3068 Subsection **58-1-501(1)(a)**, or **58-1-501(1)(c)** is guilty of a third degree felony.

3069 (2) The division may assess administrative penalties in accordance with the provisions
3070 of Section **58-71-402**, for acts of unlawful conduct.

3071 (3) (a) The director may collect a penalty that is not paid by:

3072 (i) referring the matter to a collection agency; or

3073 (ii) bringing an action in the district court of the county where the person against whom

3074 the penalty is imposed resides or in the county where the office of the director is located.

3075 (b) A county attorney or the attorney general of the state shall provide legal assistance
3076 and advice to the director in an action to collect a penalty.

3077 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
3078 action brought by the division to collect a penalty.

3079 Section 49. Section **58-76-502** is amended to read:

3080 **58-76-502. Penalty for unlawful conduct.**

3081 (1) (a) If, upon inspection or investigation, the division concludes that a person has
3082 violated Section 58-76-501 or any rule or order issued with respect to Section 58-76-501, and
3083 that disciplinary action is appropriate, the director or the director's designee from within the
3084 division shall promptly issue a citation to the person according to this chapter and any pertinent
3085 rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an
3086 adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

3087 (i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-76-501
3088 or any rule or order issued with respect to Section 58-76-501, as evidenced by an uncontested
3089 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may
3090 be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be
3091 ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section
3092 58-76-501 or any rule or order issued with respect to this section.

3093 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
3094 58-76-401 may not be assessed through a citation.

3095 (b) A citation shall:

3096 (i) be in writing;

3097 (ii) describe with particularity the nature of the violation, including a reference to the
3098 provision of the chapter, rule, or order alleged to have been violated;

3099 (iii) clearly state that the recipient must notify the division in writing within 20
3100 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
3101 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

3102 (iv) clearly explain the consequences of failure to timely contest the citation or to make
3103 payment of any fines assessed by the citation within the time specified in the citation.

3104 (c) The division may issue a notice in lieu of a citation.

3105 (d) Each citation issued under this section, or a copy of each citation, may be served
3106 upon any person upon whom a summons may be served in accordance with the Utah Rules of

3107 Civil Procedure and may be made personally or upon the person's agent by a division
3108 investigator or by any person specially designated by the director or by mail.

3109 (e) If within 20 calendar days from the service of the citation, the person to whom the
3110 citation was issued fails to request a hearing to contest the citation, the citation becomes the
3111 final order of the division and is not subject to further agency review. The period to contest a
3112 citation may be extended by the division for cause.

3113 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
3114 the license of a licensee who fails to comply with a citation after it becomes final.

3115 (g) The failure of an applicant for licensure to comply with a citation after it becomes
3116 final is a ground for denial of license.

3117 (h) No citation may be issued under this section after the expiration of six months
3118 following the occurrence of any violation.

3119 (i) The director or the director's designee shall assess fines according to the following:

3120 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

3121 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

3122 and

3123 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to
3124 \$2,000 for each day of continued offense.

3125 (2) An action initiated for a first or second offense which has not yet resulted in a final
3126 order of the division shall not preclude initiation of any subsequent action for a second or
3127 subsequent offense during the pendency of any preceding action. The final order on a
3128 subsequent action shall be considered a second or subsequent offense, respectively, provided
3129 the preceding action resulted in a first or second offense, respectively.

3130 ~~[(3) Any penalty which is not paid may be collected by the director by either referring~~
3131 ~~the matter to a collection agency or bringing an action in the district court of the county in~~
3132 ~~which the person against whom the penalty is imposed resides or in the county where the office~~
3133 ~~of the director is located. Any county attorney or the attorney general of the state shall provide~~

3134 ~~legal assistance and advice to the director in any action to collect the penalty. In any action~~
3135 ~~brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be~~
3136 ~~awarded to the division.]~~

3137 (3) (a) The director may collect a penalty that is not paid by:

3138 (i) referring the matter to a collection agency; or

3139 (ii) bringing an action in the district court of the county where the person against whom
3140 the penalty is imposed resides or in the county where the office of the director is located.

3141 (b) A county attorney or the attorney general of the state shall provide legal assistance
3142 and advice to the director in an action to collect a penalty.

3143 (c) A court shall award reasonable attorney fees and costs to the prevailing party in an
3144 action brought by the division to collect a penalty.

3145 Section 50. Section **58-79-201** is amended to read:

3146 **58-79-201. Board.**

3147 (1) There is created the Hunting Guides and Outfitters Licensing Board consisting of
3148 ~~[three persons licensed in accordance with this chapter,]~~ five members as follows:

3149 (a) three persons licensed as a hunting guide or an outfitter in accordance with this
3150 chapter;

3151 (b) one member of the Wildlife Board, created in Section [23-14-2](#), selected by the
3152 Wildlife Board[;]; and

3153 (c) one person appointed by the Wildlife Board.

3154 (2) Except for the two members selected by the Wildlife Board, the board shall be
3155 appointed and serve in accordance with Section [58-1-201](#).

3156 (3) The two members selected by the Wildlife Board may not hold a license regulated
3157 by this chapter.

3158 ~~[(3)]~~ (4) (a) The duties and responsibilities of the board shall be in accordance with
3159 Sections [58-1-202](#) and [58-1-203](#).

3160 (b) The board shall also:

3161 (i) designate one of its members on a permanent or rotating basis to assist the division
3162 in reviewing complaints concerning the unlawful or unprofessional conduct of hunting guides
3163 and outfitters; and

3164 (ii) advise the division in its investigations of these complaints.

3165 ~~[(4)]~~ (5) A board member who has, under Subsection ~~[(3)]~~ (4)(b), reviewed a complaint
3166 or advised in its investigation may be disqualified from participating with the board when the
3167 board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

3168 Section 51. Section **78B-3-416** is amended to read:

3169 **78B-3-416. Division to provide panel -- Exemption -- Procedures -- Statute of**
3170 **limitations tolled -- Composition of panel -- Expenses -- Division authorized to set license**
3171 **fees.**

3172 (1) (a) The division shall provide a hearing panel in alleged medical liability cases
3173 against health care providers as defined in Section [78B-3-403](#), except dentists.

3174 (b) (i) The division shall establish procedures for prelitigation consideration of medical
3175 liability claims for damages arising out of the provision of or alleged failure to provide health
3176 care.

3177 (ii) The division may establish rules necessary to administer the process and
3178 procedures related to prelitigation hearings and the conduct of prelitigation hearings in
3179 accordance with Sections [78B-3-416](#) through [78B-3-420](#).

3180 (c) The proceedings are informal, nonbinding, and are not subject to Title 63G, Chapter
3181 4, Administrative Procedures Act, but are compulsory as a condition precedent to commencing
3182 litigation.

3183 (d) Proceedings conducted under authority of this section are confidential, privileged,
3184 and immune from civil process.

3185 (2) (a) The party initiating a medical liability action shall file a request for prelitigation
3186 panel review with the division within 60 days after the service of a statutory notice of intent to
3187 commence action under Section [78B-3-412](#).

3188 (b) The request shall include a copy of the notice of intent to commence action. The
3189 request shall be mailed to all health care providers named in the notice and request.

3190 (3) (a) The filing of a request for prelitigation panel review under this section tolls the
3191 applicable statute of limitations until the later of:

3192 (i) 60 days following the division's issuance of:

3193 (A) an opinion by the prelitigation panel; or

3194 (B) a certificate of compliance under Section 78B-3-418; or

3195 (ii) the expiration of the time for holding a hearing under Subsection (3)(b)(ii).

3196 (b) The division shall:

3197 (i) send any opinion issued by the panel to all parties by regular mail; and

3198 (ii) complete a prelitigation hearing under this section within:

3199 (A) 180 days after the filing of the request for prelitigation panel review; or

3200 (B) any longer period as agreed upon in writing by all parties to the review.

3201 (c) If the prelitigation hearing has not been completed within the time limits
3202 established in Subsection (3)(b)(ii), the claimant shall:

3203 (i) file an affidavit of merit under the provisions of Section 78B-3-423; or

3204 (ii) file an affidavit with the division within 180 days of the request for pre-litigation
3205 review, in accordance with Subsection (3)(d), alleging that the respondent has failed to
3206 reasonably cooperate in scheduling the hearing.

3207 (d) If the claimant files an affidavit under Subsection (3)(c)(ii):

3208 (i) within 15 days of the filing of the affidavit under Subsection (3)(c)(ii), the division
3209 shall determine whether either the respondent or the claimant failed to reasonably cooperate in
3210 the scheduling of a pre-litigation hearing; and

3211 (ii) (A) if the determination is that the respondent failed to reasonably cooperate in the
3212 scheduling of a hearing, and the claimant did not fail to reasonably cooperate, the division

3213 shall, issue a certificate of compliance for the claimant in accordance with Section 78B-3-418;

3214 or

3215 (B) if the division makes a determination other than the determination in Subsection
3216 (3)(d)(ii)(A), the claimant shall file an affidavit of merit in accordance with Section 78B-3-423,
3217 within 30 days of the determination of the division under this Subsection (3).

3218 (e) (i) The claimant and any respondent may agree by written stipulation that no useful
3219 purpose would be served by convening a prelitigation panel under this section.

3220 (ii) When the stipulation is filed with the division, the division shall within 10 days
3221 after receipt issue a certificate of compliance under Section 78B-3-418, as it concerns the
3222 stipulating respondent, and stating that the claimant has complied with all conditions precedent
3223 to the commencement of litigation regarding the claim.

3224 (4) The division shall provide for and appoint an appropriate panel or panels to hear
3225 complaints of medical liability and damages, made by or on behalf of any patient who is an
3226 alleged victim of medical liability. The panels are composed of:

3227 (a) one member who is a resident lawyer currently licensed and in good standing to
3228 practice law in this state and who shall serve as chairman of the panel, who is appointed by the
3229 division from among qualified individuals who have registered with the division indicating a
3230 willingness to serve as panel members, and a willingness to comply with the rules of
3231 professional conduct governing lawyers in the state, and who has completed division training
3232 regarding conduct of panel hearings;

3233 (b) (i) one member who is a licensed health care provider listed under Section
3234 78B-3-403, who is practicing and knowledgeable in the same specialty as the proposed
3235 defendant, and who is appointed by the division in accordance with Subsection (5); or

3236 (ii) in claims against only hospitals or their employees, one member who is an
3237 individual currently serving in a hospital administration position directly related to hospital
3238 operations or conduct that includes responsibility for the area of practice that is the subject of
3239 the liability claim, and who is appointed by the division; and

3240 (c) a lay panelist who is not a lawyer, doctor, hospital employee, or other health care
3241 provider, and who is a responsible citizen of the state, selected and appointed by the division

3242 from among individuals who have completed division training with respect to panel hearings.

3243 (5) (a) Each person listed as a health care provider in Section 78B-3-403 and practicing
3244 under a license issued by the state, is obligated as a condition of holding that license to
3245 participate as a member of a medical liability prelitigation panel at reasonable times, places,
3246 and intervals, upon issuance, with advance notice given in a reasonable time frame, by the
3247 division of an Order to Participate as a Medical Liability Prelitigation Panel Member.

3248 (b) A licensee may be excused from appearance and participation as a panel member
3249 upon the division finding participation by the licensee will create an unreasonable burden or
3250 hardship upon the licensee.

3251 (c) A licensee whom the division finds failed to appear and participate as a panel
3252 member when so ordered, without adequate explanation or justification and without being
3253 excused for cause by the division, may be assessed an administrative fine not to exceed \$5,000.

3254 (d) A licensee whom the division finds intentionally or repeatedly failed to appear and
3255 participate as a panel member when so ordered, without adequate explanation or justification
3256 and without being excused for cause by the division, may be assessed an administrative fine not
3257 to exceed \$5,000, and is guilty of unprofessional conduct.

3258 (e) All fines collected under Subsections (5)(c) and (d) shall be deposited in the
3259 Physicians Education Fund created in Section 58-67a-1.

3260 (f) The director of the division may collect a fine that is not paid by:

3261 (i) referring the matter to a collection agency; or

3262 (ii) bringing an action in the district court of the county where the person against whom
3263 the penalty is imposed resides or in the county where the office of the director is located.

3264 (g) A county attorney or the attorney general of the state shall provide legal assistance
3265 and advice to the director in an action to collect a fine.

3266 (h) A court shall award reasonable attorney fees and costs to the prevailing party in an
3267 action brought by the division to collect a fine.

3268 (6) Each person selected as a panel member shall certify, under oath, that he has no

3269 bias or conflict of interest with respect to any matter under consideration.

3270 (7) A member of the prelitigation hearing panel may not receive compensation or
3271 benefits for the member's service, but may receive per diem and travel expenses in accordance
3272 with:

3273 (a) Section [63A-3-106](#);

3274 (b) Section [63A-3-107](#); and

3275 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
3276 [63A-3-107](#).

3277 (8) (a) In addition to the actual cost of administering the licensure of health care
3278 providers, the division may set license fees of health care providers within the limits
3279 established by law equal to their proportionate costs of administering prelitigation panels.

3280 (b) The claimant bears none of the costs of administering the prelitigation panel except
3281 under Section [78B-3-420](#).

3282 Section 52. **Effective date.**

3283 (1) Except as provided in Subsection (2), this bill takes effect on May 8, 2018.

3284 (2) The amendments to the following sections take effect on July 1, 2018:

3285 (a) Section [58-67-302.8](#) (Effective 07/01/18);

3286 (b) Section [58-67-304](#) (Effective 07/01/18);

3287 (c) Section [58-68-302.5](#) (Effective 07/01/18); and

3288 (d) Section [58-68-304](#) (Effective 07/01/18).