

Psychology Candidate Examination

Reference List

The reference material listed below was used to prepare the questions for this examination. The examination may also contain questions based on trade knowledge or general industry practices.

Reference material may be highlighted, underlined, and/or indexed. They must not be otherwise unmarked (not written in) and may not contain additional papers (loose or attached). These references will not be available in the examination center. References may be tabbed/indexed with permanent tabs only. Temporary tabs, such as Post-It-Notes, are not allowed and must be removed from the reference before the exam will begin. If you are downloading from the internet, you may bring this reference into the testing center with you as long as it is bound. You can have it spiral bound or may hole-punch it and put it in a binder.

Table of Content

- Page 3** - Division of Occupational and Professional Licensing Act, Title 58-1
- Page 30-** General Rules of the Division of Occupational and Professional Licensing, Title R156-1
- Page 54** - Psychologist Licensing Act, Title 58-61
- Page 61** - Psychology Licensing Act Rules, Title R156-61
- Page 68** - Mental Health Professional Practice Act, 58-60
- Page 88** - Mental Health Professional Practice Act Rule, R156-60
- Page 90** - Aging and Adult Services, Title 62a Chapter 3
- Page 109** - Abuse and Neglect Reporting Law, Section 62A-4a-403
- Page 110** - Utah State Hospital and Other Mental Health Facilities, Title 62a-15-610
- Page 111** - Ethical Standards for Psychologists
- Page 127** - Communicable Disease Control Act, Title 26-6
- Page 128** - Confidential Information Release, Title 26-25
- Page 130** - Utah Health Data Authority Act, Title 26-33a
- Page 138** - Substance Abuse and Mental Health Act – Commitment of minor to secure drug or alcohol facility or program, Title 62a-15
- Page 139** - Confidential Communications for Sexual Assault Act, Title 77-38 Section 201 – 204
- Page 140** - Reporting of Prohibited Acts Effecting a School, Title 53A-11, Section 1302
- Page 141** - Utah Healthcare Malpractice Act, Title 78B-3 Section 401 – 424
- Page 156** - Limitation of a Therapist’s Duty to Warn, Title 78B-3-502
- Page 157** - Patient Access to Medical Records, Title 78B-05-618

Dopl.utah.gov/laws/58-1.pdf

Department of Professional Licensing, Licensing Act

58-1-101. Short title.

This chapter is known as the "Division of Occupational and Professional Licensing Act." Renumbered and Amended by Chapter 297, 1993 General Session

58-1-102. Definitions.

For purposes of this title:

(1) "Ablative procedure" is as defined in Section 58-67-102.

(2) "Cosmetic medical procedure":

(a) is as defined in Section 58-67-102; and

(b) except for Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice Act, does not apply to the scope of practice of an individual licensed under this title if the individual's scope of practice includes the authority to operate or perform surgical procedures.

(3) "Department" means the Department of Commerce.

(4) "Director" means the director of the Division of Occupational and Professional Licensing.

(5) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(6) "Executive director" means the executive director of the Department of Commerce.

(7) "Licensee" includes any holder of a license, certificate, registration, permit, student card, or apprentice card authorized under this title.

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

(ii) Notwithstanding Subsection (8)(a)(i), nonablative procedure includes hair removal.

(b) "Nonablative procedure" does not include:

(i) a superficial procedure;

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

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

(9) "Superficial procedure" means a procedure that is expected or intended to temporarily alter living skin tissue and may excise or remove stratum corneum but have no appreciable risk of damage to any tissue below the stratum corneum.

(10) "Unlawful conduct" has the meaning given in Subsection 58-1-501(1).

(11) "Unprofessional conduct" has the meaning given in Subsection 58-1-501(2). Amended by Chapter 362, 2012 General Session

58-1-103. Division created to administer licensing laws.

There is created within the Department of Commerce the Division of Occupational and Professional Licensing. The division shall administer and enforce all licensing laws of Title 58. Renumbered and Amended by Chapter 297, 1993 General Session

58-1-104. Director of division -- Appointment -- Duties.

(1) The division shall be under the supervision, direction, and control of a director. The director shall be appointed by the executive director with the approval of the governor. The director shall hold office at the pleasure of the governor.

(2) The director shall perform all duties, functions, and responsibilities assigned to the division by law or rule and, where provided, with the collaboration and assistance of the boards established under this title. Renumbered and Amended by Chapter 297, 1993 General Session

58-1-105. Employment of staff.

The director, with the approval of the executive director, may employ necessary staff, including specialists and professionals, to assist him in performing the duties, functions, and responsibilities of the division. Renumbered and Amended by Chapter 297, 1993 General Session

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

(1) The duties, functions, and responsibilities of the division include the following:

- (a) prescribing, adopting, and enforcing rules to administer this title;
 - (b) investigating the activities of any person whose occupation or profession is regulated or governed by the laws and rules administered and enforced by the division;
 - (c) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the production of any books, papers, documents, records, contracts, recordings, tapes, correspondence, or information relevant to an investigation upon a finding of sufficient need by the director or by the director's designee;
 - (d) taking administrative and judicial action against persons in violation of the laws and rules administered and enforced by the division, including the issuance of cease and desist orders;
 - (e) seeking injunctions and temporary restraining orders to restrain unauthorized activity;
 - (f) giving public notice of board meetings;
 - (g) keeping records of board meetings, proceedings, and actions and making those records available for public inspection upon request;
 - (h) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew, or otherwise acting upon any license;
 - (i) preparing and submitting to the governor and the Legislature an annual report of the division's operations, activities, and goals;
 - (j) preparing and submitting to the executive director a budget of the expenses for the division;
 - (k) establishing the time and place for the administration of examinations; and
 - (l) preparing lists of licensees and making these lists available to the public at cost upon request unless otherwise prohibited by state or federal law.
- (2) The division may not include home telephone numbers or home addresses of licensees on the lists prepared under Subsection (1)(l), except as otherwise provided by rules of the division made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) (a) The division may provide the home address or home telephone number of a licensee on a list prepared under Subsection (1) upon the request of an individual who provides proper identification and the reason for the request, in writing, to the division.
- (b) A request under Subsection (3)(a) is limited to providing information on only one licensee per request.
- (c) The division shall provide, by rule, what constitutes proper identification under Subsection (3)(a). Amended by Chapter 382, 2008 General Session

58-1-107. Applicability -- Relationship to specific chapters under title.

The provisions of this chapter uniformly apply to the administration and enforcement of this title. However, unless expressly prohibited in this chapter, any provision of this chapter may be supplemented or altered by specific chapters of this title.
Enacted by Chapter 297, 1993 General Session

58-1-108. Adjudicative proceedings.

- (1) The division and all boards created under the authority of this title shall comply with the procedures and requirements of Title 13, Chapter 1, Department of Commerce, and Title 63G, Chapter 4, Administrative Procedures Act, in all of their adjudicative proceedings as defined by Subsection 63G-4-103(1).
- (2) Before proceeding under Section 63G-4-502, the division shall review the proposed action with a committee of no less than three licensees appointed by the chairman of the licensing board created under this title for the profession of the person against whom the action is proposed.
- (3) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, a warning or final disposition letter which does not constitute disciplinary action against the addressee, issued in response to a complaint of unprofessional or unlawful conduct under this title, does not constitute an adjudicative proceeding. Amended by Chapter 382, 2008 General Session

58-1-109. Presiding officers -- Content of orders -- Recommended orders -- Final orders -- Appeal of orders.

- (1) Unless otherwise specified by statute or rule, the presiding officer for adjudicative proceedings before the division shall be the director. However, pursuant to Title 63G, Chapter 4, Administrative Procedures Act, the director may designate in writing an individual or body of

individuals to act as presiding officer to conduct or to assist the director in conducting any part or all of an adjudicative proceeding.

(2) Unless otherwise specified by the director, an administrative law judge shall be designated as the presiding officer to conduct formal adjudicative proceedings in accordance with Subsection 63G-4-102(4), Sections 63G-4-204 through 63G-4-207, and 63G-4-209.

(3) Unless otherwise specified by the director, the licensing board of the occupation or profession that is the subject of the proceedings shall be designated as the presiding officer to serve as fact finder at the evidentiary hearing in a formal adjudicative proceeding.

(4) At the close of an evidentiary hearing in an adjudicative proceeding, unless otherwise specified by the director, the presiding officer who served as the fact finder at the hearing shall issue a recommended order based upon the record developed at the hearing determining all issues pending before the division.

(5) (a) The director shall issue a final order affirming the recommended order or modifying or rejecting all or any part of the recommended order and entering new findings of fact, conclusions of law, statement of reasons, and order based upon the director's personal attendance at the hearing or a review of the record developed at the hearing. Before modifying or rejecting a recommended order, the director shall consult with the presiding officer who issued the recommended order.

(b) If the director issues a final order modifying or rejecting a recommended order, the licensing board of the occupation or profession that is the subject of the proceeding may, by a two-thirds majority vote of all board members, petition the executive director or designee within the department to review the director's final order. The executive director's decision shall become the final order of the division. This subsection does not limit the right of the parties to appeal the director's final order by filing a request for agency review under Subsection (8).

(6) If the director is unable for any reason to rule upon a recommended order of a presiding officer, the director may designate another person within the division to issue a final order.

(7) If the director or the director's designee does not issue a final order within 20 calendar days after the date of the recommended order of the presiding officer, the recommended order becomes the final order of the director or the director's designee.

(8) The final order of the director may be appealed by filing a request for agency review with the executive director or the executive director's designee within the department.

(9) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209. Amended by Chapter 382, 2008 General Session

58-1-110. Legislative review in Title 58, Occupations and Professions.

Legislation proposing the licensing or regulation of an occupation or profession under Title 58, Occupations and Professions, that is not currently subject to licensing or regulation under Title 58, Occupations and Professions:

(1) may not be enacted by the Legislature unless:

(a) a proposal to license or regulate the occupation or profession has been reviewed by the Occupational and Professional Licensure Review Committee as described in Title 36, Chapter 23, Occupational and Professional Licensure Review Committee Act; or

(b) the proposed legislation contains a provision that expressly exempts the legislation from the review requirement of Subsection (1)(a);

(2) is subject to a reauthorization schedule as described in Title 63I, Chapter 1, Legislative Oversight and Sunset Act; and

(3) shall include a repeal date in Section 63I-1-258 that is no later than 10 years after the effective date of the legislation.

Enacted by Chapter 323, 2013 General Session

58-1-201. Boards -- Appointment -- Membership -- Terms -- Vacancies -- Quorum -- Per diem and expenses -- Chair -- Financial interest or faculty position in professional school that teaches continuing education prohibited.

(1) (a) (i) The executive director shall appoint the members of the boards established under this title.

- (ii) In appointing these members the executive director shall give consideration to recommendations by members of the respective occupations and professions and by their organizations.
- (b) Each board shall be composed of five members, four of whom shall be licensed or certified practitioners in good standing of the occupation or profession the board represents, and one of whom shall be a member of the general public, unless otherwise provided under the specific licensing chapter.
- (c) (i) The name of each person appointed to a board shall be submitted to the governor for confirmation or rejection.
- (ii) If an appointee is rejected by the governor, the executive director shall appoint another person in the same manner as set forth in Subsection (1)(a).
- (2) (a) (i) Except as required by Subsection (2)(b), as terms of current board members expire, the executive director shall appoint each new member or reappointed member to a four-year term.
- (ii) Upon the expiration of the term of a board member, the board member shall continue to serve until a successor is appointed, but for a period not to exceed six months from the expiration date of the member's term.
- (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
- (c) A board member may not serve more than two consecutive terms, and a board member who ceases to serve on a board may not serve again on that board until after the expiration of a two-year period beginning from that cessation of service.
- (d) (i) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (ii) After filling that term, the replacement member may be appointed for only one additional full term.
- (e) The director, with the approval of the executive director, may remove a board member and replace the member in accordance with this section for the following reasons:
 - (i) the member fails or refuses to fulfill the responsibilities and duties of a board member, including attendance at board meetings;
 - (ii) the member engages in unlawful or unprofessional conduct; or
 - (iii) if appointed to the board position as a licensed member of the board, the member fails to maintain a license that is active and in good standing.
- (3) A majority of the board members constitutes a quorum. A quorum is sufficient authority for the board to act.
- (4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (5) Each board shall annually designate one of its members to serve as chair for a one-year period.
- (6) A board member may not be a member of the faculty of, or have a financial interest in, a vocational or professional college or school that provides continuing education to any licensee if that continuing education is required by statute or rule. Amended by Chapter 262, 2013 General Session

58-1-202. Boards -- Duties, functions, and responsibilities.

- (1) The duties, functions, and responsibilities of each board include the following:
 - (a) recommending to the director appropriate rules;
 - (b) recommending to the director policy and budgetary matters;
 - (c) approving and establishing a passing score for applicant examinations;
 - (d) screening applicants and recommending licensing, renewal, reinstatement, and relicensure actions to the director in writing;
 - (e) assisting the director in establishing standards of supervision for students or persons in training to become qualified to obtain a license in the occupation or profession it represents;

(f) acting as presiding officer in conducting hearings associated with adjudicative proceedings and in issuing recommended orders when so designated by the director; and
(g) in accordance with Subsection (3), each board may recommend to the appropriate legislative committee whether the board supports a change to the licensing act.

(2) Subsection (1) does not apply to boards created in Title 58, Chapter 55, Construction Trades Licensing.

(3) (a) This Subsection (3) applies to the following:

- (i) Chapter 5a, Podiatric Physician Licensing Act;
- (ii) Chapter 16a, Optometry Practice Act;
- (iii) Chapter 17b, Pharmacy Practice Act;
- (iv) Chapter 24b, Physical Therapy Practice Act;
- (v) Chapter 28, Veterinary Practice Act;
- (vi) Chapter 31b, Nurse Practice Act;
- (vii) Chapter 40a, Athletic Trainer Licensing Act;
- (viii) Chapter 44a, Nurse Midwife Practice Act;
- (ix) Chapter 67, Utah Medical Practice Act;
- (x) Chapter 68, Utah Osteopathic Medical Practice Act;
- (xi) Chapter 69, Dentist and Dental Hygienist Practice Act;
- (xii) Chapter 70a, Physician Assistant Act;
- (xiii) Chapter 71, Naturopathic Physician Practice Act; and
- (xiv) Chapter 73, Chiropractic Physician Practice Act.

(b) Subsection (1)(g) does not:

- (i) require a board's approval to amend a practice act; and
- (ii) apply to technical or clarifying amendments to a practice act. Amended by Chapter 259, 2012 General Session

58-1-203. Duties, functions, and responsibilities of division in collaboration with board -- Construction Services Commission.

(1) The following duties, functions, and responsibilities of the division shall be performed by the division with the collaboration and assistance of the appropriate board:

- (a) defining which schools, colleges, universities, departments of universities, military educational and training programs, or other institutions of learning are reputable and in good standing with the division;
- (b) prescribing license qualifications;
- (c) prescribing rules governing applications for licenses;
- (d) providing for a fair and impartial method of examination of applicants;
- (e) defining unprofessional conduct, by rule, to supplement the definitions under this chapter or other licensing chapters;
- (f) establishing advisory peer committees to the board and prescribing their scope of authority; and
- (g) establishing conditions for reinstatement and renewal of licenses.

(2) Notwithstanding Subsection (1), the duties, functions, and responsibilities of the division outlined in Subsection (1) shall, instead, be performed by the Construction Services Commission for all purposes of Title 58, Chapter 55, Utah Construction Trades Licensing. Amended by Chapter 181, 2011 General Session

58-1-301. License application -- Licensing procedure.

(1) (a) Each license applicant shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of the particular qualifications required of the applicant, shall include the applicant's Social Security number, shall be verified by the applicant, and shall be accompanied by the appropriate fees.

(b) An applicant's Social Security number is a private record under Subsection 63G-2-302(1)(i).

(2) (a) A license shall be issued to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.

(b) A written notice of additional proceedings shall be provided to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon the applicant's qualifications for licensure, if the outcome of additional proceedings is required to determine the division's response to the application.

(c) A written notice of denial of licensure shall be provided to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.

(d) A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all qualifications for licensure.

(3) Before any person is issued a license under this title, all requirements for that license as established under this title and by rule shall be met.

(4) If all requirements are met for the specific license, the division shall issue the license.

Amended by Chapter 426, 2013 General Session

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

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

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

(b) Section 58-31b-302 of Title 58, Chapter 31b, Nurse Practice Act;

(c) Section 58-47b-302 of Title 58, Chapter 47b, Massage Therapy Practice Act;

(d) Section 58-55-302 of Title 58, Chapter 55, Utah Construction Trades Licensing Act, as it applies to alarm companies and alarm company agents;

(e) Section 58-63-302 of Title 58, Chapter 63, Security Personnel Licensing Act; and

(f) Section 58-64-302 of Title 58, Chapter 64, Deception Detection Examiners Licensing Act.

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

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

(b) includes convictions, pleas of nolo contendere, pleas of guilty or nolo contendere held in abeyance, dismissed charges, and charges without a known disposition. Amended by Chapter 262, 2013 General Session

58-1-301.7. Change of information.

(1) (a) An applicant, licensee, or certificate holder shall send the division a signed statement, in a form required by the division, notifying the division within 10 business days of a change in mailing address.

(b) When providing a mailing address, the individual may provide a post office box or other mail drop location.

(c) In addition to providing a mailing address, an applicant, licensee, or certificate holder may provide to the division, in a form required by the division, an email address and may designate email as the preferred method of receiving notifications from the division.

(2) An applicant, licensee, or certificate holder is considered to have received a notification that has been sent to the most recent:

(a) mailing address provided to the division by the applicant, licensee, or certificate holder; or

(b) email address furnished to the division by the applicant, licensee, or certificate holder, if email has been designated by the applicant, licensee, or certificate holder as the preferred method of receiving notifications from the division. Amended by Chapter 262, 2013 General Session

58-1-302. License by endorsement.

(1) The division may issue a license without examination to a person who has been licensed in a state, district, or territory of the United States, or in a foreign country, where the education, experience, and examination requirements are, or were at the time the license was issued, substantially equal to the requirements of this state.

(2) Before a person may be issued a license under this section, the person shall produce satisfactory evidence of the person's identity, qualifications, and good standing in the occupation or profession for which licensure is sought. Amended by Chapter 262, 2013 General Session

58-1-303. Temporary license.

(1) (a) The division may issue a temporary license to a person who has met all license requirements except the passing of an examination. In this case:

(i) the licensee shall take the next available examination; and

(ii) the temporary license automatically expires upon release of official examination results if the applicant fails the examination.

(b) The division may issue a temporary license to a person licensed in another state or country who is in Utah temporarily to teach or assist a Utah resident licensed to practice an occupation or profession under this title.

(c) The division may issue a temporary license to a person licensed in another state who met the requirements for licensure in that state, which were equal to or greater than the requirements for licensure of this state at the time the license was obtained in the other state, upon a finding by the division, in collaboration with the appropriate board, that the issuance of a temporary license is necessary to or justified by:

(i) a local or national emergency or any governmental action causing an unusual circumstance that might be reasonably considered to materially jeopardize the public health, safety, or welfare if a temporary license is not issued;

(ii) a lack of necessary available services in any community or area of the state from an occupation or profession licensed under this title, if the lack of services might be reasonably considered to materially jeopardize the public health, safety, or welfare if a temporary license is not issued; or

(iii) a need to first observe an applicant for licensure in this state in a monitored or supervised practice of the applicant's occupation or profession before a decision is made by the division either to grant or deny the applicant a regular license.

(2) The division may not issue a temporary license to a person who qualifies for one under Subsection (1)(a) more than three consecutive times within the three-year period immediately following the issuance of the first temporary license.

(3) The division may not issue a temporary license to a person solely because there is a competitive advantage enjoyed or a competitive disadvantage suffered by any party caused by the absence of a licensed person, unless in addition there is or will be a material risk presented to the public health, safety, or welfare. Renumbered and Amended by Chapter 297, 1993 General Session

58-1-304. Restricted license.

(1) The division may issue a restricted or probationary license to an applicant for licensure, renewal, or reinstatement of licensure if:

(a) the applicant appears to meet the qualifications for licensure, but has engaged in unlawful, unprofessional, or other conduct bearing upon the applicant's qualifications; and

(b) the division determines the need to observe the applicant in a monitored or supervised practice of the applicant's occupation or profession or to attach other reasonable restrictions or conditions upon the applicant in order to accommodate licensure, while protecting the public health, safety, and welfare.

(2) Issuance of a restricted or probationary license is considered a partial denial of licensure that is subject to agency review. Amended by Chapter 262, 2013 General Session

58-1-305. Inactive license.

(1) The division may adopt rules permitting inactive licensure. The rules shall specify the requirements and procedures for placing a license on inactive status, the length of time a license may remain on inactive status, and the requirements and procedures to activate an inactive license.

(2) Except as otherwise specified by rule, an inactive licensee has no right or privilege to engage in the practice of the licensed occupation or profession. Enacted by Chapter 297, 1993 General Session

58-1-306. Surrender of license.

- (1) The division may, by written agreement, accept the voluntary surrender of a license.
- (2) Unless otherwise stated in the written agreement, tender and acceptance of a voluntary surrender of a license does not foreclose the division from pursuing additional disciplinary or other action authorized under this title or in rules adopted under this title.
- (3) Unless otherwise stated in the written agreement, tender and acceptance of a voluntary surrender of a license terminates all rights and privileges associated with the license.
- (4) Unless otherwise stated in the written agreement, the surrendered rights and privileges of licensure may be reacquired only by reapplying for licensure and meeting the requirements for a new or reinstated license set forth under this title or in rules adopted under this title.
- (5) Unless otherwise stated in the written agreement, documentation of tender and acceptance of a voluntary surrender of a license is a public record.
- (6) Unless otherwise stated in the written agreement, when a tender and acceptance of a voluntary surrender of a license occurs while adjudicative proceedings are pending against the licensee for unprofessional or unlawful conduct, the division may report the surrender of license to appropriate state and federal agencies and licensing data banks. Enacted by Chapter 297, 1993 General Session

58-1-307. Exemptions from licensure.

- (1) Except as otherwise provided by statute or rule, the following individuals may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:
 - (a) an individual serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the individual holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;
 - (b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;
 - (c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified individuals;
 - (d) an individual residing in another state and licensed to practice a regulated occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;
 - (e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;
 - (f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;
 - (g) an individual licensed in a health care profession in another state who performs that profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state;
 - (h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator;

(i) an individual licensed and in good standing in another state, who is in this state:

- (i) temporarily, under the invitation and control of a sponsoring entity;
- (ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division; and
- (iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods;

(j) a law enforcement officer, as defined under Section 53-13-103, who:

- (i) is operating a voice stress analyzer in the course of the officer's full-time employment with a federal, state, or local law enforcement agency;
- (ii) has completed the manufacturer's training course and is certified by the manufacturer to operate that voice stress analyzer; and
- (iii) is operating the voice stress analyzer in accordance with Section 58-64-601, regarding deception detection instruments; and

(k) the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, provided:

- (i) the spouse holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division; and
- (ii) the license is current and the spouse is in good standing in the state of licensure.

(2) (a) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice.

(b) Violation of a limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.

(3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.

(4) Upon the declaration of a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities, the division in collaboration with the board may:

- (a) suspend the requirements for permanent or temporary licensure of individuals who are licensed in another state for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state;
- (b) modify, under the circumstances described in this Subsection (4) and Subsection (5), the scope of practice restrictions under this title for individuals who are licensed under this title as:
 - (i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;
 - (ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31c, Nurse Licensure Compact;
 - (iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;
 - (iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter 17b, Pharmacy Practice Act;
 - (v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act;
 - (vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist Practice Act; and
 - (vii) a physician assistant under Chapter 70a, Physician Assistant Act;
- (c) suspend the requirements for licensure under this title and modify the scope of practice in the circumstances described in this Subsection (4) and Subsection (5) for medical services personnel or paramedics required to be certified under Section 26-8a-302;
- (d) suspend requirements in Subsections 58-17b-620(3) through (6) which require certain prescriptive procedures;
- (e) exempt or modify the requirement for licensure of an individual who is activated as a member of a medical reserve corps during a time of emergency as provided in Section 26A-1-126; and
- (f) exempt or modify the requirement for licensure of an individual who is registered as a volunteer health practitioner as provided in Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

(5) Individuals exempt under Subsection (4)(c) and individuals operating under modified scope of practice provisions under Subsection (4)(b):

(a) are exempt from licensure or subject to modified scope of practice for the duration of the emergency;

(b) must be engaged in the distribution of medicines or medical devices in response to the emergency or declaration; and

(c) must be employed by or volunteering for:

(i) a local or state department of health; or

(ii) a host entity as defined in Section 26-49-102.

(6) In accordance with the protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health or a local health department shall coordinate with public safety authorities as defined in Subsection 26-23b-110(1) and may:

(a) use a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance to prevent or treat a disease or condition that gave rise to, or was a consequence of, the emergency; or

(b) distribute a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance:

(i) if necessary, to replenish a commercial pharmacy in the event that the commercial pharmacy's normal source of the vaccine, antiviral, antibiotic, or other prescription medication is exhausted; or

(ii) for dispensing or direct administration to treat the disease or condition that gave rise to, or was a consequence of, the emergency by:

(A) a pharmacy;

(B) a prescribing practitioner;

(C) a licensed health care facility;

(D) a federally qualified community health clinic; or

(E) a governmental entity for use by a community more than 50 miles from a person described in Subsections (6)(b)(ii)(A) through (D).

(7) In accordance with protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health shall coordinate the distribution of medications:

(a) received from the strategic national stockpile to local health departments; and

(b) from local health departments to emergency personnel within the local health departments' geographic region.

(8) The Department of Health shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, protocols for administering, dispensing, and distributing a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance in the event of a declaration of a national, state, or local emergency. The protocol shall establish procedures for the Department of Health or a local health department to:

(a) coordinate the distribution of:

(i) a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance received by the Department of Health from the strategic national stockpile to local health departments; and

(ii) a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication received by a local health department to emergency personnel within the local health department's geographic region;

(b) authorize the dispensing, administration, or distribution of a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance to the contact of a patient, as defined in Section 26-6-2, without a patient-practitioner relationship, if the contact's condition is the same as that of the physician's patient; and

(c) authorize the administration, distribution, or dispensing of a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication to an individual who:

(i) is working in a triage situation;

(ii) is receiving preventative or medical treatment in a triage situation;

(iii) does not have coverage for the prescription in the individual's health insurance plan;

(iv) is involved in the delivery of medical or other emergency services in response to the declared national, state, or local emergency; or

(v) otherwise has a direct impact on public health.

(9) The Department of Health shall give notice to the division upon implementation of the protocol established under Subsection (8). Amended by Chapter 150, 2012 General Session

58-1-308. Term of license -- Expiration of license -- Renewal of license -- Reinstatement of license -- Application procedures.

(1) (a) Each license issued under this title shall be issued in accordance with a two-year renewal cycle established by rule.

(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) (a) The expiration date of a license shall be shown on the license.

(b) A license that is not renewed prior to the expiration date shown on the license automatically expires.

(c) A license automatically expires prior to the expiration date shown on the license upon the death of a licensee who is a natural person, or upon the dissolution of a licensee that is a partnership, corporation, or other business entity .

(d) If the existence of a dissolved partnership, corporation, or other business entity is reinstated prior to the expiration date shown upon the entity's expired license issued by the division, the division shall, upon written application, reinstate the applicant's license, unless it finds that the applicant no longer meets the qualifications for licensure.

(e) Expiration of licensure is not an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.

(3) (a) The division shall notify each licensee in accordance with procedures established by rule that the licensee's license is due for renewal and that unless an application for renewal is received by the division by the expiration date shown on the license, together with the appropriate renewal fee and documentation showing completion of or compliance with renewal qualifications, the license will not be renewed.

(b) Examples of renewal qualifications which by statute or rule the division may require the licensee to document completion of or compliance with include:

(i) continuing education;

(ii) continuing competency;

(iii) quality assurance;

(iv) utilization plan and protocol;

(v) financial responsibility;

(vi) certification renewal; and

(vii) calibration of equipment.

(4) (a) (i) An application for renewal that complies with Subsection (3) is complete.

(ii) A renewed license shall be issued to applicants who submit a complete application, unless it is apparent to the division that the applicant no longer meets the qualifications for continued licensure.

(b) (i) The division may evaluate or verify documentation showing completion of or compliance with renewal requirements on an entire population or a random sample basis, and may be assisted by advisory peer committees.

(ii) If necessary, the division may complete its evaluation or verification subsequent to renewal and, if appropriate, pursue action to suspend or revoke the license of a licensee who no longer meets the qualifications for continued licensure.

(c) The application procedures specified in Subsection 58-1-301(2), apply to renewal applications to the extent they are not in conflict with this section.

(5) (a) Any license that is not renewed may be reinstated at any time within two years after nonrenewal upon submission of an application for reinstatement, payment of the renewal fee together with a reinstatement fee determined by the department under Section 63J-1-504, and upon submission of documentation showing completion of or compliance with renewal qualifications.

(b) The application procedures specified in Subsection 58-1-301(2) apply to the reinstatement applications to the extent they are not in conflict with this section.

(c) Except as otherwise provided by rule, a license that is reinstated no later than 120 days after it expires shall be retroactively reinstated to the date it expired.

(6) (a) If not reinstated within two years, the holder may obtain a license only if the holder meets requirements provided by the division by rule or by statute for a new license.

(b) Each licensee under this title who has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States may reinstate the licensee's license without taking an examination by submitting an application for reinstatement, paying the current annual renewal fee and the reinstatement fee, and submitting documentation showing completion of or compliance with any renewal qualifications at any time within six months after reestablishing domicile within Utah or terminating full-time government service. Amended by Chapter 183, 2009 General Session

58-1-309. Laws and rules examination.

In addition to qualifications for licensure or renewal of licensure enumerated in specific practice acts under this title, the division may by rule require an applicant to pass an examination of the laws and rules relevant to the occupation or profession to ensure familiarity with these laws and rules. Enacted by Chapter 297, 1993 General Session

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

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

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

(a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title;

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

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

(d) the applicant or licensee is unable to practice the occupation or profession with reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material, or as a result of a mental or physical condition, when the condition demonstrates a threat or potential threat to the public health, safety, or welfare.

(3) A licensee whose license to practice an occupation or profession regulated by this title has been suspended, revoked, placed on probation, or restricted may apply for reinstatement of the license at reasonable intervals and upon compliance with conditions imposed upon the licensee by statute, rule, or terms of the license suspension, revocation, probation, or restriction.

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

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

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

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

(5) The division may impose an administrative penalty in accordance with Section 58-1-502.

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

(6)(b). (b) The division may not take disciplinary action against a person for unprofessional or unlawful conduct more than 10 years after the occurrence of the conduct, unless the proceeding is in response to a civil or criminal judgment or settlement and the proceeding is initiated within one year following the judgment or settlement. Amended by Chapter 262, 2013 General Session

58-1-402. Administrative review -- Special appeals boards.

(1) (a) Any applicant who has been denied a license to practice on the basis of credentials, character, or failure to pass a required examination, or who has been refused renewal or reinstatement of a license to practice on the basis that the applicant does not meet qualifications for continued licensure in any occupation or profession under the jurisdiction of the division may submit a request for agency review to the executive director within 30 days following notification of the denial of a license or refusal to renew or reinstate a license.

(b) The executive director shall determine whether the circumstances for denying an application for an initial license or for renewal or reinstatement of a license would justify calling a special appeals board under Subsection (2). The executive director's decision is not subject to agency review.

(2) A special appeals board shall consist of three members appointed by the executive director as follows:

(a) one member from the occupation or profession in question who is not on the board of that occupation or profession;

(b) one member from the general public who is neither an attorney nor a practitioner in an occupation or profession regulated by the division; and

(c) one member who is a resident lawyer currently licensed to practice law in this state who shall serve as chair of the special appeals board.

(3) The special appeals board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its proceedings.

(4) (a) Within a reasonable amount of time following the conclusion of a hearing before a special appeals board, the board shall enter an order based upon the record developed at the hearing. The order shall state whether a legal basis exists for denying the application for an initial license or for renewal or reinstatement of a license that is the subject of the appeal. The order is not subject to further agency review.

(b) The division or the applicant may obtain judicial review of the decision of the special appeals board in accordance with Sections 63G-4-401 and 63G-4-403.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) If an applicant under Subsection (1) is not given a special appeals board, the applicant shall be given agency review under the ordinary agency review procedures specified by rule. Amended by Chapter 286, 2010 General Session

58-1-403. Minimum 90-day suspension.

A license may not be reinstated subsequent to action taken under Section 58-1-401 within 90 days after the action has been taken, unless the division in collaboration with the appropriate board imposes other conditions. Renumbered and Amended by Chapter 297, 1993 General Session

58-1-404. Diversion -- Procedure.

(1) As used in this section, "diversion" means suspending action to discipline a licensee who is or could be charged in a Notice of Agency Action with certain offenses within the category of unprofessional or unlawful conduct on the condition that the licensee agrees to participate in an educational or rehabilitation program or fulfill some other condition.

(2) (a) (i) The director may establish a diversion advisory committee for each occupation or profession or similar groups of occupations or professions licensed by the division.

(ii) The committees shall assist the director in the administration of this section.

(b) (i) Each committee shall consist of at least three licensees from the same or similar occupation or profession as the person whose conduct is the subject of the committee's consideration.

(ii) The director shall appoint the members of a diversion advisory committee from nominations submitted by the corresponding board established for the same or similar occupation or

profession under Section 58-1-201 or from other qualified nominees developed by or submitted to the division.

(iii) Committee members may not serve concurrently as members of the corresponding board.

(iv) Committee members shall serve voluntarily without remuneration.

(v) The director may:

(A) dissolve a diversion advisory committee;

(B) remove or request the replacement of a member of a committee; and

(C) establish procedures that are necessary and proper for a committee's administration.

(3) The director may, after consultation with the appropriate diversion advisory committee and by written agreement with the licensee, divert the licensee to a diversion program:

(a) at any time after receipt by the division of a complaint against the licensee when no adjudicative proceeding has been commenced;

(b) at any time prior to the conclusion of a hearing under Section 63G-4-206 when an adjudicative proceeding has been commenced against the licensee; or

(c) after a self-referral by a licensee who is not the subject of a current investigation, complaint, or adjudicative proceeding.

(4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall define by rule the particular offenses within the category of unprofessional or unlawful conduct that may be subject to diversion.

(b) A licensee may be eligible for a diversion program only once for the same or similar offense, whether the diversion program was in this state or another jurisdiction, and is not eligible if previously disciplined by the division, by a licensing agency of another state, or by a federal government agency for the same or a similar offense.

(c) The term of a diversion agreement shall be five years or less, but may be extended for an additional period of time as agreed to by the parties in writing.

(d) A decision by the director not to divert a licensee is not subject to appeal or judicial review.

(5) A licensee may be represented by counsel:

(a) during the negotiations for diversion;

(b) at the time of the execution of the diversion agreement; and

(c) at each hearing before the director relating to a diversion program.

(6) (a) As used in this section, "diversion agreement" means a written agreement between the division, through its director, and the licensee, which specifies formal terms and conditions the licensee must fulfill in order to comply with the diversion program.

(b) (i) A diversion agreement shall contain a full detailed statement of the requirements agreed to by the licensee and a full detailed stipulation of the facts upon which the diversion agreement is premised.

(ii) The facts stipulated in the diversion agreement shall constitute binding admissions of the licensee:

(A) in a proceeding under Subsection (6)(c) or (6)(d) to terminate the diversion agreement and impose disciplinary sanctions against the licensee; and

(B) in a disciplinary proceeding based on unprofessional or unlawful conduct that is not the basis of the diversion agreement.

(c) The diversion agreement shall provide that if the licensee makes an intentional material misrepresentation of fact in the stipulation of facts contained in the diversion agreement, the director shall initiate the procedures set forth in Subsection

(13) to terminate the diversion agreement and issue an order of license revocation.

(d) (i) The diversion agreement shall provide that if the licensee fails to comply with its terms, the director shall initiate the procedures set forth in Subsection (14) to terminate the diversion agreement and issue an order of license suspension, which shall be stayed in favor of an order of probation having the same terms as those that comprised the diversion agreement.

(ii) The division may waive and not include as probationary requirements each term of the diversion agreement it does not consider necessary to protect the public.

(iii) The term of the order of probation shall be as provided in Subsection

(14)(c)(ii).

(e) The division director may not approve a diversion agreement unless the licensee, as part of the diversion agreement:

- (i) knowingly and intelligently waives the right to a hearing under Title 63G, Chapter 4, Administrative Procedures Act, for the conduct upon which the diversion agreement was premised;
 - (ii) agrees to be subject to the procedures and remedies set forth in this section;
 - (iii) acknowledges an understanding of the consequences of making an intentional misrepresentation of fact in the stipulation of facts contained in the diversion agreement; and
 - (iv) acknowledges an understanding of the consequences of failing to comply with the terms of the diversion agreement.
- (7) (a) If the division and the licensee enter into a diversion agreement after the division has commenced an adjudicative proceeding against the licensee, the director shall stay that proceeding pending completion of the diversion agreement.
- (b) The order staying the adjudicative proceeding shall be filed in that proceeding and may reference the diversion agreement.
- (8) (a) Upon successful completion of a diversion agreement, the director shall dismiss each charge under the director's jurisdiction of unprofessional or unlawful conduct that was filed against the licensee.
- (b) Whether or not an adjudicative proceeding had been commenced against the licensee, the division may not thereafter subject the licensee to disciplinary action for the conduct that formed the basis of the completed diversion agreement.
- (c) Neither the execution of a diversion agreement nor the dismissal of filed charges constitute disciplinary action, and no report of either may be made to disciplinary databases.
- (d) The division may consider the completion of a diversion program and the contents of the diversion agreement in determining the appropriate disciplinary action if the licensee is charged in the future with the same or similar conduct.
- (e) The order of dismissal shall be filed in the adjudicative proceeding in which the misconduct was charged and may reference the diversion agreement.
- (9) (a) Acceptance of the licensee into diversion does not preclude the division from investigating or continuing to investigate the licensee for unlawful or unprofessional conduct committed before, during, or after participation in the diversion program.
- (b) Acceptance of the licensee into diversion does not preclude the division from taking disciplinary action or continuing to take disciplinary action against the licensee for unlawful or unprofessional conduct committed before, during, or after participation in the diversion program, except for that conduct that formed the basis for the diversion agreement.
- (c) A licensee terminated from the diversion program for failure to comply with the diversion agreement is subject to disciplinary action by the division for acts committed before, during, and after participation in the diversion program, including violations identified in the diversion agreement.
- (10) The classification, retention, and disclosure of records relating to a licensee's participation in the diversion program is governed by Title 63G, Chapter 2, Government Records Access and Management Act, except that a provision in the diversion agreement that addresses access to or release of diversion records regarding the licensee shall govern the access to and release of those records.
- (11) Notwithstanding any other provision of this section, the fact that the licensee completed a diversion program and the contents of the diversion agreement itself may be considered by the division in determining the appropriate disciplinary action if the licensee is charged in the future with the same or similar conduct.
- (12) Meetings regarding the diversion program are not subject to Title 52, Chapter 4, Open and Public Meetings Act.
- (13) (a) If, during the course of the diversion agreement, information is brought to the attention of the director that the licensee made an intentional material misrepresentation of fact in the stipulation of facts contained in the diversion agreement, the director shall cause to be served upon the licensee an order to show cause specifying the information relied upon by the director and setting a time and place for a hearing to determine whether or not the licensee made the intentional material misrepresentation of fact and whether the agreement should be terminated on that ground.

(b) Proceedings to terminate a diversion agreement on the grounds that the licensee made an intentional material misrepresentation of fact in the stipulation of facts contained in the diversion agreement and to issue an order of license revocation shall comply with Title 63G, Chapter 4, Administrative Procedures Act, except as follows:

(i) the notice of agency action shall be in the form of an order to show cause, which shall contain all of the information specified in Subsection 63G-4-201(2), except a statement that a written response to the order to show cause is required;

(ii) no written response to the order to show cause is required;

(iii) discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence on behalf of either party and all parties shall have access to information contained in the division's diversion file to the extent permitted by law;

(iv) the hearing shall be held only after timely notice to all parties; and

(v) an agency review or reconsideration of an order terminating a diversion agreement or of an order of license revocation pursuant to this Subsection (13) shall be limited to the division director's findings of fact, conclusions of law, and order that arose out of the order to show cause proceeding.

(c) Upon finding the licensee made an intentional material misrepresentation of fact in the stipulation of facts contained in the diversion agreement and that terminating the agreement is in the best interest of the public, and issuing an order to that effect, the director shall issue an order of license revocation, revoking the licensee's professional license.

(d) The order terminating the diversion agreement and the order of license revocation shall include findings of fact and conclusions of law as determined by the director following the hearing or as otherwise stipulated and agreed to by the parties.

(e) If the diversion agreement being terminated was entered into after the division had commenced an adjudicative proceeding against the licensee, that adjudicative proceeding shall be considered to be merged into the order of license revocation and it may not constitute a basis for a separate disciplinary action against the licensee.

(f) The order terminating the diversion agreement and the order of license revocation shall notify the licensee of the right to request agency review or reconsideration.

(14) (a) If, during the course of the diversion agreement, information is brought to the attention of the director that the licensee has violated the diversion agreement and if it appears in the best interest of the public to proceed with charges, the director, after consultation with the diversion advisory committee, shall cause to be served upon the licensee an order to show cause specifying the facts relied upon by the director and setting a time and place for a hearing to determine whether or not the licensee has violated the diversion agreement and whether the agreement should be terminated.

(b) Proceedings to terminate a diversion agreement as described in Subsection

(14)(c) shall comply with Title 63G, Chapter 4, Administrative Procedures Act, except as follows:

(i) the notice of agency action shall be in the form of an order to show cause, which shall contain all of the information specified in Subsection 63G-4-201(2), except a statement that a written response to the order to show cause is required;

(ii) no written response to the order to show cause shall be required;

(iii) discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence on behalf of either party and all parties shall have access to information contained in the division's diversion file to the extent permitted by law;

(iv) the hearing shall be held only after timely notice to all parties; and

(v) an agency review or reconsideration of an order terminating a diversion agreement or of an order of license suspension and probation pursuant to this Subsection (14) shall be limited to the division director's findings of fact, conclusions of law, and order that arose out of the order to show cause proceeding.

(c) (i) Upon finding the licensee has violated the diversion agreement by conduct that is entirely the same or similar to the conduct upon which the diversion agreement is premised, or by violating a compliance provision contained in the diversion agreement, and further finding that terminating the agreement is in the best interest of the public, and after issuing an order to that effect, the director shall issue an order of probation, consisting of the same terms as those which comprised the diversion agreement.

(ii) Upon finding that the licensee has violated the diversion agreement by conduct that includes conduct that is not the same or similar to the conduct upon which the diversion agreement is premised, and further finding that terminating the agreement is in the best interest of the public, and after issuing an order to that effect, the director shall, after notice of opportunity to be heard is provided to the licensee, issue an order imposing each disciplinary sanction the division deems appropriate, including suspension, public reprimand, a fine, probation, or revocation of licensure.

(iii) The period of probation shall be the time period which remained under the diversion agreement, or five years from the date of the order of license suspension and probation, whichever is longer, unless otherwise agreed by the parties.

(iv) The period of probation is tolled during the time the licensee does not have an active license in the state.

(d) (i) The order terminating the diversion agreement and the order of license suspension and probation shall include findings of fact and conclusions of law as determined by the director following the hearing or as otherwise stipulated and agreed to by the parties.

(ii) The findings of fact may include those facts to which the licensee stipulated in the diversion agreement and additional facts as the director may determine in the course of the hearing.

(e) If the diversion agreement being terminated was entered into after the division had commenced an adjudicative proceeding against the licensee, that adjudicative proceeding shall be considered to be merged into the order of license suspension and probation and it may not constitute a basis for separate disciplinary action against the licensee.

(f) The order terminating the diversion agreement and the order of license suspension and probation shall notify the licensee of the right to request agency review or reconsideration.

(g) (i) The terms and conditions of the order of license suspension and probation may be amended by order of the director, pursuant to motion or stipulation of the parties.

(ii) The order of the director on the motion shall not be subject to agency review, but is subject to agency reconsideration under Section 63G-4-302.

(h) (i) If, during the course of probation, the director has reason to believe the licensee has violated the order of probation, the director shall cause to be served upon the licensee an order to show cause why the probation should not be terminated and why each additional disciplinary sanction the division deems appropriate should not be imposed, including suspension, public reprimand, a fine, or revocation of licensure.

(ii) The order to show cause shall specify the facts relied upon by the director and shall set a time and place for hearing before the director to determine whether or not the licensee has violated the order of probation, whether that order should be terminated, and why each additional disciplinary sanction the division deems appropriate should not be imposed, including suspension, public reprimand, a fine, or revocation of licensure.

(15) (a) Nothing in this section precludes the division from issuing an emergency order pursuant to Section 63G-4-502.

(b) If the division issues an emergency order against a licensee who is subject to a diversion agreement with the division, that diversion agreement shall be immediately and automatically terminated upon the issuance of the emergency order, without requiring compliance with the provisions of Title 63G, Chapter 4, Administrative Procedures Act.

(c) (i) A licensee whose diversion agreement has been terminated pursuant to Subsection (15)(b) is entitled, upon request, to a posttermination hearing to challenge the termination of the diversion agreement.

(ii) The request shall be considered a request for agency action and shall comply with the requirements of Subsection 63G-4-201(3).

(iii) The division shall uphold the termination of the diversion agreement if it finds that:

(A) the licensee violated the diversion agreement; and

(B) it is in the best interest of the public to terminate the diversion agreement.

(16) The administrative statute of limitations for taking disciplinary action described in Subsection 58-1-401(6) shall be tolled during a diversion program. Amended by Chapter 262, 2013 General Session

58-1-405. Provisions of volunteer health or veterinary services -- Division authority.

In accordance with Section 26-49-205, the division may pursue actions against a volunteer health practitioner operating under Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act. Enacted by Chapter 242, 2008 General Session

58-1-501. Unlawful and unprofessional conduct.

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

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

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

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

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

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

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

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

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

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

(B) with prescriptive authority conferred by an exception issued under this title or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment; and (ii) Subsection (1)(f)(i) does not apply to treatment rendered in an emergency, on-call or cross coverage situation, provided that the person who issues the prescription has prescriptive authority conferred by a license under this title, or is exempt from licensure under this title.

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

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

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

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

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

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

- (f) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so;
- (g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;
- (h) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent;
- (i) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education;
- (j) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license;
- (k) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license;
- (l) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule;
- (m) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device:
 - (i) without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or
 - (ii) with prescriptive authority conferred by an exception issued under this title, or a multi-state practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment;
- (n) violating a provision of Section 58-1-501.5; or
- (o) violating the terms of an order governing a license. Amended by Chapter 262, 2013 General Session

58-1-501.3. Health professional prescribing exceptions for expedited partner therapy for sexually transmitted diseases.

- (1) For purposes of this section:
 - (a) "Drug to treat a sexually transmitted disease" means a drug:
 - (i) as defined in Section 58-17b-102; and
 - (ii) that is:
 - (A) an antibiotic; and
 - (B) prescribed in accordance with guidelines from the Centers for Disease Control and Prevention for patient delivered expedited partner therapy in the management of sexually transmitted disease.
 - (b) "Partner" means a person:
 - (i) with whom a practitioner does not have a bonafide practitioner-patient relationship; and
 - (ii) who is identified as, or claims to be a sexual partner of a patient.
 - (c) "Patient" means a person who:
 - (i) has a sexually transmitted disease; and
 - (ii) has a bonafide practitioner-patient relationship with a practitioner.
 - (d) "Sexually transmitted disease" means:
 - (i) gonorrhea; or
 - (ii) chlamydia.
- (2) This section does not require a practitioner or a licensee under this chapter to prescribe or dispense a drug to treat a sexually transmitted disease for patient delivered expedited partner therapy. A practitioner's or licensee's decision to use expedited partner therapy as allowed by this section is voluntary.
- (3) Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502, it is not unlawful conduct or unprofessional conduct, and it does not violate the provisions of this chapter if:
 - (a) a practitioner, in accordance with this Subsection (3):
 - (i) issues a prescription for a drug to treat a sexually transmitted disease to a partner by:
 - (A) writing "partner of (patient name)" on the prescription order; and
 - (B) giving the partner's prescription to the patient for subsequent use by the partner; or

- (ii) notwithstanding Section 58-17b-610, dispenses a drug sample to treat a sexually transmitted disease to the patient for the subsequent use of the partner; or
- (b) a pharmacist, in accordance with this Subsection (3), dispenses a prescription drug for the treatment of a sexually transmitted disease to:
 - (i) a person who:
 - (A) claims to be a partner; and
 - (B) presents a prescription for the drug to the pharmacist which is written for the unnamed partner of a named patient;
 - (ii) the patient for the subsequent use by the unnamed partner; or
 - (iii) an agent of the patient or partner.
- (4) (a) For purposes of Subsection (3), and notwithstanding Section 58-17b-602:
 - (i) the partner does not have to be identified on the prescription order by information that would disclose the identity of the partner; and
 - (ii) when dispensing a drug to treat a sexually transmitted disease directly to the partner, the patient's identifying information may, but does not need to, be included on the partner's drug label.
- (b) Information provided by a pharmacist to a patient or the patient's agent for subsequent use by a partner satisfies the requirements of patient counseling for both the patient and the partner under Section 58-17b-613.
- (5) (a) The Legislature finds that the prevention and treatment of sexually transmitted diseases in the state is a compelling public health issue.
- (b) A practitioner or licensee under this chapter is not liable for a medical malpractice action if the use of expedited partner therapy is in compliance with this section, except for those acts which are grossly negligent or willful and wanton. Enacted by Chapter 151, 2009 General Session

58-1-501.5. Anatomic pathology services -- Billing violations.

- (1) As used in this section, the following definitions apply:
 - (a) (i) "Anatomic pathology services" including "technical or professional component of anatomic pathology services" means:
 - (A) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or under the supervision of a physician;
 - (B) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician or under the supervision of a physician;
 - (C) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral human blood smears when the attending or treating physician or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;
 - (D) subcellular pathology and molecular pathology; and
 - (E) blood bank services performed by a pathologist.
 - (ii) "Anatomic pathology services" including "technical or professional component of anatomic pathology services" does not include the initial collection or packaging of a sample for transport.
 - (b) "Clinical laboratory" or "laboratory" means a facility for the biological, microbiological, serological, chemical, immuno-hematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.
 - (c) "Health care facility" has the meaning provided in Section 26-21-2.
 - (d) "Health care provider" includes:
 - (i) an advanced practice registered nurse licensed under Chapter 31b, Nurse Practice Act;
 - (ii) a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act;
 - (iii) a dentist licensed under Chapter 69, Dentist and Dental Hygienist Practice Act;
 - (iv) a nurse midwife licensed under Chapter 44a, Nurse Midwife Practice Act;
 - (v) an optometrist licensed under Chapter 16a, Utah Optometry Practice Act;

(vi) an osteopathic physician and surgeon licensed under Chapter 68, Utah Osteopathic Medical Practice Act;

(vii) a podiatric physician licensed under Chapter 5a, Podiatric Physician Licensing Act;

(viii) a physician and surgeon licensed under Chapter 67, Utah Medical Practice Act; and

(ix) a physician assistant licensed under Chapter 70a, Physician Assistant Act.

(e) "Insurer" includes:

(i) any entity offering accident and health insurance as defined in Section 31A-1-301;

(ii) workers' compensation benefits;

(iii) a health maintenance organization; or

(iv) any self-insurance, as defined in Section 31A-1-301, that offers health care insurance or benefits.

(2) (a) A health care provider who orders anatomic pathology services for a patient from an independent physician or laboratory may not directly or indirectly mark up, charge a commission, or make a profit on the anatomic pathology service provided by the independent physician or laboratory.

(b) Nothing in Subsection (2)(a):

(i) restricts the ability of a health care provider, who has not performed or supervised either the technical or professional component of the anatomic pathology service, to obtain payment for services related solely to the collection and packaging of a sample and administrative billing costs; or

(ii) restricts the ability of the lab function in the Department of Health to bill for services.

(3) A health care provider when billing a patient directly for anatomic pathology services provided by an independent physician or laboratory shall furnish an itemized bill which conforms with the billing practices of the American Medical Association that conspicuously discloses the charge for each anatomic pathology service, physician or laboratory name, and address for each anatomic pathology service rendered to the patient by the physician or laboratory that performed the anatomic pathology service.

(4) The disclosure to be made under Subsection (3) shall not be required when the anatomic pathology service is being ordered by a hospital, a laboratory performing either the professional or technical component of the service, or a physician performing either the professional or technical component of the service, a public health clinic, or a state or federal agency.

(5) Failure to comply with the requirements of this section shall be considered to be unprofessional conduct. Amended by Chapter 250, 2008 General Session

58-1-501.6. Health care provider advertisements and disclosure -- Unprofessional conduct.

For purposes of this section:

(1) (a) "Advertisement" includes:

(i) billboards;

(ii) written documents such as:

(A) brochures;

(B) pamphlets;

(C) direct mail solicitations;

(D) radio, television, and telephone solicitation scripts; and

(E) telephone directories;

(iii) media, including television, radio, and Internet websites; and

(iv) any other means of promotion intended to directly or indirectly induce a person to enter into an agreement for services with a health care provider.

(b) "Advertisement" does not include materials that provide information about health care provider networks established by health insurance carriers.

(2) "Health care provider" means a natural person who is:

(a) defined as a health care provider in Section 78B-3-403; and

(b) licensed under this title.

(3) (a) This section does not provide authority for a health care provider to advertise the services offered by the health care provider.

(b) If a health care provider's licensing authority and professional ethics permit the health care provider to advertise, the provisions of this section apply to any advertisement for the health care provider's services, on or after July 1, 2011.

(4) An advertisement for a health care provider's services that includes the health care provider's name shall identify the license type, as used by the division, under which the health care provider is practicing.

(5) (a) A physician licensed under Chapter 67, Utah Medical Practice Act, may comply with the requirements of this section by using any one of the designations in the definitions of "practice of medicine" in Section 58-67-102.

(b) A physician licensed under Chapter 68, Utah Osteopathic Medical Practice Act, may comply with this section by using any of the designations in the definition of "practice of osteopathic medicine" in Section 58-68-102.

(6) It is unprofessional conduct if a health care provider violates this section. Enacted by Chapter 139, 2011 General Session

58-1-501.7. Standards of conduct for prescription drug education -- Academic and commercial detailing.

(1) For purposes of this section:

(a) "Academic detailing":

(i) means a health care provider who is licensed under this title to prescribe or dispense a prescription drug and employed by someone other than a pharmaceutical manufacturer:

(A) for the purpose of countering information provided in commercial detailing; and

(B) to disseminate educational information about prescription drugs to other health care providers in an effort to better align clinical practice with scientific research; and

(ii) does not include a health care provider who:

(A) is disseminating educational information about a prescription drug as part of teaching or supervising students or graduate medical education students at an institution of higher education or through a medical residency program;

(B) is disseminating educational information about a prescription drug to a patient or a patient's representative; or

(C) is acting within the scope of practice for the health care provider regarding the prescribing or dispensing of a prescription drug.

(b) "Commercial detailing" means an educational practice employed by a pharmaceutical manufacturer in which clinical information and evidence about a prescription drug is shared with health care professionals.

(c) "Manufacture" is as defined in Section 58-37-2.

(d) "Pharmaceutical manufacturer" is a person who manufactures a prescription drug.

(2) (a) Except as provided in Subsection (3), the provisions of this section apply to an academic detailer beginning July 1, 2013.

(b) An academic detailer and a commercial detailer who educate another health care provider about prescription drugs through written or oral educational material is subject to federal regulations regarding:

(i) false and misleading advertising in 21 C.F.R., Part 201 (2007);

(ii) prescription drug advertising in 21 C.F.R., Part 202 (2007); and

(iii) the federal Office of the Inspector General's Compliance Program Guidance for Pharmaceutical Manufacturers issued in April 2003, as amended.

(c) A person who is injured by a violation of this section has a private right of action against a person engaged in academic detailing, if:

(i) the actions of the person engaged in academic detailing, that are a violation of this section, are:

(A) the result of gross negligence by the person; or

(B) willful and wanton behavior by the person; and

(ii) the damages to the person are reasonable, foreseeable, and proximately caused by the violations of this section.

(3) (a) For purposes of this Subsection, "accident and health insurer":

(i) is as defined in Section 31A-1-301; and

(ii) includes a self-funded health benefit plan and an administrator for a self-funded health benefit plan.

(b) This section does not apply to a person who engages in academic detailing if that person is engaged in academic detailing on behalf of:

(i) an accident and health insurer, including when an accident and health insurer contracts with or offers:

(A) the state Medicaid program, including the Primary Care Network within the state's Medicaid program;

(B) the Children's Health Insurance Program created in Section 26-40-103;

(C) the state's high risk insurance program created in Section 31A-29-104;

(D) a Medicare plan; and

(E) a Medicare supplement plan;

(ii) a hospital as defined in Section 26-21-2;

(iii) any class of pharmacy as defined in Section 58-17b-102, including any affiliated pharmacies;

(iv) an integrated health system as defined in Section 13-5b-102; or

(v) a medical clinic.

(c) This section does not apply to communicating or disseminating information about a prescription drug for the purpose of conducting research using prescription drugs at a health care facility as defined in Section 26-21-2, or a medical clinic. Enacted by Chapter 100, 2013 General Session

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

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

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

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

(ii) attempt to negotiate a stipulated settlement; or

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

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

(A) an uncontested citation;

(B) a stipulated settlement; or

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

(ii) The division may, in addition to or in lieu of a fine under Subsection (2)(b)(i), order the person to cease and desist from violating Subsection 58-1-501(1)(a), (1)(c), or

(2)(o), or a rule or order issued with respect to those subsections.

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

(d) A citation shall:

(i) be in writing;

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

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

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

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

- (f) (i) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.
- (ii) The period to contest a citation may be extended by the division for cause.
- (g) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.
- (h) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
- (i) The division may not issue a citation under this section after the expiration of six months following the occurrence of a violation.
- (j) The director or the director's designee shall assess fines according to the following:
 - (i) for the first offense handled pursuant to Subsection (2)(a), a fine of up to \$1,000;
 - (ii) for a second offense handled pursuant to Subsection (2)(a), a fine of up to \$2,000; and
 - (iii) for each subsequent offense handled pursuant to Subsection (2)(a), a fine of up to \$2,000 for each day of continued offense.
- (3) (a) An action for a first or second offense that has not yet resulted in a final order of the division may not preclude initiation of a subsequent action for a second or subsequent offense during the pendency of a preceding action.
- (b) The final order on a subsequent action is considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.
- (4) (a) The director may collect a penalty that is not paid by:
 - (i) either referring the matter to a collection agency; or
 - (ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.
- (b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect the penalty.
- (c) A court may award reasonable attorney fees and costs to the division in an action brought by the division to enforce the provisions of this section. Amended by Chapter 262, 2013 General Session

58-1-503. Maximum civil penalty for violation of court order.

- (1) If any written order issued under this title or if an injunction or temporary restraining order issued by a court of competent jurisdiction relating to this title is violated, the court may impose a civil penalty of not more than \$2,000 for each day the written order, injunction, or temporary restraining order is violated, if the person in violation has received notice of the written order, injunction, or temporary restraining order.
- (2) All penalties ordered under this section shall be deposited into the General Fund.
Renumbered and Amended by Chapter 297, 1993 General Session

58-1-504. Court-ordered discipline.

The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this title if so ordered by a court. Enacted by Chapter 232, 1997 General Session

58-1-505. Cosmetic medical procedure supervisor.

- (1) For purposes of this section and Section 58-1-506:
 - (a) "Cosmetic medical facility" means a physician's office or a facility that has a supervisor who performs the supervision required in Section 58-1-506.
 - (b) "Supervisor" means:
 - (i) a physician with an unrestricted license under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act, who is acting within the scope of the practice of medicine, as defined in Section 58-67-102; and
 - (ii) an advanced practice registered nurse with an unrestricted license under Chapter 31b, Nurse Practice Act, who is acting within the scope of practice of advanced practice registered nursing, as defined in Section 58-31b-102.

- (2) (a) An individual authorized by this title to perform a cosmetic medical procedure shall be supervised by a supervisor when performing a medical procedure.
- (b) Cosmetic medical procedures may only be performed in a cosmetic medical facility.
- (c) A supervisor may delegate the supervisory role only to another individual who is qualified as a supervisor. Enacted by Chapter 362, 2012 General Session

58-1-506. Supervision of cosmetic medical procedures.

(1) For purposes of this section:

(a) "Delegation group A" means the following who are licensed under this title, acting within their respective scope of practice, and qualified under Subsections (2)(f)(i) and (iii):

(i) a physician assistant, if acting under the supervision of a physician and the procedure is included in the delegation of services agreement as defined in Section 58-70a-102;

(ii) a registered nurse;

(iii) a master esthetician; and

(iv) an electrologist, if evaluating for or performing laser hair removal.

(b) "Delegation group B" means:

(i) a practical nurse or an esthetician who is licensed under this title, acting within their respective scope of practice, and qualified under Subsections (2)(f)(i) and

(iii); and

(ii) a medical assistant who is qualified under Subsections (2)(f)(i) and (iii).

(c) "Direct cosmetic medical procedure supervision" means the supervisor:

(i) has authorized the procedure to be done on the patient by the supervisee; and

(ii) is present and available for a face-to-face communication with the supervisee when and where a cosmetic medical procedure is performed.

(d) "General cosmetic medical procedure supervision" means the supervisor:

(i) has authorized the procedure to be done on the patient by the supervisee;

(ii) is available in a timely and appropriate manner in person to evaluate and

initiate care for a patient with a suspected adverse reaction or complication; and

(iii) is located within 60 minutes or 60 miles of the cosmetic medical facility.

(e) "Indirect cosmetic medical procedure supervision" means the supervisor:

(i) has authorized the procedure to be done on the patient by the supervisee;

(ii) has given written instructions to the person being supervised;

(iii) is present within the cosmetic medical facility in which the person being supervised is providing services; and

(iv) is available to:

(A) provide immediate face-to-face communication with the person being supervised; and

(B) evaluate the patient, as necessary.

(f) "Hair removal review" means:

(i) conducting an in-person, face-to-face interview of a patient based on the responses provided by the patient to a detailed medical history assessment that was prepared by the supervisor;

(ii) evaluating for contraindications and conditions that are part of the treatment plan; and

(iii) if the patient history or patient presentation deviates in any way from the treatment plan, referring the patient to the supervisor and receiving clearance from the supervisor before starting the treatment.

(2) A supervisor supervising a nonablative cosmetic medical procedure for hair removal shall:

(a) have an unrestricted license to practice medicine or advanced practice registered nursing in the state;

(b) develop the medical treatment plan for the procedure;

(c) conduct a hair removal review, or delegate the hair removal review to a member of delegation group A, of the patient prior to initiating treatment or a series of treatments;

(d) personally perform the nonablative cosmetic medical procedure for hair removal, or authorize and delegate the procedure to a member of delegation group A or B;

(e) during the nonablative cosmetic medical procedure for hair removal provide general cosmetic medical procedure supervision to individuals in delegation group A performing the procedure, except physician assistants, who shall be supervised as provided in Chapter 70a, Physician

Assistant Act, and indirect cosmetic medical procedure supervision to individuals in delegation group B performing the procedure; and

(f) verify that a person to whom the supervisor delegates an evaluation under Subsection (2)(c) or delegates a procedure under Subsection (2)(d) or (3)(b)(ii):

(i) has received appropriate training regarding the medical procedures developed under Subsection (2)(b);

(ii) has an unrestricted license under this title or is performing under the license of the supervising physician and surgeon; and

(iii) has maintained competence to perform the nonablative cosmetic medical procedure through documented education and experience of at least 80 hours, as further defined by rule, regarding:

(A) the appropriate standard of care for performing nonablative cosmetic medical procedures;

(B) physiology of the skin;

(C) skin typing and analysis;

(D) skin conditions, disorders, and diseases;

(E) pre and post procedure care;

(F) infection control;

(G) laser and light physics training;

(H) laser technologies and applications;

(I) safety and maintenance of lasers;

(J) cosmetic medical procedures an individual is permitted to perform under this title;

(K) recognition and appropriate management of complications from a procedure; and

(L) cardio-pulmonary resuscitation (CPR).

(3) For a nonablative cosmetic medical procedure other than hair removal under Subsection (2):

(a) (i) except as provided in Subsection (3)(a)(ii) and (iii), a physician who has an unrestricted license to practice medicine shall:

(A) develop a treatment plan for the nonablative cosmetic medical procedure; and

(B) conduct an in-person face-to-face evaluation of the patient prior to the initiation of a treatment protocol or series of treatments;

(ii) a nurse practitioner who has an unrestricted license for advanced practice registered nursing may perform the evaluation and develop the treatment plan under Subsection (3)(a)(i) for nonablative medical procedures other than tattoo removal; or

(iii) a physician assistant acting under the supervision of a physician, with the procedure included in the delegation of service agreement as defined in Section 58-70a-102, may perform the evaluation under Subsection (3)(a)(i)(B) for nonablative medical procedures other than tattoo removal; and

(b) the supervisor supervising the procedure shall:

(i) have an unrestricted license to practice medicine or advanced practice registered nursing;

(ii) personally perform the nonablative cosmetic medical procedure or:

(A) authorize and provide general cosmetic medical procedure supervision for the nonablative cosmetic medical procedure that is performed by a registered nurse or a master esthetician;

(B) authorize and provide supervision as provided in Chapter 70a, Physician Assistant Act, for the nonablative cosmetic medical procedure that is performed by a physician assistant, if the procedure is included in the delegation of services agreement; or

(C) authorize and provide direct cosmetic medical procedure supervision for the nonablative cosmetic medical procedure that is performed by an esthetician; and

(iii) verify that a person to whom the supervisor delegates a procedure under Subsection (3)(b):

(A) has received appropriate training regarding the medical procedures to be performed;

(B) has an unrestricted license and is acting within their scope of practice under this title; and

(C) is qualified under Subsection (2)(f)(iii).

(4) A supervisor performing or supervising a cosmetic medical procedure under Subsection (2) or (3) shall ensure that:

(a) the supervisor's name is prominently posted at the cosmetic medical facility identifying the supervisor;

(b) a copy of the supervisor's license is displayed on the wall of the cosmetic medical facility;

(c) the patient receives written information with the name and licensing information of the supervisor who is supervising the nonablative cosmetic medical procedure and the person who is performing the nonablative cosmetic medical procedure;

(d) the patient is provided with a telephone number that is answered within 24 hours for follow-up communication; and

(e) the cosmetic medical facility's contract with a master esthetician who performs a nonablative cosmetic medical procedure at the facility is kept on the premises of the facility.

(5) Failure to comply with the provisions of this section is unprofessional conduct.

(6) A chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act is not subject to the supervision requirements in this section for a nonablative cosmetic medical procedure for hair removal if the chiropractic physician is acting within the scope of practice of a chiropractic physician and with training specific to nonablative hair removal. Enacted by Chapter 362, 2012 General Session

58-1-507. Cosmetic medical procedure -- Truth in advertising.

Beginning July 1, 2013, a facility that performs a cosmetic medical procedure as defined in Section 58-67-102 may not advertise or hold itself out to the public as a "medical spa," "medical facility," or "medical clinic" unless the facility has an individual on the premises while a cosmetic medical procedure is performed who is licensed under:

(1) Chapter 31b, Nurse Practices Act, as an advanced practice registered nurse, practicing as a nurse practitioner;

(2) Chapter 67, Utah Medical Practice Act; or

(3) Chapter 68, Utah Osteopathic Medical Practice Act. Enacted by Chapter 362, 2012 General Session

Dopl.utah.gov/laws/R156-1.pdf

R156. Commerce, Occupational and Professional Licensing.

R156-1. General Rule of the Division of Occupational and Professional Licensing.

R156-1-101. Title.

This rule is known as the "General Rule of the Division of Occupational and Professional Licensing."

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or this rule:

- (1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.
- (2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:
 - (a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;
 - (b) dishonest or selfish motive;
 - (c) pattern of misconduct;
 - (d) multiple offenses;
 - (e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;
 - (f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;
 - (g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;
 - (h) vulnerability of the victim;
 - (i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;
 - (j) illegal conduct, including the use of controlled substances; and
 - (k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.
- (3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards.
- (4) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.
- (5) "Denial of licensure" means action by the Division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.
- (6)(a) "Disciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(2)(a) through (2)(b).
 - (b) "Disciplinary action", as used in Subsection 58-1-401(5), shall not be construed to mean an adverse licensure action taken in response to an application for licensure. Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.
- (7) "Diversion agreement" means a formal written agreement between a

licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(8) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(9) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(10) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the Division under the authority of Subsection 58-1-108(2).

(11) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(12) "Inactive" or "inactivation" means action by the Division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(13) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a Department administrative law judge, or if both the Division regulatory and compliance officer and a Department administrative law judge are unable to so serve for any reason, an alternate designated by the director in writing.

(14) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(15) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(16) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iii) timely and good faith effort to make restitution or rectify the

consequences of the misconduct involved;

(iv) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(v) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii) remorse.

(b) The following factors may not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

(v) complainant's recommendation as to sanction; and

(vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):

(A) argument that a prior proceeding was conducted unfairly, contrary to law, or in violation of due process or any other procedural safeguard;

(B) argument that a prior finding or sanction was contrary to the evidence or entered without due consideration of relevant evidence;

(C) argument that a respondent was not adequately represented by counsel in a prior proceeding; and

(D) argument or evidence that former statements of a respondent made in conjunction with a plea or settlement agreement are not, in fact, true.

(17) "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(18) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the Division under the authority of Subsection 58-1-203(1)(f).

(19) "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(20) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(21) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(22) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(23) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(24) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.

(25) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(26) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.

(27) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(28) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(29) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

(30) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-502.

(31) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

R156-1-102a. Global Definitions of Levels of Supervision.

(1) Except as otherwise provided by statute or rule, the global definitions of levels of supervision herein shall apply to supervision terminology used in Title 58 and Title R156, and shall be referenced and used, to the extent practicable, in statutes and rules to promote uniformity and consistency.

(2) Except as otherwise provided by statute or rule, all unlicensed personnel specifically allowed to practice a regulated occupation or profession are required to practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(3) Except as otherwise provided by statute or rule, all license classifications required to practice under supervision shall practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(4) Levels of supervision are defined as follows:

(a) "Direct supervision" and "immediate supervision" mean the supervising licensee is present and available for face-to-face communication with the person being supervised when and where occupational or professional services are being provided.

(b) "Indirect supervision" means the supervising licensee:

(i) has given either written or verbal instructions to the person being supervised;

(ii) is present within the facility in which the person being supervised is providing services; and

(iii) is available to provide immediate face-to-face communication with

the person being supervised as necessary.

(c) "General supervision" means that the supervising licensee:

- (i) has authorized the work to be performed by the person being supervised;
- (ii) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio or some other means, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and
- (iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.

(5) "Supervising licensee" means a licensee who has satisfied any requirements to act as a supervisor and has agreed to provide supervision of an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with the provisions of this chapter.

R156-1-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58.

R156-1-106. Division - Duties, Functions, and Responsibilities.

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers, home addresses, and e-mail addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized:

(a) responses to requests from another governmental entity, governmentmanaged corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the Division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the Division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research;

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for issuing credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3)(a) and (b), the Division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the Division, if the reason for the request is deemed by the Division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The Division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the Division regulatory and compliance officer is unable to so serve for any reason, a replacement specified by the director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the Division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(b), and R156-46b-201(2)(a) through (c), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (j), (l), (m), (o), (p), and (q), and R156-46b-202(2)(a), (b)(ii), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsection R156-46b-201(1)(c), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-15A-210(1) through (4); and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (d),(f), (h), (j), (n) and R156-46b-202(2)(b)(iii).

(iii) At the direction of a bureau manager or program coordinator, a

licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Citation Hearing Officer. The regulatory and compliance officer or other citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(k).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(e) for convening a board of appeal under Subsection 15A-1-207(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-202(1)(f) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) informal adjudicative proceedings described in Subsections R156-46b-202(1)(l), (m), (o), (p), and (q), and R156-46b-202(2)(b)(i), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements;

(B) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(C) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. The director is designated as the presiding officer for the concurrence role on disciplinary proceedings under Subsections R156-46b-202(2)(b)(i), (c), and (d) as required by Subsection 58-55-103(1)(b)(iv).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (d),(h), and (n).

(e) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(f) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(g) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(h) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the

Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a Division investigation made pursuant to Subsection 58-1-106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the Division and the signature of the subpoena authority.

(2) The person who requests an investigative subpoena is responsible for service of the subpoena.

(3)(a) Service may be made:

(i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and

(ii) personally or on the agent of the person being served.

(b) If a party is represented by an attorney, service shall be made on the attorney.

(4)(a) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

(d) Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(5) There shall appear on all investigative subpoenas a certificate of service.

(6) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

(a) A motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than ten days after service of the investigative subpoena.

(b) A response by the Division to a motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than five business days after receipt of a motion to quash or modify an investigative subpoena.

(c) No final reply by the recipient of an investigative subpoena who files a motion to quash or modify shall be permitted.

R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a

case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the Division.

(7) Unless otherwise approved by the Division, peer or advisory committee meetings shall be held in the building occupied by the Division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The Division shall provide a Division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

R156-1-301. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and

date stamped by the Division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the Division's electronic

licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the Division's Internet Renewal System.

R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.

Pursuant to the provisions of Subsection 58-1-401(1) and (2), if an applicant or licensee has failed to demonstrate good moral character, has been involved in unlawful conduct, has been involved in unprofessional conduct, or has any other mental or physical condition which conduct or condition, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare, the Division may consider various relevant factors in determining what action to take regarding licensure including the following:

(1) aggravating circumstances, as defined in Subsection R156-1-102(2);

(2) mitigating circumstances, as defined in Subsection R156-1-102(16);

(3) the degree of risk to the public health, safety or welfare;

(4) the degree of risk that a conduct will be repeated;

(5) the degree of risk that a condition will continue;

(6) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(7) the length of time since the last conduct or condition has occurred;

(8) the current criminal probationary or parole status of the applicant or licensee;

(9) the current administrative status of the applicant or licensee;

(10) results of previously submitted applications, for any regulated profession or occupation;

(11) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

(12) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(13) psychological evaluations; or

(14) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

(a) advanced practice registered nurse;

(b) architect;

(c) audiologist;

(d) certified nurse midwife;

(e) certified public accountant emeritus;

- (f) certified registered nurse anesthetist;
- (g) certified court reporter;
- (h) certified social worker;
- (i) chiropractic physician;
- (j) clinical mental health counselor;
- (k) clinical social worker;
- (l) contractor;
- (m) deception detection examiner;
- (n) deception detection intern;
- (o) dental hygienist;
- (p) dentist;
- (q) direct-entry midwife;
- (r) genetic counselor;
- (s) health facility administrator;
- (t) hearing instrument specialist;
- (u) landscape architect;
- (v) licensed advanced substance use disorder counselor;
- (w) marriage and family therapist;
- (x) naturopath/naturopathic physician;
- (y) optometrist;
- (z) osteopathic physician and surgeon;
- (aa) pharmacist;
- (bb) pharmacy technician;
- (cc) physical therapist;
- (dd) physician assistant;
- (ee) physician and surgeon;
- (ff) podiatric physician;
- (gg) private probation provider;
- (hh) professional engineer;
- (ii) professional land surveyor;
- (jj) professional structural engineer;
- (kk) psychologist;
- (ll) radiology practical technician;
- (mm) radiologic technologist;
- (nn) security personnel;
- (oo) speech-language pathologist;
- (pp) substance use disorder counselor; and
- (qq) veterinarian.

(3) Applicants for inactive licensure shall apply to the Division in writing upon forms available from the Division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the Division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their

activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE RENEWAL DATES

- (1) Acupuncturist May 31 even years
- (2) Advanced Practice Registered Nurse January 31 even years
- (3) Advanced Practice Registered Nurse-CRNA January 31 even years
- (4) Architect May 31 even years
- (5) Athlete Agent September 30 even years
- (6) Athletic Trainer May 31 odd years
- (7) Audiologist May 31 odd years
- (8) Barber September 30 odd years
- (9) Barber School September 30 odd years
- (10) Building Inspector November 30 odd years
- (11) Burglar Alarm Security March 31 odd years
- (12) C.P.A. Firm September 30 even years
- (13) Certified Court Reporter May 31 even years
- (14) Certified Dietitian September 30 even years
- (15) Certified Medical Language Interpreter March 31 odd years
- (16) Certified Nurse Midwife January 31 even years
- (17) Certified Public Accountant September 30 even years
- (18) Certified Social Worker September 30 even years
- (19) Chiropractic Physician May 31 even years
- (20) Clinical Mental Health Counselor September 30 even years
- (21) Clinical Social Worker September 30 even years
- (22) Construction Trades Instructor November 30 odd years
- (23) Contractor November 30 odd years
- (24) Controlled Substance License Attached to primary license renewal
- (25) Controlled Substance Precursor May 31 odd years
- (26) Controlled Substance Handler September 30 odd years
- (27) Cosmetologist/Barber September 30 odd years
- (28) Cosmetology/Barber School September 30 odd years
- (29) Deception Detection November 30 even years
- (30) Dental Hygienist May 31 even years
- (31) Dentist May 31 even years
- (32) Direct-entry Midwife Sept 30 odd years
- (33) Electrician
Apprentice, Journeyman, Master,
Residential Journeyman,
Residential Master November 30 even years
- (34) Electrologist September 30 odd years
- (35) Electrology School September 30 odd years
- (36) Elevator Mechanic November 30 even years
- (37) Environmental Health Scientist May 31 odd years
- (38) Esthetician September 30 odd years
- (39) Esthetics School September 30 odd years
- (40) Factory Built Housing Dealer September 30 even years

- (41) Funeral Service Director May 31 even years
 - (42) Funeral Service May 31 even years Establishment
 - (43) Genetic Counselor September 30 even years
 - (44) Health Facility May 31 odd years Administrator
 - (45) Hearing Instrument September 30 even years Specialist
 - (46) Internet Facilitator September 30 odd years
 - (47) Landscape Architect May 31 even years
 - (48) Licensed Advanced Substance Use Disorder Counselor May 31 odd years
 - (49) Licensed Practical Nurse January 31 even years
 - (50) Licensed Substance May 31 odd years Use Disorder Counselor
 - (51) Marriage and Family September 30 even years Therapist
 - (52) Massage Apprentice, May 31 odd years Therapist
 - (53) Master Esthetician September 30 odd years
 - (54) Medication Aide Certified March 31 odd years
 - (55) Nail Technologist September 30 odd years
 - (56) Nail Technology School September 30 odd years
 - (57) Naturopath/Naturopathic May 31 even years Physician
 - (58) Occupational Therapist May 31 odd years
 - (59) Occupational Therapy May 31 odd years Assistant
 - (60) Optometrist September 30 even years
 - (61) Osteopathic Physician and May 31 even years Surgeon, Online Prescriber
 - (62) Outfitter/Hunting Guide May 31 even years
 - (63) Pharmacy Class A-B-C-D-E, September 30 odd years Online Contract Pharmacy
 - (64) Pharmacist September 30 odd years
 - (65) Pharmacy Technician September 30 odd years
 - (66) Physical Therapist May 31 odd years
 - (67) Physical Therapist Assistant May 31 odd years
 - (68) Physician Assistant May 31 even years
 - (69) Physician and Surgeon, January 31 even years Online Prescriber
 - (70) Plumber, Apprentice, Journeyman, Master, Residential Master, Residential Journeyman
November 30 even years
 - (71) Podiatric Physician September 30 even years
 - (72) Pre Need Funeral Arrangement Sales Agent May 31 even years
 - (73) Private Probation Provider May 31 odd years
 - (74) Professional Engineer March 31 odd years
 - (75) Professional Geologist March 31 odd years
 - (76) Professional Land Surveyor March 31 odd years
 - (77) Professional Structural March 31 odd years Engineer
 - (78) Psychologist September 30 even years
 - (79) Radiologic Technologist, May 31 odd years Radiology Practical Technician Radiologist
Assistant
 - (80) Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist,
Master Therapeutic Recreation Specialist May 31 odd years
 - (81) Registered Nurse January 31 odd years
 - (82) Respiratory Care September 30 even years Practitioner
 - (83) Security Personnel November 30 even years
 - (84) Social Service Worker September 30 even years
 - (85) Speech-Language Pathologist May 31 odd years
 - (86) Veterinarian September 30 even years
 - (87) Vocational Rehabilitation Counselor March 31 odd years
- (2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:
- (a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made

toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(f) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(g) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(h) Dental Educator licenses shall be issued for a two year renewable term, until the date of termination of employment with the dental school as an employee, or until the failure to maintain any of the requirements of Section 58-69-302.5, whichever occurs first.

(i) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(j) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(k) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(l) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(m) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The Division shall send a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2) Except as provided in Subsection(4), renewal notices shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system.

(3) In accordance with Subsection 58-1-301.7(1), each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(2), mailing to the last mailing address furnished to the Division constitutes legal notice.

(4) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

(5) Renewal notices shall provide that the renewal requirements are outlined in the online renewal process and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

(6) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(7) Licensees licensed during the last 12 months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308d. Waiver of Continuing Education Requirements - Renewal Requirements.

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a

detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities and education.

R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensee.

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.

(1) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the Division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

(2) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(3) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(4) Upon completion of the audit or investigation, the Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(5) A notice of unconditional denial or partial denial of licensure to an applicant the Division conditionally licensed, renewed, or reinstated shall include the following:

(a) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

- (b) the Division's file or other reference number of the audit or investigation; and
- (c) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested.

R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between the date of the expiration of the license and 30 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the Division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for licensure demonstrating the applicant meets all current qualifications for licensure;

(b) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested; and

(c) pay the established license fee for a new applicant for licensure.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the Division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(b) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(c) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating

full-time government service; and
(d) pay the established license renewal fee and the reinstatement fee.

R156-1-308h. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

- (1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.
- (2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.
- (3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted, Suspended or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

- (1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;
- (2) pay the established license renewal fee and the reinstatement fee;
- (3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and
- (4) pay any fines or citations owed to the Division prior to the expiration of license.

R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

- (1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;
- (2) pay the established license fee for a new applicant for licensure; and
- (3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

- (1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Sections R156-1-308a through R156-1-308l.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

- (a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;
- (b) pay the established license fee for a new applicant for licensure;
- (c) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;
- (d) pay any fines or citations owed to the Division prior to the surrender of license.

R156-1-308I. Reinstatement of Licensure and Relicensure - Term of Licensure.

Except as otherwise governed by the terms of an order issued by the Division, a license issued to an applicant for reinstatement or relicensure issued during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

R156-1-310. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined.

Cheating includes:

- (a) communication between examinees inside of the examination room or facility during the course of the examination;
- (b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;
- (c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;
- (d) permitting anyone to copy answers to the examination;
- (e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;
- (f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the Division will again consider the applicant for licensure.

R156-1-404a. Diversion Advisory Committees Created.

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

(1) reviewing the details of the information regarding licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

- (3) supervising compliance with all terms and conditions of diversion agreements;
- (4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and
- (5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

R156-1-404c. Diversion - Eligible Offenses.

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

R156-1-404d. Diversion - Procedures.

- (1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.
- (2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.
- (3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404.
- (4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.
- (5) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.

- (1) The Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.
- (2) The Division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.
- (3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations there under. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the Division.
- (4) The cost of administering agreements and providing the services there under shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the

value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the Division shall enter agreements under this section, the Division shall ensure the parties are competent to provide the required services. The Division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing;

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference; or

(7) failing, as a prescribing practitioner, to follow the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain", July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference.

R156-1-502. Administrative Penalties.

(1) In accordance with Subsection 58-1-401(5) and Section 58-1-502, except as otherwise provided by a specific chapter under Title R156, the following fine schedule shall apply to citations issued under the referenced authority:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation Fine

58-1-501(1)(a) \$ 500.00

58-1-501(1)(c) \$ 800.00

58-1-501(2)(o) \$ 0 - \$250.00

SECOND OFFENSE

58-1-501(1)(a) \$1,000.00

58-1-501(1)(c) \$1,600.00

58-1-501(2)(o) \$251.00 - \$500.00

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-502(2)(j)(iii).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor or chief investigator may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-1-503. Reporting Disciplinary Action.

The Division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

R156-1-506. Supervision of Cosmetic Medical Procedures.

The 80 hours of documented education and experience required under Subsection 58-1-506(2)(f)(iii) to maintain competence to perform nonablative cosmetic medical procedures is defined to include the following:

- (1) the appropriate standards of care for performing nonablative cosmetic medical procedures;
- (2) physiology of the skin;
- (3) skin typing and analysis;
- (4) skin conditions, disorders, and diseases;
- (5) pre and post procedure care;
- (6) infection control;
- (7) laser and light physics training;
- (8) laser technologies and applications;
- (9) safety and maintenance of lasers;
- (10) cosmetic medical procedures an individual is permitted to perform under this title;
- (11) recognition and appropriate management of complications from a procedure; and
- (12) current cardio-pulmonary resuscitation (CPR) certification for health care providers from one of the following organizations:
 - (a) American Heart Association;
 - (b) American Red Cross or its affiliates; or
 - (c) American Safety and Health Institute.

KEY: diversion programs, licensing, supervision, evidentiary restrictions

Date of Enactment or Last Substantive Amendment: January 21, 2014

Notice of Continuation: January 5, 2012

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(2)

PSYCHOLOGIST LICENSING ACT

Part 1 - General Provisions

58-61-101. Title.

This chapter is known as the "Psychologist Licensing Act."

58-61-102. Definitions.

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

- (1) "Board" means the Psychologist Licensing Board created in Section 58-61-201.
- (2) "Client" or "patient" means an individual who consults or is examined or interviewed by a psychologist acting in his professional capacity.
- (3) "Confidential communication" means information, including information obtained by the psychologist's examination of the client or patient, which is:
 - (a) (i) transmitted between the client or patient and a psychologist in the course of that relationship; or
 - (ii) transmitted among the client or patient, the psychologist, and individuals who are participating in the diagnosis or treatment under the direction of the psychologist, including members of the client's or patient's family; and
- (b) made in confidence, for the diagnosis or treatment of the client or patient by the psychologist, and by a means not intended to be disclosed to third persons other than those individuals:
 - (i) present to further the interest of the client or patient in the consultation, examination, or interview;
 - (ii) reasonably necessary for the transmission of the communications; or
 - (iii) participating in the diagnosis and treatment of the client or patient under the direction of the psychologist
- (4) "Hypnosis" means, regarding individuals exempted from licensure under this chapter, a process by which one individual induces or assists another individual into a hypnotic state without the use of drugs or other substances and for the purpose of increasing motivation or to assist the individual to alter lifestyles or habits.
- (5) "Individual" means a natural person.
- (6) "Mental health therapist" means an individual licensed under this title as a:
 - (a) physician and surgeon, or osteopathic physician engaged in the practice of mental health therapy;
 - (b) an advanced practice registered nurse, specializing in psychiatric mental health nursing;
 - (c) an advanced practice registered nurse intern, specializing in psychiatric mental health nursing;
 - (d) psychologist qualified to engage in the practice of mental health therapy;
 - (e) a certified psychology resident qualifying to engage in the practice of mental health therapy;
 - (f) clinical social worker;
 - (g) certified social worker;
 - (h) marriage and family therapist;
 - (i) an associate marriage and family therapist;
 - (j) a clinical mental health counselor; or
 - (k) an associate clinical mental health counselor.
- (7) "Mental illness" means a mental or emotional condition defined in an approved diagnostic and statistical manual for mental disorders generally recognized in the professions of mental health therapy listed under Subsection (6).
- (8) "Practice of mental health therapy" means treatment or prevention of mental illness, whether in person or remotely, including:
 - (a) conducting a professional evaluation of an individual's condition of mental health, mental illness, or emotional disorder;
 - (b) establishing a diagnosis in accordance with established written standards generally recognized in the professions of mental health therapy listed under Subsection (6);
 - (c) prescribing a plan for the prevention or treatment of a condition of mental illness or emotional disorder; and
 - (d) engaging in the conduct of professional intervention, including psychotherapy by the application of established methods and procedures generally recognized

in the professions of mental health therapy listed under Subsection (6).

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

- (i) the practice of mental health therapy by means of observation, description, evaluation, interpretation, intervention, and treatment to effect modification of human behavior by the application of generally recognized professional psychological principles, methods, and 2 procedures for the purpose of preventing, treating, or eliminating mental or emotion illness or dysfunction, the symptoms of any of these, or maladaptive behavior;
- (ii) the observation, description, evaluation, interpretation, or modification of human behavior by the application of generally recognized professional principles, methods, or procedures requiring the education, training, and clinical experience of a psychologist, for the purpose of assessing, diagnosing, preventing, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health;
- (iii) psychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning;
- (iv) counseling, marriage and family therapy, psychoanalysis, psychotherapy, hypnosis, and behavior analysis and therapy;
- (v) diagnosis and treatment of mental and emotional disorders of disability, alcoholism and substance abuse, disorders of habit or conduct, and the psychological aspects of physical illness, accident, injury, or disability; and
- (vi) psycho educational evaluation, therapy, remediation, and consultation.

(b) An individual practicing psychology may provide services to individuals, couples, families, groups of individuals, members of the public, and individuals or groups within organizations or institutions.

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

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

(12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-61-502, and may be further defined by division rule.

Part 2 - Board

58-61-201. Board.

(1) There is created the Psychologist Licensing Board consisting of four licensed psychologists and one members from the general public.

(2) The board shall be appointed, serve terms, and be compensated in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board are under Sections 58-1-202 and 58-1-203. In addition, the board shall:

(a) designate one of its members on a permanent or rotating basis to assist the division in review of complaints concerning unlawful or unprofessional practice by a licensee in any profession regulated by the board and to advise the division regarding the conduct of investigations of the complaints; and

(b) disqualify a member from acting as presiding officer in an administrative procedure in which that member has previously reviewed the complaint or advised the division.

Part 3 - Licensing

58-61-301. License required.

(1) (a) A license is required to engage in the practice of psychology, except as specifically provided in Section 58-1-307.

(b) Notwithstanding the provisions of Subsection 58-1-307(1)(c) an individual shall be certified under this chapter as a psychology resident in order to engage in a residency program of supervised clinical training necessary to meet licensing requirements as a psychologist under this chapter.

(2) The division shall issue to a person who qualifies under this chapter a license in the classification of:

- (a) psychologist; or
 - (b) certified psychology resident. 58-61-302. Term of license.
- (1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.
- (b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
- (2) At the time of renewal the licensee shall show satisfactory evidence of renewal requirements as required under this chapter.
- (3) Each license expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.
- 58-61-303. Repealed.
- 58-61-304. Qualifications for licensure by examination or endorsement.
- (1) An applicant for licensure as a psychologist based upon education, clinical training, and examination shall:
- (a) submit an application on a form provided by the division;
 - (b) pay a fee determined by the department under Section 63J-1-504;
 - (c) be of good moral character;
 - (d) produce certified transcripts of credit verifying satisfactory completion of a doctoral degree in psychology that includes specific core course work established by division rule under Section 58-1-203, from an institution of higher education whose doctoral program, at the time the applicant received the doctoral degree, met approval criteria established by division rule made in consultation with the board;
 - (e) have completed a minimum of 4,000 hours of psychology training as defined by division rule under Section 58-1-203 in not less than two years and under the supervision of a psychologist supervisor approved by the division in collaboration with the board;
 - (f) to be qualified to engage in mental health therapy, document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of a master's level of education in psychology, which training may be included as part of the 4,000 hours of training required in Subsection (1)(e), and for which documented evidence demonstrates not less than one hour of supervision for each 40 hours of supervised training was obtained under the direct supervision of a psychologist, as defined by rule ;
 - (g) pass the examination requirement established by division rule under Section 58-1-203; and
 - (h) meet with the board, upon request for good cause, for the purpose of evaluating the applicant's qualifications for licensure.
- (2) An applicant for licensure as a psychologist by endorsement based upon licensure in another jurisdiction shall:
- (a) submit an application on a form provided by the division;
 - (b) pay a fee determined by the department under Section 63J-1-504;
 - (c) be of good moral character and professional standing, and not have any disciplinary action pending or in effect against the applicant's psychologist license in any jurisdiction;
 - (d) have passed the Utah Psychologist Law and Ethics Examination established by division rule;
 - (e) provide satisfactory evidence the applicant is currently licensed in another state, district, or territory of the United States, or in any other jurisdiction approved by the division in collaboration with the board;
 - (f) provide satisfactory evidence the applicant has actively practiced psychology in that jurisdiction for not less than 2,000 hours or one year, whichever is greater;
 - (g) provide satisfactory evidence that:
 - (i) the education, supervised experience, examination, and all other requirements for licensure in that jurisdiction at the time the applicant obtained licensure were substantially equivalent to the licensure requirements for a psychologist in Utah at the time the applicant obtained licensure in the other jurisdiction; or
 - (ii) the applicant is:

(A) a current holder of Board Certified Specialist status in good standing from the American Board of Professional Psychology;

(B) currently credentialed as a health service provider in psychology by the National Register of Health Service Providers in Psychology; or

(C) currently holds a Certificate of Professional Qualification (CPQ) granted by the Association of State and Provincial Psychology Boards; and

(h) meet with the board, upon request for good cause, for the purpose of evaluating the applicant's qualifications for licensure.

(3) (a) An applicant for certification as a psychology resident shall comply with the provisions of Subsections (1)(a), (b), (c), (d), and (h).

(b) (i) An individual's certification as a psychology resident is limited to the period of time necessary to complete clinical training as described in Subsections (1)(e) and (f) and extends not more than one year from the date the minimum requirement for training is completed, unless the individual presents satisfactory evidence to the division and the Psychologist Licensing Board that the individual is making reasonable progress toward passing the qualifying examination or is otherwise on a course reasonably expected to lead to licensure as a psychologist.

(ii) The period of time under Subsection (3)(b)(i) may not exceed two years past the date the minimum supervised clinical training requirement has been completed. 58-61-305. Qualifications for admission to examination. All applicants for admission to any examination qualifying an individual for licensure under this chapter shall:

(1) submit an application on a form provided by the division;

(2) pay the fee established for the examination; and

(3) certify under penalty of perjury as evidenced by notarized signature on the application for admission to the examination that the applicant:

(a) has completed the education requirement under this chapter and been awarded the earned degree required for licensure; and

(b) has successfully completed the supervised training required under this chapter for licensure.

58-61-306. Continuing education.

By rule made under Section 58-1-203, the division may establish a continuing education requirement as a condition for renewal of a license under this chapter upon finding continuing education is necessary to reasonably protect the public health, safety, or welfare.

58-61-307. Exemptions from licensure.

(1) Except as modified in Section 58-61-301, the exemptions from licensure in Section 58-1-307 apply to this chapter.

(2) In addition to the exemptions from licensure in Section 58-1-307, the following when practicing within the scope of the license held, may engage in acts included in the definition of practice as a psychologist, subject to the stated circumstances and limitations, without being licensed under this chapter:

(a) a physician and surgeon or osteopathic physician licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;

(b) a registered psychiatric mental health nurse specialist licensed under Chapter 31, Nurse Practice Act;

(c) a recognized member of the clergy while functioning in his ministerial capacity as long as he does not represent himself as or use the title of psychologist;

(d) an individual who is offering expert testimony in any proceeding before a court, administrative hearing, deposition upon the order of any court or other body having power to order the deposition, or proceedings before any master, referee, or alternative dispute resolution provider;

(e) an individual engaged in performing hypnosis who is not licensed under this title in a profession which includes hypnosis in its scope of practice, and who:

(i) (A) induces a hypnotic state in a client for the purpose of increasing motivation or altering lifestyles or habits, such as eating or smoking, through hypnosis;

(B) consults with a client to determine current motivation and behavior patterns;

(C) prepares the client to enter hypnotic states by explaining how hypnosis works and what the client will experience;

- (D) tests clients to determine degrees of suggestibility;
- (E) applies hypnotic techniques based on interpretation of consultation results and analysis of client's motivation and behavior patterns; and
- (F) trains clients in self-hypnosis conditioning;
- (ii) may not:
 - (A) engage in the practice of mental health therapy;
 - (B) represent himself using the title of a license classification in Subsection 58-60-102(5); or
 - (C) use hypnosis with or treat a medical, psychological, or dental condition defined in generally recognized diagnostic and statistical manuals of medical, psychological, or dental disorders;
- (f) an individual's exemption from licensure under Subsection 58-1-307(1)(
 - b) terminates when the student's training is no longer supervised by qualified faculty or staff and the activities are no longer a defined part of the degree program;
 - (g) an individual holding an earned doctoral degree in psychology who is employed by an accredited institution of higher education and who conducts research and teaches in that individual's professional field, but only if the individual does not engage in providing delivery or supervision of professional services regulated under this chapter to individuals or groups regardless of whether there is compensation for the services;
 - (h) any individual who was employed as a psychologist by a state, county, or municipal agency or other political subdivision of the state prior to July 1, 1981, and who subsequently has maintained employment as a psychologist in the same state, county, or municipal agency or other political subdivision while engaged in the performance of his official duties for that agency or political subdivision;
 - (i) an individual certified as a school psychologist under Section 53A-6-104:
 - (i) may represent himself as and use the terms "school psychologist" or "certified school psychologist"; and
 - (ii) is restricted in his practice to employment within settings authorized by the State Board of Education;
 - (j) an individual providing advice or counsel to another individual in a setting of their association as friends or relatives and in a nonprofessional and noncommercial relationship, if there is no compensation paid for the advice or counsel; and
 - (k) an individual who is licensed, in good standing, to practice mental health therapy in a state or territory of the United States outside of Utah may provide short time transitional mental health therapy remotely to a client in Utah only if:
 - (i) the individual is present in the state or territory where the individual is licensed to practice mental health therapy;
 - (ii) the client relocates to Utah;
 - (iii) the client is a client of the individual immediately before the client relocates to Utah;
 - (iv) the individual provides the short term transitional mental health therapy only during the 45 day period beginning on the day on which the client relocates to Utah;
 - (v) within 10 days after the day on which the client relocates to Utah, the individual provides written notice to the division of the individual's intent to provide short term transitional mental health therapy remotely to the client; and
 - (vi) the individual does not engage in unlawful conduct or unprofessional conduct. 58-61-308.

Scope of practice - Limitations.

- (1) A psychologist may engage in all acts and practices defined as the practice of psychology without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's education, training, and competence.
- (2) An individual certified as a psychology resident may engage in all acts and practices defined as the practice of psychology only under conditions of employment as a psychology resident and under the supervision of a licensed psychologist who is an approved psychology training supervisor as defined by division rule. A certified psychology resident shall not engage in the independent practice of psychology.

Part 4 - License Denial and Discipline

58-61-401. Grounds for action regarding license - Disciplinary proceedings.

The division's grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuance a cease and desist order are under Section 58-1-401.

Part 5 - Penalties

58-61-501. Unlawful conduct.

As used in this chapter, "unlawful conduct" includes:

- (1) practice of psychology unless licensed as a psychologist or certified psychology resident under this chapter or exempted from licensure under this title;
- (2) practice of mental health therapy by a licensed psychologist who has not acceptably documented to the division his completion of the supervised training in psychotherapy required under Subsection 58-61-304(1)(f); or
- (3) representing oneself or using the title of psychologist, or certified psychology resident unless currently licensed under this chapter.

58-61-502. Unprofessional conduct.

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

- (a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession for which the individual is licensed, or the laws of the state;
- (b) failure to confine practice conduct to those acts or practices:
 - (i) in which the individual is competent by education, training, and experience within limits of education, training, and experience; and
 - (ii) which are within applicable scope of practice laws of this chapter; and
- (c) disclosing or refusing to disclose any confidential communication under Section 58-61-602.

(2) "Unprofessional conduct" under this chapter may be further defined by division rule. 58-61-503. Penalty for unlawful conduct.

An individual who commits any act of unlawful conduct as defined in:

- (1) Subsection 58-61-501(1) or (2) is guilty of a third degree felony; or
- (2) Subsection 58-61-501(3) is guilty of a class A misdemeanor.

58-61-504. Reporting of unprofessional or unlawful conduct - Immunity from liability.

(1) Upon learning of an act of unlawful or unprofessional conduct as defined in Section 58-61-102 by a person licensed under this chapter or an individual not licensed under this chapter and engaged in acts or practices regulated under this chapter, that results in disciplinary action by a licensed health care facility, professional practice group, or professional society, or that results in a significant adverse impact upon the public health, safety, or welfare, the following shall report the conduct in writing to the division within ten days after learning of the disciplinary action or the conduct unless the individual or person knows it has been reported:

- (a) a licensed health care facility or organization in which an individual licensed under this chapter engaged in practice;
- (b) an individual licensed under this chapter; and
- (c) a professional society or organization whose membership is individuals licensed under this chapter and which has the authority to discipline or expel a member for acts of unprofessional conduct or unlawful conduct.

(2) Any individual reporting acts of unprofessional or unlawful conduct by an individual licensed under this chapter is immune from liability arising out of the disclosure to the extent the individual furnishes the information in good faith and without malice.

Part 6 - Evidentiary Privilege and Confidentiality

58-61-601. Evidentiary privilege.

Evidentiary privilege for psychologists regarding admissibility of any confidential communication in administrative, civil, or criminal proceedings is in accordance with Rule 506 of the Utah Rules of Evidence.

58-61-602. Confidentiality - Exemptions.

(1) A psychologist under this chapter may not disclose any confidential communication with a client or patient without the express consent of:

- (a) the client or patient;
- (b) the parent or legal guardian of a minor client or patient; or
- (c) the authorized agent of a client or patient.

(2) A psychologist under this chapter is not subject to Subsection (1) if:

(a) the psychologist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

(i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult;

(ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;

(iii) reporting under Title 78B Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or

(iv) reporting of a communicable disease as required under Section 26-6-6;

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure

Dopl.utah.gov/laws/R156-61.pdf

R156. Commerce, Occupational and Professional Licensing.

R156-61. Psychologist Licensing Act Rule.

R156-61-101. Title.

This rule is known as the "Psychologist Licensing Act Rule."

R156-61-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 61, as used in Title 58, Chapters 1 and 61 or this rule:

- (1) "Approved diagnostic and statistical manual for mental disorders" means the following:
 - (a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 or Fourth Edition: DSM-IV published by the American Psychiatric Association;
 - (b) 2013 ICD-9-CM for Physicians, Volumes 1 and 2 Professional Edition published by the American Medical Association; or
 - (c) ICD-10-CM 2013: The Complete Official Draft Code Set published by the American Medical Association.
- (2) "CoA" means Committee on Accreditation of the American Psychological Association.
- (3) "Direct supervision" of a supervisee in training, as used in Subsection 58-61-304(1)(f), means:
 - (a) a supervisor meeting with the supervisee when both are physically present in the same room at the same time; or
 - (b) a supervisor meeting with the supervisee remotely via real-time electronic methods that allow for visual and audio interaction between the supervisor and supervisee under the following conditions:
 - (i) the supervisor and supervisee shall enter into a written supervisory agreement which, at a minimum, establishes the following:
 - (A) frequency, duration, reason for, and objectives of electronic meetings between the supervisor and supervisee;
 - (B) a plan to ensure accessibility of the supervisor to the supervisee despite the physical distance between their offices;
 - (C) a plan to address potential conflicts between clinical recommendations of the supervisor and the representatives of the agency employing the supervisee;
 - (D) a plan to inform a supervisee's client or patient and employer regarding the supervisee's use of remote supervision;
 - (E) a plan to comply with the supervisor's duties and responsibilities as established in rule; and
 - (F) a plan to physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision or at a lesser frequency as approved by the Division in collaboration with the Board;
 - (ii) the supervisee submits the supervisory agreement to the Division and obtains approval before counting direct supervision completed via live real-time methods toward the 40 hour direct supervision requirement; and
 - (iii) in evaluating a supervisory agreement, the Division shall consider whether it adequately protects the health, safety, and welfare of the public.
- (4)(a) "Predoctoral internship" refers to a formal training program that meets the minimum requirements of the Association of Psychology Postdoctoral and Internship Centers (APPIC) offered to culminate a doctoral degree in clinical, counseling, or school psychology.
 - (b) A training program may be a full-time one year program or a half-time two year program.
- (5)(a) "Program accredited by the CoA", as used in Subsections R156-61-302a(1), means a psychology department program that is accredited at the time of completion of a doctoral psychology degree.
 - (b) No other accredited educational program at a degree granting institution is considered to meet the requirement in Subsections R156-61-302a(1), and in no case are departments or institutions of higher education considered accredited.
- (6)(a) "Program of respecialization", as used in Subsection R156-61-302a(3), is a formal program designed to prepare someone with a doctoral degree in psychology with the necessary skills to practice psychology.

(b) The respecialization activities shall include substantial requirements that are formally offered as an organized sequence of course work and supervised practicum leading to a certificate (or similar recognition) by an educational body that offers a doctoral degree qualifying for licensure in the same area of practice as that of the certificate.

(7) "Qualified faculty", as used in Subsection 58-1-307(1)(b), means a university faculty member who provides pre-doctoral supervision of clinical or counseling experience in a university setting who:

(i) is licensed in Utah as a psychologist; and

(ii) is training students in the context of a doctoral program leading to licensure.

(8) "Residency program", as used in Subsection 58-61-301(1)(b), means a program of post-doctoral supervised clinical training necessary to meet licensing requirements as a psychologist.

(9)(a) "Psychology training", as used in Subsection 58-61-304(1)(e), means practical training experience providing direct services in the practice of mental health therapy and psychology under supervision. All activities in full-time internships and full-time post-doctoral positions devoted solely to mental health delivery meet this definition.

(b) Activities not directly related to the practice of psychology, even if commonly performed by psychologists, do not meet the definition of psychology training under Subsection 58-61-304(1)(e). Examples of ineligible activities include psychology coursework, analog clinical activities (e.g. role plays), activities required for business purposes (e.g. billing), supervision of others engaged in activities other than practice of psychology (e.g. supervising adolescents in wilderness settings), and activities commonly performed by non-psychologists (e.g. teaching of psychology on topics not of a professional nature).

R156-61-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 61.

R156-61-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-61-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is hereby enabled in accordance with Subsection 58-1-203(1)(f), the Ethics Committee as an advisory peer committee to the Psychologist Licensing Board on either a permanent or ad hoc basis consisting of members licensed in good standing as psychologists qualified to engage in the practice of mental health therapy, in number and area of expertise necessary to fulfill the duties and responsibilities of the committee as set forth in Subsection (3).

(2) The committee shall be appointed and serve in accordance with Section R156-1-205.

(3) The committee shall assist the Division in its duties, functions, and responsibilities defined in Section 58-1-202 including:

(a) upon the request of the Division, reviewing reported violations of Utah law or the standards and ethics of the profession by a person licensed as a psychologist and advising the Division if allegations against or information known about the person presents a reasonable basis to initiate or continue an investigation with respect to the person;

(b) upon the request of the Division providing expert advice to the Division with respect to conduct of an investigation; and

(c) when appropriate serving as an expert witness in matters before the Division.

R156-61-302a. Qualifications for Licensure- Education Requirements.

(1) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology degree that qualifies an applicant for licensure as a psychologist shall be accredited by the CoA.

(a) An applicant shall graduate from the actual program that is accredited by CoA.

No other program within the department or institution qualifies unless separately accredited.

(b) If a transcript does not uniquely identify the qualifying CoA accredited degree program, it is the responsibility of the applicant to provide signed, written documentation from the program director or department chair that the applicant did indeed graduate from the qualifying accredited degree program.

(2) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology doctoral degree that is not accredited by CoA shall meet the following criteria in order to qualify an applicant for licensure as a psychologist:

(a) if located in the United States or Canada, be an institution having a doctoral psychology program recognized by the Association of State and Provincial Psychology Boards (ASPPB)/National Register Joint Designation Committee as being found to meet "designation criteria", at the time the applicant received the earned degree. Whether a program is found to meet designation criteria is a decision to be made by the ASPPB/National Register Joint Designation Committee; or

(b) if located outside of the United States or Canada, be an institution that meets the ASPPB National Register (NR) Designation Guidelines for defining a doctoral degree in psychology as determined by the NR.

(3) An applicant whose psychology doctoral degree training is not designed to lead to clinical practice or who wishes to practice in a substantially different area than the training of the doctoral degree shall complete a program of respecialization as defined in Subsection R156-61-102(5), and shall meet requirements of Subsections R156-61-302a(2).

(4) The date of completion of the doctoral degree shall be the graduation date listed on the official transcript.

R156-61-302b. Qualifications for Licensure - Experience Requirements.

(1) An applicant for licensure as a psychologist under Subsection 58-61-304(1)(e) or mental health therapy under Subsections 58-61-304(1)(e) and (1)(f) shall complete a minimum of 4,000 hours of psychology training approved by the Division in collaboration with the Board. The training shall:

(a) be completed in not less than two years;

(b) be completed in not more than four years following the awarding of the doctoral degree unless the Division in collaboration with the Board approves an extension due to extenuating circumstances;

(c) be completed while the applicant is enrolled in an approved doctoral program or licensed as a certified psychology resident;

(d) be completed while the applicant is under the supervision of a qualified psychologist meeting the requirements under Section R156-61-302d;

(e) if completed under the supervision of a qualified faculty member who is not an approved psychology training supervisor in accordance with Subsection R156-61-302d, the training shall not be credited toward the 4,000 hours of psychology doctoral clinical training;

(f) be completed as part of a supervised psychology training program as defined in Subsection R156-61-102(4) that does not exceed:

(i) 40 hours per week for full-time internships and full-time post doctoral positions; or

(ii) 20 hours of part-time internships and part-time post doctoral positions; and

(g) be completed while the applicant is under supervision of a minimum of one hour of supervision for every 20 hours of pre-doctoral training and experience and one hour for every 40 hours of post-doctoral training and experience.

(2) In accordance with Subsection 58-61-301(1)(b), an individual engaged in a post-doctoral residency program of supervised clinical training shall be certified as a psychology resident.

(3) An applicant for licensure may accrue any portion of the 4,000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program.

(4) An applicant who applies for licensure as a psychologist who completes the 4,000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program or post-doctoral residency, and meets qualifications for licensure, may be approved to sit for the examinations, and upon passing the examinations will be issued a psychologist license.

(5) An applicant for licensure as a psychologist who has commenced and completed all or part of the psychology or mental health therapy training requirements under Subsection R156-61-302b

(1) outside the state, may receive credit for that training

completed outside of the state if it is demonstrated by the applicant that the training is equivalent to the requirements for training under Subsections 58-61-304(1)(e) and (f), and Subsection R156-61-302b(1).

R156-61-302c. Qualifications for Licensure - Examination Requirements.

(1) The examination requirements which shall be met by an applicant for licensure as a psychologist under Subsection 58-61-304(1)(g) are:

(a) passing the Examination for the Professional Practice of Psychology (EPPP) developed by the American Association of State Psychology Board (ASPPB) with a passing score as recommended by the ASPPB; and

(b) passing the Utah Psychologist Law and Ethics Examination with a score of not less than 75%.

(2) A person may be admitted to the EPPP and Utah Psychologist Law and Ethics examinations in Utah only after meeting the requirements under 58-61-305, and after receiving written approval from the Division.

(3) If an applicant is admitted to an EPPP examination based upon substantive information that is incorrect and furnished knowingly by the applicant, the applicant shall automatically be given a failing score and shall not be permitted to retake the examination until the applicant submits fees and a correct application demonstrating the applicant is qualified for the examination and adequately explains why the applicant knowingly furnished incorrect information.

If an applicant is inappropriately admitted to an EPPP examination because of a Division or Board error and the applicant receives a passing score, the results of the examination may not be used for licensure until the deficiency which would have barred the applicant for admission to the examination is corrected.

(4) An applicant who fails the EPPP examination three times will only be allowed subsequent admission to the examination after the applicant has appeared before the Board, developed with the Board a plan of study in appropriate subject matter, and thereafter completed the planned course of study to the satisfaction of the Board.

(5) An applicant who is found to be cheating on the EPPP examination or in any way invalidating the integrity of the examination shall automatically be given a failing score and shall not be permitted to retake the examination for a period of at least three years or as determined by the Division in collaboration with the Board.

(6) In accordance with Section 58-1-203 and Subsection 58-61-304(1)(g), an applicant for the EPPP or the Utah Psychologist Law and Ethics Examination shall pass the examinations within one year from the date of the psychologist application for licensure. If the applicant does not pass the examinations within one year, the pending psychologist application shall be denied. The applicant may continue to register to take the EPPP examination under the procedures outlined in Subsection R156-61-302c(4).

(7) In accordance with Section 58-1-203 and Subsection 58-61-304(2)(d), an applicant for psychologist licensure by endorsement shall pass the Utah Psychologist Law and Ethics Examination within six months from the date of the psychologist application for licensure. If the applicant does not pass the examination in six months, the pending psychologist application shall be denied.

R156-61-302d. Qualifications for Designation as an Approved Psychology Training Supervisor.

In accordance with Subsections 58-61-304(1)(e) and (f), to be approved by the Division in collaboration with the Board as a supervisor of psychology or mental health therapy training, an individual shall:

(1) be currently licensed in good standing as a psychologist in the jurisdiction in which the supervised training is being performed; and

(2) have practiced as a licensed psychologist for not fewer than 4,000 hours in a period of not less than two years.

R156-61-302e. Duties and Responsibilities of a Supervisor of Psychology Training and Mental Health Therapist Training.

The duties and responsibilities of a psychologist supervisor are further defined, clarified or established as follows. The psychologist supervisor shall:

- (1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training, including supervision of all activities requiring a mental health therapy license;
- (2) engage in a relationship with the supervisee in which the supervisor is independent from control by the supervisee, and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;
- (3) supervise not more than three full-time equivalent supervisees unless otherwise approved by the Division in collaboration with the Board;
- (4) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, ability to diagnose patients, and other factors determined by the supervisor;
- (5) comply with the confidentiality requirements of Section 58-61-602;
- (6) provide timely and periodic review of the client records assigned to the supervisee;
- (7) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of psychology;
- (8) submit appropriate documentation to the Division with respect to work completed by the supervisee evidencing the performance of the supervisee during the period of supervised psychology training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of psychology and mental health therapy;
- (9) ensure that the supervisee is certified by the Division as a psychology resident, or is enrolled in a psychology doctoral program and engaged in a training experience authorized by the educational program;
- (10) ensure the psychologist supervisor is legally able to personally provide the services which the psychologist supervisor is supervising; and
- (11) ensure the psychologist supervisor meets all other requirements for supervision as described in this section.

R156-61-302f. Renewal Cycle - Procedures.

- (1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 61, is established by rule in Section R156-1-308a.
- (2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-61-302g. License Reinstatement - Requirements.

An applicant for reinstatement of a license after two years following expiration of that license shall:

- (1) upon request meet with the Board for the purpose of evaluating the applicant's current ability to safely and competently engage in practice as a psychologist and to make a determination of education, experience or examination requirements which will be required before reinstatement;
- (2) upon the recommendation of the Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of psychology and/or mental health therapy training;
- (3) take or retake, and pass the Utah Psychology Law Examination; or the EPPP Examination, or both, if it is determined by the Board it is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a psychologist; and
- (4) complete a minimum of 48 hours of professional education in subjects determined necessary by the Board to ensure the applicant's ability to engage safely and competently in practice as a psychologist.

R156-61-302h. Continuing Education.

(1) There is hereby established a continuing education requirement for all individuals license d or certified under Title 58, Chapter 61.

(2) During each two year period commencing on October 1 of each even numbered year:

(a) a licensed psychologist shall be required to complete not less than 48 hours of continuing education directly related to the licensee's professional practice;

(b) a certified psychology resident shall be required to complete not less than 24 hours of continuing education directly related to professional practice.

(3) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Continuing education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a psychologist;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for continuing education shall be recognized in accordance with the following:

(a) Unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences.

(b) A maximum of ten hours per two year period may be recognized for teaching in a college or university, teaching continuing education courses in the field of psychology, or supervision of an individual completing the experience requirement for licensure as a psychologist.

(c) A minimum of six hours per two year period shall be completed in ethics/law.

(d) A maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a psychologist.

(e) A maximum of 18 hours per two year period may be recognized for Internet or distance learning courses that includes an examination, a completion certificate and recognized by the American Psychological Association or a state or province psychological association.

(f) A maximum of six hours per two year period may be recognized for regular peer consultation, review and meetings if properly documented that the peer consultation, review and meetings meet the following requirements:

(i) have an identifiable clear statement of purpose and defined objective for the educational consultation/meeting directly related to the practice of a psychologist;

(ii) are relevant to the licensee's professional practice;

(iii) are presented in a competent, well organized manner consistent with the stated purpose and objective of the consultation/meeting;

(iv) are prepared and presented by individuals who are qualified by education, training and experience; and

(v) have associated with it a competent method of registration of individuals who attended.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after the close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to qualified professional education to demonstrate it meets the requirements under this section.

R156-61-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, June 1, 2010 edition, which is adopted and incorporated by reference;

- (2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, 2005 edition, which is adopted and incorporated by reference;
- (3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-61-302d and R156-61-302e;
- (4) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;
- (5) engaging in or aiding or abetting deceptive or fraudulent billing practices;
- (6) failing to establish and maintain appropriate professional boundaries with a client or former client;
- (7) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;
- (8) engaging in sexual activities or sexual contact with a client with or without client consent;
- (9) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;
- (10) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and the client;
- (11) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and that individual;
- (12) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;
- (13) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;
- (14) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;
- (15) exploiting a client for personal gain;
- (16) using a professional client relationship to exploit a client or other person for personal gain;
- (17) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;
- (18) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;
- (19) failure to cooperate with the Division during an investigation
- (20) participating in a residency program or other post degree experience without being certified as a psychology resident for post-doctoral training and experience;
- (21) supervising a residency program of an individual who is not certified as a psychology resident; or
- (22) when providing services remotely:
 - (a) failing to practice according to professional standards of care in the delivery of services remotely;
 - (b) failing to protect the security of electronic, confidential data and information; or
 - (c) failing to appropriately store and dispose of electronic, confidential data and information.

KEY: licensing, psychologists

Date of Enactment or Last Substantive Amendment: November 7, 2013

Notice of Continuation: January 13, 2014

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-61-101

MENTAL HEALTH PROFESSIONAL PRACTICE ACT
Part 1 - General Provisions

58-60-101. Title.

This chapter is known as the "Mental Health Professional Practice Act."

58-60-102. Definitions.

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

- (1) "Client" or "patient" means an individual who consults or is examined or interviewed by an individual licensed under this chapter who is acting in the individual's professional capacity.
- (2) "Confidential communication" means information obtained by an individual licensed under this chapter, including information obtained by the individual's examination of the client or patient, which is:
 - (a) (i) transmitted between the client or patient and an individual licensed under this chapter in the course of that relationship; or
 - (ii) transmitted among the client or patient, an individual licensed under this chapter, and individuals who are participating in the diagnosis or treatment under the direction of an individual licensed under this chapter, including members of the client's or patient's family; and
 - (b) made in confidence, for the diagnosis or treatment of the client or patient by the individual licensed under this chapter, and by a means not intended to be disclosed to third persons other than those individuals:
 - (i) present to further the interest of the client or patient in the consultation, examination, or interview;
 - (ii) reasonably necessary for the transmission of the communications; or
 - (iii) participating in the diagnosis and treatment of the client or patient under the direction of the mental health therapist.
- (3) "Hypnosis" means, when referring to individuals exempted from licensure under this chapter, a process by which an individual induces or assists another individual into a hypnotic state without the use of drugs or other substances and for the purpose of increasing motivation or to assist the individual to alter lifestyles or habits.
- (4) "Individual" means a natural person.
- (5) "Mental health therapist" means an individual licensed who is practicing within the scope of practice defined in the individual's respective licensing act and is licensed under this title as:
 - (a) a physician and surgeon, or osteopathic physician engaged in the practice of mental health therapy;
 - (b) an advanced practice registered nurse, specializing in psychiatric mental health nursing;
 - (c) an advanced practice registered nurse intern, specializing in psychiatric mental health nursing;
 - (d) a psychologist qualified to engage in the practice of mental health therapy;
 - (e) a certified psychology resident qualifying to engage in the practice of mental health therapy;
 - (f) a clinical social worker;
 - (g) a certified social worker;
 - (h) a marriage and family therapist;
 - (i) an associate marriage and family therapist;
 - (j) a clinical mental health counselor; or
 - (k) an associate clinical mental health counselor.
- (6) "Mental illness" means a mental or emotional condition defined in an approved diagnostic and statistical manual for mental disorders generally recognized in the professions of mental health therapy listed under Subsection (5).
- (7) "Practice of mental health therapy" means treatment or prevention of mental illness, whether in person or remotely, including:
 - (a) conducting a professional evaluation of an individual's condition of mental health, mental illness, or emotional disorder consistent with standards generally recognized in the

- professions of mental health therapy listed under Subsection (5);
 - (b) establishing a diagnosis in accordance with established written standards generally recognized in the professions of mental health therapy listed under Subsection (5);
 - (c) prescribing a plan for the prevention or treatment of a condition of mental illness or emotional disorder; and
 - (d) engaging in the conduct of professional intervention, including psychotherapy by the application of established methods and procedures generally recognized in the professions of mental health therapy listed under Subsection (5).
- (8) "Remotely" means communicating via Internet, telephone, or other electronic means that facilitate real-time audio or visual interaction between individuals when they are not physically present in the same room at the same time.
- (9) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-60-109.
- (10) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-60-110, and may be further defined by division rule.

58-60-103. Licensure required.

- (1) An individual shall be licensed under this chapter; Chapter 67, Utah Medical Practice Act; Chapter 68, Utah Osteopathic Medical Practice Act; Chapter 31b, Nurse Practice Act; Chapter 61, Psychologist Licensing Act; or exempted from licensure under this chapter in order to:
- (a) engage in, or represent that the individual will engage in the practice of mental health therapy, clinical social work, certified social work, marriage and family therapy, or clinical mental health counseling; or
 - (b) practice as, or represent that the individual is, a mental health therapist, clinical social worker, certified social worker, marriage and family therapist, clinical mental health counselor, psychiatrist, psychologist, registered psychiatric mental health nurse specialist, certified psychology resident, associate marriage and family therapist, or associate clinical mental health counselor.
- (2) An individual shall be licensed under this chapter or exempted from licensure under this chapter in order to:
- (a) engage in, or represent that the individual is engaged in practice as a social services worker; or
 - (b) represent that the individual is, or use the title of, a social service worker.
- (3) An individual shall be licensed under this chapter or exempted from licensure under this chapter in order to:
- (a) engage in, or represent that the individual is engaged in, practice as a substance use disorder counselor; or
 - (b) represent that the individual is, or use the title of, a substance use disorder counselor.
- (4) Notwithstanding the provisions of Subsection 58-1-307(1)(c), an individual shall be certified under this chapter, or otherwise exempted from licensure under this chapter in order to engage in an internship or residency program of supervised clinical training necessary to meet the requirements for licensure as:
- (a) a marriage and family therapist under Part 3, Marriage and Family Therapist Licensing Act; or
 - (b) a clinical mental health counselor under Part 4, Professional Counselor Licensing Act.

58-60-104. Term of license - Expiration - Renewal.

- (1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.
- (b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
- (2) At the time of renewal the licensee shall show satisfactory evidence of renewal requirements as required under this chapter.
- (3) Each license expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

58-60-105. Continuing education.

(1) By rule made under Section 58-1-203, the division may establish a continuing education requirement as a condition for renewal of any license classification under this chapter upon finding continuing education for that profession is necessary to reasonably protect the public health, safety, or welfare.

(2) If a renewal cycle is extended or shortened under Section 58-60-104, the continuing education hours required for license renewal under this section shall be increased or decreased proportionally.

58-60-106. Status of licenses held on the effective date of this chapter.

An individual holding a valid Utah license as a clinical social worker, certified social worker, social service worker, or marriage and family therapist under any licensing or practice acts in this title in effect immediately prior to July 1, 1994, is on or after July 1, 1994, considered to hold a current license under this chapter in the comparable classification as a clinical social worker, certified social worker, social service worker, or marriage and family therapist.

58-60-107. Exemptions from licensure.

(1) Except as modified in Section 58-60-103, the exemptions from licensure in Section 58-1-307 apply to this chapter.

(2) In addition to the exemptions from licensure in Section 58-1-307, the following may engage in acts included within the definition of practice as a mental health therapist, subject to the stated circumstances and limitations, without being licensed under this chapter:

(a) the following when practicing within the scope of the license held:

(i) a physician and surgeon or osteopathic physician and surgeon licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;

(ii) an advanced practice registered nurse, specializing in psychiatric mental health nursing, licensed under Chapter 31b, Nurse Practice Act; and

(iii) a psychologist licensed under Chapter 61, Psychologist Licensing Act;

(b) a recognized member of the clergy while functioning in a ministerial capacity as long as the member of the clergy does not represent that the member of the clergy is, or use the title of, a license classification in Subsection 58-60-102(5);

(c) an individual who is offering expert testimony in a proceeding before a court, administrative hearing, deposition upon the order of a court or other body having power to order the deposition, or a proceeding before a master, referee, or alternative dispute resolution provider;

(d) an individual engaged in performing hypnosis who is not licensed under this title in a profession which includes hypnosis in its scope of practice, and who:

(i) (A) induces a hypnotic state in a client for the purpose of increasing motivation or altering lifestyles or habits, such as eating or smoking, through hypnosis;

(B) consults with a client to determine current motivation and behavior patterns;

(C) prepares the client to enter hypnotic states by explaining how hypnosis works and what the client will experience.

(D) tests clients to determine degrees of suggestibility;

(E) applies hypnotic techniques based on interpretation of consultation results and analysis of client's motivation and behavior patterns; and

(F) trains clients in self-hypnosis conditioning;

(ii) may not:

(A) engage in the practice of mental health therapy;

(B) use the title of a license classification in Subsection 58-60-102(5); or

(C) use hypnosis with or treat a medical, psychological, or dental condition defined in generally recognized diagnostic and statistical manuals of medical, psychological, or dental disorders;

(e) an individual's exemption from licensure under Subsection 58-1-307(1)(b) terminates

- when the student's training is no longer supervised by qualified faculty or staff and the activities are no longer a defined part of the degree program;
- (f) an individual holding an earned doctoral degree or master's degree in social work, marriage and family therapy, or clinical mental health counseling, who is employed by an accredited institution of higher education and who conducts research and teaches in that individual's professional field, but only if the individual does not engage in providing or supervising professional services regulated under this chapter to individuals or groups regardless of whether there is compensation for the services;
- (g) an individual in an on-the-job training program approved by the division while under the supervision of qualified persons;
- (h) an individual providing general education in the subjects of alcohol, drug use, or substance use disorders, including prevention;
- (i) an individual providing advice or counsel to another individual in a setting of their association as friends or relatives and in a nonprofessional and noncommercial relationship, if there is no compensation paid for the advice or counsel; and
- (j) an individual who is licensed, in good standing, to practice mental health therapy or substance use disorder counseling in a state or territory of the United States outside of Utah may provide short term transitional mental health therapy remotely or short term transitional substance use disorder counseling remotely to a client in Utah only if:
- (i) the individual is present in the state or territory where the individual is licensed to practice mental health therapy or substance use disorder counseling;
- (ii) the client relocates to Utah;
- (iii) the client is a client of the individual immediately before the client relocates to Utah;
- (iv) the individual provides the short term transitional mental health therapy or short term transitional substance use disorder counseling remotely to the client only during the 45 day period beginning on the date on which the client relocates to Utah;
- (v) within 10 days after the day on which the client relocates to Utah, the individual provides written notice to the division of the individual's intent to provide short term transitional mental health therapy or short term transitional substance use disorder counseling remotely to the client; and
- (vi) the individual does not engage in unlawful conduct or unprofessional conduct.

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

The division's grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order are under Section 58-1-401.

58-60-109. Unlawful conduct.

As used in this chapter, "unlawful conduct" includes:

- (1) practice of the following unless licensed in the appropriate classification or exempted from licensure under this title:
- (a) mental health therapy;
- (b) clinical social work;
- (c) certified social work;
- (d) marriage and family therapy;
- (e) clinical mental health counselor;
- (f) practice as a social service worker; or
- (g) substance use disorder counselor;
- (2) practice of mental health therapy by a licensed psychologist who has not acceptably documented to the division the licensed psychologist's completion of the supervised training in mental health therapy required under Subsection 58-61-304(1)(f); or
- (3) representing oneself as, or using the title of, the following unless currently licensed in a license classification under this title:

- (a) psychiatrist;
- (b) psychotherapist;
- (c) registered psychiatric mental health nurse specialist;
- (d) mental health therapist;
- (e) clinical social worker;
- (f) certified social worker;
- (g) marriage and family therapist;
- (h) clinical mental health counselor;
- (i) clinical hypnotist;
- (j) social service worker;
- (k) substance use disorder counselor;
- (l) associate clinical mental health counselor; or
- (m) associate marriage and family therapist.

58-60-110. Unprofessional conduct.

- (1) As used in this chapter, "unprofessional conduct" includes:
- (a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession for which the individual is licensed, or the laws of the state;
 - (b) failure to confine practice conduct to those acts or practices:
 - (i) in which the individual is competent by education, training, and experience within limits of education, training, and experience; and
 - (ii) which are within applicable scope of practice laws of this chapter; and
 - (c) disclosing or refusing to disclose any confidential communication under Section 58-60-114 or 58-60-509.
- (2) "Unprofessional conduct" under this chapter may be further defined by division rule.

58-60-111. Penalty for unlawful conduct.

An individual who commits any act of unlawful conduct as defined in:

- (1) Subsection 58-60-109(1) or (2) is guilty of a third degree felony; or
- (2) Subsection 58-60-109(3) is guilty of a class A misdemeanor.

58-60-112. Reporting of unprofessional or unlawful conduct - Immunity from liability.

(1) Upon learning of an act of unlawful or unprofessional conduct as defined in Section 58-60-102 by a person licensed under this chapter or an individual not licensed under this chapter and engaged in acts or practices regulated under this chapter, that results in disciplinary action by a licensed health care facility, professional practice group, or professional society, or that results in a significant adverse impact upon the public health, safety, or welfare, the following shall report the conduct in writing to the division within ten days after learning of the disciplinary action or the conduct unless the individual or person knows it has been reported:

- (a) a licensed health care facility or organization in which an individual licensed under this chapter engaged in practice;
- (b) an individual licensed under this chapter; and
- (c) a professional society or organization whose membership is individuals licensed under this chapter and which has the authority to discipline or expel a member for acts of unprofessional conduct or unlawful conduct.

(2) Any individual reporting acts of unprofessional or unlawful conduct by an individual licensed under this chapter is immune from liability arising out of the disclosure to the extent the individual furnishes the information in good faith and without malice.

58-60-113. Evidentiary privilege.

Evidentiary privilege for mental health therapists regarding admissibility of any confidential communication in administrative, civil, or criminal proceedings is in accordance with Rule 506 of the Utah Rules of Evidence.

58-60-114. Confidentiality - Exemptions.

(1) A mental health therapist under this chapter may not disclose any confidential communication with a client or patient without the express consent of:

- (a) the client or patient;
- (b) the parent or legal guardian of a minor client or patient; or
- (c) the authorized agent of a client or patient.

(2) A mental health therapist under this chapter is not subject to Subsection (1) if:

- (a) the mental health therapist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:
 - (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult;
 - (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;
 - (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or
 - (iv) reporting of a communicable disease as required under Section 26-6-6;
- (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or
- (c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure

58-60-115. License by endorsement.

The division shall issue a license by endorsement under this chapter to a person who:

- (1) submits an application on a form provided by the division;
- (2) pays a fee determined by the department under Section 63J-1-504;
- (3) provides documentation of current licensure in good standing in a state, district, or territory of the United States to practice in the profession for which licensure is being sought;
- (4) except as provided in Subsection (5), provides documentation that the person has engaged in the lawful practice of the profession for which licensure is sought for at least 4,000 hours, of which 1,000 hours are in mental health therapy;
- (5) if applying for a license to practice as a licensed substance use disorder counselor, provides documentation that the person:
 - (a) has engaged in the lawful practice of the profession for at least 4,000 hours; and
 - (b) has passed an examination approved by the division, by rule, to establish proficiency in the profession;
- (6) has passed the profession specific jurisprudence examination if required of a new applicant; and
- (7) is of good moral character and professional standing, and has no disciplinary action pending or in effect against the applicant's license in any jurisdiction.

58-60-115.2. Pre-existing license by endorsement.

A person who, on May 11, 2010, has a valid license by endorsement under Section 58-60-115 that was granted before May 11, 2010, is considered to have met the requirements of Subsection 58-60-115(4) if the person provides documentation that the person has engaged in:

- (1) the lawful practice of the person's profession, including mental health therapy, for not less than 4,000 hours during the three years immediately preceding the date of application for licensure in Utah; or
- (2) the lawful practice of the profession for which licensure is sought for not less than 4,000 hours, of which 1,000 hours are in mental health therapy.

58-60-116. Repealed.

58-60-117. Externship licenses.

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

- (a) submits an application for licensure under Part 2, Social Worker Licensing Act, Part 3, Marriage and Family Therapist Licensing Act, or Part 4, Clinical Mental Health Counselor Licensing Act;
 - (b) pays a fee determined by the department under Section 63J-1-504;
 - (c) holds an earned doctoral degree or master's degree in a discipline that is a prerequisite for practice as a mental health therapist;
 - (d) has one or more deficiencies in course work, experience, or training;
 - (e) provides mental health therapy as an employee of a public or private organization, which provides mental health therapy, while under the supervision of a person licensed under this chapter; and
 - (f) is of good moral character and has no disciplinary action pending or in effect against the applicant in connection with the practice of mental health therapy, in any jurisdiction.
- (2) A temporary license issued under this section shall expire upon the earlier of:
- (a) issuance of the license applied for; or
 - (b) three years from the date the temporary license was issued.
- (3) The temporary license issued under this section is an externship license.

Part 2 - Social Worker Licensing Act

58-60-201. Title.

This part is known as the "Social Worker Licensing Act."

58-60-202. Definitions.

In addition to the definitions in Sections 58-1-102 and 58-60-102, as used in this part:

- (1) "Board" means the Social Worker Licensing Board created in Section 58-60-203.
- (2) (a) "Practice as a social service worker" means performance of general entry level services under general supervision of a mental health therapist through the application of social work theory, methods, and ethics in order to enhance the social or psychosocial functioning of an individual, a couple, a family, a group, or a community, including:
 - (i) conducting:
 - (A) a non-clinical psychosocial assessment; or
 - (B) a home study;
 - (ii) collaborative planning and goal setting;
 - (iii) ongoing case management;
 - (iv) progress monitoring;
 - (v) supportive counseling;
 - (vi) information gathering;
 - (vii) making referrals; and
 - (viii) engaging in advocacy.
- (b) "Practice as a social service worker" does not include:
 - (i) diagnosing or treating mental illness; or
 - (ii) providing psychotherapeutic services to an individual, couple, family, group, or community.
- (3) "Practice of clinical social work" includes:
 - (a) the practice of mental health therapy by observation, description, evaluation, interpretation, intervention, and treatment to effect modification of behavior by the application of generally recognized professional social work principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunction, the symptoms of any of these, or maladaptive behavior;
 - (b) the application of generally recognized psychotherapeutic and social work principles and practice requiring the education, training, and clinical experience of a clinical social worker; and
 - (c) supervising of the practice of a certified social worker or social service worker as the supervision is required under this chapter and as further defined by division rule.
- (4) "Practice of certified social work" includes:
 - (a) the supervised practice of mental health therapy by a clinical social worker by

observation, description, evaluation, interpretation, intervention, and treatment to effect modification of behavior by the application of generally recognized professional social work principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunctions, the symptoms of any of these, or maladaptive behavior;

(b) the supervised or independent and unsupervised application of generally recognized professional social work principles and practices requiring the education, training, and experience of a certified social worker; and

(c) supervision of the practice of a social service worker as the supervision is required under this chapter and as further defined by division rule.

(5) "Program accredited by the Council on Social Work Education" means a program that:

(a) was accredited by the Council on Social Work Education on the day on which the applicant for licensure satisfactorily completed the program; or

(b) was in candidacy for accreditation by the Council on Social Work Education on the day on which the applicant for licensure satisfactorily completed the program.

(6) "Supervision of a social service worker" means supervision conducted by an individual licensed

as a mental health therapist under this title in accordance with division rules made in collaboration with the board.

58-60-203. Board.

(1) There is created the Social Worker Licensing Board consisting of one certified social worker, three clinical social workers, two social service workers, and one member from the general public.

(2) The board shall be appointed, serve terms, and be compensated in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board are under Sections 58-1-202 and 58-1-203. In addition, the board shall:

(a) designate one of its members on a permanent or rotating basis to assist the division in review of complaints concerning unlawful or unprofessional practice by a licensee in any profession regulated by the board and to advise the division regarding the conduct of investigations of the complaints; and

(b) disqualify any member from acting as presiding officer in any administrative procedure in which that member has previously reviewed the complaint or advised the division.

58-60-204. License classifications.

The division shall issue licenses and certifications to individuals qualified under this part in the classifications:

(1) clinical social worker;

(2) certified social worker;

(3) certified social worker intern; and

(4) social service worker.

58-60-205. Qualifications for licensure as a clinical or certified social worker and social service worker.

(1) An applicant for licensure as a clinical social worker shall:

(a) submit an application on a form provided by the division;

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

(c) be of good moral character;

(d) produce certified transcripts from an accredited institution of higher education recognized by the division in collaboration with the board verifying satisfactory completion of an education and earned degree as follows:

(i) an earned master's degree in social work resulting from completion of an education program accredited by the Council on Social Work Education; or

(ii) an earned doctoral degree in social work that results from successful completion of a clinical concentration and practicum approved by the division and defined by

rule under Section 58-1-203;

(e) have completed a minimum of 4,000 hours of clinical social work training as defined by division rule under Section 58-1-203 in not less than two years and under the supervision of a clinical social worker supervisor approved by the division in collaboration with the board;

(f) document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of the education requirement in Subsection (1)(d), which training may be included as part of the 4,000 hours of training in Subsection (1)(e), and of which documented evidence demonstrates not less than 100 of the hours were obtained under the direct supervision of a clinical social worker, as defined by rule;

(g) have completed a case work, group work, or family treatment course sequence with a clinical practicum in content as defined by rule under Section 58-1-203; and

(h) pass the examination requirement established by rule under Section 58-1-203.

(2) An applicant for licensure as a certified social worker shall:

(a) submit an application on a form provided by the division;

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

(c) be of good moral character;

(d) produce certified transcripts from an accredited institution of higher education recognized by the division in collaboration with the Social Worker Licensing Board verifying satisfactory completion of an education and an earned degree as follows:

(i) a social work education program accredited by the Council on Social Work Education and an earned master's degree resulting from completion of that program; or

(ii) an education program that contains approved clinical social work concentration and practicum in content as defined by rule under Section 58-1-203 and an earned doctorate resulting from completion of that program; and

(e) pass the examination requirement established by rule under Section 58-1-203.

(3) (a) An applicant for certification as a certified social worker intern shall meet the requirements of Subsections (2)(a), (b), (c), and (d).

(b) Certification under Subsection (3)(a) is limited to the time necessary to pass the examination required under Subsection (2)(e) or six months, whichever occurs first.

(c) A certified social worker intern may provide mental health therapy under the general supervision of a clinical social worker.

(4) An applicant for licensure as a social service worker shall:

(a) submit an application on a form provided by the division;

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

(c) be of good moral character;

(d) produce certified transcripts from an accredited institution of higher education recognized by the division in collaboration with the Social Worker Licensing Board verifying satisfactory completion of an earned degree resulting from education as follows:

(i) a bachelor's degree in a social work program accredited by the Council on Social Work Education;

(ii) a master's degree in a field approved by the division in collaboration with the social worker board;

(iii) a bachelor's degree in any field if the applicant:

(A) has completed at least three semester hours, or the equivalent, in each of the following areas:

(I) social welfare policy;

(II) human growth and development; and

(III) social work practice methods, as defined by rule; and

(B) provides documentation that the applicant has completed at least 2,000 hours of qualifying experience under the supervision of a mental health therapist, which experience is approved by the division in collaboration with the Social Worker Licensing Board, and which is performed after completion of the requirements to obtain the bachelor's degree required

- under this Subsection (4); or
- (iv) successful completion of the first academic year of a Council on Social Work Education approved master's of social work curriculum and practicum; and
 - (e) pass the examination requirement established by rule under Section 58-1-203.
- (5) The division shall ensure that the rules for an examination described under Subsections (1)(h), (2)(e), and (4)(e) allow additional time to complete the examination if requested by an applicant who is:
- (a) a foreign born legal resident of the United States for whom English is a second language; or
 - (b) an enrolled member of a federally recognized Native American tribe.

58-60-205.5. Continuing education.

As a condition of renewal of a license under this part, a social service worker licensee shall, during each two-year licensure cycle, complete qualified continuing professional education, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

58-60-206. Qualifications for admission to examination.

All applicants for admission to an examination qualifying an individual for licensure under this part shall, before taking the examination:

- (1) submit an application for examination on a form provided by the division;
- (2) pay the fee established for the examination; and
- (3) certify under penalty of perjury as evidenced by notarized signature on the application for examination that the applicant:
 - (a) has completed the education requirements and been awarded the earned degree required for licensure; or
 - (b) has only one semester, or the equivalent, remaining before the applicant completes the education requirement for earning the degree that is required for licensure.

58-60-207. Scope of practice - Limitations.

- (1) A clinical social worker may engage in all acts and practices defined as the practice of clinical social work without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's education, training, and competence.
- (2) To the extent an individual is professionally prepared by the education and training track completed while earning a master's or doctor of social work degree, a licensed certified social worker may engage in all acts and practices defined as the practice of certified social work consistent with the licensee's education, clinical training, experience, and competence:
 - (a) under supervision of a clinical social worker and as an employee of another person when engaged in the practice of mental health therapy;
 - (b) without supervision and in private and independent practice or an employee of another person, if not engaged in the practice of mental health therapy;
 - (c) including engaging in the private, independent, unsupervised practice of social work as a self-employed individual, in partnership with other licensed clinical or certified social workers, as a professional corporation, or in any other capacity or business entity, so long as he does not practice unsupervised psychotherapy; and
 - (d) supervising social service workers as provided by division rule.

Part 3 - Marriage and Family Therapist Licensing Act

58-60-301. Title.

This part is known as the "Marriage and Family Therapist Licensing Act."

58-60-302. Definitions.

In addition to the definitions in Sections 58-1-102 and 58-60-102, as used in this part:

- (1) "Assess" means the use of diagnostic procedures, tests, and interview techniques generally

accepted as standard in mental health therapy to diagnose any condition related to mental, emotional, behavioral, and social disorders or dysfunctions.

(2) "Board" means the Marriage and Family Therapist Licensing Board created in Section 58-60-303.

(3) "Practice of marriage and family therapy" includes:

(a) the process of providing professional mental health therapy including psychotherapy to individuals, couples, families, or groups;

(b) utilizing established principles that recognize the interrelated nature of individual problems and dysfunctions in family members to assess, diagnose, and treat mental, emotional, and behavioral disorders;

(c) individual, premarital, relationship, marital, divorce, and family therapy;

(d) specialized modes of treatment for the purpose of diagnosing and treating mental, emotional, and behavioral disorders, modifying interpersonal and intrapersonal dysfunction, and promoting mental health; and

(e) assessment utilized to develop, recommend, and implement appropriate plans of treatment, dispositions, and placement related to the functioning of the individual, couple, family, or group.

58-60-303. Board.

(1) There is created the Marriage and Family Therapist Licensing Board consisting of four marriage

and family therapists and one member from the general public.

(2) The board shall be appointed, serve terms, and be compensated in accordance with Section 58-1-201.

(3) The board shall:

(a) comply with the provisions of Sections 58-1-202 and 58-1-203;

(b) designate one of its members on a permanent or rotating basis to assist the division in review of complaints concerning unlawful or unprofessional practice by a licensee in the respective profession regulated by the board and to advise the division with respect to the conduct of investigations of the complaints; and

(c) disqualify any member from acting as presiding officer in any administrative procedure in which that member has previously reviewed the complaint or advised the division.

58-60-304. License classification.

The division will issue licenses to individuals qualified under this part in the classification of:

(1) marriage and family therapist; or

(2) associate marriage and family therapist.

58-60-305. Qualifications for licensure.

(1) All applicants for licensure as marriage and family therapists shall:

(a) submit an application on a form provided by the division;

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

(c) be of good moral character;

(d) produce certified transcripts evidencing completion of a masters or doctorate degree in marriage and family therapy from:

(i) a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education; or

(ii) an accredited institution meeting criteria for approval established by rule under Section 58-1-203;

(e) have completed a minimum of 4,000 hours of marriage and family therapy training as defined by division rule under Section 58-1-203, in not less than two years, under the supervision of a marriage and family therapist supervisor who meets the requirements of Section 58-60-307, and obtained after completion of the education requirement in Subsection (1)(d);

(f) document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of the education requirement described

in Subsection (1)(d)(i) or (1)(d)(ii), which training may be included as part of the 4,000 hours of training described in Subsection (1)(e), and of which documented evidence demonstrates not less than 100 of the supervised hours were obtained during direct personal supervision by a marriage and family therapist supervisor qualified under Section 58-60-307, as defined by rule; and

(g) pass the examination requirement established by division rule under Section 58-1-203.

(2) (a) All applicants for licensure as an associate marriage and family therapist shall comply with the provisions of Subsections (1)(a), (b), (c), and (d).

(b) An individual's license as an associate marriage and family therapist is limited to the period of time necessary to complete clinical training as described in Subsections (1)(e) and (f) and extends not more than one year from the date the minimum requirement for training is completed, unless the individual presents satisfactory evidence to the division and the appropriate board that the individual is making reasonable progress toward passing of the qualifying examination for that profession or is otherwise on a course reasonably expected to lead to licensure, but the period of time under this Subsection (2)(b) may not exceed two years past the date the minimum supervised clinical training requirement has been completed.

58-60-305.5. Qualification for licensure before May 1, 2000.

(1) A person who was licensed under this chapter as of May 1, 2000, may apply for renewal of licensure without being required to fulfill the educational requirements described in Subsection 58-60-305(1)(d).

(2) A person who seeks licensure under this chapter before July 1, 2002, need comply only with the licensure requirements in effect before May 1, 2000.

58-60-306. Qualifications for admission to examination.

All applicants for admission to any examination qualifying an individual for licensure under this part shall:

(1) submit an application on a form provided by the division;

(2) pay the fee established for the examination; and

(3) certify under penalty of perjury as evidenced by notarized signature on the application for admission to the examination that the applicant has completed the education requirement and been awarded the earned degree required for licensure.

58-60-307. Marriage and family therapist supervisors - Qualifications.

(1) Each person acting as a marriage and family therapist supervisor shall:

(a) have at least two years clinical experience as a marriage and family therapist since the date of first licensure as a marriage and family therapist; and

(b) either:

(i) be approved as a supervisor by a national marriage and family therapist professional organization; or

(ii) meet the criteria established by rule.

(2) Persons who act as a supervisor without meeting the requirements of this section are subject to discipline for unprofessional conduct.

58-60-308. Scope of practice - Limitations.

(1) A licensed marriage and family therapist may engage in all acts and practices defined in the practice of marriage and family therapy without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's education, training, and competence.

(2) (a) To the extent an individual has completed the educational requirements of Subsection 58-60-305(1)(d) a licensed associate marriage and family therapist may engage in all acts and practices defined as the practice of marriage and family therapy if the practice is:

(i) within the scope of employment as a licensed associate marriage and family therapist with a public agency or a private clinic as defined by division rule; and

(ii) under the supervision of a licensed marriage and family therapist who is qualified

as a supervisor under Section 58-60-307.

(b) A licensed associate marriage and family therapist may not engage in the independent practice of marriage and family therapy.

Part 4 - Clinical Mental Health Counselor Licensing Act

58-60-401. Title.

This part is known as the "Clinical Mental Health Counselor Licensing Act."

58-60-402. Definitions.

In addition to the definitions in Sections 58-1-102 and 58-60-102, as used in this part:

(1) "Board" means the Clinical Mental Health Counselor Licensing Board created in Section 58-60-403.

(2) "Practice of clinical mental health counseling" means the practice of mental health therapy by means of observation, description, evaluation, interpretation, intervention, and treatment to effect modification of human behavior by the application of generally recognized clinical mental health counseling principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunction, symptoms of any of these, or maladaptive behavior.

58-60-403. Board.

(1) There is created the Clinical Mental Health Counselor Licensing Board consisting of four clinical mental health counselors and one member from the general public.

(2) The board shall be appointed, serve terms, and be compensated in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall:

(a) designate one of its members on a permanent or rotating basis to assist the division in review of complaints concerning unlawful or unprofessional practice by a licensee in the respective profession regulated by the board and to advise the division with respect to the conduct of investigations of the complaints; and

(b) disqualify any member from acting as presiding officer in any administrative procedure in which that member has previously reviewed the complaint or advised the division.

58-60-404. License classification.

The division shall issue licenses to individuals qualified under the provisions of this part in the classification of:

(1) a clinical mental health counselor; or

(2) an associate clinical mental health counselor.

58-60-405. Qualifications for licensure.

(1) An applicant for licensure as a clinical mental health counselor shall:

(a) submit an application on a form provided by the division;

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

(c) be of good moral character;

(d) produce certified transcripts from an accredited institution of higher education recognized by the division in collaboration with the board verifying satisfactory completion of:

(i) an education and degree in an education program in counseling with a core curriculum defined by division rule under Section 58-1-203 preparing one to competently engage in mental health therapy; and

(ii) an earned doctoral or master's degree resulting from that education program;

(e) have completed a minimum of 4,000 hours of clinical mental health counselor training as defined by division rule under Section 58-1-203, in not less than two years, under the supervision of a clinical mental health counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist supervisor approved by the division in collaboration with the board and

- obtained after completion of the education requirement in Subsection (1)(d);
- (f) document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of the education requirement in Subsection (1)(d), which training may be included as part of the 4,000 hours of training in Subsection (1)(e), and of which documented evidence demonstrates not less than 100 of the hours were obtained under the direct supervision of a mental health therapist as defined by rule; and
- (g) pass the examination requirement established by division rule under Section 58-1-203.
- (2) (a) An applicant for licensure as an associate clinical mental health counselor shall comply with the provisions of Subsections (1)(a), (b), (c), and (d).
- (b) Except as provided under Subsection (2)(c), an individual's licensure as an associate clinical mental health counselor is limited to the period of time necessary to complete clinical training as described in Subsections (1)(e) and (f) and extends not more than one year from the date the minimum requirement for training is completed.
- (c) The time period under Subsection (2)(b) may be extended to a maximum of two years past the date the minimum supervised clinical training requirement has been completed, if the applicant presents satisfactory evidence to the division and the appropriate board that the individual is:
- (i) making reasonable progress toward passing of the qualifying examination for that profession; or
 - (ii) otherwise on a course reasonably expected to lead to licensure.

58-60-406. Qualifications for admission to examination.

All applicants for admission to any examination qualifying an individual for licensure under this part shall:

- (1) submit an application on a form provided by the division;
- (2) pay the fee established for the examination; and
- (3) certify under penalty of perjury as evidenced by notarized signature on the application for admission to the examination that the applicant has completed the education requirement and been awarded the earned degree required for licensure.

58-60-407. Scope of practice - Limitations.

- (1) A licensed clinical mental health counselor may engage in all acts and practices defined as the practice of clinical mental health counseling without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's education, training, and competence.
- (2) (a) To the extent an individual has completed the educational requirements of Subsections 58-60-308(1)(d), a licensed associate clinical mental health counselor may engage in all acts and practices defined as the practice of clinical mental health counseling if the practice is:
- (i) within the scope of employment as a licensed clinical mental health counselor with a public agency or private clinic as defined by division rule; and
 - (ii) under supervision of a qualified licensed mental health therapist as defined in Section 58-60-102.
- (b) A licensed associate clinical mental health counselor may not engage in the independent practice of clinical mental health counseling.

Part 5 - Substance Use Disorder Counselor Act

58-60-501. Title.

This part is known as the "Substance Use Disorder Counselor Act."

58-60-502. Definitions.

In addition to the definitions in Sections 58-1-102 and 58-60-102, as used in this part:

- (1) "Board" means the Substance Use Disorder Counselor Licensing Board created in Section 58-60-503.

(2) (a) "Counseling" means a collaborative process that facilitates the client's progress toward mutually determined treatment goals and objectives.

(b) "Counseling" includes:

(i) methods that are sensitive to an individual client's characteristics, to the influence of significant others, and to the client's cultural and social context; and

(ii) an understanding, appreciation, and ability to appropriately use the contributions of various addiction counseling models as the counseling models apply to modalities of care for individuals, groups, families, couples, and significant others.

(3) "Direct supervision" means:

(a) a minimum of one hour of supervision by a supervisor of the substance use disorder counselor for every 40 hours of client care provided by the substance use disorder counselor, which supervision may include group supervision;

(b) the supervision is conducted in a face-to-face manner, unless otherwise approved on a case-by-case basis by the division in collaboration with the board; and

(c) a supervisor is available for consultation with the counselor at all times.

(4) "General supervision" shall be defined by division rule.

(5) "Group supervision" means more than one counselor licensed under this part meets with the supervisor at the same time.

(6) "Individual supervision" means only one counselor licensed under this part meets with the supervisor at a given time.

(7) "Practice as a certified advanced substance use disorder counselor" and "practice as a certified

advanced substance use disorder counselor intern" means providing services described in Subsection (9) under the direct supervision of a mental health therapist or licensed advanced substance use disorder counselor.

(8) "Practice as a certified substance use disorder counselor" and "practice as a certified substance

use disorder counselor intern" means providing the services described in Subsections (10)(a) and (b) under the direct supervision of a mental health therapist or licensed advanced substance use disorder counselor.

(9) "Practice as a licensed advanced substance use disorder counselor" means:

(a) providing the services described in Subsections (10)(a) and (b);

(b) screening and assessing of individuals, including identifying substance use disorder symptoms and behaviors and co-occurring mental health issues; and

(c) treatment planning for substance use disorders, including initial planning, ongoing intervention, continuity of care, discharge planning, planning for relapse prevention, and long term recovery support.

(10) (a) "Practice as a substance use disorder counselor" means providing services as an employee of a substance use disorder agency under the general supervision of a licensed mental health therapist, to individuals or groups of persons, whether in person or remotely, for conditions of substance use disorders, consistent with the education and training of a substance use disorder counselor required under this part, and the standards and ethics of the profession as approved by the division in collaboration with the board.

(b) "Practice as a substance use disorder counselor" includes:

(i) administering the screening process by which a client is determined to need substance use disorder services, which may include screening, brief intervention, and treatment referral;

(ii) conducting the administrative intake procedures for admission to a program;

(iii) conducting orientation of a client, including:

(A) describing the general nature and goals of the program;

(B) explaining rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program;

(C) explaining hours during which services are available in a nonresidential program;

(D) treatment costs to be borne by the client, if any; and

- (E) describing the client's rights as a program participant;
- (iv) conducting assessment procedures by which a substance use disorder counselor gathers information related to an individual's strengths weaknesses, needs, and substance use disorder symptoms for the development of the treatment plan;
- (v) participating in the process of treatment planning, including recommending specific interventions to support existing treatment goals and objectives developed by the substance use disorder counselor, the mental health therapist, and the client to:
 - (A) identify and rank problems needing resolution;
 - (B) establish agreed upon immediate and long term goals; and
 - (C) decide on a treatment process and the resources to be utilized;
- (vi) monitoring compliance with treatment plan progress;
- (vii) providing substance use disorder counseling services to alcohol and drug use disorder clients and significant people in the client's life as part of a comprehensive treatment plan, including:
 - (A) leading specific task-oriented groups, didactic groups, and group discussions;
 - (B) cofacilitating group therapy with a licensed mental health therapist; and
 - (C) engaging in one-on-one interventions and interactions coordinated by a mental health therapist;
- (viii) performing case management activities that bring services, agencies, resources, or people together within a planned framework of action toward the achievement of established goals, including, when appropriate, liaison activities and collateral contacts;
- (ix) providing substance use disorder crisis intervention services;
- (x) providing client education to individuals and groups concerning alcohol and other substance use disorders, including identification and description of available treatment services and resources;
- (xi) identifying the needs of the client that cannot be met by the substance use disorder counselor or substance use disorder agency and referring the client to appropriate services and community resources;
- (xii) developing and providing effective reporting and recordkeeping procedures and services, which include charting the results of the assessment and treatment plan, writing reports, progress notes, discharge summaries, and other client-related data; and
- (xiii) consulting with other professionals in regard to client treatment and services to assure comprehensive quality care for the client.
- (c) "Practice as a substance use disorder counselor" does not include:
 - (i) the diagnosing of mental illness, including substance use disorders, as defined in Section 58-60-102;
 - (ii) engaging in the practice of mental health therapy as defined in Section 58-60-102; or
 - (iii) the performance of a substance use disorder diagnosis, other mental illness diagnosis, or psychological testing.
- (11) "Program" means a substance use disorder agency that provides substance use disorder services, including recovery support services.
- (12) "Recovery support services" means services provided to an individual who is identified as having need of substance use disorder preventative or treatment services, either before, during, or after an episode of care that meets the level of care standards established by division rule.
- (13) "Substance use disorder agency" means a public or private agency, health care facility, or health care practice that:
 - (a) provides substance use disorder services, recovery support services, primary health care services, or substance use disorder preventative services; and
 - (b) employs qualified mental health therapists in sufficient number to:

- (i) evaluate the condition of clients being treated by each counselor licensed under this part and employed by the substance use disorder agency; and
 - (ii) ensure that appropriate substance use disorder services are being given.
- (14) "Substance use disorder education program" means a formal program of substance use disorder education offered by an accredited institution of higher education that meets standards established by division rule.

58-60-503. Board.

- (1) There is created the Substance Use Disorder Counselor Licensing Board consisting of:
- (a) three substance use disorder counselors;
 - (b) three mental health therapists qualified by education or experience to treat substance use disorder and who are currently practicing in the substance use disorder field; and
 - (c) one public member.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
- (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
 - (b) advise the division in its investigation of these complaints.
- (4) A board member who has, under Subsection (3), reviewed a complaint or advised in the investigation of a complaint may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

58-60-504. License classification.

The division shall issue substance use disorder counselor licenses to individuals qualified under this part in the classification of:

- (1) licensed advanced substance use disorder counselor;
- (2) certified advanced substance use disorder counselor;
- (3) certified advanced substance use disorder counselor intern;
- (4) licensed substance use disorder counselor;
- (5) certified substance use disorder counselor; and
- (6) certified substance use disorder counselor intern.

58-60-505. Repealed.

58-60-506. Qualifications for licensure on or after July 1, 2012.

- (1) An applicant for licensure under this part on or after July 1, 2012, must meet the following qualifications:
- (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63J-1-504;
 - (c) be of good moral character;
 - (d) satisfy the requirements of Subsection (2), (3), (4), (5), (6), or (7) respectively; and
 - (e) except for licensure as a certified substance use disorder counselor intern and a certified advanced substance use disorder counselor intern, satisfy the examination requirement established by division rule under Section 58-1-203.
- (2) In accordance with division rules, an applicant for licensure as an advanced substance use disorder counselor shall produce:
- (a) certified transcripts from an accredited institution of higher education that:
 - (i) meet division standards;
 - (ii) verify the satisfactory completion of a baccalaureate or graduate degree; and
 - (iii) verify the completion of prerequisite courses established by division rules;
 - (b) documentation of the applicant's completion of a substance use disorder education program that includes:
 - (i) at least 300 hours of substance use disorder related education, of which 200 hours may have been obtained while qualifying for a substance use disorder counselor license;

- (ii) a supervised practicum of at least 350 hours, of which 200 hours may have been obtained while qualifying for a substance use disorder counselor license; and
- (c) documentation of the applicant's completion of at least 4,000 hours of supervised experience in substance use disorder treatment, of which 2,000 hours may have been obtained while qualifying for a substance use disorder counselor license, that:
 - (i) meets division standards; and
 - (ii) is performed within a four-year period after the applicant's completion of the substance use disorder education program described in Subsection (2)(b), unless, as determined by the division after consultation with the board, the time for performance is extended due to an extenuating circumstance.
- (3) An applicant for licensure as a certified advanced substance use disorder counselor shall meet the requirements in Subsections (2)(a) and (b).
- (4) (a) An applicant for licensure as a certified advanced substance use disorder counselor intern shall meet the requirements in Subsections (2)(a) and (b).
- (b) A certified advanced substance use disorder counselor intern license expires at the earlier of:
 - (i) the licensee passing the examination required for licensure as a certified advanced substance use disorder counselor; or
 - (ii) six months after the certified advanced substance use disorder counselor intern license is issued.
- (5) In accordance with division rules, an applicant for licensure as a substance use disorder counselor shall produce:
 - (a) certified transcripts from an accredited institution that:
 - (i) meet division standards;
 - (ii) verify satisfactory completion of an associate's degree or equivalent as defined by the division in rule; and
 - (iii) verify the completion of prerequisite courses established by division rules;
 - (b) documentation of the applicant's completion of a substance use disorder education program that includes:
 - (i) completion of at least 200 hours of substance use disorder related education; and
 - (ii) completion of a supervised practicum of least 200 hours; and
 - (c) documentation of the applicant's completion of at least 2,000 hours of supervised experience in substance use disorder treatment that:
 - (i) meets division standards; and
 - (ii) is performed within a two-year period after the applicant's completion of the substance use disorder education program described in Subsection (5)(b), unless, as determined by the division after consultation with the board, the time for performance is extended due to an extenuating circumstance.
- (6) An applicant for licensure as a certified substance use disorder counselor shall meet the requirements of Subsections (5)(a) and (b).
- (7) (a) An applicant for licensure as a certified substance use disorder counselor intern shall meet the requirements of Subsections (5)(a) and (b).
- (b) A certified substance use disorder counselor intern license expires at the earlier of:
 - (i) the licensee passing the examination required for licensure as a certified substance use disorder counselor; or
 - (ii) six months after the certified substance use disorder counselor intern license is issued.

58-60-507. Qualifications for admission to examination.

All applicants for admission to any examinations qualifying an individual for licensure under this part shall:

- (1) submit an application on a form provided by the division; and
- (2) pay the fee established for the examination.

58-60-508. Substance use disorder counselor supervisor's qualifications - Functions.

- (1) A mental health therapist supervisor of a substance use disorder counselor shall:
- (a) be qualified by education or experience to treat substance use disorders;
 - (b) be currently working in the substance use disorder treatment field;
 - (c) review substance use disorder counselor assessment procedures and recommendations;
 - (d) provide substance use disorder diagnosis and other mental health diagnoses in accordance with Subsection 58-60-102(7);
 - (e) supervise the development of a treatment plan;
 - (f) approve the treatment plan; and
 - (g) provide direct supervision for not more than five persons, unless granted an exception in writing from the board and the division.
- (2) A supervisor of a certified substance use disorder counselor, certified substance use disorder counselor intern, certified advanced substance use disorder counselor, certified advanced substance use disorder counselor intern, or licensed substance use disorder counselor may :
- (a) be a licensed advanced substance use disorder counselor with:
 - (i) until July 1, 2014, at least two years of experience as a substance use disorder counselor;
 - (ii) beginning on July 1, 2014, at least two years of experience as a licensed advanced substance use disorder counselor; or
 - (b) be currently working in the substance use disorder field; and
 - (c) provide direct supervision for no more than three persons, unless granted an exception in writing from the board and the division.

58-60-509. Confidentiality - Exemptions.

- (1) A licensee under this part may not disclose any confidential communication with a client or patient without the express consent of:
- (a) the client or patient;
 - (b) the parent or legal guardian of a minor client or patient; or
 - (c) the authorized agent of a client or patient.
- (2) A licensee under this part is not subject to Subsection (1) if:
- (a) the licensee is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:
 - (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult;
 - (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;
 - (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or
 - (iv) reporting of a communicable disease as required under Section 26-6-6;
 - (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or
 - (c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

58-60-510. Evidentiary privilege.

Evidentiary privilege for a licensee under this part concerning admissibility of any confidential communication in administrative, civil, or criminal proceedings is in accordance with Rule 506, Utah Rules of Evidence.

58-60-511. Experience requirement - Transition of licensing and experience.

- (1) Except as otherwise approved in writing by the board and the division, an individual currently licensed as a substance abuse counselor may transition to the substance use disorder counselor license as follows:
- (a) an individual who documents practice as a substance abuse counselor for six years or longer, by July 1, 2013, may apply for an advanced substance use disorder license;

(b) if an individual who has practiced as a substance abuse counselor for less than six years of experience meets the education requirements under Subsection 58-60-506(2)(a) by July 1, 2013, the individual may apply to the division for an advanced substance use disorder license;

(c) the division shall convert the license of an individual who has practiced for less than six years, and who is licensed as a substance abuse counselor, to a substance use disorder counselor license; or

(d) the division shall convert the license of an individual who is a certified substance abuse counselor, or a certified substance abuse counselor intern, to a certified substance use disorder counselor.

(2) An applicant working toward licensure under division rules in effect before July 1, 2012, who is enrolled in an approved education program, and has completed at least 100 hours of addiction specific training before July 1, 2012, may be licensed in accordance with division rules.

Dopl.utah.gov/laws/R156-60.pdf

R156. Commerce, Occupational and Professional Licensing.

R156-60. Mental Health Professional Practice Act Rule.

R156-60-101. Title.

This rule is known as the "Mental Health Professional Practice Act Rule."

R156-60-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the following:

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 or Fourth Edition: DSM-IV published by the American Psychiatric Association;

(b) 2013 ICD-9-CM for Physicians, Volumes 1 and 2 Professional Edition published by the American Medical Association; or

(c) ICD-10-CM 2013: The Complete Official Draft CodeSet published by the American Medical Association.

(2) "Client or patient" means an individual who, when competent requests, or when not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist agrees verbally or in writing to provide professional services to that individual, or without an overt agreement does in fact provide professional services to that individual.

(3) "Direct supervision" of a supervisee in training, as used in Subsection 58-60-205(1)(f), 58-60-305(1)(f), and 58-60-405(1)(f), means:

(a) a supervisor meeting with the supervisee when both are physically present in the same room at the same time; or

(b) a supervisor meeting with the supervisee remotely via real-time electronic methods that allow for visual and audio interaction between the supervisor and supervisee under the following conditions:

(i) the supervisor and supervisee shall enter into a written supervisory agreement which, at a minimum, establishes the following:

(A) frequency, duration, reason for, and objectives of electronic meetings between the supervisor and supervisee;

(B) a plan to ensure accessibility of the supervisor to the supervisee despite the physical distance between their offices;

(C) a plan to address potential conflicts between clinical recommendations of the supervisor and the representatives of the agency employing the supervisee;

(D) a plan to inform a supervisee's client or patient and employer regarding the supervisee's use of remote supervision;

(E) a plan to comply with the supervisor's duties and responsibilities as established in rule; and

(F) a plan to physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision or at a lesser frequency as approved by the Division in collaboration with the Board;

(ii) the supervisee submits the supervisory agreement to the Division and obtains approval before counting direct supervision completed via live real-time methods toward the 100 hour direct supervision requirement; and

(iii) in evaluating a supervisory agreement, the Division shall consider whether it adequately protects the health, safety, and welfare of the public.

(4) "Employee" means an individual who is or should be treated as a W-2 employee by the Internal Revenue Service.

(5) "General supervision" means that the supervisor is available for consultation with the supervisee by personal face to face contact, or direct voice contact by telephone, radio, or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

R156-60-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 60.

R156-60-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-60-502. Unprofessional Conduct.

"Unprofessional conduct" includes when providing services remotely:

- (1) failing to practice according to professional standards of care in the delivery of services remotely;
- (2) failing to protect the security of electronic, confidential data and information; or
- (3) failing to appropriately store and dispose of electronic, confidential data and information.

Title 62 A Utah Human Services Code

Chapter 3 Aging and Adult Services

Section 101

62A-3-101. Definitions.

As used in this chapter:

(1) "Adult" or "high risk adult" means a person 18 years of age or older who experiences a condition:

(a) that places the person at a high risk of being unable to care for himself:

(i) as determined by assessment; and

(ii) due to the onset of a physical or cognitive impairment or frailty; and

(b) for which the person is not eligible to receive services under:

(i) Chapter 5, Services to People with Disabilities; or

(ii) Chapter 15, Substance Abuse and Mental Health Act.

(2) "Aging" and "aged" means a person 60 years of age or older.

(3) "Area agency" means an area agency that provides services to the aged, high risk adults, or both within a planning and service area.

(4) "Area agency on aging" means a public or private nonprofit agency or office designated by the division to:

(a) operate within a planning and service area of the state; and

(b) develop and implement a broad range of services for the aged in the area described in Subsection (4)(a).

(5) "Area agency on high risk adults" means a public or private nonprofit agency or office designated by the division to:

(a) operate within a planning and service area of the state; and

(b) develop and implement services for high risk adults in the area described in Subsection (5)(a).

(6) "Board" means the Board of Aging and Adult Services.

(7) "Director" means the director of the division.

(8) "Division" means the Division of Aging and Adult Services within the department.

(9) "Personal care attendant" means a person who:

(a) is selected by:

(i) an aged person;

(ii) an agent of an aged person;

(iii) a high risk adult; or

(iv) an agent of a high risk adult; and

(b) provides personal services to the:

(i) aged person described in Subsection (9)(a)(i); or

(ii) high risk adult described in Subsection (9)(a)(iii).

(10) "Personal services" means nonmedical care and support, including assisting a person with:

(a) meal preparation;

(b) eating;

(c) bathing;

(d) dressing;

(e) personal hygiene; or

(f) daily living activities.

(11) "Planning and service area" means a geographical area of the state designated by the division for purposes of planning, development, delivery, and overall administration of services for the aged or high risk adults.

(12) (a) "Public funds" means state or federal funds that are disbursed by:

(i) the Department of Health;

(ii) the division;

(iii) an area agency; or

(iv) an area agency on aging.

(b) "Public funds" includes:

- (i) Medicaid funds; and
- (ii) Medicaid waiver funds

62A-3-102. Division created.

There is created a Division of Aging and Adult Services within the department, under the administration and general supervision of the executive director.

62A-3-103. Director of division -- Appointment -- Qualifications.

- (1) The director of the division shall be appointed by the executive director with the concurrence of the board.
- (2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning the aging and adult populations.
- (3) The director is the administrative head of the division.

62A-3-104. Authority of division.

- (1) The division is the sole state agency, as defined by the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., to:
 - (a) serve as an effective and visible advocate for the aging and adult population of this state;
 - (b) develop and administer a state plan under the policy direction of the board; and
 - (c) take primary responsibility for state activities relating to provisions of the Older Americans Act of 1965, as amended.
- (2) (a) The division has authority to designate:
 - (i) planning and service areas for the state; and
 - (ii) an area agency on aging within each planning and service area to design and implement a comprehensive and coordinated system of services and programs for the aged within appropriations from the Legislature.
 - (b) Designation as an area agency on aging may be withdrawn:
 - (i) upon request of the area agency on aging; or
 - (ii) upon noncompliance with the provisions of the:
 - (A) Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;
 - (B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;
 - (C) provisions of this chapter; or
 - (D) rules, policies, or procedures established by the division.
- (3) (a) The division has the authority to designate:
 - (i) planning and service areas for the state; and
 - (ii) subject to Subsection (3)(b), an area agency on high risk adults within each planning and service area to design and implement a comprehensive and coordinated system of case management and programs for high risk adults within appropriations from the Legislature.
 - (b) For purposes of Subsection (3)(a)(ii), before October 1, 1998, the division shall designate as the area agency on high risk adults in a planning and service area:
 - (i) the area agency on aging that operates within the same geographic area if that agency requests, before July 1, 1998, to expand that agency's current contract with the division to include the responsibility of:
 - (A) being the area agency on high risk adults; or
 - (B) operating the area agency on high risk adults:
 - (I) through joint cooperation with one or more existing area agencies on aging; and
 - (II) without reducing geographical coverage in any service area; or
 - (ii) a public or private nonprofit agency or office if the area agency on aging that operates within the same geographic area has not made a request in accordance with Subsection (3)(b)(i).
 - (c) (i) Area agencies on high risk adults shall be in operation before July 1, 1999.
 - (ii) The division's efforts to establish area agencies on high risk adults shall start with counties with a population of more than 150,000 people.
 - (d) Designation as an area agency on high risk adults may be withdrawn:

- (i) upon request by the area agency; or
- (ii) upon noncompliance with:
 - (A) state law;
 - (B) federal law; or
 - (C) rules, policies, or procedures established by the division.

(4) (a) The division may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures:

(i) seek federal grants, loans, or participation in federal programs; and

(ii) receive and distribute state and federal funds for the division's programs and services to the aging and adult populations of the state.

(b) The division may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as provided in Section [62A-3-104.3](#).

(5) The division has authority to establish, either directly or by contract, programs of advocacy, monitoring, evaluation, technical assistance, and public education to enhance the quality of life for aging and adult citizens of the state.

(6) In accordance with the rules of the division and Title 63G, Chapter 6a, Utah Procurement Code, the division may contract with:

(a) the governing body of an area agency to provide a comprehensive program of services; or

(b) public and private entities for special services.

(7) The division has authority to provide for collection, compilation, and dissemination of information, statistics, and reports relating to issues facing aging and adult citizens.

(8) The division has authority to prepare and submit reports regarding the operation and administration of the division to the department, the Legislature, and the governor, as requested.

(9) The division shall:

(a) implement and enforce policies established by the board governing all aspects of the division's programs for aging and adult persons in the state;

(b) in order to ensure compliance with all applicable state and federal statutes, policies, and procedures, monitor and evaluate programs provided by or under contract with:

(i) the division;

(ii) area agencies; and

(iii) an entity that receives funds from an area agency;

(c) examine expenditures of public funds;

(d) withhold funds from programs based on contract noncompliance;

(e) review and approve plans of area agencies in order to ensure:

(i) compliance with division policies; and

(ii) a statewide comprehensive program;

(f) in order to further programs for aging and adult persons and prevent duplication of services, promote and establish cooperative relationships with:

(i) state and federal agencies;

(ii) social and health agencies;

(iii) education and research organizations; and

(iv) other related groups;

(g) advocate for the aging and adult populations;

(h) promote and conduct research on the problems and needs of aging and adult persons;

(i) submit recommendations for changes in policies, programs, and funding to the:

(i) governor; and

(ii) Legislature; and

(j) (i) accept contributions to and administer the funds contained in the "Out and About" Homebound Transportation Assistance Fund created in Section [62A-3-110](#); and

(ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to facilitate the administration of the "Out and About" Homebound Transportation Assistance Fund in accordance with Section [62A-3-110](#).

62A-3-104.1. Powers and duties of area agencies.

(1) An area agency that provides services to an aged person, or a high risk adult shall within the area agency's respective jurisdiction:

- (a) advocate by monitoring, evaluating, and providing input on all policies, programs, hearings, and levies that affect a person described in this Subsection (1);
- (b) design and implement a comprehensive and coordinated system of services within a designated planning and service area;
- (c) conduct periodic reviews and evaluations of needs and services;
- (d) prepare and submit to the division plans for funding and service delivery for services within the designated planning and service area;
- (e) establish, either directly or by contract, programs licensed under Chapter 2, Licensure of Programs and Facilities;
- (f) (i) appoint an area director;
- (ii) prescribe the area director's duties; and
- (iii) provide adequate and qualified staff to carry out the area plan described in Subsection (1)(d);
- (g) establish rules not contrary to policies of the board and rules of the division, regulating local services and facilities;
- (h) operate other services and programs funded by sources other than those administered by the division;
- (i) establish mechanisms to provide direct citizen input, including an area agency advisory council with a majority of members who are eligible for services from the area agency;
- (j) establish fee schedules; and
- (k) comply with the requirements and procedures of:
 - (i) Title 11, Chapter 13, Interlocal Cooperation Act; and
 - (ii) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

(2) Before disbursing any public funds, an area agency shall require that all entities receiving any public funds agree in writing that:

- (a) the division may examine the entity's program and financial records; and
- (b) the auditor of the local area agency may examine and audit the entity's program and financial records, if requested by the local area agency.

(3) An area agency on aging may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as provided in Section [62A-3-104.3](#).

(4) (a) For the purpose of providing services pursuant to this part, a local area agency may receive:

- (i) property;
- (ii) grants;
- (iii) gifts;
- (iv) supplies;
- (v) materials;
- (vi) any benefit derived from the items described in Subsections (4)(a)(i) through (v); and
- (vii) contributions.

(b) If a gift is conditioned upon the gift's use for a specified service or program, the gift shall be used for the specific service or program.

(5) (a) Area agencies shall award all public funds in compliance with:

- (i) the requirements of Title 63G, Chapter 6a, Utah Procurement Code; or
- (ii) a county procurement ordinance that requires procurement procedures similar to those described in Subsection (5)(a)(i).

(b) (i) If all initial bids on a project are rejected, the area agency shall publish a new invitation to bid.

(ii) If no satisfactory bid is received by the area agency described in Subsection (5)(b)(i), when the bids received from the second invitation are opened the area agency may execute a contract without requiring competitive bidding.

(c) (i) An area agency need not comply with the procurement provisions of this section when it disburses public funds to another governmental entity.

(ii) For purposes of this Subsection (5)(c), "governmental entity" means any political subdivision or institution of higher education of the state.

(d) (i) Contracts awarded by an area agency shall be for a:

(A) fixed amount; and

(B) limited period.

(ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in available funding for the same contract purpose without competition.

(6) Local area agencies shall comply with:

(a) applicable state and federal:

(i) statutes;

(ii) policies; and

(iii) audit requirements; and

(b) directives resulting from an audit described in Subsection (6)(a)(iii).

62A-3-104.2. Contracts for services.

When an area agency has established a plan to provide services authorized by this chapter, and those services meet standards fixed by rules of the board, the area agency may enter into a contract with the division for services to be furnished by that area agency for an agreed compensation to be paid by the division.

62A-3-104.3. Disbursal of public funds -- Background check of a personal care attendant.

(1) For purposes of this section, "office" is as defined in Section [62A-2-101](#).

(2) Subject to Subsection (4), public funds may not be disbursed to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, unless the personal care attendant is approved by the office to have direct access and provide services to children or vulnerable adults pursuant to Section [62A-2-120](#).

(3) For purposes of Subsection (2), the office shall conduct a background check of a personal care attendant:

(a) who desires to receive public funds as payment for the personal services described in Subsection (2); and

(b) using the same procedures established for a background check of an applicant for an initial license under Section [62A-2-120](#).

(4) The background check and the approval determination described in this section shall be conducted for a personal care attendant on an annual basis.

62A-3-105. Matching requirements for state and federal Older American funds.

(1) Except as provided in Subsection (2), a local area agency on aging that receives state or federal Older Americans Act Supportive Services, Older Americans Act Congregate Meals, or Older Americans Act Home Delivered Meals related funds from the division to provide programs and services under this chapter shall match those funds in an amount at least equal to:

(a) 15% of service dollars; and

(b) 25% of administrative dollars.

(2) A local area agency on aging is not required to match cash-in-lieu funds related to the Home Delivered Meals program or congregate meals.

(3) A local area agency on aging may include services, property, or other in-kind contributions to meet the administrative dollars match but may only use cash to meet the service dollars match.

62A-3-106. Eligibility criteria.

Eligibility for services provided by the division directly or through contractual arrangements shall be determined by criteria established by the division and approved by the board.

62A-3-106.5. Agency responsible to investigate and provide services.

(1) For purposes of this section, "responsible agency" means the agency responsible to investigate or provide services in a particular case under the rules established under Subsection (2)(a).

(2) In order to avoid duplication in responding to a report of alleged abuse, neglect, or exploitation of a vulnerable adult who resides in a long-term care facility, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish procedures to:

(a) determine whether Adult Protective Services or the Long-Term Care Ombudsman Program will be responsible to investigate or provide services in a particular case; and

(b) determine whether, and under what circumstances, the agency described in Subsection (2)(a) that is not the responsible agency will provide assistance to the responsible agency in a particular case.

(3) Notwithstanding Subsection (2), or the rules made pursuant to Subsection (2), Adult Protective Services shall be the agency within the division that is responsible for receiving all reports of alleged abuse, neglect, or exploitation of a vulnerable adult as provided in Section [62A-3-305](#).

62A-3-107. Requirements for establishing division policy.

(1) The board is the program policymaking body for the division and for programs funded with state and federal money under Sections [62A-3-104.1](#) and [62A-3-104.2](#). In establishing policy and reviewing existing policy, the board shall seek input from local area agencies, consumers, providers, advocates, division staff, and other interested parties as determined by the board.

(2) The board shall establish, by rule, procedures for developing its policies which ensure that local area agencies are given opportunity to comment and provide input on any new policy of the board and on any proposed changes in the board's existing policy. The board shall also provide a mechanism for review of its existing policy and for consideration of policy changes that are proposed by those local area agencies.

(3) A member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:

(a) Section [63A-3-106](#);

(b) Section [63A-3-107](#); and

(c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and [63A-3-107](#).

62A-3-107.5. Allocation of funds to acquire facilities.

(1) (a) The board may make grants to local area agencies on aging to acquire facilities to provide community-based services for aged persons. Grants under this section shall be made solely from appropriations made to the division for implementation of this section.

(b) Acquisition of a facility may include acquisition of real property, construction of a new facility, acquisition of an existing facility, or alteration, renovation, or improvement of an existing facility.

(c) The local area agency may allocate grants received under this section to a local nonprofit or governmental agency that owns or operates a facility to provide community-based services for aged persons.

(2) A local area agency on aging or the local nonprofit or governmental agency that owns or operates the facility and receives grant money from the area agency shall provide a matching contribution of at least 25% of the grant funds it receives under this section. A matching contribution may include funds, services, property, or other in-kind contributions.

(3) In making grants under this section, the board may consider:

(a) the extent and availability of public and private funding to operate programs in the facility to be acquired and to provide for maintenance of that facility;

(b) the need for community-based services in the geographical area served by the area agency on aging;

(c) the availability of private and local funds to assist in acquisition, alteration, renovation, or improvement of the facility; and

(d) the extent and level of support for acquisition of the facility from local government officials, private citizens, interest groups, and others.

(4) Grants to local area agencies on aging and any local nonprofit or governmental agency that owns or operates a facility and receives grant money from the area agency under this section are subject to the oversight and control by the division described in Subsection [62A-3-104](#)(8).

(5) It is the intent of the Legislature that the grants made under this section serve the statewide purpose of providing support for senior citizens throughout the state, and that the grants shall be made to serve as effectively as possible the facilities in greatest need of assistance.

62A-3-108. Allocation of funds to local area agencies -- Formulas.

(1) The board shall establish by rule formulas for allocating funds to local area agencies through contracts to provide programs and services in accordance with this part based on need. Determination of need shall be based on the number of eligible persons located in the local area which the division is authorized to serve, unless federal regulations require otherwise or the board establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need. Formulas established by the board shall include a differential to compensate for additional costs of providing services in rural areas.

(2) Formulas established under Subsection (1) shall be in effect on or before July 1, 1998, and apply to all state and federal funds appropriated by the Legislature to the division for local area agencies, but does not apply to:

- (a) funds that local area agencies receive from sources other than the division;
- (b) funds that local area agencies receive from the division to operate a specific program within its jurisdiction which is available to all residents of the state;
- (c) funds that a local area agency receives from the division to meet a need that exists only within that local area; and
- (d) funds that a local area agency receives from the division for research projects.

62A-3-109. Adjudicative proceedings.

Adjudicative proceedings held by, or relating to, the division or the board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

62A-3-110. "Out and About" Homebound Transportation Assistance Fund.

(1) (a) There is created an expendable special revenue fund known as the "Out and About" Homebound Transportation Assistance Fund.

(b) The "Out and About" Homebound Transportation Assistance Fund shall consist of:

- (i) private contributions;
- (ii) donations or grants from public or private entities;
- (iii) voluntary donations collected under Section [53-3-214.8](#); and
- (iv) interest and earnings on account money.

(c) The cost of administering the "Out and About" Homebound Transportation Assistance Fund shall be paid from money in the fund.

(2) The Division of Aging and Adult Services in the Department of Human Services shall:

(a) administer the funds contained in the "Out and About" Homebound Transportation Assistance Fund; and

(b) select qualified organizations and distribute the funds in the "Out and About" Homebound Transportation Assistance Fund in accordance with Subsection (3).

(3) (a) The division may distribute the funds in the "Out and About" Homebound Transportation Assistance Fund to a selected organization that provides public transportation to aging persons, high risk adults, or people with disabilities.

(b) An organization that provides public transportation to aging persons, high risk adults, or people with disabilities may apply to the Division of Aging and Adult Services, in a manner prescribed by the division, to receive all or part of the money contained in the "Out and About" Homebound Transportation Assistance Fund.

62A-3-201. Legislative findings -- Purpose -- Ombudsman.

The Legislature finds and declares that the aging citizens of this state should be assisted in asserting their civil and human rights as patients, residents, and clients of long-term care facilities created to serve their specialized needs and problems; and that for the health, safety, and welfare of these citizens, the state should take appropriate action through an adequate legal framework to address their difficulties.

The purpose of this part is to establish within the division the long-term care ombudsman program for the aging citizens of this state and identify duties and responsibilities of that program and of the ombudsman, in order to address problems relating to long-term care for aging citizens, and to fulfill federal requirements.

62A-3-202. Definitions.

As used in this part:

(1) "Elderly resident" means an adult 60 years of age or older who because of physical, economic, social, or emotional problems cannot function normally on an independent basis, and who resides in a long-term care facility.

(2) "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the state, or to which the state is a party, or created by any county or municipality, which is responsible for the regulation, visitation, inspection, or supervision of facilities, or which provides services to patients, residents, or clients of facilities.

(3) "Long-term care facility" means any skilled nursing facility, intermediate care facility, nursing home, assisted living facility, adult foster care home, or any living arrangement in the community through which room and personal care services are provided for elderly residents.

(4) "Ombudsman" means the administrator of the long-term care ombudsman program, created pursuant to Section [62A-3-203](#).

62A-3-203. Creation of Long-Term Care Ombudsman Program -- Responsibilities.

(1) (a) There is created within the division the Long-Term Care Ombudsman Program for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by elderly residents of long-term care facilities within the state.

(b) Subject to the rules made under Section [62A-3-106.5](#), the ombudsman is responsible for:

(i) receiving and resolving complaints relating to elderly residents of long-term care facilities;

(ii) conducting investigations of any act, practice, policy, or procedure of any long-term care facility or government agency which it has reason to believe affects or may affect the health, safety, welfare, or civil and human rights of any elderly resident of a long-term care facility;

(iii) coordinating the department's services for elderly residents of long-term care facilities to ensure that those services are made available to eligible elderly citizens of the state; and

(iv) providing training regarding the delivery and regulation of long-term care to public agencies, local ombudsman program volunteers, and operators and employees of long-term care facilities.

(2) (a) A long-term care facility shall display an ombudsman program information poster.

(b) The division is responsible for providing the posters, which shall include the names and phone numbers for local ombudsman programs.

62A-3-204. Powers and responsibilities of ombudsman.

The long-term care ombudsman shall:

(1) comply with Title VII of the federal Older Americans Act, 42 U.S.C. 3058 et seq.;

(2) establish procedures for and engage in receiving complaints, conducting investigations, reporting findings, issuing findings and recommendations, promoting community contact and involvement with elderly residents of long-term care facilities through the use of volunteers, and publicizing its functions and activities;

(3) investigate an administrative act or omission of any long-term care facility or governmental agency if the act or omission relates to the purposes of the ombudsman. The

ombudsman may exercise its authority under this subsection without regard to the finality of the administrative act or omission, and it may make findings in order to resolve the subject matter of its investigation;

(4) recommend to the division rules that it considers necessary to carry out the purposes of the ombudsman;

(5) cooperate and coordinate with governmental entities and voluntary assistance organizations in exercising its powers and responsibilities;

(6) request and receive cooperation, assistance, services, and data from any governmental agency, to enable it to properly exercise its powers and responsibilities;

(7) establish local ombudsman programs to assist in carrying out the purposes of this part, which shall meet the standards developed by the division, and possess all of the authority and power granted to the long-term care ombudsman program under this part; and

(8) exercise other powers and responsibilities as reasonably required to carry out the purposes of this part.

62A-3-205. Procedures -- Adjudicative proceedings.

The long-term care ombudsman shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

62A-3-206. Investigation of complaints -- Procedures.

(1) (a) The ombudsman shall investigate each complaint he receives. An investigation may consist of a referral to another public agency, the collecting of facts and information over the telephone, or an inspection of the long-term care facility that is named in the complaint.

(b) The ombudsman shall notify any complainant of its decision to not pursue investigation of a complaint after the initial investigation and the reasons for the decision.

(2) In making any investigation, the ombudsman may engage in actions it deems appropriate including, but not limited to:

(a) making inquiries and obtaining information;

(b) holding investigatory hearings;

(c) entering upon and inspecting any premises, without notice to the facility, provided the investigator identifies himself upon entering the premises as a person authorized by this part to inspect the premises; and

(d) inspecting or obtaining any book, file, medical record, or other record required by law to be retained by the long-term care facility or governmental agency, pertaining to elderly residents, subject to Subsection (3).

(3) (a) Before reviewing a resident's records, the ombudsman shall seek to obtain written permission to review the records from the institutionalized elderly person or his legal representative.

(b) The effort to obtain permission under Subsection (3)(a) shall include personal contact with the elderly resident or his legal representative. If the resident or legal representative refuses to sign a release allowing access to records, the ombudsman shall record and abide by this decision. If the attempt to obtain a signed release fails for any other reason, the ombudsman may review the records.

(4) Following any investigation, the ombudsman shall report its findings and recommendations to the complainant, elderly residents of long-term care facilities affected by the complaint, and to the long-term care facility or governmental agency involved.

62A-3-207. Confidentiality of materials relating to complaints or investigations -- Immunity from liability -- Discriminatory, disciplinary, or retaliatory actions prohibited.

(1) The ombudsman shall establish procedures to assure that all files maintained by the long-term care ombudsman program are disclosed only at the discretion of and under the authority of the ombudsman. The identity of a complainant or elderly resident of a long-term care facility may not be disclosed by the ombudsman unless:

(a) the complainant or elderly resident, or the legal representative of either, consents in writing to the disclosure;

(b) disclosure is ordered by the court; or

(c) the disclosure is made to a local area agency on aging, the state adult protective services agency, the Department of Health, the Department of Public Safety, the local law enforcement agency, or the county attorney as part of the investigation of a complaint.

(2) Neither the ombudsman nor its agents or designees may be required to testify in court with respect to confidential matters, except as the court finds necessary to enforce the provisions of this part.

(3) Any person who makes a complaint to the ombudsman pursuant to this part is immune from any civil or criminal liability unless the complaint was made maliciously or without good faith.

(4) (a) Discriminatory, disciplinary, or retaliatory action may not be taken against any volunteer or employee of a long-term care facility or governmental agency, or against any elderly resident of a long-term care facility, for any communication made or information given or disclosed to aid the ombudsman or other appropriate public agency in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith.

(b) This subsection does not infringe on the rights of an employer to supervise, discipline, or terminate an employee for any other reason.

62A-3-208. Prohibited acts -- Penalty.

(1) No person may:

(a) give or cause to be given advance notice to a long-term care facility or agency that an investigation or inspection under the direction of the ombudsman is pending or under consideration, except as provided by law;

(b) disclose confidential information submitted to the ombudsman pursuant to this part, except as provided by law;

(c) willfully interfere with the lawful actions of the ombudsman;

(d) willfully refuse to comply with lawful demands of the ombudsman, including the demand for immediate entry into or inspection of the premises of any long-term care facility or agency or for immediate access to any elderly resident of a long-term care facility; or

(e) offer or accept any compensation, gratuity, or promise thereof in an effort to affect the outcome of a matter being investigated or of a matter which is before the ombudsman for determination of whether an investigation should be conducted.

(2) Violation of any provision of this part constitutes a class B misdemeanor.

62A-3-301. Definitions.

As used in this part:

(1) "Abandonment" means any knowing or intentional action or failure to act, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.

(2) "Abuse" means:

(a) knowingly or intentionally:

(i) attempting to cause harm;

(ii) causing harm; or

(iii) placing another in fear of harm;

(b) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult;

(c) emotional or psychological abuse;

(d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or

(e) deprivation of life sustaining treatment, or medical or mental health treatment, except:

(i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

(ii) when informed consent, as defined in Section [76-5-111](#), has been obtained.

(3) "Adult" means a person who is 18 years of age or older.

(4) "Adult protection case file" means a record, stored in any format, contained in a case file maintained by Adult Protective Services.

(5) "Adult Protective Services" means the unit within the division responsible to investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective services.

(6) "Capacity to consent" means the ability of a person to understand and communicate regarding the nature and consequences of decisions relating to the person, and relating to the person's property and lifestyle, including a decision to accept or refuse services.

(7) "Caretaker" means each person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, resource management, or other necessities.

(8) "Counsel" means an attorney licensed to practice law in this state.

(9) "Database" means the statewide database maintained by the division under

Section [62A-3-311.1](#).

(10) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

(11) "Elder adult" means a person 65 years of age or older.

(12) "Emergency" means a circumstance in which a vulnerable adult is at an immediate risk of death, serious physical injury, or serious physical, emotional, or financial harm.

(13) (a) "Emotional or psychological abuse" means knowing or intentional verbal or nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

(b) "Emotional or psychological abuse" includes intimidating, threatening, isolating, coercing, or harassing.

(c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct by a vulnerable adult who lacks the capacity to intentionally or knowingly:

(i) engage in the conduct; or

(ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

(14) "Exploitation" means an offense described in Subsection [76-5-111](#)(4) or Section [76-5b-202](#).

(15) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, serious physical injury, suffering, or distress inflicted knowingly or intentionally.

(16) "Inconclusive" means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.

(17) "Intimidation" means communication through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or abuse.

(18) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:

(i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the expressed wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;

(ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or

(iii) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.

(b) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.

(19) "Lacks capacity to consent" is as defined in Section [76-5-111](#).

(20) (a) "Neglect" means:

(i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing, shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care without assistance; or

(B) failure of a caretaker to provide protection from health and safety hazards or maltreatment;

(ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;

(iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;

(iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment plan that causes or is likely to cause harm to the vulnerable adult;

(v) self-neglect by the vulnerable adult; or

(vi) abandonment by a caretaker.

(b) "Neglect" does not include conduct, or failure to take action, that is permitted or excused under Title 75, Chapter 2a, Advance Health Care Directive Act.

(21) "Physical injury" includes the damage and conditions described in Section [76-5-111](#).

(22) "Protected person" means a vulnerable adult for whom the court has ordered protective services.

(23) "Protective services" means services to protect a vulnerable adult from abuse, neglect, or exploitation.

(24) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food, water, medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain the vulnerable adult's well being when that failure is the result of the adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.

(25) "Serious physical injury" is as defined in Section [76-5-111](#).

(26) "Supported" means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred.

(27) "Undue influence" occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.

(28) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical impairment which substantially affects that person's ability to:

(a) provide personal protection;

(b) provide necessities such as food, shelter, clothing, or mental or other health care;

(c) obtain services necessary for health, safety, or welfare;

(d) carry out the activities of daily living;

(e) manage the adult's own financial resources; or

(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(29) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

62A-3-302. Purpose of Adult Protective Services Program.

Subject to the rules made by the division under Section [62A-3-106.5](#), Adult Protective Services:

(1) shall investigate or cause to be investigated reports of alleged abuse, neglect, or exploitation of vulnerable adults;

(2) shall, where appropriate, provide short-term, limited protective services with the permission of the affected vulnerable adult or the guardian or conservator of the vulnerable adult; and

(3) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and develop procedures and policies relating to:

(a) reporting and investigating incidents of abuse, neglect, or exploitation; and

(b) providing protective services to the extent that funds are appropriated by the Legislature for this purpose.

62A-3-303. Powers and duties of Adult Protective Services.

In addition to all other powers and duties that Adult Protective Services is given under this part, Adult Protective Services:

(1) shall maintain an intake system for receiving and screening reports;

(2) shall investigate reports;

- (3) shall perform protective needs assessments;
 - (4) may coordinate with, or make referrals to, community resources;
 - (5) may provide limited services to a vulnerable adult, on a temporary basis, when family or community resources are not available to provide for the protective needs of the vulnerable adult;
 - (6) shall have access to facilities licensed by, or contracting with, the department or the Department of Health for the purpose of conducting investigations;
 - (7) shall be given access to, or provided with, written statements, documents, exhibits, and other items related to an investigation, including medical or financial records of a vulnerable adult who is the subject of an investigation if:
 - (a) for a vulnerable adult who does not lack the capacity to consent, the vulnerable adult signs a release of information; or
 - (b) for a vulnerable adult who lacks the capacity to consent, an administrative subpoena is issued by Adult Protective Services;
 - (8) may institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
 - (9) may require all persons, including family members of a vulnerable adult and any caretaker, to cooperate with Adult Protective Services in carrying out its duties under this chapter, including conducting investigations and providing protective services;
 - (10) may require all officials, agencies, departments, and political subdivisions of the state to assist and cooperate within their jurisdictional power with the court, the division, and Adult Protective Services in furthering the purposes of this chapter;
 - (11) may conduct studies and compile data regarding abuse, neglect, and exploitation;
- and
- (12) may issue reports and recommendations.

62A-3-304. Cooperation by caretaker.

A caretaker, facility, or other institution shall, regardless of the confidentiality standards of the caretaker, facility, or institution:

- (1) report abuse, neglect, or exploitation of a vulnerable adult in accordance with this chapter;
- (2) cooperate with any Adult Protective Services investigation;
- (3) provide Adult Protective Services with access to records or documents relating to the vulnerable adult who is the subject of an investigation; or
- (4) provide evidence in any judicial or administrative proceeding relating to a vulnerable adult who is the subject of an investigation.

62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Nonmedical healing.

(1) A person who has reason to believe that a vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the nearest law enforcement agency. When the initial report is made to law enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the vulnerable adult.

(2) When the initial report or subsequent investigation by Adult Protective Services indicates that a criminal offense may have occurred against a vulnerable adult:

- (a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense; and
- (b) the law enforcement agency may initiate an investigation in cooperation with Adult Protective Services.

(3) A person who in good faith makes a report or otherwise notifies a law enforcement agency or Adult Protective Services of suspected abuse, neglect, or exploitation is immune from civil and criminal liability in connection with the report or other notification.

(4) (a) A person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a class B misdemeanor.

(b) A covered provider or covered contractor, as defined in Section [26-21-201](#), that knowingly fails to report suspected abuse or neglect, as required by this section, is subject to a private right of action and liability for the abuse or neglect of another person that is committed by the individual who was not reported to Adult Protective Services in accordance with this section.

(5) Under circumstances not amounting to a violation of Section [76-8-508](#), a person who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report, a witness, the person who made the report, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.

(6) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

62A-3-307. Photographing, video, and audio taping.

Law enforcement or Adult Protective Services investigators may collect evidence regarding alleged abuse, neglect, or exploitation of a vulnerable adult by taking, or causing to be taken, photographs, video tape recordings, or audio or video tape accounts of a vulnerable adult, if the vulnerable adult:

(1) consents to the taking of the photographs, video tape recordings, or audio or video tape accounts; or

(2) lacks the capacity to give the consent described in Subsection (1).

62A-3-308. Peace officer's authority to transport -- Notification.

(1) A peace officer may remove and transport, or cause to have transported, a vulnerable adult to an appropriate medical or shelter facility, if:

(a) the officer has probable cause to believe that:

(i) by reason of abuse, neglect, or exploitation there exist exigent circumstances; and

(ii) the vulnerable adult will suffer serious physical injury or death if not immediately placed in a safe environment;

(b) the vulnerable adult refuses to consent or lacks capacity to consent; and

(c) there is not time to notify interested parties or to apply for a warrant or other court order.

(2) A peace officer described in Subsection (1) shall, within four hours after a vulnerable adult is transported to an appropriate medical or shelter facility:

(a) notify Adult Protective Services intake; and

(b) request that Adult Protective Services or the division file a petition with the court for an emergency protective order.

62A-3-309. Enforcement by division -- Duty of county or district attorney.

(1) It is the duty of the county or district attorney, as appropriate under Sections [17-18a-202](#) and [17-18a-203](#), to:

(a) assist and represent the division;

(b) initiate legal proceedings to protect vulnerable adults; and

(c) take appropriate action to prosecute the alleged offenders.

(2) If the county or district attorney fails to act upon the request of the division to provide legal assistance within five business days after the day on which the request is made:

(a) the division may request the attorney general to act; and

(b) the attorney general may, in the attorney general's discretion, assume the responsibilities and carry the action forward in place of the county or district attorney.

62A-3-311. Requests for records.

(1) Requests for records maintained by Adult Protective Services shall be made in writing to Adult Protective Services.

(2) Classification and disclosure of records shall be made in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

62A-3-311.1. Statewide database -- Restricted use and access.

(1) The division shall maintain a database for reports of vulnerable adult abuse, neglect, or exploitation made pursuant to this part.

(2) The database shall include:

(a) the names and identifying data of the alleged abused, neglected, or exploited vulnerable adult and the alleged perpetrator;

(b) information regarding whether or not the allegation of abuse, neglect, or exploitation was found to be:

(i) supported;

(ii) inconclusive;

(iii) without merit; or

(iv) for reports for which the finding is made before May 5, 2008:

(A) substantiated; or

(B) unsubstantiated; and

(c) any other information that may be helpful in furthering the purposes of this part, as determined by the division.

(3) Information obtained from the database may be used only:

(a) for statistical summaries compiled by the department that do not include names or other identifying data;

(b) where identification of a person as a perpetrator may be relevant in a determination regarding whether to grant or deny a license, privilege, or approval made by:

(i) the department;

(ii) the Division of Occupational and Professional Licensing;

(iii) the Bureau of Licensing, within the Department of Health;

(iv) any government agency specifically authorized by statute to access or use the information in the database; or

(v) an agency of another state that performs a similar function to an agency described in Subsections (3)(b)(i) through (iv); or

(c) as otherwise specifically provided by law.

62A-3-311.5. Notice of supported finding -- Procedure for challenging finding -- Limitations.

(1) (a) Except as provided in Subsection (1)(b), within 15 days after the day on which the division makes a supported finding that a person committed abuse, neglect, or exploitation of a vulnerable adult, the division shall serve the person with a notice of agency action, in accordance with Subsections (2) and (3).

(b) The division may serve the notice described in Subsection (1)(a) within a reasonable time after the 15 day period described in Subsection (1)(a) if:

(i) the delay is necessary in order to:

(A) avoid impeding an ongoing criminal investigation or proceeding; or

(B) protect the safety of a person; and

(ii) the notice is provided before the supported finding is used as a basis to deny the person a license or otherwise adversely impact the person.

(2) The division shall cause the notice described in Subsection (1)(a) to be served by personal service or certified mail.

(3) The notice described in Subsection (1)(a) shall:

(a) indicate that the division has conducted an investigation regarding alleged abuse, neglect, or exploitation of a vulnerable adult by the alleged perpetrator;

(b) indicate that, as a result of the investigation described in Subsection (3)(a), the division made a supported finding that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult;

(c) include a summary of the facts that are the basis for the supported finding;

(d) indicate that the supported finding may result in disqualifying the person from:

(i) being licensed, certified, approved, or employed by a government agency;

(ii) being employed by a service provider, person, or other entity that contracts with, or is licensed by, a government agency; or

- (iii) qualifying as a volunteer for an entity described in Subsection (3)(d)(i) or (ii);
- (e) indicate that, as a result of the supported finding, the alleged perpetrator's identifying information is listed in the database;
- (f) indicate that the alleged perpetrator may request a copy of the report of the alleged abuse, neglect, or exploitation; and
- (g) inform the alleged perpetrator of:
 - (i) the right described in Subsection (4)(a); and
 - (ii) the consequences of failing to exercise the right described in Subsection (4)(a) in a timely manner.

(4) (a) The alleged perpetrator has the right, within 30 days after the day on which the notice described in Subsection (1)(a) is served, to challenge the supported finding by filing a request for an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act.

(b) If the alleged perpetrator fails to file a request for an informal adjudicative proceeding within the time described in Subsection (4)(a), the supported finding will become final and will not be subject to challenge or appeal.

(5) At the hearing described in Subsection (4)(a), the division has the burden of proving, by a preponderance of the evidence, that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult.

(6) Notwithstanding any provision of this section, an alleged perpetrator described in this section may not challenge a supported finding if a court of competent jurisdiction entered a finding in a proceeding to which the alleged perpetrator was a party, that the alleged perpetrator committed the abuse, neglect, or exploitation of a vulnerable adult, upon which the supported finding is based.

(7) A person who was listed in the database as a perpetrator before May 5, 2008, and who did not have an opportunity to challenge the division's finding that resulted in the listing, may at any time:

- (a) request that the division reconsider the division's finding; or
- (b) request an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act, to challenge the finding.

62A-3-312. Access to information in database.

The database and the adult protection case file:

- (1) shall be made available to law enforcement agencies, the attorney general's office, and county or district attorney's offices;
- (2) shall be released as required under Subsection [63G-2-202](#)(4)(c); and
- (3) may be made available, at the discretion of the division, to:
 - (a) subjects of a report as follows:
 - (i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or that adult's attorney or legal guardian; and
 - (ii) a person identified in a report as having abused, neglected, or exploited a vulnerable adult, or that person's attorney; and
 - (b) persons involved in an evaluation or assessment of the vulnerable adult as follows:
 - (i) an employee or contractor of the department who is responsible for the evaluation or assessment of an adult protection case file;
 - (ii) a multidisciplinary team approved by the division to assist Adult Protective Services in the evaluation, assessment, and disposition of a vulnerable adult case;
 - (iii) an authorized person or agency providing services to, or responsible for, the care, treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when in the opinion of the division, that information will assist in the protection of, or provide other benefits to, the victim;
 - (iv) a licensing authority for a facility, program, or person providing care to a victim named in a report; and
 - (v) legally authorized protection and advocacy agencies when they represent a victim or have been requested by the division to assist on a case, including:
 - (A) the Office of Public Guardian, created in Section [62A-14-103](#); and

(B) the Long-Term Care Ombudsman Program, created in Section [62A-3-203](#).

62A-3-314. Private right of action -- Estate asset -- Attorney fees.

(1) A vulnerable adult who suffers harm or financial loss as a result of exploitation has a private right of action against the perpetrator.

(2) Upon the death of a vulnerable adult, any cause of action under this section shall constitute an asset of the estate of the vulnerable adult.

(3) If the plaintiff prevails in an action brought under this section, the court may order that the defendant pay the costs and reasonable attorney fees of the plaintiff.

(4) If the defendant prevails in an action brought under this section, the court may order that the plaintiff pay the costs and reasonable attorney fees of the defendant, if the court finds that the action was frivolous, unreasonable, or taken in bad faith.

62A-3-315. Protective services voluntary unless court ordered.

(1) Vulnerable adults who receive protective services under this part shall do so knowingly or voluntarily or upon district court order.

(2) Protective services may be provided without a court order for a vulnerable adult who does not lack capacity to consent and who requests or knowingly or voluntarily consents to those services. Protective services may also be provided for a vulnerable adult whose guardian or conservator with authority to consent does consent to those services. When short-term, limited protective services are provided, the division and the recipient, or the recipient's guardian or conservator, shall execute a written agreement setting forth the purposes and limitations of the services to be provided. If consent is subsequently withdrawn by the recipient, the recipient's guardian or conservator, or the court, services, including any investigation, shall cease.

(3) The court may order protective services to be provided to a vulnerable adult who does not consent or who lacks capacity to consent to services in accordance with this part.

62A-3-316. Costs incurred in providing of protective services.

Costs incurred in providing protective services are the responsibility of the vulnerable adult when:

(1) the vulnerable adult is financially able to pay for those services, according to rates established by the division, and that payment is provided for as part of the written agreement for services described in Section [62A-3-315](#);

(2) the vulnerable adult to be protected is eligible for those services from another governmental agency; or

(3) the court appoints a guardian or conservator and orders that the costs be paid from the vulnerable adult's estate.

62A-3-317. Venue for protective services proceedings.

Venue for all proceedings for protective services under this chapter is in the county where the vulnerable adult resides or is present.

62A-3-318. Petition by division for protective services -- Notice -- Rights of adult.

(1) If the division determines that a vulnerable adult is in need of protective services but lacks capacity to consent to protective services, the division may petition the district court for an order authorizing the division to provide protective services. The petition shall include:

(a) the name, address, and age of the adult who is the subject of the petition;

(b) the reasonably ascertainable names and addresses of the spouse, parents, adult children, and caretaker of the adult who is the subject of the petition;

(c) the name and address of any court-appointed guardian or conservator for the adult;

(d) specific facts sufficient to show that the subject of the petition is a vulnerable adult in need of protective services; and

(e) specific facts sufficient to show that the vulnerable adult lacks capacity to consent.

(2) Upon the filing of a petition, the court shall set a date for hearing on the petition. At least 10 days' notice of the petition and the hearing shall be given to the adult who is the subject of the petition and to each other person identified in Subsection (1)(b) or (c).

(3) The notice shall be in plain language and in at least a 14-point font. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the adult, and a list of rights as set forth in Subsections (4), (6), and (7). The petition and notice shall be served personally upon the adult who is the subject of the petition and upon the adult's spouse, caretaker, and parents if they can be found within the state. Notice to the spouse, caretaker, and parents, if they cannot be found within the state, and to other persons shall be given by first-class mail, postage prepaid.

(4) The adult who is the subject of the petition shall have the right to be present at the hearing, unless the adult has knowingly and voluntarily waived the right to be present, or unless a licensed physician has certified that the adult is physically unable to attend. Waiver shall not be presumed by nonappearance of the adult, but shall be determined by the court on the basis of evidence provided to the court.

(5) The adult who is the subject of the petition may be examined by a licensed physician appointed by the court, who shall submit a written report to the court. The adult may be interviewed by a visitor, as defined in Section [75-5-308](#), appointed by the court, who shall submit a written report to the court. The visitor may also interview knowledgeable persons at the division and others who have knowledge of the adult who is the subject of the petition.

(6) The adult who is the subject of the petition has the right to be represented by counsel at all proceedings before the court. Unless the adult has retained counsel, the court shall appoint counsel. The fees of the adult's counsel shall be paid by the adult who is the subject of the petition unless the adult is indigent in which case the division will pay the adult's reasonable attorney fees.

(7) The adult who is the subject of the petition is entitled to present evidence and to cross-examine witnesses, including any court-appointed physician and visitor. The issues may be determined at a closed hearing if the adult who is the subject of the petition so requests.

(8) Nothing in this section limits proceedings under Title 75, Utah Uniform Probate Code.

62A-3-319. Court order for protective services -- Review.

(1) Only upon court order may involuntary protective services be provided to a vulnerable adult who lacks capacity to consent to services.

(2) The court may order protective services if it is satisfied that the adult who is the subject of the petition under Section [62A-3-318](#) lacks capacity to consent to services and is in need of protective services. The court shall specifically state the purpose, extent, and limitations of the protective services, including specific findings of fact and conclusions of law. The court shall fashion any order so as to place the least possible restrictions on the rights of the vulnerable adult, consistent with the welfare, safety, and best interests of the adult.

(3) Any party to the proceedings may petition the court for modification or dissolution of the order at any time upon a showing of a material change in circumstances. Any protected person has the right to petition the court for a rehearing within 10 days after the date the order was entered.

62A-3-320. Petition for emergency order -- Protective services -- Temporary guardian -- Forcible entry.

(1) Upon the filing of a petition for an emergency order, the court may, without notice, order appropriate protective services, if the court finds that:

- (a) the subject of the petition is a vulnerable adult;
- (b) the adult has no court-appointed guardian or conservator or the guardian or conservator is not effectively performing the guardian's or conservator's duties;
- (c) an emergency exists; and
- (d) the welfare, safety, or best interests of the adult require immediate action.

(2) The order described in Subsection (1) shall specifically designate the protective services which are approved, together with supporting facts.

(3) Protective services authorized in an emergency order may not include hospitalization, nursing or custodial care, or a change in residence, unless the court specifically finds that the action is necessary and authorizes the specific protective services in the order.

(4) (a) Protective services provided through an emergency order may not be provided longer than three business days, at which time the order shall expire unless a petition for guardianship, conservatorship, or other protective services is filed.

(b) If a petition for guardianship, conservatorship, or other protective services is filed within the three-business-day period described in Subsection (4)(a), the emergency order may be continued for as long as 15 days from the day on which the last petition was filed, to allow time for a hearing to determine whether the emergency order shall remain in effect.

(5) In the emergency order, the court may appoint a temporary guardian, in accordance with Section [75-5-310](#).

(6) To implement an emergency order, the court may authorize forcible entry by a peace officer into the premises where the protected person is residing, only upon a showing that voluntary access into the premises is not possible and that forcible entry is required.

62A-3-321. Petition for injunctive relief when caretaker refuses to allow services.

(1) When a vulnerable adult is in need of protective services and the caretaker refuses to allow the provision of those services, the division may petition the court for injunctive relief prohibiting the caretaker from interfering with the provision of protective services.

(2) The division's petition under Subsection (1) shall allege facts sufficient to show that the vulnerable adult is in need of protective services, that the vulnerable adult either consents or lacks capacity to consent to those services, and that the caretaker refuses to allow the provision of those services or to order other appropriate relief.

(3) The court may, on appropriate findings and conclusions in accordance with Rule 65A, Utah Rules of Civil Procedure, issue an order enjoining the caretaker from interfering with the provision of protective services.

(4) The petition under Subsection (1) may be joined with a petition under Section [62A-3-318](#) or Section [62A-3-320](#).

Title 62A Utah Human Services Code

Section 403

Abuse and Neglect Reporting Law

62A-4a-403. Reporting requirements.

(1) (a) Except as provided in Subsection (2), when any person including persons licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 31b, Nurse Practice Act, has reason to believe that a child has been subjected to abuse or neglect, or who observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect, that person shall immediately notify the nearest peace officer, law enforcement agency, or office of the division.

(b) Upon receipt of the notification described in Subsection (1)(a), the peace officer or law enforcement agency shall immediately notify the nearest office of the division. If an initial report of abuse or neglect is made to the division, the division shall immediately notify the appropriate local law enforcement agency. The division shall, in addition to its own investigation, comply with and lend support to investigations by law enforcement undertaken pursuant to a report made under this section.

(2) Subject to Subsection (3), the notification requirements of Subsection (1) do not apply to a clergyman or priest, without the consent of the person making the confession, with regard to any confession made to the clergyman or priest in the professional character of the clergyman or priest in the course of discipline enjoined by the church to which the clergyman or priest belongs, if:

- (a) the confession was made directly to the clergyman or priest by the perpetrator; and
- (b) the clergyman or priest is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession.

(3) (a) When a clergyman or priest receives information about abuse or neglect from any source other than confession of the perpetrator, the clergyman or priest is required to give notification on the basis of that information even though the clergyman or priest may have also received a report of abuse or neglect from the confession of the perpetrator.

(b) Exemption of notification requirements for a clergyman or priest does not exempt a clergyman or priest from any other efforts required by law to prevent further abuse or neglect by the perpetrator.

Le.utah.gov/code/TITLE62A/htm/62a15_061000.htm
Title 62A Utah Human Services Code
Chapter 15 Substance Abuse and Mental Health Act
Section 610

62A-15-610. Objectives of state hospital and other facilities -- Persons who may be admitted to state hospital.

(1) The objectives of the state hospital and other mental health facilities shall be to care for all persons within this state who are subject to the provisions of this chapter; and to furnish them with the proper attendance, medical treatment, seclusion, rest, restraint, amusement, occupation, and support that is conducive to their physical and mental well-being.

(2) Only the following persons may be admitted to the state hospital:

(a) persons 18 years of age and older who meet the criteria necessary for commitment under this part and who have severe mental disorders for whom no appropriate, less restrictive treatment alternative is available;

(b) persons under 18 years of age who meet the criteria necessary for commitment under Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, and for whom no less restrictive alternative is available;

(c) persons adjudicated and found to be guilty with a mental illness under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness;

(d) persons adjudicated and found to be not guilty by reason of insanity who are under a subsequent commitment order because they have a mental illness and are a danger to themselves or others, under Section [77-16a-302](#);

(e) persons found incompetent to proceed under Section [77-15-6](#);

(f) persons who require an examination under Title 77, Utah Code of Criminal Procedure; and

(g) persons in the custody of the Department of Corrections, admitted in accordance with Section [62A-15-605.5](#), giving priority to those persons with severe mental disorders.

Ethical Standards for Psychologists www.apa.org/ethics

Introduction and Applicability

Psychologists are committed to increasing scientific and professional knowledge of behavior and people's understanding of themselves and others and to the use of such knowledge to improve the condition of individuals, organizations and society. Psychologists respect and protect civil and human rights and the central importance of freedom of inquiry and expression in research, teaching, and publication. They strive to help the public in developing informed judgments and choices concerning human behavior. In doing so, they perform many roles, such as researcher, educator, diagnostician, therapist, supervisor, consultant, administrator, social interventionist and expert witness. This Ethics Code provides a common set of principles and standards upon which psychologists build their professional and scientific work.

This Ethics Code is intended to provide specific standards to cover most situations encountered by psychologists. It has as its goals the welfare and protection of the individuals and groups with whom psychologists work and the education of members, students and the public regarding ethical standards of the discipline.

The development of a dynamic set of ethical standards for psychologists' work-related conduct requires a personal commitment and lifelong effort to act ethically; to encourage ethical behavior by students, supervisees, employees and colleagues; and to consult with others concerning ethical problems.

Preamble

This section consists of General Principles. General Principles, as opposed to Ethical Standards, are aspirational in nature. Their intent is to guide and inspire psychologists toward the very highest ethical ideals of the profession. General Principles, in contrast to Ethical Standards, do not represent obligations and should not form the basis for imposing sanctions. Relying upon General Principles for either of these reasons distorts both their meaning and purpose.

Principle A: Beneficence and Nonmaleficence

Psychologists strive to benefit those with whom they work and take care to do no harm. In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons and the welfare of animal subjects of research. When conflicts occur among psychologists' obligations or concerns, they attempt to resolve these conflicts in a responsible fashion that avoids or minimizes harm. Because psychologists' scientific and professional judgments and actions may affect the lives of others, they are alert to and guard against personal, financial, social, organizational or political factors that might lead to misuse of their influence. Psychologists strive to be aware of the possible effect of their own physical and mental health on their ability to help those with whom they work.

Principle B: Fidelity and Responsibility

Psychologists establish relationships of trust with those with whom they work. They are aware of their professional and scientific responsibilities to society and to the specific communities in which they work. Psychologists uphold professional standards of conduct, clarify their professional roles and obligations, accept appropriate responsibility for their behavior and seek to manage conflicts of interest that could lead to exploitation or harm. Psychologists consult with, refer to, or cooperate with other professionals and institutions to the extent needed to serve the best interests of those with whom they work. They are concerned about the ethical compliance of their colleagues' scientific and professional conduct. Psychologists strive to contribute a portion of their professional time for little or no compensation or personal advantage.

Principle C: Integrity

Psychologists seek to promote accuracy, honesty and truthfulness in the science, teaching and practice of psychology. In these activities psychologists do not steal, cheat or engage in fraud, subterfuge or intentional misrepresentation of fact. Psychologists strive to keep their promises and to avoid unwise or unclear commitments. In situations in which deception may be ethically justifiable to maximize benefits and minimize harm, psychologists have a serious obligation to

consider the need for, the possible consequences of, and their responsibility to correct any resulting mistrust or other harmful effects that arise from the use of such techniques.

Principle D: Justice

Psychologists recognize that fairness and justice entitle all persons to access to and benefit from the contributions of psychology and to equal quality in the processes, procedures and services being conducted by psychologists. Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of their competence and the limitations of their expertise do not lead to or condone unjust practices.

Principle E: Respect for People's Rights and Dignity

Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination. Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making. Psychologists are aware of and respect cultural, individual and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language and socioeconomic status and consider these factors when working with members of such groups. Psychologists try to eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone activities of others based upon such prejudices.

Standard 1: Resolving Ethical Issues

1.01 Misuse of Psychologists' Work

If psychologists learn of misuse or misrepresentation of their work, they take reasonable steps to correct or minimize the misuse or misrepresentation.

1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

If psychologists' ethical responsibilities conflict with law, regulations or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

1.03 Conflicts Between Ethics and Organizational Demands

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

1.04 Informal Resolution of Ethical Violations

When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual, if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved. (See also Standards [1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority](#), and [1.03, Conflicts Between Ethics and Organizational Demands](#).)

1.05 Reporting Ethical Violations

If an apparent ethical violation has substantially harmed or is likely to substantially harm a person or organization and is not appropriate for informal resolution under Standard [1.04, Informal Resolution of Ethical Violations](#), or is not resolved properly in that fashion, psychologists take further action appropriate to the situation. Such action might include referral to state or national committees on professional ethics, to state licensing boards or to the appropriate institutional authorities. This standard does not apply when an intervention would violate confidentiality rights or when psychologists have been retained to review the work of another psychologist whose professional conduct is in question. (See also Standard [1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority](#).)

1.06 Cooperating with Ethics Committees

Psychologists cooperate in ethics investigations, proceedings and resulting requirements of the APA or any affiliated state psychological association to which they belong. In doing so, they address any confidentiality issues. Failure to cooperate is itself an ethics violation. However, making a request for deferment of adjudication of an ethics complaint pending the outcome of litigation does not alone constitute noncooperation.

1.07 Improper Complaints

Psychologists do not file or encourage the filing of ethics complaints that are made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

1.08 Unfair Discrimination Against Complainants and Respondents

Psychologists do not deny persons employment, advancement, admissions to academic or other programs, tenure, or promotion, based solely upon their having made or their being the subject of an ethics complaint. This does not preclude taking action based upon the outcome of such proceedings or considering other appropriate information.

Standard 2: Competence

2.01 Boundaries of Competence

(a) Psychologists provide services, teach and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study or professional experience.

(b) Where scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language or socioeconomic status is essential for effective implementation of their services or research, psychologists have or obtain the training, experience, consultation or supervision necessary to ensure the competence of their services, or they make appropriate referrals, except as provided in Standard [2.02, Providing Services in Emergencies](#).

(c) Psychologists planning to provide services, teach or conduct research involving populations, areas, techniques or technologies new to them undertake relevant education, training, supervised experience, consultation or study.

(d) When psychologists are asked to provide services to individuals for whom appropriate mental health services are not available and for which psychologists have not obtained the competence necessary, psychologists with closely related prior training or experience may provide such services in order to ensure that services are not denied if they make a reasonable effort to obtain the competence required by using relevant research, training, consultation or study.

(e) In those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect clients/patients, students, supervisees, research participants, organizational clients and others from harm.

(f) When assuming forensic roles, psychologists are or become reasonably familiar with the judicial or administrative rules governing their roles.

2.02 Providing Services in Emergencies

In emergencies, when psychologists provide services to individuals for whom other mental health services are not available and for which psychologists have not obtained the necessary training, psychologists may provide such services in order to ensure that services are not denied. The services are discontinued as soon as the emergency has ended or appropriate services are available.

2.03 Maintaining Competence

Psychologists undertake ongoing efforts to develop and maintain their competence.

2.04 Bases for Scientific and Professional Judgments

Psychologists' work is based upon established scientific and professional knowledge of the discipline. (See also Standards [2.01e, Boundaries of Competence](#), and [10.01b, Informed Consent to Therapy](#).)

2.05 Delegation of Work to Others

Psychologists who delegate work to employees, supervisees or research or teaching assistants or who use the services of others, such as interpreters, take reasonable steps to (1) avoid delegating such work to persons who have a multiple relationship with those being served that would likely lead to exploitation or loss of objectivity; (2) authorize only those responsibilities that such persons can be expected to perform competently on the basis of their education, training or experience, either independently or with the level of supervision being provided; and (3) see that such persons perform these services competently. (See also Standards [2.02, Providing Services in Emergencies](#); [3.05, Multiple Relationships](#); [4.01, Maintaining Confidentiality](#); [9.01, Bases for Assessments](#); [9.02, Use of Assessments](#); [9.03, Informed Consent in Assessments](#); and [9.07, Assessment by Unqualified Persons](#).)

2.06 Personal Problems and Conflicts

(a) Psychologists refrain from initiating an activity when they know or should know that there is a substantial likelihood that their personal problems will prevent them from performing their work-related activities in a competent manner.

(b) When psychologists become aware of personal problems that may interfere with their performing work-related duties adequately, they take appropriate measures, such as obtaining professional consultation or assistance and determine whether they should limit, suspend or terminate their work-related duties. (See also Standard [10.10, Terminating Therapy](#).)

Standard 3: Human Relations

3.01 Unfair Discrimination

In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status or any basis proscribed by law.

3.02 Sexual Harassment

Psychologists do not engage in sexual harassment. Sexual harassment is sexual solicitation, physical advances or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the psychologist's activities or roles as a psychologist and that either (1) is unwelcome, is offensive or creates a hostile workplace or educational environment, and the psychologist knows or is told this or (2) is sufficiently severe or intense to be abusive to a reasonable person in the context. Sexual harassment can consist of a single intense or severe act or of multiple persistent or pervasive acts. (See also Standard [1.08, Unfair Discrimination Against Complainants and Respondents](#).)

3.03 Other Harassment

Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those persons' age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language or socioeconomic status.

3.04 Avoiding Harm

Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

3.05 Multiple Relationships

(a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.

A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists.

Multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical.

(b) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.

(c) When psychologists are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, at the outset they clarify role expectations and the extent of confidentiality and thereafter as changes occur. (See also Standards [3.04, Avoiding Harm](#), and [3.07, Third-Party Requests for Services](#).)

3.06 Conflict of Interest

Psychologists refrain from taking on a professional role when personal, scientific, professional, legal, financial or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence or effectiveness in performing their functions as psychologists or (2) expose the person or organization with whom the professional relationship exists to harm or exploitation.

3.07 Third-Party Requests for Services

When psychologists agree to provide services to a person or entity at the request of a third party, psychologists attempt to clarify at the outset of the service the nature of the relationship with all individuals or organizations involved. This clarification includes the role of the psychologist (e.g., therapist, consultant, diagnostician, or expert witness), an identification of who is the client, the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality. (See also Standards [3.05, Multiple relationships](#), and 4.02, Discussing the Limits of Confidentiality.)

3.08 Exploitative Relationships

Psychologists do not exploit persons over whom they have supervisory, evaluative or other authority such as clients/patients, students, supervisees, research participants and employees. (See also Standards [3.05, Multiple Relationships](#); [6.04, Fees and Financial Arrangements](#); [6.05, Barter with Clients/Patients](#); [7.07, Sexual Relationships with Students and Supervisees](#); [10.05, Sexual Intimacies with Current Therapy Clients/Patients](#); [10.06, Sexual Intimacies with Relatives or Significant Others of Current Therapy Clients/Patients](#); [10.07, Therapy with Former Sexual Partners](#); and [10.08, Sexual Intimacies with Former Therapy Clients/Patients](#).)

3.09 Cooperation with Other Professionals

When indicated and professionally appropriate, psychologists cooperate with other professionals in order to serve their clients/patients effectively and appropriately. (See also Standard [4.05, Disclosures](#).)

3.10 Informed Consent

(a) When psychologists conduct research or provide assessment, therapy, counseling or consulting services in person or via electronic transmission or other forms of communication, they obtain the informed consent of the individual or individuals using language that is reasonably understandable to that person or persons except when conducting such activities without consent is mandated by law or governmental regulation or as otherwise provided in this Ethics Code. (See also Standards [8.02, Informed Consent to Research](#); [9.03, Informed Consent in Assessments](#); and [10.01, Informed Consent to Therapy](#).)

(b) For persons who are legally incapable of giving informed consent, psychologists nevertheless (1) provide an appropriate explanation, (2) seek the individual's assent, (3) consider such persons' preferences and best interests, and (4) obtain appropriate permission from a legally authorized person, if such substitute consent is permitted or required by law. When consent by a legally authorized person is not permitted or required by law, psychologists take reasonable steps to protect the individual's rights and welfare.

(c) When psychological services are court ordered or otherwise mandated, psychologists inform the individual of the nature of the anticipated services, including whether the services are court ordered or mandated and any limits of confidentiality, before proceeding.

(d) Psychologists appropriately document written or oral consent, permission, and assent. (See also Standards [8.02, Informed Consent to Research](#); [9.03, Informed Consent in Assessments](#); and [10.01, Informed Consent to Therapy](#).)

3.11 Psychological Services Delivered to or Through Organizations

(a) Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about (1) the nature and

objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality. As soon as feasible, they provide information about the results and conclusions of such services to appropriate persons.

(b) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

3.12 Interruption of Psychological Services

Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, relocation or retirement or by the client's/patient's relocation or financial limitations. (See also Standard [6.02c, Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work.](#))

Standard 4: Privacy and Confidentiality

4.01 Maintaining Confidentiality

Psychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium, recognizing that the extent and limits of confidentiality may be regulated by law or established by institutional rules or professional or scientific relationship. (See also Standard [2.05, Delegation of Work to Others.](#))

4.02 Discussing the Limits of Confidentiality

(a) Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives) and organizations with whom they establish a scientific or professional relationship (1) the relevant limits of confidentiality and (2) the foreseeable uses of the information generated through their psychological activities. (See also Standard [3.10, Informed Consent.](#))

(b) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.

(c) Psychologists who offer services, products, or information via electronic transmission inform clients/patients of the risks to privacy and limits of confidentiality.

4.03 Recording

Before recording the voices or images of individuals to whom they provide services, psychologists obtain permission from all such persons or their legal representatives. (See also Standards [8.03, Informed Consent for Recording Voices and Images in Research](#); [8.05, Dispensing with Informed Consent for Research](#); and [8.07, Deception in Research.](#))

4.04 Minimizing Intrusions on Privacy

(a) Psychologists include in written and oral reports and consultations, only information germane to the purpose for which the communication is made.

(b) Psychologists discuss confidential information obtained in their work only for appropriate scientific or professional purposes and only with persons clearly concerned with such matters.

4.05 Disclosures

(a) Psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient or another legally authorized person on behalf of the client/patient unless prohibited by law.

(b) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to (1) provide needed professional services; (2) obtain appropriate professional consultations; (3) protect the client/patient, psychologist, or others from harm; or (4) obtain payment for services from a client/patient, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose. (See also Standard [6.04e, Fees and Financial Arrangements.](#))

4.06 Consultations

When consulting with colleagues, (1) psychologists do not disclose confidential information that reasonably could lead to the identification of a client/patient, research participant or other person or organization with whom they have a confidential relationship unless they have obtained the

prior consent of the person or organization or the disclosure cannot be avoided, and (2) they disclose information only to the extent necessary to achieve the purposes of the consultation. (See also Standard [4.01, Maintaining Confidentiality.](#))

4.07 Use of Confidential Information for Didactic or Other Purposes

Psychologists do not disclose in their writings, lectures or other public media, confidential, personally identifiable information concerning their clients/patients, students, research participants, organizational clients or other recipients of their services that they obtained during the course of their work, unless (1) they take reasonable steps to disguise the person or organization, (2) the person or organization has consented in writing, or (3) there is legal authorization for doing so.

Standard 5: Advertising and Other Public Statements

5.01 Avoidance of False or Deceptive Statements

(a) Public statements include but are not limited to paid or unpaid advertising, product endorsements, grant applications, licensing applications, other credentialing applications, brochures, printed matter, directory listings, personal resumes or curricula vitae or comments for use in media such as print or electronic transmission, statements in legal proceedings, lectures and public oral presentations and published materials. Psychologists do not knowingly make public statements that are false, deceptive or fraudulent concerning their research, practice or other work activities or those of persons or organizations with which they are affiliated.

(b) Psychologists do not make false, deceptive or fraudulent statements concerning (1) their training, experience or competence; (2) their academic degrees; (3) their credentials; (4) their institutional or association affiliations; (5) their services; (6) the scientific or clinical basis for or results or degree of success of, their services; (7) their fees; or (8) their publications or research findings.

(c) Psychologists claim degrees as credentials for their health services only if those degrees (1) were earned from a regionally accredited educational institution or (2) were the basis for psychology licensure by the state in which they practice.

5.02 Statements by Others

(a) Psychologists who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.

(b) Psychologists do not compensate employees of press, radio, television or other communication media in return for publicity in a news item. (See also Standard [1.01, Misuse of Psychologists' Work.](#))

(c) A paid advertisement relating to psychologists' activities must be identified or clearly recognizable as such.

5.03 Descriptions of Workshops and Non-Degree-Granting Educational Programs

To the degree to which they exercise control, psychologists responsible for announcements, catalogs, brochures or advertisements describing workshops, seminars or other non-degree-granting educational programs ensure that they accurately describe the audience for which the program is intended, the educational objectives, the presenters and the fees involved.

5.04 Media Presentations

When psychologists provide public advice or comment via print, Internet or other electronic transmission, they take precautions to ensure that statements (1) are based on their professional knowledge, training or experience in accord with appropriate psychological literature and practice; (2) are otherwise consistent with this Ethics Code; and (3) do not indicate that a professional relationship has been established with the recipient. (See also Standard [2.04, Bases for Scientific and Professional Judgments.](#))

5.05 Testimonials

Psychologists do not solicit testimonials from current therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence.

5.06 In-Person Solicitation

Psychologists do not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence. However, this prohibition does not

preclude (1) attempting to implement appropriate collateral contacts for the purpose of benefiting an already engaged therapy client/patient or (2) providing disaster or community outreach services.

Standard 6: Record Keeping and Fees

6.01 Documentation of Professional and Scientific Work and Maintenance of Records

Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain and dispose of records and data relating to their professional and scientific work in order to (1) facilitate provision of services later by them or by other professionals, (2) allow for replication of research design and analyses, (3) meet institutional requirements, (4) ensure accuracy of billing and payments, and (5) ensure compliance with law. (See also Standard [4.01, Maintaining Confidentiality](#).)

6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work

(a) Psychologists maintain confidentiality in creating, storing, accessing, transferring and disposing of records under their control, whether these are written, automated or in any other medium. (See also Standards [4.01, Maintaining Confidentiality](#), and [6.01, Documentation of Professional and Scientific Work and Maintenance of Records](#).)

(b) If confidential information concerning recipients of psychological services is entered into databases or systems of records available to persons whose access has not been consented to by the recipient, psychologists use coding or other techniques to avoid the inclusion of personal identifiers.

(c) Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice. (See also Standards [3.12, Interruption of Psychological Services](#), and [10.09, Interruption of Therapy](#).)

6.03 Withholding Records for Nonpayment

Psychologists may not withhold records under their control that are requested and needed for a client's/patient's emergency treatment solely because payment has not been received.

6.04 Fees and Financial Arrangements

(a) As early as is feasible in a professional or scientific relationship, psychologists and recipients of psychological services reach an agreement specifying compensation and billing arrangements.

(b) Psychologists' fee practices are consistent with law.

(c) Psychologists do not misrepresent their fees.

(d) If limitations to services can be anticipated because of limitations in financing, this is discussed with the recipient of services as early as is feasible. (See also Standards [10.09, Interruption of Therapy](#), and [10.10, Terminating Therapy](#).)

(e) If the recipient of services does not pay for services as agreed, and if psychologists intend to use collection agencies or legal measures to collect the fees, psychologists first inform the person that such measures will be taken and provide that person an opportunity to make prompt payment. (See also Standards [4.05, Disclosures](#); [6.03, Withholding Records for Nonpayment](#); and [10.01, Informed Consent to Therapy](#).)

6.05 Barter with Clients/Patients

Barter is the acceptance of goods, services, or other nonmonetary remuneration from clients/patients in return for psychological services. Psychologists may barter only if (1) it is not clinically contraindicated, and (2) the resulting arrangement is not exploitative. (See also Standards [3.05, Multiple Relationships](#), and [6.04, Fees and Financial Arrangements](#).)

6.06 Accuracy in Reports to Payors and Funding Sources

In their reports to payors for services or sources of research funding, psychologists take reasonable steps to ensure the accurate reporting of the nature of the service provided or research conducted, the fees, charges or payments, and where applicable, the identity of the provider, the findings and the diagnosis. (See also Standards [4.01, Maintaining Confidentiality](#); [4.04, Minimizing Intrusions on Privacy](#); and [4.05, Disclosures](#).)

6.07 Referrals and Fees

When psychologists pay, receive payment from or divide fees with another professional, other

than in an employer-employee relationship, the payment to each is based on the services provided (clinical, consultative, administrative or other) and is not based on the referral itself. (See also Standard [3.09, Cooperation with Other Professionals.](#))

Standard 7: Education and Training

7.01 Design of Education and Training Programs

Psychologists responsible for education and training programs take reasonable steps to ensure that the programs are designed to provide the appropriate knowledge and proper experiences, and to meet the requirements for licensure, certification or other goals for which claims are made by the program. (See also Standard [5.03, Descriptions of Workshops and Non-Degree-Granting Educational Programs.](#))

7.02 Descriptions of Education and Training Programs

Psychologists responsible for education and training programs take reasonable steps to ensure that there is a current and accurate description of the program content (including participation in required course- or program-related counseling, psychotherapy, experiential groups, consulting projects or community service), training goals and objectives, stipends and benefits and requirements that must be met for satisfactory completion of the program. This information must be made readily available to all interested parties.

7.03 Accuracy in Teaching

(a) Psychologists take reasonable steps to ensure that course syllabi are accurate regarding the subject matter to be covered, bases for evaluating progress and the nature of course experiences. This standard does not preclude an instructor from modifying course content or requirements when the instructor considers it pedagogically necessary or desirable, so long as students are made aware of these modifications in a manner that enables them to fulfill course requirements. (See also Standard [5.01, Avoidance of False or Deceptive Statements.](#))

(b) When engaged in teaching or training, psychologists present psychological information accurately. (See also Standard [2.03, Maintaining Competence.](#))

7.04 Student Disclosure of Personal Information

Psychologists do not require students or supervisees to disclose personal information in course- or program-related activities, either orally or in writing, regarding sexual history, history of abuse and neglect, psychological treatment and relationships with parents, peers and spouses or significant others except if (1) the program or training facility has clearly identified this requirement in its admissions and program materials or (2) the information is necessary to evaluate or obtain assistance for students whose personal problems could reasonably be judged to be preventing them from performing their training- or professionally related activities in a competent manner or posing a threat to the students or others.

7.05 Mandatory Individual or Group Therapy

(a) When individual or group therapy is a program or course requirement, psychologists responsible for that program allow students in undergraduate and graduate programs the option of selecting such therapy from practitioners unaffiliated with the program. (See also Standard [7.02, Descriptions of Education and Training Programs.](#))

(b) Faculty who are or are likely to be responsible for evaluating students' academic performance do not themselves provide that therapy. (See also Standard [3.05, Multiple Relationships.](#))

7.06 Assessing Student and Supervisee Performance

(a) In academic and supervisory relationships, psychologists establish a timely and specific process for providing feedback to students and supervisees. Information regarding the process is provided to the student at the beginning of supervision.

(b) Psychologists evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements.

7.07 Sexual Relationships with Students and Supervisees

Psychologists do not engage in sexual relationships with students or supervisees who are in their department, agency, or training center or over whom psychologists have or are likely to have evaluative authority. (See also Standard [3.05, Multiple Relationships.](#))

Standard 8: Research and Publication

8.01 Institutional Approval

When institutional approval is required, psychologists provide accurate information about their research proposals and obtain approval prior to conducting the research. They conduct the research in accordance with the approved research protocol.

8.02 Informed Consent to Research

(a) When obtaining informed consent as required in Standard 3.10, Informed Consent, psychologists inform participants about (1) the purpose of the research, expected duration and procedures; (2) their right to decline to participate and to withdraw from the research once participation has begun; (3) the foreseeable consequences of declining or withdrawing; (4) reasonably foreseeable factors that may be expected to influence their willingness to participate such as potential risks, discomfort or adverse effects; (5) any prospective research benefits; (6) limits of confidentiality; (7) incentives for participation; and (8) whom to contact for questions about the research and research participants' rights. They provide opportunity for the prospective participants to ask questions and receive answers. (See also Standards [8.03, Informed Consent for Recording Voices and Images in Research](#); [8.05, Dispensing with Informed Consent for Research](#); and [8.07, Deception in Research](#).)

(b) Psychologists conducting intervention research involving the use of experimental treatments clarify to participants at the outset of the research (1) the experimental nature of the treatment; (2) the services that will or will not be available to the control group(s) if appropriate; (3) the means by which assignment to treatment and control groups will be made; (4) available treatment alternatives if an individual does not wish to participate in the research or wishes to withdraw once a study has begun; and (5) compensation for or monetary costs of participating including, if appropriate, whether reimbursement from the participant or a third-party payor will be sought. (See also Standard [8.02a, Informed Consent to Research](#).)

8.03 Informed Consent for Recording Voices and Images in Research

Psychologists obtain informed consent from research participants prior to recording their voices or images for data collection unless (1) the research consists solely of naturalistic observations in public places, and it is not anticipated that the recording will be used in a manner that could cause personal identification or harm, or (2) the research design includes deception, and consent for the use of the recording is obtained during debriefing. (See also Standard [8.07, Deception in Research](#).)

8.04 Client/Patient, Student, and Subordinate Research Participants

(a) When psychologists conduct research with clients/patients, students or subordinates as participants, psychologists take steps to protect the prospective participants from adverse consequences of declining or withdrawing from participation.

(b) When research participation is a course requirement or an opportunity for extra credit, the prospective participant is given the choice of equitable alternative activities.

8.05 Dispensing with Informed Consent for Research

Psychologists may dispense with informed consent only (1) where research would not reasonably be assumed to create distress or harm and involves (a) the study of normal educational practices, curricula, or classroom management methods conducted in educational settings; (b) only anonymous questionnaires, naturalistic observations or archival research for which disclosure of responses would not place participants at risk of criminal or civil liability or damage their financial standing, employability or reputation, and confidentiality is protected; or (c) the study of factors related to job or organization effectiveness conducted in organizational settings for which there is no risk to participants' employability, and confidentiality is protected or (2) where otherwise permitted by law or federal or institutional regulations.

8.06 Offering Inducements for Research Participation

(a) Psychologists make reasonable efforts to avoid offering excessive or inappropriate financial or other inducements for research participation when such inducements are likely to coerce participation.

(b) When offering professional services as an inducement for research participation, psychologists clarify the nature of the services, as well as the risks, obligations and limitations. (See also Standard [6.05, Barter with Clients/Patients.](#))

8.07 Deception in Research

(a) Psychologists do not conduct a study involving deception unless they have determined that the use of deceptive techniques is justified by the study's significant prospective scientific, educational or applied value and that effective nondeceptive alternative procedures are not feasible.

(b) Psychologists do not deceive prospective participants about research that is reasonably expected to cause physical pain or severe emotional distress.

(c) Psychologists explain any deception that is an integral feature of the design and conduct of an experiment to participants as early as is feasible, preferably at the conclusion of their participation, but no later than at the conclusion of the data collection, and permit participants to withdraw their data. (See also Standard [8.08, Debriefing.](#))

8.08 Debriefing

(a) Psychologists provide a prompt opportunity for participants to obtain appropriate information about the nature, results, and conclusions of the research, and they take reasonable steps to correct any misconceptions that participants may have of which the psychologists are aware.

(b) If scientific or humane values justify delaying or withholding this information, psychologists take reasonable measures to reduce the risk of harm.

(c) When psychologists become aware that research procedures have harmed a participant, they take reasonable steps to minimize the harm.

8.09 Humane Care and Use of Animals in Research

(a) Psychologists acquire, care for, use, and dispose of animals in compliance with current federal, state and local laws and regulations, and with professional standards.

(b) Psychologists trained in research methods and experienced in the care of laboratory animals supervise all procedures involving animals and are responsible for ensuring appropriate consideration of their comfort, health and humane treatment.

(c) Psychologists ensure that all individuals under their supervision who are using animals have received instruction in research methods and in the care, maintenance and handling of the species being used, to the extent appropriate to their role. (See also Standard [2.05, Delegation of Work to Others.](#))

(d) Psychologists make reasonable efforts to minimize the discomfort, infection, illness and pain of animal subjects.

(e) Psychologists use a procedure subjecting animals to pain, stress or privation only when an alternative procedure is unavailable and the goal is justified by its prospective scientific, educational or applied value.

(f) Psychologists perform surgical procedures under appropriate anesthesia and follow techniques to avoid infection and minimize pain during and after surgery.

(g) When it is appropriate that an animal's life be terminated, psychologists proceed rapidly, with an effort to minimize pain and in accordance with accepted procedures.

8.10 Reporting Research Results

(a) Psychologists do not fabricate data. (See also Standard [5.01a, Avoidance of False or Deceptive Statements.](#))

(b) If psychologists discover significant errors in their published data, they take reasonable steps to correct such errors in a correction, retraction, erratum or other appropriate publication means.

8.11 Plagiarism

Psychologists do not present portions of another's work or data as their own, even if the other work or data source is cited occasionally.

8.12 Publication Credit

(a) Psychologists take responsibility and credit, including authorship credit, only for work they have actually performed or to which they have substantially contributed. (See also Standard [8.12b, Publication Credit.](#))

(b) Principal authorship and other publication credits accurately reflect the relative scientific or professional contributions of the individuals involved, regardless of their relative status. Mere possession of an institutional position, such as department chair, does not justify authorship

credit. Minor contributions to the research or to the writing for publications are acknowledged appropriately, such as in footnotes or in an introductory statement.

(c) Except under exceptional circumstances, a student is listed as principal author on any multiple-authored article that is substantially based on the student's doctoral dissertation. Faculty advisors discuss publication credit with students as early as feasible and throughout the research and publication process as appropriate. (See also Standard [8.12b, Publication Credit.](#))

8.13 Duplicate Publication of Data

Psychologists do not publish, as original data, data that have been previously published. This does not preclude republishing data when they are accompanied by proper acknowledgment.

8.14 Sharing Research Data for Verification

(a) After research results are published, psychologists do not withhold the data on which their conclusions are based from other competent professionals who seek to verify the substantive claims through reanalysis and who intend to use such data only for that purpose, provided that the confidentiality of the participants can be protected and unless legal rights concerning proprietary data preclude their release. This does not preclude psychologists from requiring that such individuals or groups be responsible for costs associated with the provision of such information.

(b) Psychologists who request data from other psychologists to verify the substantive claims through reanalysis may use shared data only for the declared purpose. Requesting psychologists obtain prior written agreement for all other uses of the data.

8.15 Reviewers

Psychologists who review material submitted for presentation, publication, grant or research proposal review respect the confidentiality of and the proprietary rights in such information of those who submitted it.

Standard 9: Assessment

9.01 Bases for Assessments

(a) Psychologists base the opinions contained in their recommendations, reports and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings. (See also Standard [2.04, Bases for Scientific and Professional Judgments.](#))

(b) Except as noted in [9.01c](#), psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions and appropriately limit the nature and extent of their conclusions or recommendations. (See also Standards [2.01, Boundaries of Competence](#), and [9.06, Interpreting Assessment Results.](#))

(c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

9.02 Use of Assessments

(a) Psychologists administer, adapt, score, interpret or use assessment techniques, interviews, tests or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.

(b) Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such validity or reliability has not been established, psychologists describe the strengths and limitations of test results and interpretation.

(c) Psychologists use assessment methods that are appropriate to an individual's language preference and competence, unless the use of an alternative language is relevant to the assessment issues.

9.03 Informed Consent in Assessments

(a) Psychologists obtain informed consent for assessments, evaluations or diagnostic services,

as described in Standard 3.10, Informed Consent, except when (1) testing is mandated by law or governmental regulations; (2) informed consent is implied because testing is conducted as a routine educational, institutional or organizational activity (e.g., when participants voluntarily agree to assessment when applying for a job); or (3) one purpose of the testing is to evaluate decisional capacity. Informed consent includes an explanation of the nature and purpose of the assessment, fees, involvement of third parties and limits of confidentiality and sufficient opportunity for the client/patient to ask questions and receive answers.

(b) Psychologists inform persons with questionable capacity to consent or for whom testing is mandated by law or governmental regulations about the nature and purpose of the proposed assessment services, using language that is reasonably understandable to the person being assessed.

(c) Psychologists using the services of an interpreter obtain informed consent from the client/patient to use that interpreter, ensure that confidentiality of test results and test security are maintained, and include in their recommendations, reports and diagnostic or evaluative statements, including forensic testimony, discussion of any limitations on the data obtained. (See also Standards [2.05, Delegation of Work to Others](#); [4.01, Maintaining Confidentiality](#); [9.01, Bases for Assessments](#); [9.06, Interpreting Assessment Results](#); and [9.07, Assessment by Unqualified Persons](#).)

9.04 Release of Test Data

(a) The term test data refers to raw and scaled scores, client/patient responses to test questions or stimuli and psychologists' notes and recordings concerning client/patient statements and behavior during an examination. Those portions of test materials that include client/patient responses are included in the definition of test data. Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances release of confidential information under these circumstances is regulated by law. (See also Standard [9.11, Maintaining Test Security](#).)

(b) In the absence of a client/patient release, psychologists provide test data only as required by law or court order.

9.05 Test Construction

Psychologists who develop tests and other assessment techniques use appropriate psychometric procedures and current scientific or professional knowledge for test design, standardization, validation, reduction or elimination of bias and recommendations for use.

9.06 Interpreting Assessment Results

When interpreting assessment results, including automated interpretations, psychologists take into account the purpose of the assessment as well as the various test factors, test-taking abilities and other characteristics of the person being assessed, such as situational, personal, linguistic and cultural differences, that might affect psychologists' judgments or reduce the accuracy of their interpretations. They indicate any significant limitations of their interpretations. (See also Standards [2.01b and c, Boundaries of Competence](#), and [3.01, Unfair Discrimination](#).)

9.07 Assessment by Unqualified Persons

Psychologists do not promote the use of psychological assessment techniques by unqualified persons, except when such use is conducted for training purposes with appropriate supervision. (See also Standard [2.05, Delegation of Work to Others](#).)

9.08 Obsolete Tests and Outdated Test Results

(a) Psychologists do not base their assessment or intervention decisions or recommendations on data or test results that are outdated for the current purpose.

(b) Psychologists do not base such decisions or recommendations on tests and measures that are obsolete and not useful for the current purpose.

9.09 Test Scoring and Interpretation Services

(a) Psychologists who offer assessment or scoring services to other professionals accurately describe the purpose, norms, validity, reliability and applications of the procedures and any special qualifications applicable to their use.

(b) Psychologists select scoring and interpretation services (including automated services) on the basis of evidence of the validity of the program and procedures as well as on other appropriate considerations. (See also Standard [2.01b and c, Boundaries of Competence](#).)

(c) Psychologists retain responsibility for the appropriate application, interpretation and use of assessment instruments, whether they score and interpret such tests themselves or use automated or other services.

9.10 Explaining Assessment Results

Regardless of whether the scoring and interpretation are done by psychologists, by employees or assistants or by automated or other outside services, psychologists take reasonable steps to ensure that explanations of results are given to the individual or designated representative unless the nature of the relationship precludes provision of an explanation of results (such as in some organizational consulting, preemployment or security screenings, and forensic evaluations), and this fact has been clearly explained to the person being assessed in advance.

9.11 Maintaining Test Security

The term test materials refers to manuals, instruments, protocols and test questions or stimuli and does not include test data as defined in Standard [9.04, Release of Test Data](#). Psychologists make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques consistent with law and contractual obligations, and in a manner that permits adherence to this Ethics Code.

Standard 10: Therapy

10.01 Informed Consent to Therapy

(a) When obtaining informed consent to therapy as required in Standard [3.10, Informed Consent](#), psychologists inform clients/patients as early as is feasible in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties and limits of confidentiality and provide sufficient opportunity for the client/patient to ask questions and receive answers. (See also Standards [4.02, Discussing the Limits of Confidentiality](#), and [6.04, Fees and Financial Arrangements](#).)

(b) When obtaining informed consent for treatment for which generally recognized techniques and procedures have not been established, psychologists inform their clients/patients of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available and the voluntary nature of their participation. (See also Standards [2.01e, Boundaries of Competence](#), and [3.10, Informed Consent](#).)

(c) When the therapist is a trainee and the legal responsibility for the treatment provided resides with the supervisor, the client/patient, as part of the informed consent procedure, is informed that the therapist is in training and is being supervised and is given the name of the supervisor.

10.02 Therapy Involving Couples or Families

(a) When psychologists agree to provide services to several persons who have a relationship (such as spouses, significant others, or parents and children), they take reasonable steps to clarify at the outset (1) which of the individuals are clients/patients and (2) the relationship the psychologist will have with each person. This clarification includes the psychologist's role and the probable uses of the services provided or the information obtained. (See also Standard [4.02, Discussing the Limits of Confidentiality](#).)

(b) If it becomes apparent that psychologists may be called on to perform potentially conflicting roles (such as family therapist and then witness for one party in divorce proceedings), psychologists take reasonable steps to clarify and modify, or withdraw from, roles appropriately. (See also Standard [3.05c, Multiple Relationships](#).)

10.03 Group Therapy

When psychologists provide services to several persons in a group setting, they describe at the outset the roles and responsibilities of all parties and the limits of confidentiality.

10.04 Providing Therapy to Those Served by Others

In deciding whether to offer or provide services to those already receiving mental health services elsewhere, psychologists carefully consider the treatment issues and the potential client's/patient's welfare. Psychologists discuss these issues with the client/patient or another legally authorized person on behalf of the client/patient in order to minimize the risk of confusion

and conflict, consult with the other service providers when appropriate, and proceed with caution and sensitivity to the therapeutic issues.

10.05 Sexual Intimacies with Current Therapy Clients/Patients

Psychologists do not engage in sexual intimacies with current therapy clients/patients.

10.06 Sexual Intimacies with Relatives or Significant Others of Current Therapy Clients/Patients

Psychologists do not engage in sexual intimacies with individuals they know to be close relatives, guardians, or significant others of current clients/patients. Psychologists do not terminate therapy to circumvent this standard.

10.07 Therapy with Former Sexual Partners

Psychologists do not accept as therapy clients/patients persons with whom they have engaged in sexual intimacies.

10.08 Sexual Intimacies with Former Therapy Clients/Patients

(a) Psychologists do not engage in sexual intimacies with former clients/patients for at least two years after cessation or termination of therapy.

(b) Psychologists do not engage in sexual intimacies with former clients/patients even after a two-year interval except in the most unusual circumstances. Psychologists who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client/patient bear the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including (1) the amount of time that has passed since therapy terminated; (2) the nature, duration, and intensity of the therapy; (3) the circumstances of termination; (4) the client's/patient's personal history; (5) the client's/patient's current mental status; (6) the likelihood of adverse impact on the client/patient; and (7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient. (See also Standard [3.05, Multiple Relationships.](#))

10.09 Interruption of Therapy

When entering into employment or contractual relationships, psychologists make reasonable efforts to provide for orderly and appropriate resolution of responsibility for client/patient care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the client/patient. (See also Standard [3.12, Interruption of Psychological Services.](#))

10.10 Terminating Therapy

(a) Psychologists terminate therapy when it becomes reasonably clear that the client/patient no longer needs the service, is not likely to benefit, or is being harmed by continued service.

(b) Psychologists may terminate therapy when threatened or otherwise endangered by the client/patient or another person with whom the client/patient has a relationship.

(c) Except where precluded by the actions of clients/patients or third-party payors, prior to termination psychologists provide pretermination counseling and suggest alternative service providers as appropriate.

History and Effective Date

The American Psychological Association's [Council of Representatives](#) adopted this version of the APA Ethics Code during its meeting on August 21, 2002. The Code became effective on June 1, 2003. The Council of Representatives amended this version of the Ethics Code on February 20, 2010. The amendments became effective on June 1, 2010. Inquiries concerning the substance or interpretation of the APA Ethics Code should be addressed to the Director, Office of Ethics, American Psychological Association, 750 First St. NE, Washington, DC 20002-4242. The standards in this Ethics Code will be used to adjudicate complaints brought concerning alleged conduct occurring on or after the effective date. Complaints will be adjudicated on the basis of the version of the Ethics Code that was in effect at the time the conduct occurred.

The APA has previously published its Ethics Code as follows:

American Psychological Association. (1953). *Ethical standards of psychologists*. Washington, DC: Author.

American Psychological Association. (1959). Ethical standards of psychologists. *American Psychologist*, 14, 279-282.

American Psychological Association. (1963). Ethical standards of psychologists. *American Psychologist*, 18, 56-60.

American Psychological Association. (1968). Ethical standards of psychologists. *American Psychologist*, 23, 357-361.

American Psychological Association. (1977, March). Ethical standards of psychologists. *APA Monitor*, 22-23.

American Psychological Association. (1979). *Ethical standards of psychologists*. Washington, DC: Author.

American Psychological Association. (1981). Ethical principles of psychologists. *American Psychologist*, 36, 633-638.

American Psychological Association. (1990). Ethical principles of psychologists (Amended June 2, 1989). *American Psychologist*, 45, 390-395.

American Psychological Association. (1992). Ethical principles of psychologists and code of conduct. *American Psychologist*, 47, 1597-1611.

American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist*, 57, 1060-1073.

Request copies of the APA's Ethical Principles of Psychologists and Code of Conduct from the APA Order Department, 750 First St. NE, Washington, DC 20002-4242, or phone (202) 336-5510.

Le.utah.gov/code/TITLE26/htm/26_06_000600.htm
Title 26 Utah Health Code
Chapter 6 Utah Communicable Disease Control Act
Section 6

26-6-6. Duty to report individual suspected of having communicable disease.

The following shall report to the department or the local health department regarding any individual suffering from or suspected of having a disease that is communicable, as required by department rule:

- (1) health care providers as defined in Section [78B-3-403](#);
- (2) facilities licensed under Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act;
- (3) health care facilities operated by the federal government;
- (4) mental health facilities;
- (5) care facilities licensed by the Department of Human Services;
- (6) nursing homes and other care facilities;
- (7) dispensaries, clinics, or laboratories that diagnose, test, or otherwise care for individuals who are suffering from a disease suspected of being communicable;
- (8) individuals who have knowledge of others who have a communicable disease;
- (9) individuals in charge of schools having responsibility for any individuals who have a disease suspected of being communicable; and
- (10) child care programs, as defined in Section [26-39-102](#).

Title 26 Utah Health Code

Chapter 25 Confidential Information Release

Section 1

26-25-1. Authority to provide data on treatment and condition of persons to designated agencies -- Immunity from liability.

(1) Any person, health facility, or other organization may, without incurring liability, provide the following information to the persons and entities described in Subsection (2):

(a) information as determined by the state registrar of vital records appointed under Title 26, Chapter 2, Utah Vital Statistics Act;

(b) interviews;

(c) reports;

(d) statements;

(e) memoranda;

(f) familial information; and

(g) other data relating to the condition and treatment of any person.

(2) The information described in Subsection (1) may be provided to:

(a) the department and local health departments;

(b) the Division of Substance Abuse and Mental Health within the Department of Human Services;

(c) scientific and health care research organizations affiliated with institutions of higher education;

(d) the Utah Medical Association or any of its allied medical societies;

(e) peer review committees;

(f) professional review organizations;

(g) professional societies and associations; and

(h) any health facility's in-house staff committee for the uses described in Subsection (3).

(3) The information described in Subsection (1) may be provided for the following purposes:

(a) study and advancing medical research, with the purpose of reducing the incidence of disease, morbidity, or mortality; or

(b) the evaluation and improvement of hospital and health care rendered by hospitals, health facilities, or health care providers.

(4) Any person may, without incurring liability, provide information, interviews, reports, statements, memoranda, or other information relating to the ethical conduct of any health care provider to peer review committees, professional societies and associations, or any in-hospital staff committee to be used for purposes of intraprofessional society or association discipline.

(5) No liability may arise against any person or organization as a result of:

(a) providing information or material authorized in this section;

(b) releasing or publishing findings and conclusions of groups referred to in this section to advance health research and health education; or

(c) releasing or publishing a summary of these studies in accordance with this chapter.

(6) As used in this chapter:

(a) "health care provider" has the meaning set forth in Section [78B-3-403](#); and

(b) "health care facility" has the meaning set forth in Section [26-21-2](#).

26-25-2. Restrictions on use of data.

(1) The information described in Subsection [26-25-1](#)(1) that is provided to the entities described in Subsection [26-25-1](#)(2) shall:

(a) be used and disclosed by the entities described in Subsection [26-25-1](#)(2) in accordance with this chapter; and

(b) is not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(2) The Division of Substance Abuse and Mental Health within the Department of Human Services, scientific and health care research organizations affiliated with institutions of higher education, the Utah Medical Association or any of its allied medical societies, peer review committees, professional review organizations, professional societies and associations, or any health facility's in-house staff committee may only use or publish the information or material received or gathered under Section [26-25-1](#) for the purpose of study and advancing medical research or medical education in the interest of reducing the incidence of disease, morbidity, or mortality, except that a summary of studies conducted in accordance with Section [26-25-1](#) may be released by those groups for general publication.

26-25-3. Information considered privileged communications.

All information, interviews, reports, statements, memoranda, or other data furnished by reason of this chapter, and any findings or conclusions resulting from those studies are privileged communications and are not subject to discovery, use, or receipt in evidence in any legal proceeding of any kind or character.

26-25-4. Information held in confidence -- Protection of identities.

(1) All information described in Subsection [26-25-1](#)(1) that is provided to a person or organization described in Subsection [26-25-1](#)(2) shall be held in strict confidence by that person or organization, and any use, release, or publication resulting there from shall be made only for the purposes described in Subsection [26-25-1](#)(3) and Section [26-25-2](#) and shall preclude identification of any individual or individuals studied.

(2) Notwithstanding Subsection (1), the department's use and disclosure of information is not governed by this chapter.

26-25-5. Violation of chapter a misdemeanor -- Civil liability.

(1) Any use, release or publication, negligent or otherwise, contrary to the provisions of this chapter is a class B misdemeanor.

(2) Subsection (1) does not relieve the person or organization responsible for such use, release, or publication from civil liability.

Title 26 Utah Health Code

Chapter 33a Utah Health Data Authority Act

Section 101

26-33a-101. Short title.

This chapter is known as the "Utah Health Data Authority Act."

26-33a-102. Definitions.

As used in this chapter:

- (1) "Committee" means the Health Data Committee created by Section [26-1-7](#).
- (2) "Control number" means a number assigned by the committee to an individual's health data as an identifier so that the health data can be disclosed or used in research and statistical analysis without readily identifying the individual.
- (3) "Data supplier" means a health care facility, health care provider, self-funded employer, third-party payor, health maintenance organization, or government department which could reasonably be expected to provide health data under this chapter.
- (4) "Disclosure" or "disclose" means the communication of health care data to any individual or organization outside the committee, its staff, and contracting agencies.
- (5) "Executive director" means the director of the department.
- (6) "Health care facility" means a facility that is licensed by the department under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act. The committee may by rule add, delete, or modify the list of facilities that come within this definition for purposes of this chapter.
- (7) "Health care provider" means any person, partnership, association, corporation, or other facility or institution that renders or causes to be rendered health care or professional services as a physician, registered nurse, licensed practical nurse, nurse-midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech pathologist, certified social worker, social service worker, social service aide, marriage and family counselor, or practitioner of obstetrics, and others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons, and officers, employees, or agents of any of the above acting in the course and scope of their employment.
- (8) "Health data" means information relating to the health status of individuals, health services delivered, the availability of health manpower and facilities, and the use and costs of resources and services to the consumer, except vital records as defined in Section [26-2-2](#) shall be excluded.
- (9) "Health maintenance organization" has the meaning set forth in Section [31A-8-101](#).
- (10) "Identifiable health data" means any item, collection, or grouping of health data that makes the individual supplying or described in the health data identifiable.
- (11) "Individual" means a natural person.
- (12) "Organization" means any corporation, association, partnership, agency, department, unit, or other legally constituted institution or entity, or part thereof.
- (13) "Research and statistical analysis" means activities using health data analysis including:
 - (a) describing the group characteristics of individuals or organizations;
 - (b) analyzing the noncompliance among the various characteristics of individuals or organizations;
 - (c) conducting statistical procedures or studies to improve the quality of health data;
 - (d) designing sample surveys and selecting samples of individuals or organizations; and
 - (e) preparing and publishing reports describing these matters.
- (14) "Self-funded employer" means an employer who provides for the payment of health care services for employees directly from the employer's funds, thereby assuming the financial risks rather than passing them on to an outside insurer through premium payments.
- (15) "Plan" means the plan developed and adopted by the Health Data Committee under Section [26-33a-104](#).

- (16) "Third party payor" means:
- (a) an insurer offering a health benefit plan, as defined by Section [31A-1-301](#), to at least 2,500 enrollees in the state;
 - (b) a nonprofit health service insurance corporation licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance Corporations;
 - (c) a program funded or administered by Utah for the provision of health care services, including the Medicaid and medical assistance programs described in Chapter 18, Medical Assistance Act; and
 - (d) a corporation, organization, association, entity, or person:
 - (i) which administers or offers a health benefit plan to at least 2,500 enrollees in the state; and
 - (ii) which is required by administrative rule adopted by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to supply health data to the committee.

26-33a-103. Committee membership -- Terms -- Chair -- Compensation.

- (1) The Health Data Committee created by Section [26-1-7](#) shall be composed of 14 members appointed by the governor with the consent of the Senate.
- (2) No more than seven members of the committee may be members of the same political party.
- (3) The appointed members of the committee shall be knowledgeable regarding the health care system and the characteristics and use of health data and shall be selected so that the committee at all times includes individuals who provide care.
- (4) The membership of the committee shall be:
 - (a) one person employed by or otherwise associated with a hospital as defined by Section [26-21-2](#), who is knowledgeable about the collection, analysis, and use of health care data;
 - (b) two physicians, as defined in Section [58-67-102](#):
 - (i) who are licensed to practice in this state;
 - (ii) who actively practice medicine in this state;
 - (iii) who are trained in or have experience with the collection, analysis, and use of health care data; and
 - (iv) one of whom is selected by the Utah Medical Association;
 - (c) three persons:
 - (i) who are:
 - (A) employed by or otherwise associated with a business that supplies health care insurance to its employees; and
 - (B) knowledgeable about the collection and use of health care data; and
 - (ii) at least one of whom represents an employer employing 50 or fewer employees;
 - (d) three persons representing health insurers:
 - (i) at least one of whom is employed by or associated with a third-party payor that is not licensed under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;
 - (ii) at least one of whom is employed by or associated with a third party payer that is licensed under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans; and
 - (iii) who are trained in, or experienced with the collection, analysis, and use of health care data;
 - (e) two consumer representatives:
 - (i) from organized consumer or employee associations; and
 - (ii) knowledgeable about the collection and use of health care data;
 - (f) one person:
 - (i) representative of a neutral, non-biased entity that can demonstrate that it has the broad support of health care payers and health care providers; and
 - (ii) who is knowledgeable about the collection, analysis, and use of health care data; and

- (g) two persons representing public health who are trained in, or experienced with the collection, use, and analysis of health care data.
- (5) (a) Except as required by Subsection (5)(b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.
- (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall:
- (i) at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years; and
- (ii) prior to July 1, 2011, re-appoint the members described in Subsections (4)(b), (d), and (f) as necessary to comply with changes in eligibility for membership that were enacted during the 2011 General Session.
- (c) Members may serve after their terms expire until replaced.
- (6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (7) Committee members shall annually elect a chair of the committee from among their membership. The chair shall report to the executive director.
- (8) The committee shall meet at least once during each calendar quarter. Meeting dates shall be set by the chair upon 10 working days notice to the other members, or upon written request by at least four committee members with at least 10 working days notice to other committee members.
- (9) Seven committee members constitute a quorum for the transaction of business. Action may not be taken except upon the affirmative vote of a majority of a quorum of the committee.
- (10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section [63A-3-106](#);
- (b) Section [63A-3-107](#); and
- (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and [63A-3-107](#).
- (11) All meetings of the committee shall be open to the public, except that the committee may hold a closed meeting if the requirements of Sections [52-4-204](#), [52-4-205](#), and [52-4-206](#) are met.

26-33a-104. Purpose, powers, and duties of the committee.

- (1) The purpose of the committee is to direct a statewide effort to collect, analyze, and distribute health care data to facilitate the promotion and accessibility of quality and cost-effective health care and also to facilitate interaction among those with concern for health care issues.
- (2) The committee shall:
- (a) develop and adopt by rule, following public hearing and comment, a health data plan that shall among its elements:
- (i) identify the key health care issues, questions, and problems amenable to resolution or improvement through better data, more extensive or careful analysis, or improved dissemination of health data;
- (ii) document existing health data activities in the state to collect, organize, or make available types of data pertinent to the needs identified in Subsection (2)(a)(i);
- (iii) describe and prioritize the actions suitable for the committee to take in response to the needs identified in Subsection (2)(a)(i) in order to obtain or to facilitate the obtaining of needed data, and to encourage improvements in existing data collection, interpretation, and reporting activities, and indicate how those actions relate to the activities identified under Subsection (2)(a)(ii);
- (iv) detail the types of data needed for the committee's work, the intended data suppliers, and the form in which such data are to be supplied, noting the consideration given to the potential alternative sources and forms of such data and to the estimated cost to the individual suppliers as well as to the department of acquiring these data in the proposed manner; the plan shall reasonably demonstrate that the committee has attempted to maximize cost-effectiveness in the data acquisition approaches selected;
- (v) describe the types and methods of validation to be performed to assure data validity and reliability;

(vi) explain the intended uses of and expected benefits to be derived from the data specified in Subsection (2)(a)(iv), including the contemplated tabulation formats and analysis methods; the benefits described shall demonstrably relate to one or more of the following:

- (A) promoting quality health care;
- (B) managing health care costs; or
- (C) improving access to health care services;

(vii) describe the expected processes for interpretation and analysis of the data flowing to the committee; noting specifically the types of expertise and participation to be sought in those processes; and

(viii) describe the types of reports to be made available by the committee and the intended audiences and uses;

(b) have the authority to collect, validate, analyze, and present health data in accordance with the plan while protecting individual privacy through the use of a control number as the health data identifier;

(c) evaluate existing identification coding methods and, if necessary, require by rule that health data suppliers use a uniform system for identification of patients, health care facilities, and health care providers on health data they submit under this chapter; and

(d) advise, consult, contract, and cooperate with any corporation, association, or other entity for the collection, analysis, processing, or reporting of health data identified by control number only in accordance with the plan.

(3) The committee may adopt rules to carry out the provisions of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) Except for data collection, analysis, and validation functions described in this section, nothing in this chapter shall be construed to authorize or permit the committee to perform regulatory functions which are delegated by law to other agencies of the state or federal governments or to perform quality assurance or medical record audit functions that health care facilities, health care providers, or third party payors are required to conduct to comply with federal or state law. The committee may not recommend or determine whether a health care provider, health care facility, third party payor, or self-funded employer is in compliance with federal or state laws including federal or state licensure, insurance, reimbursement, tax, malpractice, or quality assurance statutes or common law.

(5) Nothing in this chapter shall be construed to require a data supplier to supply health data identifying a patient by name or describing detail on a patient beyond that needed to achieve the approved purposes included in the plan.

(6) No request for health data shall be made of health care providers and other data suppliers until a plan for the use of such health data has been adopted.

(7) If a proposed request for health data imposes unreasonable costs on a data supplier, due consideration shall be given by the committee to altering the request. If the request is not altered, the committee shall pay the costs incurred by the data supplier associated with satisfying the request that are demonstrated by the data supplier to be unreasonable.

(8) After a plan is adopted as provided in Section [26-33a-106.1](#), the committee may require any data supplier to submit fee schedules, maximum allowable costs, area prevailing costs, terms of contracts, discounts, fixed reimbursement arrangements, capitations, or other specific arrangements for reimbursement to a health care provider.

(9) The committee may not publish any health data collected under Subsection (8) that would disclose specific terms of contracts, discounts, or fixed reimbursement arrangements, or other specific reimbursement arrangements between an individual provider and a specific payer.

(10) Nothing in Subsection (8) shall prevent the committee from requiring the submission of health data on the reimbursements actually made to health care providers from any source of payment, including consumers.

26-33a-105. Executive secretary -- Appointment -- Powers.

(1) An executive secretary shall be appointed by the executive director, with the approval of the committee, and shall serve under the administrative direction of the executive director.

(2) The executive secretary shall:

- (a) employ full-time employees necessary to carry out this chapter;

(b) supervise the development of a draft health data plan for the committee's review, modification, and approval; and

(c) supervise and conduct the staff functions of the committee in order to assist the committee in meeting its responsibilities under this chapter.

26-33a-106. Limitations on use of health data.

The committee may not use the health data provided to it by third-party payors, health care providers, or health care facilities to make recommendations with regard to a single health care provider or health care facility, or a group of health care providers or health care facilities.

26-33a-106.1. Health care cost and reimbursement data.

(1) (a) The committee shall, as funding is available, establish an advisory panel to advise the committee on the development of a plan for the collection and use of health care data pursuant to Subsection [26-33a-104](#)(6) and this section.

(b) The advisory panel shall include:

(i) the chairman of the Utah Hospital Association;

(ii) a representative of a rural hospital as designated by the Utah Hospital Association;

(iii) a representative of the Utah Medical Association;

(iv) a physician from a small group practice as designated by the Utah Medical Association;

(v) two representatives who are health insurers, appointed by the committee;

(vi) a representative from the Department of Health as designated by the executive director of the department;

(vii) a representative from the committee;

(viii) a consumer advocate appointed by the committee;

(ix) a member of the House of Representatives appointed by the speaker of the House;

and

(x) a member of the Senate appointed by the president of the Senate.

(c) The advisory panel shall elect a chair from among its members, and shall be staffed by the committee.

(2) (a) The committee shall, as funding is available:

(i) establish a plan for collecting data from data suppliers, as defined in Section [26-33a-102](#), to determine measurements of cost and reimbursements for risk adjusted episodes of health care;

(ii) share data regarding insurance claims and an individual's and small employer group's health risk factor with insurers participating in the defined contribution market created in Title 31A, Chapter 30, Part 2, Defined Contribution Arrangements, only to the extent necessary for:

(A) establishing rates and prospective risk adjusting in the defined contribution arrangement market; and

(B) risk adjusting in the defined contribution arrangement market; and

(iii) assist the Legislature and the public with awareness of, and the promotion of, transparency in the health care market by reporting on:

(A) geographic variances in medical care and costs as demonstrated by data available to the committee; and

(B) rate and price increases by health care providers:

(I) that exceed the Consumer Price Index - Medical as provided by the United States Bureau of Labor statistics;

(II) as calculated yearly from June to June; and

(III) as demonstrated by data available to the committee.

(b) The plan adopted under this Subsection (2) shall include:

(i) the type of data that will be collected;

(ii) how the data will be evaluated;

(iii) how the data will be used;

(iv) the extent to which, and how the data will be protected; and

(v) who will have access to the data.

26-33a-106.5. Comparative analyses.

(1) The committee may publish compilations or reports that compare and identify health care providers or data suppliers from the data it collects under this chapter or from any other source.

(2) (a) The committee shall publish compilations or reports from the data it collects under this chapter or from any other source which:

(i) contain the information described in Subsection (2)(b); and

(ii) compare and identify by name at least a majority of the health care facilities and institutions in the state.

(b) The report required by this Subsection (2) shall:

(i) be published at least annually; and

(ii) contain comparisons based on at least the following factors:

(A) nationally or other generally recognized quality standards;

(B) charges; and

(C) nationally recognized patient safety standards.

(3) The committee may contract with a private, independent analyst to evaluate the standard comparative reports of the committee that identify, compare, or rank the performance of data suppliers by name. The evaluation shall include a validation of statistical methodologies, limitations, appropriateness of use, and comparisons using standard health services research practice. The analyst shall be experienced in analyzing large databases from multiple data suppliers and in evaluating health care issues of cost, quality, and access. The results of the analyst's evaluation shall be released to the public before the standard comparative analysis upon which it is based may be published by the committee.

(4) The committee shall adopt by rule a timetable for the collection and analysis of data from multiple types of data suppliers.

(5) The comparative analysis required under Subsection (2) shall be available:

(a) free of charge and easily accessible to the public; and

(b) on the Health Insurance Exchange either directly or through a link.

(6) (a) The department shall include in the report required by Subsection (2)(b), or include in a separate report, comparative information on commonly recognized or generally agreed upon measures of quality identified in accordance with Subsection (7), for:

(i) routine and preventive care; and

(ii) the treatment of diabetes, heart disease, and other illnesses or conditions.

(b) The comparative information required by Subsection (6)(a) shall be based on data collected under Subsection (2) and clinical data that may be available to the committee, and shall beginning on or after July 1, 2012, compare:

(i) results for health care facilities or institutions;

(ii) a clinic's aggregate results for a physician who practices at a clinic with five or more physicians; and

(iii) a geographic region's aggregate results for a physician who practices at a clinic with less than five physicians, unless the physician requests physician-level data to be published on a clinic level.

(c) The department:

(i) may publish information required by this Subsection (6) directly or through one or more nonprofit, community-based health data organizations;

(ii) may use a private, independent analyst under Subsection (3) in preparing the report required by this section; and

(iii) shall identify and report to the Legislature's Health and Human Services Interim Committee by July 1, 2012, and every July 1, thereafter until July 1, 2015, at least five new measures of quality to be added to the report each year.

(d) A report published by the department under this Subsection (6):

(i) is subject to the requirements of Section [26-33a-107](#); and

(ii) shall, prior to being published by the department, be submitted to a neutral, non-biased entity with a broad base of support from health care payers and health care providers in accordance with Subsection (7) for the purpose of validating the report.

(7) (a) The Health Data Committee shall, through the department, for purposes of Subsection (6)(a), use the quality measures that are developed and agreed upon by a neutral, non-biased entity with a broad base of support from health care payers and health care providers.

(b) If the entity described in Subsection (7)(a) does not submit the quality measures, the department may select the appropriate number of quality measures for purposes of the report required by Subsection (6).

(c) (i) For purposes of the reports published on or after July 1, 2012, the department may not compare individual facilities or clinics as described in Subsections (6)(b)(i) through (iii) if the department determines that the data available to the department can not be appropriately validated, does not represent nationally recognized measures, does not reflect the mix of cases seen at a clinic or facility, or is not sufficient for the purposes of comparing providers.

(ii) The department shall report to the Legislature's Executive Appropriations Committee prior to making a determination not to publish a report under Subsection (7)(c)(i).

26-33a-107. Limitations on release of reports.

The committee may not release a compilation or report that compares and identifies health care providers or data suppliers unless it:

(1) allows the data supplier and the health care provider to verify the accuracy of the information submitted to the committee and submit to the committee any corrections of errors with supporting evidence and comments within a reasonable period of time to be established by rule;

(2) corrects data found to be in error; and

(3) allows the data supplier a reasonable amount of time prior to publication to review the committee's interpretation of the data and prepare a response.

26-33a-108. Disclosure of identifiable health data prohibited.

(1) All information, reports, statements, memoranda, or other data received by the committee are strictly confidential. Any use, release, or publication of the information shall be done in such a way that no person is identifiable except as provided in Sections [26-33a-107](#) and [26-33a-109](#).

(2) No member of the committee may be held civilly liable by reason of having released or published reports or compilations of data supplied to the committee, so long as the publication or release is in accordance with the requirements of Subsection (1).

(3) No person, corporation, or entity may be held civilly liable for having provided data to the committee in accordance with this chapter.

26-33a-109. Exceptions to prohibition on disclosure of identifiable health data.

(1) The committee may not disclose any identifiable health data unless:

(a) the individual has authorized the disclosure; or

(b) the disclosure complies with the provisions of this section.

(2) The committee shall consider the following when responding to a request for disclosure of information that may include identifiable health data:

(a) whether the request comes from a person after that person has received approval to do the specific research and statistical work from an institutional review board; and

(b) whether the requesting entity complies with the provisions of Subsection (3).

(3) A request for disclosure of information that may include identifiable health data shall:

(a) be for a specified period; or

(b) be solely for bona fide research and statistical purposes as determined in accordance with administrative rules adopted by the department, which shall require:

(i) the requesting entity to demonstrate to the department that the data is required for the research and statistical purposes proposed by the requesting entity; and

(ii) the requesting entity to enter into a written agreement satisfactory to the department to protect the data in accordance with this chapter or other applicable law.

(4) A person accessing identifiable health data pursuant to Subsection (3) may not further disclose the identifiable health data:

(a) without prior approval of the department; and

(b) unless the identifiable health data is disclosed or identified by control number only.

26-33a-110. Penalties.

(1) Any use, release, or publication of health care data contrary to the provisions of Sections [26-33a-108](#) and [26-33a-109](#) is a class A misdemeanor.

(2) Subsection (1) does not relieve the person or organization responsible for that use, release, or publication from civil liability.

26-33a-111. Health data not subject to subpoena or compulsory process -- Exception.

Identifiable health data obtained in the course of activities undertaken or supported under this chapter are not subject to subpoena or similar compulsory process in any civil or criminal, judicial, administrative, or legislative proceeding, nor shall any individual or organization with lawful access to identifiable health data under the provisions of this chapter be compelled to testify with regard to such health data, except that data pertaining to a party in litigation may be subject to subpoena or similar compulsory process in an action brought by or on behalf of such individual to enforce any liability arising under this chapter.

26-33a-115. Consumer-focused health care delivery and payment reform demonstration project.

(1) The Legislature finds that:

(a) current health care delivery and payment systems do not provide system wide incentives for the competitive delivery and pricing of health care services to consumers;

(b) there is a compelling state interest to encourage consumers to seek high quality, low cost care and educate themselves about health care options;

(c) some health care providers and health care payers have developed consumer-focused ideas for health care delivery and payment system reform, but lack the critical number of patient lives and payer involvement to accomplish system-wide consumer-focused reform; and

(d) there is a compelling state interest to encourage as many health care providers and health care payers to join together and coordinate efforts at consumer-focused health care delivery and payment reform that would provide to consumers enrolled in a high-deductible health plan:

(i) greater choice in health care options;

(ii) improved services through competition; and

(iii) more affordable options for care.

(2) (a) The department shall meet with health care providers and health care payers for the purpose of coordinating a demonstration project for consumer-based health care delivery and payment reform.

(b) Participation in the coordination efforts is voluntary, but encouraged.

(3) The department, in order to facilitate the coordination of a demonstration project for consumer-based health care delivery and payment reform, shall convene and consult with pertinent entities including:

(a) the Utah Insurance Department;

(b) the Office of Consumer Health Services;

(c) the Utah Medical Association;

(d) the Utah Hospital Association; and

(e) neutral, non-biased third parties with an established record for broad based, multi-provider and multi-payer quality assurance efforts and data collection.

(4) The department shall supervise the efforts by entities under Subsection (3) regarding:

(a) applying for and obtaining grant funding and other financial assistance that may be available for demonstrating consumer-based improvements to health care delivery and payment;

(b) obtaining and analyzing information and data related to current health system utilization and costs to consumers; and

(c) consulting with those health care providers and health care payers who elect to participate in the consumer-based health delivery and payment demonstration project.

(5) The executive director shall report to the Health System Reform Task Force by January 1, 2015, regarding the progress toward coordination of consumer-focused health care system payment and delivery reform.

Le.utah.gov/code/TITLE62A/htm.62A15_030100.htm
Title 62A Utah Human Services Code
Chapter 15 Substance Abuse and Mental Health Act
Section 301

**62A-15-301. Commitment of minor to secure drug or alcohol facility or program --
Procedures -- Review.**

(1) For purposes of this part:

(a) "Approved treatment facility or program" means a public or private secure, inpatient facility or program that is licensed or operated by the department or by the Department of Health to provide drug or alcohol treatment or rehabilitation.

(b) "Drug or alcohol addiction" means that the person has a physical or psychological dependence on drugs or alcohol in a manner not prescribed by a physician.

(2) The parent or legal guardian of a minor under the age of 18 years may submit that child, without the child's consent, to an approved treatment facility or program for treatment or rehabilitation of drug or alcohol addiction, upon application to a facility or program, and after a careful diagnostic inquiry is made by a neutral and detached fact finder, in accordance with the requirements of this section.

(3) The neutral fact finder who conducts the inquiry:

(a) shall be either a physician, psychologist, marriage and family therapist, psychiatric and mental health nurse specialist, or social worker licensed to practice in this state, who is trained and practicing in the area of substance abuse; and

(b) may not profit, financially or otherwise, from the commitment of the child and may not be employed by the proposed facility or program.

(4) The review by a neutral fact finder may be conducted on the premises of the proposed treatment facility or program.

(5) The inquiry conducted by the neutral fact finder shall include a private interview with the child, and an evaluation of the child's background and need for treatment.

(6) The child may be committed to the approved treatment facility or program if it is determined by the neutral fact finder that:

(a) the child is addicted to drugs or alcohol and because of that addiction poses a serious risk of harm to himself or others;

(b) the proposed treatment or rehabilitation is in the child's best interest; and

(c) there is no less restrictive alternative that would be equally as effective, from a clinical standpoint, as the proposed treatment facility or program.

(7) Any approved treatment facility or program that receives a child under this section shall conduct a periodic review, at intervals not to exceed 30 days, to determine whether the criteria described in Subsection (6) continue to exist.

(8) A minor committed under this section shall be released from the facility or program upon the request of his parent or legal guardian.

(9) Commitment of a minor under this section terminates when the minor reaches the age of 18 years.

(10) Nothing in this section requires a program or facility to accept any person for treatment or rehabilitation.

(11) The parent or legal guardian who requests commitment of a minor under this section is responsible to pay any fee associated with the review required by this section and any necessary charges for commitment, treatment, or rehabilitation for a minor committed under this section.

(12) The child shall be released from commitment unless the report of the neutral fact finder is submitted to the juvenile court within 72 hours of commitment and approved by the court.

Le.utah.gov/code/TITLE77/htm/77_38_020100.htm
Title 77 Utah Code of Criminal Procedure
Chapter 38 Rights of Crime Victims Act
Section 201

77-38-201. Title.

This part is known and cited as the "Confidential Communications for Sexual Assault Act."

77-38-202. Purpose.

It is the purpose of this act to enhance and promote the mental, physical and emotional recovery of victims of sexual assault and to protect the information given by victims to sexual assault counselors from being disclosed.

77-38-203. Definitions.

As used in this part:

(1) "Confidential communication" means information given to a sexual assault counselor by a victim and includes reports or working papers made in the course of the counseling relationship.

(2) "Rape crisis center" means any office, institution, or center assisting victims of sexual assault and their families which offers crisis intervention, medical, and legal services, and counseling.

(3) "Sexual assault counselor" means a person who is employed by or volunteers at a rape crisis center who has a minimum of 40 hours of training in counseling and assisting victims of sexual assault and who is under the supervision of the director or designee of a rape crisis center.

(4) "Victim" means a person who has experienced a sexual assault of whatever nature including incest and rape and requests counseling or assistance regarding the mental, physical, and emotional consequences of the sexual assault.

77-38-204. Disclosure of confidential communications.

The confidential communication between a victim and a sexual assault counselor is available to a third person only when:

(1) the victim is a minor and the counselor believes it is in the best interest of the victim to disclose the confidential communication to the victim's parents;

(2) the victim is a minor and the minor's parents or guardian have consented to disclosure of the confidential communication to a third party based upon representations made by the counselor that it is in the best interest of the minor victim to make such disclosure;

(3) the victim is not a minor, has given consent, and the counselor believes the disclosure is necessary to accomplish the desired result of counseling; or

(4) the counselor has an obligation under Title 62A, Chapter 4a, Child and Family Services, to report information transmitted in the confidential communication.

Le.utah.gov/code/TITLE53A/htm/53A11_130200.htm

Title 53A State System of Public Education

Chapter 11 Students in Public Schools

Section 1302

53A-11-1302. Reporting of prohibited acts affecting a school -- Confidentiality.

(1) A person who has reasonable cause to believe that an individual has committed a prohibited act shall immediately notify:

- (a) the nearest law enforcement agency;
- (b) the principal;
- (c) an administrator of the affected school;
- (d) the superintendent of the affected school district; or
- (e) an administrator of the affected school district.

(2) If notice is given to a school official, the official may authorize an investigation into allegations involving school property, students, or school district employees.

(3) School officials may refer a complaint of an alleged prohibited act reported as occurring on school grounds or in connection with school-sponsored activities to an appropriate law enforcement agency. Referrals shall be made by school officials if the complaint alleges the prohibited act occurred elsewhere.

(4) The identity of persons making reports pursuant to this section shall be kept confidential.

**Title 78B Judicial Code
Chapter 3 Actions and Venue
Section 401**

“Utah Health Care Malpractice Act”

78B-3-401. Title.

This part shall be known and may be cited as the "Utah Health Care Malpractice Act."

78B-3-402. Legislative findings and declarations -- Purpose of act.

(1) The Legislature finds and declares that the number of suits and claims for damages and the amount of judgments and settlements arising from health care has increased greatly in recent years. Because of these increases the insurance industry has substantially increased the cost of medical malpractice insurance. The effect of increased insurance premiums and increased claims is increased health care cost, both through the health care providers passing the cost of premiums to the patient and through the provider's practicing defensive medicine because he views a patient as a potential adversary in a lawsuit. Further, certain health care providers are discouraged from continuing to provide services because of the high cost and possible unavailability of malpractice insurance.

(2) In view of these recent trends and with the intention of alleviating the adverse effects which these trends are producing in the public's health care system, it is necessary to protect the public interest by enacting measures designed to encourage private insurance companies to continue to provide health-related malpractice insurance while at the same time establishing a mechanism to ensure the availability of insurance in the event that it becomes unavailable from private companies.

(3) In enacting this act, it is the purpose of the Legislature to provide a reasonable time in which actions may be commenced against health care providers while limiting that time to a specific period for which professional liability insurance premiums can be reasonably and accurately calculated; and to provide other procedural changes to expedite early evaluation and settlement of claims.

78B-3-403. Definitions.

As used in this part:

(1) "Audiologist" means a person licensed to practice audiology under Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act.

(2) "Certified social worker" means a person licensed to practice as a certified social worker under Section [58-60-205](#).

(3) "Chiropractic physician" means a person licensed to practice chiropractic under Title 58, Chapter 73, Chiropractic Physician Practice Act.

(4) "Clinical social worker" means a person licensed to practice as a clinical social worker under Section [58-60-205](#).

(5) "Commissioner" means the commissioner of insurance as provided in Section [31A-2-102](#).

(6) "Dental hygienist" means a person licensed to engage in the practice of dental hygiene as defined in Section [58-69-102](#).

(7) "Dentist" means a person licensed to engage in the practice of dentistry as defined in Section [58-69-102](#).

(8) "Division" means the Division of Occupational and Professional Licensing created in Section [58-1-103](#).

(9) "Future damages" includes a judgment creditor's damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering.

(10) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(11) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, health care facilities owned or operated by health maintenance organizations, and end stage renal disease facilities.

(12) "Health care provider" includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, registered nurse, licensed practical nurse, nurse-midwife, licensed Direct-entry midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist assistant, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, licensed athletic trainer, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of their employment.

(13) "Hospital" means a public or private institution licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(14) "Licensed athletic trainer" means a person licensed under Title 58, Chapter 40a, Athletic Trainer Licensing Act.

(15) "Licensed Direct-entry midwife" means a person licensed under the Direct-entry Midwife Act to engage in the practice of direct-entry midwifery as defined in Section [58-77-102](#).

(16) "Licensed practical nurse" means a person licensed to practice as a licensed practical nurse as provided in Section [58-31b-301](#).

(17) "Malpractice action against a health care provider" means any action against a health care provider, whether in contract, tort, breach of warranty, wrongful death, or otherwise, based upon alleged personal injuries relating to or arising out of health care rendered or which should have been rendered by the health care provider.

(18) "Marriage and family therapist" means a person licensed to practice as a marriage therapist or family therapist under Sections [58-60-305](#) and [58-60-405](#).

(19) "Naturopathic physician" means a person licensed to engage in the practice of naturopathic medicine as defined in Section [58-71-102](#).

(20) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife under Section [58-44a-301](#).

(21) "Optometrist" means a person licensed to practice optometry under Title 58, Chapter 16a, Utah Optometry Practice Act.

(22) "Osteopathic physician" means a person licensed to practice osteopathy under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(23) "Patient" means a person who is under the care of a health care provider, under a contract, express or implied.

(24) "Periodic payments" means the payment of money or delivery of other property to a judgment creditor at intervals ordered by the court.

(25) "Pharmacist" means a person licensed to practice pharmacy as provided in Section [58-17b-301](#).

(26) "Physical therapist" means a person licensed to practice physical therapy under Title 58, Chapter 24b, Physical Therapy Practice Act.

(27) "Physical therapist assistant" means a person licensed to practice physical therapy, within the scope of a physical therapist assistant license, under Title 58, Chapter 24b, Physical Therapy Practice Act.

(28) "Physician" means a person licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act.

(29) "Podiatric physician" means a person licensed to practice podiatry under Title 58, Chapter 5a, Podiatric Physician Licensing Act.

(30) "Practitioner of obstetrics" means a person licensed to practice as a physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(31) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to engage in the practice of psychology as defined in Section [58-61-102](#).

(32) "Registered nurse" means a person licensed to practice professional nursing as provided in Section [58-31b-301](#).

(33) "Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes relationships that are created as a result of adoption.

(34) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact, person designated to make decisions on behalf of a patient under a medical power of attorney, or other legal agent of the patient.

(35) "Social service worker" means a person licensed to practice as a social service worker under Section [58-60-205](#).

(36) "Speech-language pathologist" means a person licensed to practice speech-language pathology under Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act.

(37) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another.

(38) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result.

78B-3-404. Statute of limitations -- Exceptions -- Application.

(1) A malpractice action against a health care provider shall be commenced within two years after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered the injury, whichever first occurs, but not to exceed four years after the date of the alleged act, omission, neglect, or occurrence.

(2) Notwithstanding Subsection (1):

(a) in an action where the allegation against the health care provider is that a foreign object has been wrongfully left within a patient's body, the claim shall be barred unless commenced within one year after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered, the existence of the foreign object wrongfully left in the patient's body, whichever first occurs; or

(b) in an action where it is alleged that a patient has been prevented from discovering misconduct on the part of a health care provider because that health care provider has affirmatively acted to fraudulently conceal the alleged misconduct, the claim shall be barred unless commenced within one year after the plaintiff or patient discovers, or through the use of reasonable diligence, should have discovered the fraudulent concealment, whichever first occurs.

78B-3-405. Amount of award reduced by amounts of collateral sources available to plaintiff -- No reduction where subrogation right exists -- Collateral sources defined -- Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.

(1) In all malpractice actions against health care providers as defined in Section [78B-3-403](#) in which damages are awarded to compensate the plaintiff for losses sustained, the court shall reduce the amount of the award by the total of all amounts paid to the plaintiff from all collateral sources which are available to him. No reduction may be made for collateral sources for which a subrogation right exists as provided in this section nor shall there be a reduction for any collateral payment not included in the award of damages.

(2) Upon a finding of liability and an awarding of damages by the trier of fact, the court shall receive evidence concerning the total amounts of collateral sources which have been paid to or for the benefit of the plaintiff or are otherwise available to him. The court shall also take testimony of any amount which has been paid, contributed, or forfeited by, or on behalf of the plaintiff or members of his immediate family to secure his right to any collateral source benefit which he is receiving as a result of his injury, and shall offset any reduction in the award by those amounts. Evidence may not be received and a reduction may not be made with respect to future collateral source benefits except as specified in Subsection (5).

(3) For purposes of this section "collateral source" means payments made to or for the benefit of the plaintiff for:

(a) medical expenses and disability payments payable under the United States Social Security Act, any federal, state, or local income disability act, or any other public program, except the federal programs which are required by law to seek subrogation;

(b) any health, sickness, or income replacement insurance, automobile accident insurance that provides health benefits or income replacement coverage, and any other similar insurance benefits, except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others;

(c) any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except benefits received as gifts, contributions, or assistance made gratuitously; and

(d) any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.

(4) To preserve subrogation rights for amounts paid or received prior to settlement or judgment, a provider of collateral sources shall, at least 30 days before settlement or trial of the action, serve a written notice upon each health care provider against whom the malpractice action has been asserted. The written notice shall state:

(a) the name and address of the provider of collateral sources;

(b) the amount of collateral sources paid;

(c) the names and addresses of all persons who received payment; and

(d) the items and purposes for which payment has been made.

(5) Evidence is admissible of government programs that provide payments or benefits available in the future to or for the benefit of the plaintiff to the extent available irrespective of the recipient's ability to pay. Evidence of the likelihood or unlikelihood that the programs, payments, or benefits will be available in the future is also admissible. The trier of fact may consider the evidence in determining the amount of damages awarded to a plaintiff for future expenses.

(6) A provider of collateral sources is not entitled to recover any amount of benefits from a health care provider, the plaintiff, or any other person or entity as reimbursement for collateral source payments made prior to settlement or judgment, including any payments made under Title 26, Chapter 19, Medical Benefits Recovery Act, except to the extent that subrogation rights to amounts paid prior to settlement or judgment are preserved as provided in this section.

(7) All policies of insurance providing benefits affected by this section are construed in accordance with this section.

78B-3-406. Failure to obtain informed consent -- Proof required of patient -- Defenses -- Consent to health care.

(1) When a person submits to health care rendered by a health care provider, it is presumed that actions taken by the health care provider are either expressly or impliedly authorized to be done. For a patient to recover damages from a health care provider in an action based upon the provider's failure to obtain informed consent, the patient must prove the following:

(a) that a provider-patient relationship existed between the patient and health care provider;

(b) the health care provider rendered health care to the patient;

(c) the patient suffered personal injuries arising out of the health care rendered;

(d) the health care rendered carried with it a substantial and significant risk of causing the patient serious harm;

(e) the patient was not informed of the substantial and significant risk;

(f) a reasonable, prudent person in the patient's position would not have consented to the health care rendered after having been fully informed as to all facts relevant to the decision to give consent; and

(g) the unauthorized part of the health care rendered was the proximate cause of personal injuries suffered by the patient.

(2) In determining what a reasonable, prudent person in the patient's position would do under the circumstances, the finder of fact shall use the viewpoint of the patient before health care was provided and before the occurrence of any personal injuries alleged to have arisen from said health care.

(3) It shall be a defense to any malpractice action against a health care provider based upon alleged failure to obtain informed consent if:

(a) the risk of the serious harm which the patient actually suffered was relatively minor;

(b) the risk of serious harm to the patient from the health care provider was commonly known to the public;

(c) the patient stated, prior to receiving the health care complained of, that he would accept the health care involved regardless of the risk; or that he did not want to be informed of the matters to which he would be entitled to be informed;

(d) the health care provider, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which risks were disclosed, if the health care provider reasonably believed that additional disclosures could be expected to have a substantial and adverse effect on the patient's condition; or

(e) the patient or his representative executed a written consent which sets forth the nature and purpose of the intended health care and which contains a declaration that the patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial results of health care and which acknowledges that health care providers involved have explained his condition and the proposed health care in a satisfactory manner and that all questions asked about the health care and its attendant risks have been answered in a manner satisfactory to the patient or his representative.

(4) The written consent shall be a defense to an action against a health care provider based upon failure to obtain informed consent unless the patient proves that the person giving the consent lacked capacity to consent or shows by clear and convincing evidence that the execution of the written consent was induced by the defendant's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

(5) This act may not be construed to prevent any person 18 years of age or over from refusing to consent to health care for his own person upon personal or religious grounds.

(6) Except as provided in Section [76-7-304.5](#), the following persons are authorized and empowered to consent to any health care not prohibited by law:

(a) any parent, whether an adult or a minor, for the parent's minor child;

(b) any married person, for a spouse;

(c) any person temporarily standing in loco parentis, whether formally serving or not, for the minor under that person's care and any guardian for the guardian's ward;

(d) any person 18 years of age or over for that person's parent who is unable by reason of age, physical or mental condition, to provide such consent;

(e) any patient 18 years of age or over;

(f) any female regardless of age or marital status, when given in connection with her pregnancy or childbirth;

(g) in the absence of a parent, any adult for the adult's minor brother or sister; and

(h) in the absence of a parent, any grandparent for the grandparent's minor grandchild.

(7) A person who in good faith consents or authorizes health care treatment or procedures for another as provided by this act may not be subject to civil liability.

78B-3-407. Limitation on actions against health care providers when parent or guardian refuses to consent to health care of child.

(1) A malpractice action against a health care provider may not be brought on the basis of the consequences resulting from the refusal of a child's parent or guardian to consent to the child's health care, if:

(a) the health care is recommended by the health care provider;

(b) the parent or guardian is provided with sufficient information to make an informed decision regarding the recommendation of the health care provider; and

(c) the consent of the parent or guardian is required by law before the health care may be administered.

(2) The sole purpose of this section is to prohibit a malpractice action against a health care provider under the circumstances set forth by this section. This section may not be construed to:

(a) create a new cause of action;

- (b) expand an existing cause of action;
- (c) impose a new duty on a health care provider; or
- (d) expand an existing duty of a health care provider.

78B-3-408. Writing required as basis for liability for breach of guarantee, warranty, contract, or assurance of result.

Liability may not be imposed upon any health care provider on the basis of an alleged breach of guarantee, warranty, contract, or assurance of result to be obtained from any health care rendered unless the guarantee, warranty, contract, or assurance is set forth in writing and signed by the health care provider or an authorized agent of the provider.

78B-3-409. Ad damnum clause prohibited in complaint.

A dollar amount may not be specified in the prayer of a complaint filed in a malpractice action against a health care provider. The complaint shall merely pray for such damages as are reasonable in the circumstances.

78B-3-410. Limitation of award of noneconomic damages in malpractice actions.

(1) In a malpractice action against a health care provider, an injured plaintiff may recover noneconomic losses to compensate for pain, suffering, and inconvenience. The amount of damages awarded for noneconomic loss may not exceed:

- (a) for a cause of action arising before July 1, 2001, \$250,000;
- (b) for a cause of action arising on or after July 1, 2001 and before July 1, 2002, the limitation is adjusted for inflation to \$400,000;
- (c) for a cause of action arising on or after July 1, 2002, and before May 15, 2010 the \$400,000 limitation described in Subsection (1)(b) shall be adjusted for inflation as provided in Subsection (2); and

(d) for a cause of action arising on or after May 15, 2010, \$450,000.

(2) (a) Beginning July 1, 2002 and each July 1 thereafter until July 1, 2009, the limit for damages under Subsection (1)(c) shall be adjusted for inflation by the state treasurer.

(b) By July 15 of each year until July 1, 2009, the state treasurer shall:

- (i) certify the inflation-adjusted limit calculated under this Subsection (2); and
- (ii) inform the Administrative Office of the Courts of the certified limit.

(c) The amount resulting from Subsection (2)(a) shall:

- (i) be rounded to the nearest \$10,000; and
- (ii) apply to a cause of action arising on or after the date the annual adjustment is made.

(3) As used in this section, "inflation" means the seasonally adjusted consumer price index for all urban consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

(4) The limit under Subsection (1) does not apply to awards of punitive damages.

78B-3-411. Limitation on attorney's contingency fee in malpractice action.

(1) In any malpractice action against a health care provider as defined in Section [78B-3-403](#), an attorney may not collect a contingent fee for representing a client seeking damages in connection with or arising out of personal injury or wrongful death caused by the negligence of another which exceeds 33-1/3% of the amount recovered.

(2) This limitation applies regardless of whether the recovery is by settlement, arbitration, judgment, or whether appeal is involved.

78B-3-412. Notice of intent to commence action.

(1) A malpractice action against a health care provider may not be initiated unless and until the plaintiff:

(a) gives the prospective defendant or his executor or successor, at least 90 days' prior notice of intent to commence an action; and

(b) except for an action against a dentist, the plaintiff receives a certificate of compliance from the division in accordance with Section [78B-3-418](#).

(2) The notice shall include:

- (a) a general statement of the nature of the claim;
- (b) the persons involved;
- (c) the date, time, and place of the occurrence;
- (d) the circumstances surrounding the claim;
- (e) specific allegations of misconduct on the part of the prospective defendant; and
- (f) the nature of the alleged injuries and other damages sustained.

(3) Notice may be in letter or affidavit form executed by the plaintiff or his attorney.

Service shall be accomplished by persons authorized and in the manner prescribed by the Utah Rules of Civil Procedure for the service of the summons and complaint in a civil action or by certified mail, return receipt requested, in which case notice shall be considered served on the date of mailing.

(4) Notice shall be served within the time allowed for commencing a malpractice action against a health care provider. If the notice is served less than 90 days prior to the expiration of the applicable time period, the time for commencing the malpractice action against the health care provider shall be extended to 120 days from the date of service of notice.

(5) This section shall, for purposes of determining its retroactivity, not be construed as relating to the limitation on the time for commencing any action, and shall apply only to causes of action arising on or after April 1, 1976. This section shall not apply to third party actions, counterclaims or cross claims against a health care provider.

78B-3-413. Professional liability insurance coverage for providers -- Insurance commissioner may require joint underwriting authority.

(1) The commissioner may, after a public hearing, find that professional liability insurance coverage for health care providers is not readily available in the voluntary market in a specific part of this state, and that the public interest requires that action be taken.

(2) The commissioner may promulgate rules and implement plans to provide insurance coverage through all insurers issuing professional liability policies and individual and group accident and sickness policies providing medical, surgical or hospital expense coverage on either a prepaid or an expense incurred basis, including personal injury protection and medical expense coverage issued incidental to liability insurance policies.

78B-3-414. Periodic payment of future damages in malpractice actions.

(1) In any malpractice action against a health care provider, as defined in Section [78B-3-403](#), the court shall, at the request of any party, order that future damages which equal or exceed \$100,000, less amounts payable for attorney fees and other costs which are due at the time of judgment, shall be paid by periodic payments rather than by a lump sum payment.

(2) In rendering a judgment which orders the payment of future damages by periodic payments, the court shall order periodic payments to provide a fair correlation between the sustaining of losses and the payment of damages.

(a) Lost future earnings shall be paid over the judgment creditor's work life expectancy.

(b) The court shall also order, when appropriate, that periodic payments increase at a fixed rate, equal to the rate of inflation which the finder of fact used to determine the amount of future damages, or as measured by the most recent Consumer Price Index applicable to Utah for all goods and services.

(c) The present cash value of all periodic payments shall equal the fact finder's award of future damages, less any amount paid for attorney fees and costs.

(d) The present cash value of periodic payments shall be determined by discounting the total amount of periodic payments projected over the judgment creditor's life expectancy, by the rate of interest which the finder of fact used to reduce the amount of future damages to present value, or the rate of interest available at the time of trial on one year U.S. Government Treasury Bills.

(3) Before periodic payments of future damages may be ordered, the court shall require a judgment debtor to post security which assures full payment of those damages. Security for payment of a judgment of periodic payments may be in one or more of the following forms:

- (a) a bond executed by a qualified insurer;
- (b) an annuity contract executed by a qualified insurer;

(c) evidence of applicable and collectable liability insurance with one or more qualified insurers;

(d) an agreement by one or more qualified insurers to guarantee payment of the judgment; or

(e) any other form of security approved by the court.

(4) Security which complies with this section may also serve as a supersedeas bond, where one is required.

(5) A judgment which orders payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Those payments may only be modified in the event of the death of the judgment creditor.

(6) If the court finds that the judgment debtor, or the assignee of his obligation to make periodic payments, has failed to make periodic payments as ordered by the court, it shall, in addition to the required periodic payments, order the judgment debtor or his assignee to pay the judgment creditor all damages caused by the failure to make payments, including court costs and attorney fees.

(7) The obligation to make periodic payments for all future damages, other than damages for loss of future earnings, shall cease upon the death of the judgment creditor. Damages awarded for loss of future earnings may not be reduced or payments terminated by reason of the death of the judgment creditor, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately prior to his death. In that case the court which rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this section.

(8) If security is posted in accordance with Subsection (3), and approved by a final judgment entered under this section, the judgment is considered to be satisfied, and the judgment debtor on whose behalf the security is posted shall be discharged.

78B-3-415. Actions under Utah Governmental Immunity Act.

The provisions of this part shall apply to malpractice actions against health care providers which are brought under the Utah Governmental Immunity Act if applicable. This part may not affect the requirements for filing notices of claims, times for commencing actions and limitations on amounts recoverable under the Utah Governmental Immunity Act.

78B-3-416. Division to provide panel -- Exemption -- Procedures -- Statute of limitations tolled -- Composition of panel -- Expenses -- Division authorized to set license fees.

(1) (a) The division shall provide a hearing panel in alleged medical liability cases against health care providers as defined in Section [78B-3-403](#), except dentists.

(b) (i) The division shall establish procedures for prelitigation consideration of medical liability claims for damages arising out of the provision of or alleged failure to provide health care.

(ii) The division may establish rules necessary to administer the process and procedures related to prelitigation hearings and the conduct of prelitigation hearings in accordance with Sections [78B-3-416](#) through [78B-3-420](#).

(c) The proceedings are informal, nonbinding, and are not subject to Title 63G, Chapter 4, Administrative Procedures Act, but are compulsory as a condition precedent to commencing litigation.

(d) Proceedings conducted under authority of this section are confidential, privileged, and immune from civil process.

(2) (a) The party initiating a medical liability action shall file a request for prelitigation panel review with the division within 60 days after the service of a statutory notice of intent to commence action under Section [78B-3-412](#).

(b) The request shall include a copy of the notice of intent to commence action. The request shall be mailed to all health care providers named in the notice and request.

(3) (a) The filing of a request for prelitigation panel review under this section tolls the applicable statute of limitations until the later of:

(i) 60 days following the division's issuance of:

(A) an opinion by the prelitigation panel; or
 (B) a certificate of compliance under Section [78B-3-418](#); or
 (ii) the expiration of the time for holding a hearing under Subsection (3)(b)(ii).

(b) The division shall:
 (i) send any opinion issued by the panel to all parties by regular mail; and
 (ii) complete a prelitigation hearing under this section within:
 (A) 180 days after the filing of the request for prelitigation panel review; or
 (B) any longer period as agreed upon in writing by all parties to the review.

(c) If the prelitigation hearing has not been completed within the time limits established in Subsection (3)(b)(ii), the claimant shall:
 (i) file an affidavit of merit under the provisions of Section [78B-3-423](#); or
 (ii) file an affidavit with the division within 180 days of the request for pre-litigation review, in accordance with Subsection (3)(d), alleging that the respondent has failed to reasonably cooperate in scheduling the hearing.

(d) If the claimant files an affidavit under Subsection (3)(c)(ii):
 (i) within 15 days of the filing of the affidavit under Subsection (3)(c)(ii), the division shall determine whether either the respondent or the claimant failed to reasonably cooperate in the scheduling of a pre-litigation hearing; and
 (ii) (A) if the determination is that the respondent failed to reasonably cooperate in the scheduling of a hearing, and the claimant did not fail to reasonably cooperate, the division shall, issue a certificate of compliance for the claimant in accordance with Section [78B-3-418](#); or
 (B) if the division makes a determination other than the determination in Subsection (3)(d)(ii)(A), the claimant shall file an affidavit of merit in accordance with Section [78B-3-423](#), within 30 days of the determination of the division under this Subsection (3).

(e) (i) The claimant and any respondent may agree by written stipulation that no useful purpose would be served by convening a prelitigation panel under this section.
 (ii) When the stipulation is filed with the division, the division shall within 10 days after receipt issue a certificate of compliance under Section [78B-3-418](#), as it concerns the stipulating respondent, and stating that the claimant has complied with all conditions precedent to the commencement of litigation regarding the claim.

(4) The division shall provide for and appoint an appropriate panel or panels to hear complaints of medical liability and damages, made by or on behalf of any patient who is an alleged victim of medical liability. The panels are composed of:
 (a) one member who is a resident lawyer currently licensed and in good standing to practice law in this state and who shall serve as chairman of the panel, who is appointed by the division from among qualified individuals who have registered with the division indicating a willingness to serve as panel members, and a willingness to comply with the rules of professional conduct governing lawyers in the state, and who has completed division training regarding conduct of panel hearings;
 (b) (i) one member who is a licensed health care provider listed under Section [78B-3-403](#), who is practicing and knowledgeable in the same specialty as the proposed defendant, and who is appointed by the division in accordance with Subsection (5); or
 (ii) in claims against only hospitals or their employees, one member who is an individual currently serving in a hospital administration position directly related to hospital operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, and who is appointed by the division; and
 (c) a lay panelist who is not a lawyer, doctor, hospital employee, or other health care provider, and who is a responsible citizen of the state, selected and appointed by the division from among individuals who have completed division training with respect to panel hearings.

(5) (a) Each person listed as a health care provider in Section [78B-3-403](#) and practicing under a license issued by the state, is obligated as a condition of holding that license to participate as a member of a medical liability prelitigation panel at reasonable times, places, and intervals, upon issuance, with advance notice given in a reasonable time frame, by the division of an Order to Participate as a Medical Liability Prelitigation Panel Member.

(b) A licensee may be excused from appearance and participation as a panel member upon the division finding participation by the licensee will create an unreasonable burden or hardship upon the licensee.

(c) A licensee whom the division finds failed to appear and participate as a panel member when so ordered, without adequate explanation or justification and without being excused for cause by the division, may be assessed an administrative fine not to exceed \$5,000.

(d) A licensee whom the division finds intentionally or repeatedly failed to appear and participate as a panel member when so ordered, without adequate explanation or justification and without being excused for cause by the division, may be assessed an administrative fine not to exceed \$5,000, and is guilty of unprofessional conduct.

(e) All fines collected under Subsections (5)(c) and (d) shall be deposited in the Physicians Education Fund created in Section [58-67a-1](#).

(6) Each person selected as a panel member shall certify, under oath, that he has no bias or conflict of interest with respect to any matter under consideration.

(7) A member of the prelitigation hearing panel may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section [63A-3-106](#);

(b) Section [63A-3-107](#); and

(c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and [63A-3-107](#).

(8) (a) In addition to the actual cost of administering the licensure of health care providers, the division may set license fees of health care providers within the limits established by law equal to their proportionate costs of administering prelitigation panels.

(b) The claimant bears none of the costs of administering the prelitigation panel except under Section [78B-3-420](#).

78B-3-417. Proceedings -- Authority of panel -- Rights of parties to proceedings.

(1) No record of the proceedings is required and all evidence, documents, and exhibits are returned to the parties or witnesses who provided the evidence, documents, and exhibits at the end of the proceedings upon the request of the parties or witnesses who provided the evidence.

(2) The division may issue subpoenas for medical records directly related to the claim of medical liability in accordance with division rule and in compliance with the following:

(a) the subpoena shall be prepared by the requesting party in proper form for issuance by the division; and

(b) the subpoena shall be accompanied by:

(i) an affidavit prepared by the person requesting the subpoena attesting to the fact the medical record subject to subpoena is believed to be directly related to the medical liability claim to which the subpoena is related; or

(ii) by a written release for the medical records to be provided to the person requesting the subpoena, signed by the individual who is the subject of the medical record or by that individual's guardian or conservator.

(3) Per diem reimbursement to panel members and expenses incurred by the panel in the conduct of prelitigation panel hearings shall be paid by the division. Expenses related to subpoenas are paid by the requesting party, including witness fees and mileage.

(4) The proceedings are informal and formal rules of evidence are not applicable. There is no discovery or perpetuation of testimony in the proceedings, except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances.

(5) (a) A party is entitled to attend, personally or with counsel, and participate in the proceedings, except upon special order of the panel and unanimous agreement of the parties. The proceedings are confidential and closed to the public.

(b) No party has the right to cross-examine, rebut, or demand that customary formalities of civil trials and court proceedings be followed. The panel may, however, request special or supplemental participation of some or all parties in particular respects.

(c) Communications between the panel and the parties, except the testimony of the parties on the merits of the dispute, are disclosed to all other parties.

(6) The division shall appoint a panel to consider the claim and set the matter for panel review as soon as practicable after receipt of a request.

(7) Parties may be represented by counsel in proceedings before a panel.

78B-3-418. Decision and recommendations of panel -- No judicial or other review.

(1) (a) The panel shall issue an opinion and the division shall issue a certificate of compliance with the pre-litigation hearing requirements of this part in accordance with this section.

(b) A certificate of compliance issued in accordance with this section is proof that the claimant has complied with all conditions precedent under this part prior to the commencement of litigation as required in Subsection [78B-3-412](#)(1).

(c) (i) Notwithstanding any other provision of this part, any party in a medical malpractice action or arbitration hearing may request a prelitigation panel review as to a health care provider and obtain a certificate of compliance for that specific, individual health care provider for the purpose of allocating fault to that health care provider. A party in a medical malpractice action or arbitration hearing may not attempt to allocate fault to any health care provider unless a certificate of compliance has been issued in accordance with this section for that specific, individual health care provider. A health care provider exempted from the requirement of a prelitigation hearing by statute or an arbitration agreement, may nevertheless be joined in a prelitigation hearing to satisfy the requirements of this section. Participation in a prelitigation hearing may not waive any right to enforce an arbitration agreement.

(ii) The party making the claim against, or seeking to allocate fault to, a health care provider is required to seek and obtain the certificate of compliance required by this Subsection (1)(c).

(2) (a) The panel shall render its opinion in writing not later than 30 days after the end of the proceedings, and determine on the basis of the evidence whether:

(i) each claim against each health care provider has merit or has no merit; and

(ii) if a claim is meritorious, whether the conduct complained of resulted in harm to the claimant.

(b) There is no judicial or other review or appeal of the panel's decision or recommendations.

(3) The division shall issue a certificate of compliance to the claimant, for each respondent named in the intent to file a claim under this part, if:

(a) for a named respondent, the panel issues an opinion of merit under Subsections (2)(a)(i) and (ii);

(b) for a named respondent, the claimant files an affidavit of merit in accordance with Section [78B-3-423](#) if the opinion under Subsection (1)(a) is non-meritorious under either Subsection (2)(a)(i) or (ii);

(c) the claimant has complied with the provisions of Subsections [78B-3-416](#)(3)(c) and (d); or

(d) the parties submitted a stipulation under Subsection [78B-3-416](#)(3)(e).

78B-3-419. Evidence of proceedings not admissible in subsequent action -- Panelist may not be compelled to testify -- Immunity of panelist from civil liability -- Information regarding professional conduct.

(1) Evidence of the proceedings conducted by the medical review panel and its results, opinions, findings, and determinations are not admissible as evidence in any civil action or arbitration proceeding subsequently brought by the claimant against any respondent and are not reportable to any health care facility or health care insurance carrier as a part of any credentialing process.

(2) No panelist may be compelled to testify in a civil action subsequently filed with regard to the subject matter of the panel's review. A panelist has immunity from civil liability arising from participation as a panelist and for all communications, findings, opinions, and conclusions made in the course and scope of duties prescribed by this section.

(3) Nothing in this chapter may be interpreted to prohibit the division from considering any information contained in a statutory notice of intent to commence action, request for prelitigation

panel review, or written findings of a panel with respect to the division's determining whether a licensee engaged in unprofessional or unlawful conduct.

78B-3-420. Proceedings considered a binding arbitration hearing upon written agreement of parties -- Compensation to members of panel.

Upon written agreement by all parties, the proceeding may be considered a binding arbitration hearing and proceed under Title 78B, Chapter 11, Utah Uniform Arbitration Act, except for the selection of the panel, which is done as set forth in Subsection [78B-3-416](#)(4). If the proceeding is considered an arbitration proceeding, the parties are equally responsible for compensation to the members of the panel for services rendered.

78B-3-421. Arbitration agreements.

(1) After May 2, 1999, for a binding arbitration agreement between a patient and a health care provider to be validly executed or, if the requirements of this Subsection (1) have not been previously met on at least one occasion, renewed:

(a) the patient shall be given, in writing, the following information on:

(i) the requirement that the patient must arbitrate a claim instead of having the claim heard by a judge or jury;

(ii) the role of an arbitrator and the manner in which arbitrators are selected under the agreement;

(iii) the patient's responsibility, if any, for arbitration-related costs under the agreement;

(iv) the right of the patient to decline to enter into the agreement and still receive health care if Subsection (3) applies;

(v) the automatic renewal of the agreement each year unless the agreement is canceled in writing before the renewal date;

(vi) the right of the patient to have questions about the arbitration agreement answered;

(vii) the right of the patient to rescind the agreement within 10 days of signing the agreement; and

(viii) the right of the patient to require mediation of the dispute prior to the arbitration of the dispute;

(b) the agreement shall require that:

(i) except as provided in Subsection (1)(b)(ii), a panel of three arbitrators shall be selected as follows:

(A) one arbitrator collectively selected by all persons claiming damages;

(B) one arbitrator selected by the health care provider; and

(C) a third arbitrator:

(I) jointly selected by all persons claiming damages and the health care provider; or

(II) if both parties cannot agree on the selection of the third arbitrator, the other two arbitrators shall appoint the third arbitrator from a list of individuals approved as arbitrators by the state or federal courts of Utah; or

(ii) if both parties agree, a single arbitrator may be selected;

(iii) all parties waive the requirement of Section [78B-3-416](#) to appear before a hearing panel in a malpractice action against a health care provider;

(iv) the patient be given the right to rescind the agreement within 10 days of signing the agreement;

(v) the term of the agreement be for one year and that the agreement be automatically renewed each year unless the agreement is canceled in writing by the patient or health care provider before the renewal date;

(vi) the patient has the right to retain legal counsel;

(vii) the agreement only apply to:

(A) an error or omission that occurred after the agreement was signed, provided that the agreement may allow a person who would be a proper party in court to participate in an arbitration proceeding;

(B) the claim of:

(I) a person who signed the agreement;

(II) a person on whose behalf the agreement was signed under Subsection (6); and

- (III) the unborn child of the person described in this Subsection (1)(b)(vii)(B), for 12 months from the date the agreement is signed; and
- (C) the claim of a person who is not a party to the contract if the sole basis for the claim is an injury sustained by a person described in Subsection (1)(b)(vii)(B); and
- (c) the patient shall be verbally encouraged to:
- (i) read the written information required by Subsection (1)(a) and the arbitration agreement; and
- (ii) ask any questions.
- (2) When a medical malpractice action is arbitrated, the action shall:
- (a) be subject to Chapter 31a, Utah Uniform Arbitration Act; and
- (b) include any one or more of the following when requested by the patient before an arbitration hearing is commenced:
- (i) mandatory mediation;
- (ii) retention of the jointly selected arbitrator for both the liability and damages stages of an arbitration proceeding if the arbitration is bifurcated; and
- (iii) the filing of the panel's award of damages as a judgement against the provider in the appropriate district court.
- (3) Notwithstanding Subsection (1), a patient may not be denied health care on the sole basis that the patient or a person described in Subsection (6) refused to enter into a binding arbitration agreement with a health care provider.
- (4) A written acknowledgment of having received a written explanation of a binding arbitration agreement signed by or on behalf of the patient shall be a defense to a claim that the patient did not receive a written explanation of the agreement as required by Subsection (1) unless the patient:
- (a) proves that the person who signed the agreement lacked the capacity to do so; or
- (b) shows by clear and convincing evidence that the execution of the agreement was induced by the health care provider's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.
- (5) The requirements of Subsection (1) do not apply to a claim governed by a binding arbitration agreement that was executed or renewed before May 3, 1999.
- (6) A legal guardian or a person described in Subsection [78B-3-406](#)(6), except a person temporarily standing in loco parentis, may execute or rescind a binding arbitration agreement on behalf of a patient.
- (7) This section does not apply to any arbitration agreement that is subject to the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.

78B-3-422. Evidence of disclosures -- Civil proceedings -- Unanticipated outcomes -- Medical care.

- (1) As used in this section:
- (a) "Defendant" means the defendant in a malpractice action against a health care provider.
- (b) "Health care provider" includes an agent of a health care provider.
- (c) "Patient" includes any person associated with the patient.
- (2) In any civil action or arbitration proceeding relating to an unanticipated outcome of medical care, any unsworn statement, affirmation, gesture, or conduct made to the patient by the defendant shall be inadmissible as evidence of an admission against interest or of liability if it:
- (a) expresses:
- (i) apology, sympathy, commiseration, condolence, or compassion; or
- (ii) a general sense of benevolence; or
- (b) describes:
- (i) the sequence of events relating to the unanticipated outcome of medical care;
- (ii) the significance of events; or
- (iii) both.
- (3) Except as provided in Subsection (2), this section does not alter any other law or rule that applies to the admissibility of evidence in a medical malpractice action.

78B-3-423. Affidavit of merit.

- (1) (a) Before a claimant may receive a certificate of compliance under Sections [78B-3-416](#) and [78B-3-418](#), a claimant shall file an affidavit of merit under this section:
- (i) within 60 days of the date of the panel's opinion, if the claimant receives a finding from the pre-litigation panel in accordance with Section [78B-3-418](#) of non-meritorious for either:
 - (A) the claim of breach of applicable standard of care; or
 - (B) that the breach of care was the proximate cause of injury;
 - (ii) within 60 days of the expiration of the time limit in Subsection [78B-3-416](#)(3)(b)(ii), if a pre-litigation hearing is not held within the time limits under Subsection [78B-3-416](#)(3)(b)(ii); or
 - (iii) within 30 days of the division's determination under Subsection [78B-3-416](#)(3)(d)(ii)(B), if the division makes a determination under Subsection [78B-3-416](#)(3)(d)(ii)(B).
- (b) A claimant who is required to file an affidavit of merit under Subsection (1)(a) shall:
- (i) file the affidavit of merit with the division; and
 - (ii) serve each defendant with the affidavit of merit in accordance with Subsection [78B-3-412](#)(3).
- (2) The affidavit of merit shall:
- (a) be executed by the claimant's attorney or the claimant if the claimant is proceeding pro se, stating that the affiant has consulted with and reviewed the facts of the case with a health care provider who has determined after a review of the medical record and other relevant material involved in the particular action that there is a reasonable and meritorious cause for the filing of a medical liability action; and
 - (b) include an affidavit signed by a health care provider who meets the requirements of Subsection (3), which states that in the health care provider's opinion:
 - (i) there are reasonable grounds to believe that the applicable standard of care was breached;
 - (ii) the breach was a proximate cause of the injury claimed in the notice of intent to commence action; and
 - (iii) the reasons for the health care provider's opinion.
 - (c) The statement required in Subsection (2)(b)(i) shall be waived if the claimant received an opinion that there was a breach of the applicable standard of care under Subsection [78B-3-418](#)(2)(a)(i).
- (3) A health care provider who signs the affidavit of merit under Subsection (2) shall:
- (a) if none of the respondents is a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or an osteopathic physician licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, hold a current unrestricted license issued by the appropriate licensing authority of Utah or another state in the same specialty or of the same class of license as the respondents; or
 - (b) if at least one of the respondents is a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or an osteopathic physician licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, hold a current unrestricted license issued by the appropriate licensing authority of Utah or another state to practice medicine in all its branches.
- (4) A claimant's attorney or claimant may obtain up to a 60-day extension to file the affidavit of merit if:
- (a) the claimant or the claimant's attorney submits a signed affidavit for extension with notice to the division attesting to the fact that the claimant is unable to submit an affidavit of merit as required by this section because:
 - (i) a statute of limitations would impair the action; and
 - (ii) the affidavit of merit could not be obtained before the expiration of the statute of limitations; and
 - (b) the claimant or claimant's attorney submits the affidavit for extension to each named respondent in accordance with Subsection [78B-3-412](#)(3) no later than 60 days after the date specified in Subsection (1)(a)(i).
- (5) (a) A claimant or claimant's attorney who submits allegations in an affidavit of merit that are found to be without reasonable cause and untrue, based on information available to the plaintiff at the time the affidavit was submitted to the division, is liable to the defendant for the

payment of reasonable expenses and reasonable attorney fees actually incurred by the defendant or the defendant's insurer.

(b) An affidavit of merit is not admissible, and cannot be used for any purpose, in a subsequent lawsuit based on the claim that is the subject of the affidavit, except for the purpose of establishing the right to recovery under Subsection (5)(c).

(c) A court, or arbitrator under Section [78B-3-421](#), may award costs and attorney fees under Subsection (5)(a) if the defendant files a motion for costs and attorney fees within 60 days of the judgment or dismissal of the action in favor of the defendant. The person making a motion for attorney fees and costs may depose and examine the health care provider who prepared the affidavit of merit.

(6) If a claimant or the claimant's attorney does not file an affidavit of merit as required by this section, the division may not issue a certificate of compliance for the claimant and the malpractice action shall be dismissed by the court.

(7) This section applies to a cause of action that arises on or after July 1, 2010.

78B-3-424. Limitation of liability for ostensible agent.

(1) For purposes of this section:

(a) "Agent" means a person who is an "employee," "worker," or "operative," as defined in Section [34A-2-104](#), of a health care provider.

(b) "Ostensible agent" means a person:

(i) who is not an agent of the health care provider; and

(ii) who the plaintiff reasonably believes is an agent of the health care provider because the health care provider intentionally, or as a result of a lack of ordinary care, caused the plaintiff to believe that the person was an agent of the health care provider.

(2) A health care provider named as a defendant in a medical malpractice action is not liable for the acts or omissions of an ostensible agent if:

(a) the ostensible agent has privileges with the health care provider, but is not an agent of the healthcare provider;

(b) the health care provider has by policy or practice, ensured that a person providing professional services has insurance of a type and amount required, if any is required, by the rules or regulations as established in:

(i) medical staff by-laws for a health care facility; or

(ii) other health care facility contracts, indemnification agreements, rules or regulations;

(c) the insurance required in Subsection (2)(b) is in effect at the time of the alleged act or omission of the ostensible agent; and

(d) there is a claim of agency or ostensible agency in a plaintiff's notice of intent to commence an action, the healthcare provider, within 60 days of the service of the notice of intent to commence an action, lists each person identified by the plaintiff who the provider claims is not an agent or ostensible agent of the provider.

(3) This section applies to a cause of action that arises on or after July 1, 2010.

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Title 78B Judicial Code

Chapter 3 Actions and Venue

Section 502

78B-3-502. Limitation of therapist's duty to warn.

(1) A therapist has no duty to warn or take precautions to provide protection from any violent behavior of his client or patient, except when that client or patient communicated to the therapist an actual threat of physical violence against a clearly identified or reasonably identifiable victim. That duty shall be discharged if the therapist makes reasonable efforts to communicate the threat to the victim, and notifies a law enforcement officer or agency of the threat.

(2) An action may not be brought against a therapist for breach of trust or privilege, or for disclosure of confidential information, based on a therapist's communication of information to a third party in an effort to discharge his duty in accordance with Subsection (1).

(3) This section does not limit or effect a therapist's duty to report child abuse or neglect in accordance with Section [62A-4a-403](#).

Title 78B Judicial Code

Chapter 5 Procedure and Evidence

Section 618

78B-5-618. Patient access to medical records -- Third party access to medical records.

(1) Pursuant to 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a patient or a patient's personal representative may inspect or receive a copy of the patient's records from a health care provider as defined in Section [78B-3-403](#), when that health care provider is governed by the provisions of 45 C.F.R., Parts 160 and 164.

(2) When a health care provider as defined in Section [78B-3-403](#) is not governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a patient or a patient's personal representative may inspect or receive a copy of the patient's records unless access to the records is restricted by law or judicial order.

(3) A health care provider who provides a copy of a patient's records to the patient or the patient's personal representative:

(a) shall provide the copy within the deadlines required by the Health Insurance Portability and Accountability Act of 1996, Administrative Simplification rule, 45 C.F.R. Sec. 164.524(b); and

(b) may charge a reasonable cost-based fee provided that the fee includes only the cost of:

(i) copying, including the cost of supplies for and labor of copying; and

(ii) postage, when the patient or patient representative has requested the copy be mailed.

(4) Except for records provided by a health care provider under Section [26-1-37](#), a health care provider who provides a copy of a patient's records to a third party authorized to receive records:

(a) shall provide the copy within 30 days after receipt of notice; and

(b) may charge a reasonable fee to cover the health care provider's cost, but may not exceed the following rates:

(i) \$20 for locating a patient's records, per request;

(ii) copying charges may not exceed 50 cents per page for the first 40 pages and 30 cents per page for each additional page;

(iii) the cost of postage when the third party has requested the copy be mailed; and

(iv) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

(5) Except for records provided under Section [26-1-37](#), a person authorized to provide medical records, other than a health care provider under Subsections (3) and (4), who provides a copy of a patient's records to a third party authorized to receive records:

(a) shall provide the copy within 30 days after the request; and

(b) may charge a reasonable fee to cover the health care provider's cost, but may not exceed the following rates:

(i) \$20 for locating a patient's records, per request;

(ii) copying charges may not exceed 50 cents per page for the first 40 pages and 30 cents per page for each additional page;

(iii) the cost of postage when the third party has requested the copy be mailed; and

(iv) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.