

**HEALTH CARE PRACTITIONER LIABILITY AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kirk A. Cullimore**

House Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

This bill modifies a health care provider's liability under certain circumstances.

**Highlighted Provisions:**

This bill:

- ▶ provides immunity, under certain circumstances, for a health care provider who deviates from medical norms or established practices;
- ▶ prohibits the Division of Professional Licensing from sanctioning a health care provider's license for deviating from medical norms or established practices under certain circumstances;
- ▶ allows a health care provider who deviates from medical norms or established practices to advertise if certain criteria are met; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

**58-17b-502**, as last amended by Laws of Utah 2022, Chapter 465



28 ENACTS:

29 **78B-3-428**, Utah Code Annotated 1953



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

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

33 **58-1-501. Unlawful and unprofessional conduct.**

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

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

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

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

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

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

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

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

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

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

58 (A) without prescriptive authority conferred by a license issued under this title, or by

59 an exemption to licensure under this title; or

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

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

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

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

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

76 ~~[(b)]~~ (ii) violating, or aiding or abetting any other person to violate, any generally  
77 accepted professional or ethical standard applicable to an occupation or profession regulated  
78 under this title;

79 ~~[(c)]~~ (iii) subject to the provisions of Subsection (4), engaging in conduct that results in  
80 conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere that is held in  
81 abeyance pending the successful completion of probation with respect to a crime of moral  
82 turpitude or any other crime that, when considered with the functions and duties of the  
83 occupation or profession for which the license was issued or is to be issued, bears a substantial  
84 relationship to the licensee's or applicant's ability to safely or competently practice the  
85 occupation or profession;

86 ~~[(d)]~~ (iv) engaging in conduct that results in disciplinary action, including reprimand,  
87 censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory  
88 authority having jurisdiction over the licensee or applicant in the same occupation or profession  
89 if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary

90 proceedings under Section [58-1-401](#);

91 ~~[(e)]~~ [\(v\)](#) engaging in conduct, including the use of intoxicants, drugs, narcotics, or  
92 similar chemicals, to the extent that the conduct does, or might reasonably be considered to,  
93 impair the ability of the licensee or applicant to safely engage in the occupation or profession;

94 ~~[(f)]~~ [\(vi\)](#) practicing or attempting to practice an occupation or profession regulated  
95 under this title despite being physically or mentally unfit to do so;

96 ~~[(g)]~~ [\(vii\)](#) practicing or attempting to practice an occupation or profession regulated  
97 under this title through gross incompetence, gross negligence, or a pattern of incompetency or  
98 negligence;

99 ~~[(h)]~~ [\(viii\)](#) practicing or attempting to practice an occupation or profession requiring  
100 licensure under this title by any form of action or communication which is false, misleading,  
101 deceptive, or fraudulent;

102 ~~[(i)]~~ [\(ix\)](#) practicing or attempting to practice an occupation or profession regulated  
103 under this title beyond the scope of the licensee's competency, abilities, or education;

104 ~~[(j)]~~ [\(x\)](#) practicing or attempting to practice an occupation or profession regulated  
105 under this title beyond the scope of the licensee's license;

106 ~~[(k)]~~ [\(xi\)](#) verbally, physically, mentally, or sexually abusing or exploiting any person  
107 through conduct connected with the licensee's practice under this title or otherwise facilitated  
108 by the licensee's license;

109 ~~[(l)]~~ [\(xii\)](#) acting as a supervisor without meeting the qualification requirements for that  
110 position that are defined by statute or rule;

111 ~~[(m)]~~ [\(xiii\)](#) issuing, or aiding and abetting in the issuance of, an order or prescription  
112 for a drug or device:

113 ~~[(n)]~~ [\(A\)](#) without first obtaining information in the usual course of professional  
114 practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify  
115 contraindications to the proposed treatment; or

116 ~~[(o)]~~ [\(B\)](#) with prescriptive authority conferred by an exception issued under this title,  
117 or a multi-state practice privilege recognized under this title, if the prescription was issued  
118 without first obtaining information, in the usual course of professional practice, that is  
119 sufficient to establish a diagnosis, to identify underlying conditions, and to identify  
120 contraindications to the proposed treatment;

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

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

123           (b) "Unprofessional conduct" does not include:

124           (i) a health care provider, as defined in Section [78B-3-403](#) and who is licensed under

125 this title, deviating from medical norms or established practice in accordance with Section

126 [78B-3-428](#); or

127           (ii) notwithstanding Section [58-1-501.6](#), a health care provider who advertises that the

128 health care provider deviates from medical norms or established practices including the

129 maladies the health care provider treats if the health care provider:

130           (A) does not guarantee any results regarding any treatment;

131           (B) fully discloses on the health care provider's website that the health care provider

132 deviates from medical norms or established practices with a conspicuous statement; and

133           (C) includes the health care provider's contact information on the website.

134           (3) Unless otherwise specified by statute or administrative rule, in a civil or

135 administrative proceeding commenced by the division under this title, a person subject to any

136 of the unlawful and unprofessional conduct provisions of this title is strictly liable for each

137 violation.

138           (4) The following are not evidence of engaging in unprofessional conduct under

139 Subsection ~~[(2)(c)]~~ (2)(a)(iii):

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

141           (b) a conviction for which an individual's incarceration has ended more than seven

142 years before the date of the division's consideration, unless:

143           (i) after the incarceration the individual has engaged in additional conduct that results

144 in another conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere that is

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

146           (ii) the conviction was for:

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

148           (B) a felony related to a criminal sexual act pursuant to Title 76, Chapter 5, Part 4,

149 Sexual Offenses, or Title 76, Chapter 5b, Sexual Exploitation Act; or

150           (C) a felony related to criminal fraud or embezzlement, including a felony pursuant to

151 Title 76, Chapter 6, Part 5, Fraud, or Title 76, Chapter 6, Part 4, Theft.

152 Section 2. Section **58-17b-502** is amended to read:

153 **58-17b-502. Unprofessional conduct.**

154 (1) "Unprofessional conduct" includes:

155 (a) willfully deceiving or attempting to deceive the division, the board, or their agents  
156 as to any relevant matter regarding compliance under this chapter;

157 (b) except as provided in Subsection (2):

158 (i) paying or offering rebates to practitioners or any other health care providers, or  
159 receiving or soliciting rebates from practitioners or any other health care provider; or

160 (ii) paying, offering, receiving, or soliciting compensation in the form of a commission,  
161 bonus, rebate, kickback, or split fee arrangement with practitioners or any other health care  
162 provider, for the purpose of obtaining referrals;

163 (c) misbranding or adulteration of any drug or device or the sale, distribution, or  
164 dispensing of any outdated, misbranded, or adulterated drug or device;

165 (d) engaging in the sale or purchase of drugs or devices that are samples or packages  
166 bearing the inscription "sample" or "not for resale" or similar words or phrases;

167 (e) except as provided in Section **58-17b-503**, accepting back and redistributing any  
168 unused drug, or a part of it, after it has left the premises of a pharmacy;

169 (f) an act in violation of this chapter committed by a person for any form of  
170 compensation if the act is incidental to the person's professional activities, including the  
171 activities of a pharmacist, pharmacy intern, or pharmacy technician;

172 (g) violating:

173 (i) the federal Controlled Substances Act, Title II, P.L. 91-513;

174 (ii) Title 58, Chapter 37, Utah Controlled Substances Act; or

175 (iii) rules or regulations adopted under either act;

176 (h) requiring or permitting pharmacy interns or technicians to engage in activities  
177 outside the scope of practice for their respective license classifications, as defined in this  
178 chapter and division rules made in collaboration with the board, or beyond their scope of  
179 training and ability;

180 (i) administering:

181 (i) without appropriate training, as defined by rule;

182 (ii) without a physician's order, when one is required by law; and

- 183 (iii) in conflict with a practitioner's written guidelines or written protocol for  
184 administering;
- 185 (j) disclosing confidential patient information in violation of the provisions of the  
186 Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat.  
187 1936, as amended, or other applicable law;
- 188 (k) engaging in the practice of pharmacy without a licensed pharmacist designated as  
189 the pharmacist-in-charge;
- 190 (l) failing to report to the division any adverse action taken by another licensing  
191 jurisdiction, government agency, law enforcement agency, or court for conduct that in  
192 substance would be considered unprofessional conduct under this section;
- 193 (m) as a pharmacist or pharmacy intern, compounding a prescription drug in a dosage  
194 form which is regularly and commonly available from a manufacturer in quantities and  
195 strengths prescribed by a practitioner;
- 196 (n) failing to act in accordance with Title 26, Chapter 64, Family Planning Access Act,  
197 when dispensing a self-administered hormonal contraceptive under a standing order;
- 198 (o) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act; or
- 199 (p) falsely making an entry in, or altering, a medical record with the intent to conceal:
- 200 (i) a wrongful or negligent act or omission of an individual licensed under this chapter  
201 or an individual under the direction or control of an individual licensed under this chapter; or  
202 (ii) conduct described in Subsections (1)(a) through (o) or Subsection [58-1-501\(1\)](#).
- 203 (2) Subsection (1)(b) does not apply to:
- 204 (a) giving or receiving a price discount based on purchase volume;
- 205 (b) passing along a pharmaceutical manufacturer's rebate; or
- 206 (c) providing compensation for services to a veterinarian.
- 207 (3) "Unprofessional conduct" does not include~~[-]~~:
- 208 (a) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:
- 209 ~~(a)~~ (i) when registered as a pharmacy medical provider, as that term is defined in  
210 Section [26-61a-102](#), providing pharmacy medical provider services in a medical cannabis  
211 pharmacy; or
- 212 ~~(b)~~ (ii) when acting as a state central patient portal medical provider, as that term is  
213 defined in Section [26-61a-102](#), providing state central patient portal medical provider

214 services[-]; or

215 (b) if a pharmacist reasonably believes that a prescription drug will have adverse or  
216 harmful effects on an individual and warns the individual of the potential effects, filling a  
217 prescription prescribed by a health care provider who:

218 (i) is operating within the health care provider's scope of practice; and

219 (ii) is deviating from a medical norm or established practice in accordance with Section  
220 78B-3-428.

221 (4) Notwithstanding Subsection (3), the division, in consultation with the board and in  
222 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define  
223 unprofessional conduct for a pharmacist described in Subsections (3)(a) and (b).

224 Section 3. Section **78B-3-428** is enacted to read:

225 **78B-3-428. Immunity from liability for deviating from established practices.**

226 (1) A health care provider is immune from a malpractice action against a health care  
227 provider:

228 (a) to the extent the claim is based on actions related to the health care provider's  
229 deviation from medical norms or established practices; and

230 (b) if the health care provider complied with Subsection (2).

231 (2) A health care provider seeking immunity under Subsection (1):

232 (a) may not deviate outside of the health care provider's scope of practice;

233 (b) may not provide a health care service that is otherwise contrary to any state law;

234 (c) shall provide the patient a written notice that the health care provider is deviating  
235 from medical norms and established practices;

236 (d) shall obtain from the patient a written acknowledgment that the patient understood  
237 that the health care provider was deviating from medical norms or established practices;

238 (e) shall document in the patient's medical record the health care provider's rationale  
239 regarding the reason for the deviation;

240 (f) shall share the rationale described in Subsection (2)(e) with the patient before  
241 providing care that deviates from medical norms or established practices;

242 (g) shall disclose any known harms other patients have suffered related to the  
243 deviation; and

244 (h) shall disclose to the patient that the patient may enter into an agreement describing



245 what would constitute the health care provider's negligence related to the deviation.

246 (3) A health care facility is not vicariously liable for an action or claim described in

247 Subsection (1)(a) if the health care facility's health care provider acted in accordance with

248 Subsection (2).