

1 **PROFESSIONAL LICENSING REVISIONS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

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

5 Senate Sponsor: John L. Valentine

6

LONG TITLE

7 **Committee Note:**

8 The Business and Labor Interim Committee recommended this bill.

9 **General Description:**

10 This bill modifies the responsibilities and duties of the Division of Occupational and
11 Professional Licensing (DOPL) and modifies certain provisions of Title 58,
12 Occupations and Professions.
13

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ defines terms;
- 17 ▶ modifies DOPL's oversight of factory built housing;
- 18 ▶ modifies DOPL's ability to remove board members for certain conduct;
- 19 ▶ provides DOPL access to criminal background information for applicants applying
20 for licensure, licensure renewal, licensure reinstatement, and relicensure;
- 21 ▶ allows licensees to designate email addresses for correspondence with DOPL;
- 22 ▶ provides that DOPL has the authority to place a license on probation and to issue
23 fines to enforce probation violations;
- 24 ▶ modifies the provisions for diversion to align them with the provisions for
25 probation;
- 26 ▶ modifies what constitutes unprofessional conduct by including the violation of the
27 terms of an order governing a license;



- 28 ▶ modifies the requirements to qualify as an approved education program for nursing
- 29 education;
- 30 ▶ clarifies who may have access to the Controlled Substance Database;
- 31 ▶ reduces the statutory fee for manufactured housing dealers;
- 32 ▶ modifies the supervision required for medical assistants to better align the
- 33 requirements with current practice;
- 34 ▶ repeals the statute creating the Controlled Substance Precursor Advisory Board; and
- 35 ▶ makes technical changes.

36 Money Appropriated in this Bill:

37 None

38 Other Special Clauses:

39 None

40 Utah Code Sections Affected:

41 AMENDS:

- 42 **15A-1-306**, as enacted by Laws of Utah 2011, Chapter 14
- 43 **58-1-201**, as last amended by Laws of Utah 2011, Chapter 367
- 44 **58-1-301.5**, as last amended by Laws of Utah 2010, Chapter 372
- 45 **58-1-301.7**, as enacted by Laws of Utah 2011, Chapter 367
- 46 **58-1-302**, as renumbered and amended by Laws of Utah 1993, Chapter 297
- 47 **58-1-304**, as enacted by Laws of Utah 1993, Chapter 297
- 48 **58-1-401**, as last amended by Laws of Utah 2011, Chapter 367
- 49 **58-1-404**, as last amended by Laws of Utah 2011, Chapter 367
- 50 **58-1-501**, as last amended by Laws of Utah 2011, Chapter 214
- 51 **58-1-502**, as last amended by Laws of Utah 2011, Chapter 367
- 52 **58-17b-103**, as enacted by Laws of Utah 2004, Chapter 280
- 53 **58-17b-501**, as enacted by Laws of Utah 2004, Chapter 280
- 54 **58-17b-622**, as enacted by Laws of Utah 2012, Chapter 265
- 55 **58-22-305**, as last amended by Laws of Utah 2008, Chapter 277
- 56 **58-31b-601**, as last amended by Laws of Utah 2012, Fourth Special Session, Chapter 4
- 57 **58-37c-3**, as last amended by Laws of Utah 2008, Chapter 382
- 58 **58-37c-8**, as last amended by Laws of Utah 2010, Chapter 240

- 59 **58-37c-11**, as last amended by Laws of Utah 1999, Chapter 21
- 60 **58-37c-19**, as last amended by Laws of Utah 2000, Chapter 1
- 61 **58-37c-19.5**, as last amended by Laws of Utah 2004, Chapter 280
- 62 **58-37c-19.7**, as enacted by Laws of Utah 2000, Chapter 272
- 63 **58-37c-19.9**, as enacted by Laws of Utah 2000, Chapter 272
- 64 **58-37c-20**, as last amended by Laws of Utah 2007, Chapter 358
- 65 **58-37d-3**, as last amended by Laws of Utah 2003, Chapter 115
- 66 **58-37f-301**, as last amended by Laws of Utah 2012, Chapters 174 and 239
- 67 **58-40a-501**, as enacted by Laws of Utah 2006, Chapter 206
- 68 **58-56-17**, as last amended by Laws of Utah 2009, Chapter 72
- 69 **58-60-205**, as last amended by Laws of Utah 2012, Chapter 113
- 70 **58-60-206**, as last amended by Laws of Utah 2010, Chapter 214
- 71 **58-60-508**, as last amended by Laws of Utah 2012, Chapter 179
- 72 **58-61-201**, as enacted by Laws of Utah 1994, Chapter 32
- 73 **58-61-304**, as last amended by Laws of Utah 2009, Chapter 183
- 74 **58-67-102**, as last amended by Laws of Utah 2012, Chapter 362
- 75 **58-67-305**, as last amended by Laws of Utah 2012, Chapter 267
- 76 **58-67-806**, as enacted by Laws of Utah 2012, Chapter 162
- 77 **58-68-102**, as last amended by Laws of Utah 2012, Chapter 362
- 78 **58-68-305**, as last amended by Laws of Utah 2012, Chapter 267

79 REPEALS:

- 80 **58-37c-4**, as last amended by Laws of Utah 1993, Chapter 297
- 81 **58-61-303**, as enacted by Laws of Utah 1994, Chapter 32



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

84 Section 1. Section **15A-1-306** is amended to read:

85 **15A-1-306. Factory built housing and modular units -- Division responsibility --**

86 **Unlawful conduct.**

87 (1) The division:

88 (a) shall maintain current information on the HUD Code and the portions of the State

89 Construction Code relevant to manufactured housing installation and will provide at reasonable

90 cost the information to compliance agencies, local regulators, or state regulators requesting
91 such information;

92 (b) shall provide qualified personnel to advise compliance agencies, local regulators,
93 and state regulators regarding the standards for construction and setup, construction and setup
94 inspection, and additions or modifications to factory built housing;

95 (c) is designated as the state administrative agency for purposes of the HUD Code;

96 (d) may inspect [~~the work of modular unit manufacturers~~] factory built housing units in
97 the state during the construction process to determine compliance of the manufacturer with this
98 chapter for those units to be installed within the state, and upon a finding of substantive
99 deficiency, issue a corrective order to the manufacturer [~~with~~] and provide a copy of the order
100 to the local regulator in the state's political subdivision [~~in which~~] where the unit is to be
101 installed;

102 (e) shall have rights of entry and inspection as specified under the HUD Code; and

103 (f) shall implement by rule [~~as required by the HUD Code: (i) a dispute resolution~~
104 ~~program, and (ii)] a continuing education requirement for manufactured housing installation
105 contractors.~~

106 (2) The division may assess civil penalties payable to the state for violation of the
107 HUD Code in an amount identical to those set forth in Section 611 of the National
108 Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Sec. 5410.

109 (3) The state may impose criminal sanctions for violations of the HUD Code identical
110 to those set forth in Section 611 of the National Manufactured Housing Construction and
111 Safety Standards Act of 1974, 42 U.S.C. Sec. 5410, provided that if the criminal sanction is a
112 fine, the fine shall be payable to the state.

113 Section 2. Section **58-1-201** is amended to read:

114 **58-1-201. Boards -- Appointment -- Membership -- Terms -- Vacancies --**
115 **Quorum -- Per diem and expenses -- Chair -- Financial interest or faculty position in**
116 **professional school that teaches continuing education prohibited.**

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

119 (ii) In appointing these members the executive director shall give consideration to
120 recommendations by members of the respective occupations and professions and by their

121 organizations.

122 (b) Each board shall be composed of five members, four of whom shall be licensed or
123 certified practitioners in good standing of the occupation or profession the board represents,
124 and one of whom shall be a member of the general public, unless otherwise provided under the
125 specific licensing chapter.

126 (c) (i) The [~~names~~] name of [~~all persons~~] each person appointed to [~~boards~~] a board
127 shall be submitted to the governor for confirmation or rejection.

128 (ii) If an appointee is rejected by the governor, the executive director shall appoint
129 another person in the same manner as set forth in Subsection (1)(a).

130 (2) (a) (i) Except as required by Subsection (2)(b), as terms of current board members
131 expire, the executive director shall appoint each new member or reappointed member to a
132 four-year term.

133 (ii) Upon the expiration of the term of a board member, the board member shall
134 continue to serve until a successor is appointed, but for a period not to exceed six months from
135 the expiration date of the member's term.

136 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
137 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
138 of board members are staggered so that approximately half of the board is appointed every two
139 years.

140 (c) A board member may not serve more than two consecutive terms, and a board
141 member who ceases to serve on a board may not serve again on that board until after the
142 expiration of a two-year period beginning from that cessation of service.

143 (d) (i) When a vacancy occurs in the membership for any reason, the replacement shall
144 be appointed for the unexpired term.

145 (ii) After filling that term, the replacement member may be appointed for only one
146 additional full term.

147 (e) [~~If a board member fails or refuses to fulfill the responsibilities and duties of a~~
148 ~~board member, including the attendance at board meetings, the executive]~~ The director, with
149 the approval of the [~~board~~] executive director, may remove [~~the~~] a board member and replace
150 the member in accordance with this section[:] for the following reasons:

151 (i) the member fails or refuses to fulfill the responsibilities and duties of a board

152 member, including attendance at board meetings;

153 (ii) the member engages in unlawful or unprofessional conduct; or

154 (iii) if appointed to the board position as a licensed member of the board, the member
155 fails to maintain a license that is active and in good standing.

156 (3) A majority of the board members constitutes a quorum. A quorum is sufficient
157 authority for the board to act.

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

160 (a) Section 63A-3-106;

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

162 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
163 63A-3-107.

164 (5) Each board shall annually designate one of its members to serve as chair for a
165 one-year period.

166 (6) A board member may not be a member of the faculty of, or have [~~any~~] a financial
167 interest in [~~any~~], a vocational or professional college or school [~~which~~] that provides
168 continuing education to any licensee if that continuing education is required by statute or rule.

169 Section 3. Section **58-1-301.5** is amended to read:

170 **58-1-301.5. Division access to Bureau of Criminal Identification records.**

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

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

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

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

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

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

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

183 (2) The ~~[division]~~ division's access to criminal background information under
 184 ~~[Subsection (1) shall be]~~ this section:

185 (a) ~~[in accordance with]~~ shall meet the requirements of Section 53-10-108; and

186 (b) ~~[to all]~~ includes convictions, pleas of nolo contendere, pleas of guilty or nolo
 187 contendere held in abeyance, ~~[all]~~ dismissed charges, and charges without a known disposition.

188 Section 4. Section **58-1-301.7** is amended to read:

189 **58-1-301.7. Change of information.**

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

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

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

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

200 (a) mailing address [furnished] provided to the division by the applicant, licensee, or
 201 certificate holder~~[-]; or~~

202 (b) email address furnished to the division by the applicant, licensee, or certificate
 203 holder, if email has been designated by the applicant, licensee, or certificate holder as the
 204 preferred method of receiving notifications from the division.

205 Section 5. Section **58-1-302** is amended to read:

206 **58-1-302. License by endorsement.**

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

211 (2) Before ~~[any]~~ a person may be issued a license under this section, ~~[he]~~ the person
 212 shall produce satisfactory evidence of ~~[his qualifications;]~~ the person's identity, qualifications,
 213 and good standing in ~~[his]~~ the occupation or profession for which licensure is sought.

214 Section 6. Section **58-1-304** is amended to read:

215 **58-1-304. Restricted license.**

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

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

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

224 (2) Issuance of a restricted or probationary license is considered a partial denial of
225 licensure that is subject to agency review.

226 Section 7. Section **58-1-401** is amended to read:

227 **58-1-401. Grounds for denial of license -- Disciplinary proceedings -- Time**
228 **limitations -- Sanctions.**

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

232 (2) The division may refuse to issue a license to an applicant and may refuse to renew
233 or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise
234 act upon the license of ~~[any]~~ a licensee ~~[in any of]~~ for the following ~~[cases]~~ reasons:

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

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

239 (c) the applicant or licensee has been determined to be mentally incompetent ~~[for any~~
240 ~~reason]~~ by a court of competent jurisdiction; or

241 (d) the applicant or licensee is unable to practice the occupation or profession with
242 reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics,
243 chemicals, or ~~[any]~~ other type of material, or as a result of ~~[any other]~~ a mental or physical
244 condition, when the ~~[licensee's]~~ condition demonstrates a threat or potential threat to the public

245 health, safety, or welfare.

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

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

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

253 (b) ~~[any]~~ a person who engages in or represents ~~[himself to be]~~ that the person is
254 engaged in an occupation or profession regulated under this title; and

255 (c) ~~[any]~~ a person who otherwise violates this title or ~~[any rules]~~ a rule adopted under
256 this title.

257 (5) The division may impose an administrative penalty in accordance with Section
258 58-1-502.

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

263 (b) The division may not take disciplinary action against ~~[any]~~ a person for
264 unprofessional or unlawful conduct more than 10 years after the occurrence of the conduct,
265 unless the proceeding is in response to a civil or criminal judgment or settlement and the
266 proceeding is initiated within one year following the judgment or settlement.

267 Section 8. Section **58-1-404** is amended to read:

268 **58-1-404. Diversion -- Procedure.**

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

273 (2) (a) (i) The director may establish~~[-as circumstances require,]~~ a diversion advisory
274 committee for each occupation or profession or similar groups of occupations or professions
275 licensed by the division.

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

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

280 (ii) The director shall appoint the members of a diversion advisory committee from
281 nominations submitted by the corresponding board established for the same or similar
282 occupation or profession under Section 58-1-201 or from other qualified nominees developed
283 by or submitted to the division.

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

286 (iv) Committee members shall serve voluntarily without remuneration.

287 (v) The director may:

288 (A) dissolve [~~any~~] a diversion advisory committee;

289 (B) remove or request the replacement of [~~any~~] a member of a committee; and

290 (C) establish [~~any procedure~~] procedures that [~~is~~] are necessary and proper for a
291 committee's administration.

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

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

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

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

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

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

307 by a federal government agency for the same or a similar offense.

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

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

312 (5) A licensee may be represented by counsel:

313 (a) during the negotiations for diversion;

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

315 (c) at [~~any~~] each hearing before the director relating to a diversion program.

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

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

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

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

326 (B) in [~~any~~] a disciplinary proceeding based on unprofessional or unlawful conduct that
327 is not the basis of the diversion agreement.

328 (c) The diversion agreement shall provide that if the licensee makes an intentional
329 material misrepresentation of fact in the stipulation of facts contained in the diversion
330 agreement, the director shall initiate the procedures set forth in Subsection (13) to terminate the
331 diversion agreement and issue an order of license revocation.

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

337 (ii) The division may waive and not include as probationary requirements [~~any terms~~]

338 each term of the diversion agreement it does not consider necessary to protect the public.

339 (iii) The term of the order of probation shall be as provided in Subsection (14)(c)(ii).

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

342 (i) knowingly and intelligently waives the right to a hearing under Title 63G, Chapter
343 4, Administrative Procedures Act, for the conduct upon which the diversion agreement was
344 premised;

345 (ii) agrees to be subject to the procedures and remedies set forth in this section;

346 (iii) acknowledges an understanding of the consequences of making an intentional
347 misrepresentation of fact in the stipulation of facts contained in the diversion agreement; and

348 (iv) acknowledges an understanding of the consequences of failing to comply with the
349 terms of the diversion agreement.

350 (7) (a) If the division and the licensee enter into a diversion agreement after the
351 division has commenced an adjudicative proceeding against the licensee, the director shall stay
352 that proceeding pending completion of the diversion agreement.

353 (b) The order staying the adjudicative proceeding shall be filed in that proceeding and
354 may reference the diversion agreement.

355 (8) (a) Upon successful completion of a diversion agreement, the director shall dismiss
356 [~~any charges~~] each charge under the director's jurisdiction of unprofessional or unlawful
357 conduct that [~~were~~] was filed against the licensee.

358 (b) Whether or not an adjudicative proceeding had been commenced against the
359 licensee, the division may not thereafter subject the licensee to disciplinary action for the
360 conduct [~~which~~] that formed the basis of the completed diversion agreement.

361 (c) Neither the execution of a diversion agreement nor the dismissal of filed charges
362 constitute disciplinary action, and no report of either may be made to disciplinary databases.

363 (d) The division may consider the completion of a diversion program and the contents
364 of the diversion agreement in determining the appropriate disciplinary action if the licensee is
365 charged in the future with the same or similar conduct.

366 (e) The order of dismissal shall be filed in the adjudicative proceeding in which the
367 misconduct was charged and may reference the diversion agreement.

368 (9) (a) Acceptance of the licensee into diversion does not preclude the division from

369 investigating or continuing to investigate the licensee for [~~any~~] unlawful or unprofessional
370 conduct committed before, during, or after participation in the diversion program.

371 (b) Acceptance of the licensee into diversion does not preclude the division from
372 taking disciplinary action or continuing to take disciplinary action against the licensee for
373 unlawful or unprofessional conduct committed before, during, or after participation in the
374 diversion program, except for that conduct [~~which~~] that formed the basis for the diversion
375 agreement.

376 (c) [~~Any~~] A licensee terminated from the diversion program for failure to comply with
377 the diversion agreement is subject to disciplinary action by the division for acts committed
378 before, during, and after participation in the diversion program, including violations identified
379 in the diversion agreement.

380 (10) The classification, retention, and disclosure of records relating to a licensee's
381 participation in the diversion program is governed by Title 63G, Chapter 2, Government
382 Records Access and Management Act, except that [~~any~~] a provision in the diversion agreement
383 [~~which~~] that addresses access to or release of diversion records regarding the licensee shall
384 govern the access to and release of those records.

385 (11) Notwithstanding any other provision of this section, the fact that the licensee
386 completed a diversion program and the contents of the diversion agreement itself may be
387 considered by the division in determining the appropriate disciplinary action if the licensee is
388 charged in the future with the same or similar conduct.

389 (12) Meetings regarding the diversion program are not subject to Title 52, Chapter 4,
390 Open and Public Meetings Act.

391 (13) (a) If, during the course of the diversion agreement, information is brought to the
392 attention of the director that the licensee made an intentional material misrepresentation of fact
393 in the stipulation of facts contained in the diversion agreement, the director shall cause to be
394 served upon the licensee an order to show cause specifying the information relied upon by the
395 director and setting a time and place for a hearing to determine whether or not the licensee
396 made the intentional material misrepresentation of fact and whether the agreement should be
397 terminated on that ground.

398 (b) Proceedings to terminate a diversion agreement on the grounds that the licensee
399 made an intentional material misrepresentation of fact in the stipulation of facts contained in

400 the diversion agreement and to issue an order of license revocation shall comply with Title
401 63G, Chapter 4, Administrative Procedures Act, except as follows:

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

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

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

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

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

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

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

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

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

427 (14) (a) If, during the course of the diversion agreement, information is brought to the
428 attention of the director that the licensee has violated the diversion agreement and if it appears
429 in the best interest of the public to proceed with charges, the director, after consultation with
430 the diversion advisory committee, shall cause to be served upon the licensee an order to show

431 cause specifying the facts relied upon by the director and setting a time and place for a hearing
432 to determine whether or not the licensee has violated the diversion agreement and whether the
433 agreement should be terminated.

434 (b) Proceedings to terminate a diversion agreement [~~and to issue an order of license~~
435 ~~suspension and probation, and proceedings to terminate the probation and lift the stay of a~~
436 ~~license suspension,]~~ as described in Subsection (14)(c) shall comply with Title 63G, Chapter 4,
437 Administrative Procedures Act, except as follows:

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

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

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

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

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

450 (c) (i) Upon finding the licensee has violated the diversion agreement by conduct that
451 is entirely the same or similar to the conduct upon which the diversion agreement is premised,
452 or by violating a compliance provision contained in the diversion agreement, and further
453 finding that terminating the agreement is in the best interest of the public, and after issuing an
454 order to that effect, the director shall issue an order [~~of license suspension, suspending the~~
455 ~~licensee's professional license, but shall stay that suspension in favor of an order]~~ of probation,
456 consisting of the same terms as those which comprised the diversion agreement.

457 (ii) Upon finding that the licensee has violated the diversion agreement by conduct that
458 includes conduct that is not the same or similar to the conduct upon which the diversion
459 agreement is premised, and further finding that terminating the agreement is in the best interest
460 of the public, and after issuing an order to that effect, the director shall, after notice of
461 opportunity to be heard is provided to the licensee, issue an order imposing each disciplinary

462 sanction the division deems appropriate, including suspension, public reprimand, a fine,
463 probation, or revocation of licensure.

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

467 [(iii)] (iv) The period of probation is tolled during [any] the time [in which] the
468 licensee does not have an active license in the state.

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

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

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

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

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

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

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

491 (ii) The order to show cause shall specify the facts relied upon by the director and shall
492 set a time and place for hearing before the director to determine whether or not the licensee has

493 violated the order of [~~suspension and~~] probation [~~and~~], whether that order should be
494 terminated, [~~and the stay of suspension lifted~~] and why each additional disciplinary sanction the
495 division deems appropriate should not be imposed, including suspension, public reprimand, a
496 fine, or revocation of licensure.

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

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

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

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

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

510 (A) the licensee violated the diversion agreement; and

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

512 (16) The administrative statute of limitations for taking disciplinary action described in
513 Subsection 58-1-401(6) shall be tolled during a diversion program.

514 Section 9. Section **58-1-501** is amended to read:

515 **58-1-501. Unlawful and unprofessional conduct.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

585 (m) issuing, or aiding and abetting in the issuance of, an order or prescription for a

586 drug or device:

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

590 (ii) with prescriptive authority conferred by an exception issued under this title, or a
591 multi-state practice privilege recognized under this title, if the prescription was issued without
592 first obtaining information, in the usual course of professional practice, that is sufficient to
593 establish a diagnosis, to identify underlying conditions, and to identify contraindications to the
594 proposed treatment; [or]

595 (n) violating a provision of Section 58-1-501.5[-]; or
596 (o) violating the terms of an order governing a license.

597 Section 10. Section **58-1-502** is amended to read:

598 **58-1-502. Unlawful and unprofessional conduct -- Penalties.**

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

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

- 606 (i) issue a citation to the person according to this section and any pertinent rules;
- 607 (ii) attempt to negotiate a stipulated settlement; or
- 608 (iii) notify the person to appear before an adjudicative proceeding conducted under
609 Title 63G, Chapter 4, Administrative Procedures Act.

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

- 613 (A) an uncontested citation;
- 614 (B) a stipulated settlement; or
- 615 (C) a finding of a violation in an adjudicative proceeding.

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

617 order the person to cease and desist from violating Subsection 58-1-501(1)(a) [~~or~~], (1)(c), or
618 (2)(o), or [~~any~~] a rule or order issued with respect to [~~this section~~] those subsections.

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

621 (d) A citation shall:

622 (i) be in writing;

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

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

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

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

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

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

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

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

639 (i) The division may not issue a citation under this section after the expiration of six
640 months following the occurrence of a violation.

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

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

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

644 and

645 (iii) for [~~any~~] each subsequent offense handled pursuant to Subsection (2)(a), a fine of
646 up to \$2,000 for each day of continued offense.

647 (3) (a) An action for a first or second offense [~~which~~] that has not yet resulted in a final

648 order of the division may not preclude initiation of ~~[any]~~ a subsequent action for a second or
649 subsequent offense during the pendency of ~~[any]~~ a preceding action.

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

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

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

655 (ii) bringing an action in the district court of the county ~~[in which]~~ where the person
656 against whom the penalty is imposed resides or in the county where the office of the director is
657 located.

658 (b) ~~[Any]~~ A county attorney or the attorney general of the state shall provide legal
659 assistance and advice to the director in an action to collect the penalty.

660 (c) A court may award reasonable attorney fees and costs to the division in an action
661 brought by the division to enforce the provisions of this section.

662 Section 11. Section **58-17b-103** is amended to read:

663 **58-17b-103. Administrative inspections.**

664 (1) The division may for the purpose of ascertaining compliance with the provisions of
665 this chapter, require a self-audit or enter and inspect the business premises of a person:

666 (a) licensed under Part 3, Licensing; or

667 (b) who is engaged in activities that require a license under Part 3, Licensing.

668 (2) Before conducting an inspection under Subsection (1), the division shall, after
669 identifying the person in charge:

670 (a) give proper identification;

671 (b) request to see the applicable license or licenses;

672 (c) describe the nature and purpose of the inspection; and

673 (d) provide upon request, the authority of the division to conduct the inspection and the
674 penalty for refusing to permit the inspection as provided in Section 58-17b-504.

675 (3) In conducting an inspection under Subsection (1), the division may, after meeting
676 the requirements of Subsection (2):

677 (a) examine any record, prescription, order, drug, device, equipment, machine,
678 electronic device or media, or area related to activities for which a license has been issued or is

679 required by Part 3, Licensing, for the purpose of ascertaining compliance with the applicable
680 provisions of this chapter;

681 (b) reproduce any record or media at the division's own cost;

682 [~~(b)~~] (c) take a drug or device for further analysis if considered necessary;

683 [~~(c)~~] (d) temporarily seize a drug or device [~~which~~] that is suspected to be adulterated,
684 misbranded, outdated, or otherwise in violation of this chapter, pending an adjudicative
685 proceeding on the matter;

686 [~~(d)~~] (e) box and seal drugs suspected to be adulterated, outdated, misbranded, or
687 otherwise in violation of this chapter; and

688 [~~(e)~~] (f) dispose of or return [~~any~~] a drug or device obtained under this Subsection (3)
689 in accordance with procedures established by division rule.

690 (4) An inspection [~~conducted under~~] described in Subsection (1) shall be conducted
691 during regular business hours.

692 (5) If upon inspection, the division concludes that a person has violated the provisions
693 of this chapter or Chapter 37, Utah [~~Control~~] Controlled Substances Act, or [~~any~~] a rule or
694 order issued with respect to those chapters, and that disciplinary action is appropriate, the
695 director or the director's designee shall promptly issue a fine or citation to the licensee in
696 accordance with Section 58-17b-504.

697 Section 12. Section **58-17b-501** is amended to read:

698 **58-17b-501. Unlawful conduct.**

699 "Unlawful conduct" includes:

700 (1) knowingly preventing or refusing to permit [~~any~~] an authorized agent of the
701 division to conduct an inspection pursuant to Section 58-17b-103;

702 (2) failing to deliver the license, permit, or certificate to the division upon demand, if it
703 has been revoked, suspended, or refused;

704 (3) (a) using the title "pharmacist,"[;] "druggist,"[;] "pharmacy intern,"[;] "pharmacy
705 technician,"[;] or [~~any~~] a term having similar meaning, except by a person licensed as a
706 pharmacist, pharmacy intern, or pharmacy technician; or

707 (b) conducting or transacting business under a name [~~which~~] that contains, as part of
708 that name, the words "drugstore,"[;] "pharmacy,"[;] "drugs,"[;] "medicine store,"[;]

709 "medicines,"[;] "drug shop,"[;] "apothecary,"[;] "prescriptions,"[;] or [~~any other~~] a term having

710 a similar meaning, or in any manner advertising, otherwise describing, or referring to the place
711 of the conducted business or profession, unless the place is a pharmacy issued a license by the
712 division, except ~~[any]~~ an establishment selling nonprescription drugs and supplies may display
713 signs bearing the words "packaged drugs,"~~;~~ "drug sundries,"~~;~~ or "nonprescription drugs,"~~;~~
714 and is not considered to be a pharmacy or drugstore by reason of the display;

715 (4) buying, selling, causing to be sold, or offering for sale, ~~[any]~~ a drug or device
716 ~~[which]~~ that bears, or the package bears or originally did bear, the inscription "sample,"~~;~~ "not
717 for resale,"~~;~~ "for investigational or experimental use only,"~~;~~ or other similar words, except
718 when a cost is incurred in the bona fide acquisition of an investigational or experimental drug;

719 (5) using to ~~[his]~~ a person's own advantages or revealing to anyone other than the
720 division, board, and its authorized representatives, or to the courts, when relevant to ~~[any]~~ a
721 judicial or administrative proceeding under this chapter, ~~[any]~~ information acquired under
722 authority of this chapter or concerning ~~[any]~~ a method of process ~~[which]~~ that is a trade secret;

723 (6) procuring or attempting to procure ~~[any]~~ a drug ~~[for himself]~~ or to have someone
724 else procure or attempt to procure ~~[any]~~ a drug:

725 (a) by fraud, deceit, misrepresentation, or subterfuge;

726 (b) by forgery or alteration of a prescription or ~~[any]~~ a written order;

727 (c) by concealment of a material fact;

728 (d) by use of a false statement in ~~[any]~~ a prescription, chart, order, or report; or

729 (e) by theft;

730 (7) filling, refilling, or advertising the filling or refilling of prescriptions for ~~[any]~~ a
731 consumer or patient residing in this state if the person is not licensed:

732 (a) under this chapter; or

733 (b) in the state from which he is dispensing;

734 (8) requiring ~~[any]~~ an employed pharmacist, pharmacy intern, pharmacy technician, or
735 authorized supportive personnel to engage in ~~[any]~~ conduct in violation of this chapter;

736 (9) being in possession of a prescription drug for ~~[any]~~ an unlawful purpose;

737 (10) dispensing a prescription drug to ~~[anyone]~~ a person who does not have a
738 prescription from a practitioner or to ~~[anyone]~~ a person who ~~[he]~~ the person dispensing the
739 drug knows or should know is attempting to obtain drugs by fraud or misrepresentation;

740 (11) selling, dispensing, distributing, or otherwise trafficking in prescription drugs

741 when not licensed to do so or when not exempted from licensure; and

742 (12) a person using a prescription drug or controlled substance [~~for himself~~] that was
743 not lawfully prescribed for [~~him~~] the person by a practitioner.

744 Section 13. Section **58-17b-622** is amended to read:

745 **58-17b-622. Pharmacy benefit management services -- Auditing of pharmacy**
746 **records -- Appeals.**

747 (1) For purposes of this section:

748 (a) "Audit" means a review of the records of a pharmacy by or on behalf of an entity
749 that finances or reimburses the cost of health care services or pharmaceutical products.

750 (b) "Entity" includes:

751 (i) a pharmacy benefits manager or coordinator;

752 (ii) a health benefit plan;

753 (iii) a third party administrator as defined in Section 31A-1-301;

754 (iv) a state agency; or

755 (v) a company, group, or agent that represents, or is engaged by, one of the entities
756 described in Subsections (1)(b)(i) through (iv).

757 (c) "Fraud" means an intentional act of deception, misrepresentation, or concealment in
758 order to gain something of value.

759 (d) "Health benefit plan" means:

760 (i) a health benefit plan as defined in Section 31A-1-301; or

761 (ii) a health, dental, medical, Medicare supplement, or conversion program offered
762 under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.

763 (2) (a) Except as provided in Subsection (2)(b), this section applies to:

764 (i) a contract for the audit of a pharmacy entered into, amended, or renewed on or after
765 July 1, 2012; and

766 (ii) an entity that conducts an audit of the pharmacy records of a pharmacy licensed
767 under this chapter.

768 (b) This section does not apply to an audit of pharmacy records:

769 (i) for a federally funded prescription drug program, including:

770 (A) the state Medicaid program;

771 (B) the Medicare Part D program;

772 (C) a Department of Defense prescription drug program;

773 (D) a Veteran's Affairs prescription drug program; or

774 (ii) when fraud or other intentional and willful misrepresentation is alleged and the
775 pharmacy audit entity has evidence that the pharmacy's actions reasonably indicate fraud or
776 intentional and willful misrepresentation.

777 (3) (a) An audit that involves clinical or professional judgment shall be conducted by
778 or in consultation with a [~~licensed~~] pharmacist who is employed by or working with the
779 auditing entity and who is licensed in the state or another state.

780 (b) If an audit is conducted on site at a pharmacy, the entity conducting the audit:

781 (i) shall give the pharmacy 10 days advanced written notice of:

782 (A) the audit; and

783 (B) the range of prescription numbers or a date range included in the audit; and

784 (ii) may not audit a pharmacy during the first five business days of the month, unless
785 the pharmacy agrees to the timing of the audit.

786 (c) An entity may not audit claims:

787 (i) submitted more than 18 months prior to the audit, unless:

788 (A) required by federal law; or

789 (B) the originating prescription is dated in the preceding six months; or

790 (ii) that exceed 200 selected prescription claims.

791 (4) (a) An entity may not:

792 (i) include dispensing fees in the calculations of overpayments unless the prescription
793 is considered a misfill;

794 (ii) recoup funds for prescription clerical or recordkeeping errors, including
795 typographical errors, scrivener's errors, and computer errors on a required document or record
796 unless the audit entity is alleging fraud or other intentional or willful misrepresentation and the
797 audit entity has evidence that the pharmacy's actions reasonably indicate fraud or intentional
798 and willful misrepresentation; or

799 (iii) collect any funds, charge-backs, or penalties until the audit and all appeals are
800 final, unless the audit entity is alleging fraud or other intentional or willful misrepresentation
801 and the audit entity has evidence that the pharmacy's actions reasonably indicate fraud or
802 intentional and willful misrepresentation.

803 (b) Auditors shall only have access to previous audit reports on a particular pharmacy
804 if the previous audit was conducted by the same entity except as required for compliance with
805 state or federal law.

806 (5) A pharmacy subject to an audit may use the following records to validate a claim
807 for a prescription, refill, or change in a prescription:

808 (a) electronic or physical copies of records of a health care facility, or a health care
809 provider with prescribing authority; and

810 (b) any prescription that complies with state law.

811 (6) (a) An entity that audits a pharmacy shall provide the pharmacy with a preliminary
812 audit report, delivered to the pharmacy or its corporate office of record within 60 days after
813 completion of the audit.

814 (b) A pharmacy has 30 days following receipt of the preliminary audit report to
815 respond to questions, provide additional documentation, and comment on and clarify findings
816 of the audit. Receipt of the report shall be based on the postmark date or the date of a
817 computer transmission if transferred electronically.

818 (7) If an audit results in the dispute or denial of a claim, the entity conducting the audit
819 shall allow the pharmacy to resubmit a claim using any commercially reasonable method,
820 including fax, mail, or electronic claims submission provided that the period of time when a
821 claim may be resubmitted has not expired under the rules of the plan sponsor.

822 (8) (a) Within 120 days after the completion of the appeals process under Subsection
823 (9), a final audit report shall be delivered to the pharmacy or its corporate office of record.

824 (b) The final audit report shall include a disclosure of any money recovered by the
825 entity that conducted the audit.

826 (9) An entity that audits a pharmacy shall establish a written appeals process for
827 appealing a preliminary audit report and a final audit report, and shall provide the pharmacy
828 with notice of the written appeals process. If the pharmacy benefit manager's contract or
829 provider manual contains the information required by this Subsection (9), the requirement for
830 notice is met.

831 Section 14. Section **58-22-305** is amended to read:

832 **58-22-305. Exemption from licensure.**

833 (1) In addition to the exemptions from licensure in Section 58-1-307, the following

834 may engage in the following acts or practices without being licensed under this chapter:

835 (a) a person offering to render professional engineering, professional structural
836 engineering, or professional land surveying services in this state when not licensed under this
837 chapter if the person:

838 (i) holds a current and valid professional engineer, professional structural engineer, or
839 professional land surveyor license issued by a licensing authority recognized by rule by the
840 division in collaboration with the board;

841 (ii) discloses in writing to the potential client the fact that the professional engineer,
842 professional structural engineer, or professional land surveyor:

843 (A) is not licensed in the state;

844 (B) may not provide professional engineering, professional structural engineering, or
845 professional land surveying services in the state until licensed in the state; and

846 (C) that such condition may cause a delay in the ability of the professional engineer,
847 professional structural engineer, or professional land surveyor to provide licensed services in
848 the state;

849 (iii) notifies the division in writing of ~~[his]~~ the person's intent to offer to render
850 professional engineering, professional structural engineering, or professional land surveying
851 services in the state; and

852 (iv) does not provide professional engineering, professional structural engineering, or
853 professional land surveying services, or engage in the practice of professional engineering,
854 professional structural engineering, or professional land surveying in this state until licensed to
855 do so;

856 (b) a person preparing a plan and specification for a one[=] or two-family residence not
857 exceeding two stories in height;

858 (c) a person licensed to practice architecture under Title 58, Chapter 3a, Architects
859 Licensing Act, performing architecture acts or incidental engineering or structural engineering
860 practices that do not exceed the scope of the education and training of the person performing
861 engineering or structural engineering;

862 (d) unlicensed employees, subordinates, associates, or drafters of a person licensed
863 under this chapter while preparing plans, maps, sketches, drawings, documents, specifications,
864 plats, and reports under the supervision of a professional engineer, professional structural

865 engineer, or professional land surveyor;

866 (e) a person preparing a plan or specification for, or supervising the alteration of or
867 repair to, an existing building affecting an area not exceeding 3,000 square feet when structural
868 elements of a building are not changed, such as foundations, beams, columns, and structural
869 slabs, joists, bearing walls, and trusses;

870 (f) an employee of a communications, utility, railroad, mining, petroleum, or
871 manufacturing company, or an affiliate of such a company, if the professional engineering or
872 professional structural engineering work is performed solely in connection with the products or
873 systems of the company and is not offered directly to the public;

874 (g) an organization engaged in the practice of professional engineering, structural
875 engineering, or professional land surveying, provided that:

876 (i) the organization employs a principal; and

877 (ii) all individuals employed by the organization, who are engaged in the practice of
878 professional engineering, structural engineering, or land surveying, are licensed or exempt from
879 licensure under this chapter; and

880 (h) a person licensed as a professional engineer, a professional structural engineer, or a
881 professional land surveyor in a state other than Utah serving as an expert witness, provided the
882 expert testimony meets one of the following:

883 (i) oral testimony as an expert witness in an administrative, civil, or criminal
884 proceeding [~~is not part of the practice of the respective professions for which a license is~~
885 ~~required~~]; or

886 (ii) written documentation included as part of the testimony in a [~~preceding~~
887 proceeding, including designs, studies, plans, specifications, or similar documentation, [~~is not~~
888 ~~part of the practice of the respective professions for which a license is required~~] provided that
889 the purpose of the written documentation is not to establish specifications, plans, designs,
890 processes, or standards to be used in the future in [~~any~~] an industrial process, system,
891 construction, [~~designs, or repairs~~] design, or repair.

892 (2) Nothing in this section shall be construed to restrict a draftsman from preparing
893 plans for a client under the exemption provided in Subsection (1)(b)₂, or taking those plans to a
894 professional engineer for [~~his~~] the engineer's review, approval, and subsequent fixing of the
895 engineer's seal to that set of plans₂ if [~~they~~] the plans meet the building code standards.

896 Section 15. Section **58-31b-601** is amended to read:

897 **58-31b-601. Minimum standards for nursing programs -- Medication aide**
898 **training.**

899 (1) ~~[Fø] Except as provided in Subsection (2),~~ to qualify as an approved education
900 program for the purpose of qualifying graduates for licensure under this chapter, a nursing
901 education program shall be accredited by the:

902 ~~[(a) (i) be affiliated with an institution of higher education that is accredited by the:]~~

903 ~~[(A) Middle States Association of Colleges and Schools;]~~

904 ~~[(B) New England Association of Schools and Colleges;]~~

905 ~~[(C) North Central Association of Colleges and Schools;]~~

906 ~~[(D) Northwest Commission on Colleges and Universities;]~~

907 ~~[(E) Western Association of Schools and Colleges; or]~~

908 ~~[(F) Southern Association of Colleges and Schools; and]~~

909 ~~[(ii) be accredited by the:]~~

910 ~~[(A)]~~ (a) Commission on Collegiate Nursing Education;

911 ~~[(B)]~~ (b) National League for Nursing Accrediting Commission; or

912 ~~[(C)]~~ (c) Council on Accreditation of Nurse Anesthesia Educational Programs~~[-or].~~

913 ~~[(b) be approved by the board and comply with standards defined by division rules.]~~

914 ~~[(2) An approved education program described in Subsection (1), may offer its didactic~~
915 ~~courses using classroom, clinical, or online methods.]~~

916 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
917 division, in consultation with the board, may make rules establishing requirements for a
918 nursing education program to qualify for a limited time as an approved education program for
919 the purpose of qualifying graduates for licensure under this chapter, prior to its obtaining an
920 accreditation described in Subsection (1).

921 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
922 the provisions of this chapter, the division shall make rules defining the minimum standards for
923 a medication aide certified training program to qualify a person for certification under this
924 chapter as a medication aide certified.

925 Section 16. Section **58-37c-3** is amended to read:

926 **58-37c-3. Definitions.**

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

928 [~~(1) "Board" means the Controlled Substance Precursor Advisory Board created in~~
929 ~~Section 58-37c-4.~~]

930 [~~(2)~~ (1) "Controlled substance precursor" includes a chemical reagent and means any
931 of the following:

- 932 (a) Phenyl-2-propanone;
- 933 (b) Methylamine;
- 934 (c) Ethylamine;
- 935 (d) D-lysergic acid;
- 936 (e) Ergotamine and its salts;
- 937 (f) Diethyl malonate;
- 938 (g) Malonic acid;
- 939 (h) Ethyl malonate;
- 940 (i) Barbituric acid;
- 941 (j) Piperidine and its salts;
- 942 (k) N-acetylanthranilic acid and its salts;
- 943 (l) Pyrrolidine;
- 944 (m) Phenylacetic acid and its salts;
- 945 (n) Anthranilic acid and its salts;
- 946 (o) Morpholine;
- 947 (p) Ephedrine;
- 948 (q) Pseudoephedrine;
- 949 (r) Norpseudoephedrine;
- 950 (s) Phenylpropanolamine;
- 951 (t) Benzyl cyanide;
- 952 (u) Ergonovine and its salts;
- 953 (v) 3,4-Methylenedioxyphenyl-2-propanone;
- 954 (w) propionic anhydride;
- 955 (x) Insosafrole;
- 956 (y) Safrole;
- 957 (z) Piperonal;

- 958 (aa) N-Methylephedrine;
- 959 (bb) N-ethylephedrine;
- 960 (cc) N-methylpseudoephedrine;
- 961 (dd) N-ethylpseudoephedrine;
- 962 (ee) Hydriotic acid;
- 963 (ff) gamma butyrolactone (GBL), including butyrolactone, 1,2 butanolide,
- 964 2-oxanolone, tetrahydro-2-furanone, dihydro-2(3H)-furanone, and tetramethylene glycol, but
- 965 not including gamma aminobutric acid (GABA);
- 966 (gg) 1,4 butanediol;
- 967 (hh) any salt, isomer, or salt of an isomer of the chemicals listed in Subsections (2)(a)
- 968 through (gg);
- 969 (ii) Crystal iodine;
- 970 (jj) Iodine at concentrations greater than 1.5% by weight in a solution or matrix;
- 971 (kk) Red phosphorous, except as provided in Section 58-37c-19.7;
- 972 (ll) anhydrous ammonia, except as provided in Section 58-37c-19.9;
- 973 (mm) any controlled substance precursor listed under the provisions of the Federal
- 974 Controlled Substances Act which is designated by the director under the emergency listing
- 975 provisions set forth in Section 58-37c-14; and
- 976 (nn) any chemical which is designated by the director under the emergency listing
- 977 provisions set forth in Section 58-37c-14.
- 978 [~~3~~] (2) "Deliver," "delivery," "transfer," or "furnish" means the actual, constructive,
- 979 or attempted transfer of a controlled substance precursor.
- 980 [~~4~~] (3) "Matrix" means something, as a substance, in which something else
- 981 originates, develops, or is contained.
- 982 [~~5~~] (4) "Person" means any individual, group of individuals, proprietorship,
- 983 partnership, joint venture, corporation, or organization of any type or kind.
- 984 [~~6~~] (5) "Practitioner" means a physician, dentist, podiatric physician, veterinarian,
- 985 pharmacist, scientific investigator, pharmacy, hospital, pharmaceutical manufacturer, or other
- 986 person licensed, registered, or otherwise permitted to distribute, dispense, conduct research
- 987 with respect to, administer, or use in teaching, or chemical analysis a controlled substance in
- 988 the course of professional practice or research in this state.

989 ~~[(7)]~~ (6) (a) "Regulated distributor" means a person within the state who provides,
990 sells, furnishes, transfers, or otherwise supplies a listed controlled substance precursor
991 chemical in a regulated transaction.

992 (b) "Regulated distributor" does not include any person excluded from regulation under
993 this chapter.

994 ~~[(8)]~~ (7) (a) "Regulated purchaser" means any person within the state who receives a
995 listed controlled substance precursor chemical in a regulated transaction.

996 (b) "Regulated purchaser" does not include any person excluded from regulation under
997 this chapter.

998 ~~[(9)]~~ (8) "Regulated transaction" means any actual, constructive or attempted:

999 (a) transfer, distribution, delivery, or furnishing by a person within the state to another
1000 person within or outside of the state of a threshold amount of a listed precursor chemical; or

1001 (b) purchase or acquisition by any means by a person within the state from another
1002 person within or outside the state of a threshold amount of a listed precursor chemical.

1003 ~~[(10)]~~ (9) "Retail distributor" means a grocery store, general merchandise store, drug
1004 store, or other entity or person whose activities as a distributor are limited almost exclusively to
1005 sales for personal use:

1006 (a) in both number of sales and volume of sales; and

1007 (b) either directly to walk-in customers or in face-to-face transactions by direct sales.

1008 ~~[(11)]~~ (10) "Threshold amount of a listed precursor chemical" means any amount of a
1009 controlled substance precursor or a specified amount of a controlled substance precursor in a
1010 matrix; however, the division may exempt from the provisions of this chapter a specific
1011 controlled substance precursor in a specific amount and in certain types of transactions which
1012 provisions for exemption shall be defined by the division by rule adopted pursuant to Title
1013 63G, Chapter 3, Utah Administrative Rulemaking Act.

1014 ~~[(12)]~~ (11) "Unlawful conduct" as defined in Section 58-1-501 includes knowingly and
1015 intentionally:

1016 (a) engaging in a regulated transaction without first being appropriately licensed or
1017 exempted from licensure under this chapter;

1018 (b) acting as a regulated distributor and selling, transferring, or in any other way
1019 conveying a controlled substance precursor to a person within the state who is not appropriately

1020 licensed or exempted from licensure as a regulated purchaser, or selling, transferring, or
1021 otherwise conveying a controlled substance precursor to a person outside of the state and
1022 failing to report the transaction as required;

1023 (c) acting as a regulated purchaser and purchasing or in any other way obtaining a
1024 controlled substance precursor from a person within the state who is not a licensed regulated
1025 distributor, or purchasing or otherwise obtaining a controlled substance precursor from a
1026 person outside of the state and failing to report the transaction as required;

1027 (d) engaging in a regulated transaction and failing to submit reports and keep required
1028 records of inventories required under the provisions of this chapter or rules adopted pursuant to
1029 this chapter;

1030 (e) making any false statement in any application for license, in any record to be kept,
1031 or on any report submitted as required under this chapter;

1032 (f) with the intent of causing the evasion of the recordkeeping or reporting
1033 requirements of this chapter and rules related to this chapter, receiving or distributing any listed
1034 controlled substance precursor chemical in any manner designed so that the making of records
1035 or filing of reports required under this chapter is not required;

1036 (g) failing to take immediate steps to comply with licensure, reporting, or
1037 recordkeeping requirements of this chapter because of lack of knowledge of those
1038 requirements, upon becoming informed of the requirements;

1039 (h) presenting false or fraudulent identification where or when receiving or purchasing
1040 a listed controlled substance precursor chemical;

1041 (i) creating a chemical mixture for the purpose of evading any licensure, reporting or
1042 recordkeeping requirement of this chapter or rules related to this chapter, or receiving a
1043 chemical mixture created for that purpose;

1044 (j) if the person is at least 18 years of age, employing, hiring, using, persuading,
1045 inducing, enticing, or coercing another person under 18 years of age to violate any provision of
1046 this chapter, or assisting in avoiding detection or apprehension for any violation of this chapter
1047 by any federal, state, or local law enforcement official; and

1048 (k) obtaining or attempting to obtain or to possess any controlled substance precursor
1049 or any combination of controlled substance precursors knowing or having a reasonable cause to
1050 believe that the controlled substance precursor is intended to be used in the unlawful

1051 manufacture of any controlled substance.

1052 ~~[(13)]~~ (12) "Unprofessional conduct" as defined in Section 58-1-102 and as may be
1053 further defined by rule includes the following:

1054 (a) violation of any provision of this chapter, the Controlled Substance Act of this state
1055 or any other state, or the Federal Controlled Substance Act; and

1056 (b) refusing to allow agents or representatives of the division or authorized law
1057 enforcement personnel to inspect inventories or controlled substance precursors or records or
1058 reports relating to purchases and sales or distribution of controlled substance precursors as such
1059 records and reports are required under this chapter.

1060 Section 17. Section **58-37c-8** is amended to read:

1061 **58-37c-8. License -- Exceptions from licensure or regulation.**

1062 (1) ~~[Any]~~ A person engaged in a regulated transaction under this chapter shall hold a
1063 controlled substance precursor license issued under Section 58-37c-7, unless excepted from
1064 licensure under this chapter.

1065 (2) The division shall:

1066 (a) establish the form of application for a license, the requirements for licensure, and
1067 fees for initial licensure and renewal; and

1068 (b) identify required information to be contained in the application as a condition of
1069 licensure.

1070 (3) A practitioner who holds a Utah Controlled Substance License and a Controlled
1071 Substance Registration issued by the Drug Enforcement Administration of the U.S.
1072 Government is excepted from licensure under this chapter.

1073 (4) ~~[Any]~~ The purchase, sale, transfer, furnishing, or receipt of ~~[any]~~ a drug intended
1074 for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or
1075 other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or
1076 phenylpropanolamine, if the drug is lawfully purchased, sold, transferred, or furnished as an
1077 over-the-counter medication without prescription pursuant to the federal Food, Drug and
1078 Cosmetic Act, 21 USC, Sec. 301 et seq., or regulations adopted under that act, are excepted
1079 from licensure, reporting, and recordkeeping under this chapter, except that products
1080 containing ephedrine, pseudoephedrine, or phenylpropanolamine are subject to Section
1081 58-37c-20.5.

1082 (5) ~~[Any]~~ The purchase, sale, transfer, receipt, or manufacture of ~~[any]~~ dietary
1083 ~~[supplement]~~ supplements, vitamins, minerals, herbs, or other similar substances, including
1084 concentrates or extracts, which are not otherwise prohibited by law, and which may contain
1085 naturally occurring amounts of chemicals or substances listed in this chapter, or in rules
1086 adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, are exempt
1087 from licensure under this chapter.

1088 (6) A purchaser of two ounces or less of crystal iodine in a single transaction is not
1089 required to be licensed as a regulated purchaser if the transaction complies with Section
1090 58-37c-18.

1091 (7) ~~[Any]~~ The purchase, sale, transfer, receipt, or manufacture of ~~[any]~~ a product that
1092 contains ~~[any]~~ a precursor chemical listed in Subsection 58-37c-3~~[(2)]~~(1)(ff) or (gg) and that is
1093 not intended for human consumption is exempt from licensure or regulation and is not subject
1094 to criminal penalties under this chapter.

1095 Section 18. Section **58-37c-11** is amended to read:

1096 **58-37c-11. Penalty for unlawful conduct.**

1097 (1) ~~[Any]~~ A person who violates the unlawful conduct provision defined in
1098 Subsections 58-37c-3~~[(12)]~~(11)(a) through (j) is guilty of a class A misdemeanor.

1099 (2) ~~[Any]~~ A person who violates the unlawful conduct provisions defined in
1100 Subsection 58-37c-3~~[(12)]~~(11)(k) is guilty of a second degree felony.

1101 Section 19. Section **58-37c-19** is amended to read:

1102 **58-37c-19. Possession or sale of crystal iodine.**

1103 (1) ~~[Any]~~ A person licensed to engage in a regulated transaction is guilty of a class B
1104 misdemeanor who, under circumstances not amounting to a violation of Subsection
1105 58-37d-4(1)(c), offers to sell, sells, or distributes more than two ounces of crystal iodine to
1106 another person who is:

1107 (a) not licensed as a regulated purchaser of crystal iodine;

1108 (b) not excepted from licensure; or

1109 (c) not excepted under Subsection (3).

1110 (2) ~~[Any]~~ A person who is not licensed to engage in regulated transactions and not
1111 excepted from licensure is guilty of a class A misdemeanor who, under circumstances not
1112 amounting to a violation of Subsection 58-37c-3~~[(12)]~~(11)(k) or Subsection 58-37d-4(1)(a):

- 1113 (a) possesses more than two ounces of crystal iodine; or
- 1114 (b) offers to sell, sells, or distributes crystal iodine to another person.
- 1115 (3) Subsection (2)(a) does not apply to:
- 1116 (a) a chemistry laboratory maintained by:
- 1117 (i) a public or private regularly established secondary school; or
- 1118 (ii) a public or private institution of higher education that is accredited by a regional or
- 1119 national accrediting agency recognized by the United States Department of Education;
- 1120 (b) a veterinarian licensed to practice under Title 58, Chapter 28, Veterinary Practice
- 1121 Act; or
- 1122 (c) a general acute hospital.

1123 Section 20. Section **58-37c-19.5** is amended to read:

1124 **58-37c-19.5. Iodine solution greater than 1.5% -- Prescription or permit required**

1125 **-- Penalties.**

1126 (1) As used in this section, "iodine matrix" means iodine at concentrations greater than

1127 1.5% by weight in a matrix or solution.

1128 (2) A person may offer to sell, sell, or distribute an iodine matrix only:

1129 (a) as a prescription drug, pursuant to a prescription issued by a veterinarian or

1130 physician licensed within the state; or

1131 (b) to a person who is actively engaged in the legal practice of animal husbandry of

1132 livestock, as defined in Section 4-1-8.

1133 (3) Prescriptions issued under this section:

1134 (a) shall provide for a specified number of refills;

1135 (b) may be issued by electronic means, in accordance with Title 58, Chapter 17b,

1136 Pharmacy Practice Act; and

1137 (c) may be filled by a person other than the veterinarian or physician issuing the

1138 prescription.

1139 (4) A retailer offering iodine matrix for sale:

1140 (a) shall store the iodine matrix so that the public does not have access to the iodine

1141 matrix without the direct assistance or intervention of a retail employee;

1142 (b) shall keep a record, which may consist of sales receipts, of each person purchasing

1143 iodine matrix; and

1144 (c) may, if necessary to ascertain the identity of the purchaser, ask for proof of
1145 identification from the purchaser.

1146 (5) A person engaging in a regulated transaction under Subsection (2) is guilty of a
1147 class B misdemeanor if the person, under circumstances not amounting to a violation of
1148 Subsection 58-37d-4(1)(c), offers to sell, sells, or distributes an iodine matrix to a person who:

1149 (a) does not present a prescription or is not engaged in animal husbandry, as required
1150 under Subsection (2); or

1151 (b) is not excepted under Subsection (7).

1152 (6) A person is guilty of a class A misdemeanor who, under circumstances not
1153 amounting to a violation of Subsection 58-37c-3~~(12)~~(11)(k) or 58-37d-4(1)(a):

1154 (a) possesses an iodine matrix without proof of obtaining the solution in compliance
1155 with Subsection (2); or

1156 (b) offers to sell, sells, or distributes an iodine matrix in violation of Subsection (2).

1157 (7) Subsection (6)(a) does not apply to:

1158 (a) a chemistry or chemistry-related laboratory maintained by:

1159 (i) a public or private regularly established secondary school; or

1160 (ii) a public or private institution of higher education that is accredited by a regional or
1161 national accrediting agency recognized by the United States Department of Education;

1162 (b) a veterinarian licensed to practice under Title 58, Chapter 28, Veterinary Practice
1163 Act;

1164 (c) a general acute hospital; or

1165 (d) a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer,
1166 warehouseman, or common carrier, or an agent of any of these persons who possesses an
1167 iodine matrix in the regular course of lawful business activities.

1168 Section 21. Section **58-37c-19.7** is amended to read:

1169 **58-37c-19.7. Red phosphorus is a precursor -- Affirmative defense.**

1170 (1) A person is guilty of a class A misdemeanor who is not licensed to engage in a
1171 regulated transaction and is not excepted from licensure who, under circumstances not
1172 amounting to a violation of Subsection 58-37c-3~~(12)~~(11)(k) or 58-37d-4(1)(a), possesses any
1173 amount of red phosphorus.

1174 (2) It is an affirmative defense to a charge under Subsection (1) that the person in

1175 possession of red phosphorus:

1176 (a) is conducting a licensed business [~~which~~] that involves red phosphorus in the
1177 manufacture of any of the following:

1178 (i) the striking surface used for lighting matches, which is sometimes referred to as the
1179 striker plate;

1180 (ii) flame retardant in polymers; or

1181 (iii) fireworks, for which the person or entity possesses a federal license to manufacture
1182 explosives as required under 27 CFR Chapter 1, Part 55, Commerce in Explosives; or

1183 (b) (i) is a wholesaler, manufacturer, warehouseman, or common carrier handling red
1184 phosphorus, or is an agent of any of these persons; and

1185 (ii) possesses the substances in the regular course of lawful business activities.

1186 (3) (a) [~~The~~] A defendant shall provide written notice of intent to claim an affirmative
1187 defense under this section as soon as practicable, but not later than 10 days prior to trial. The
1188 court may waive the notice requirement in the interest of justice for good cause shown, if the
1189 prosecutor is not unfairly prejudiced by the lack of timely notice.

1190 (b) The notice shall include the specifics of the affirmative defense.

1191 (c) The defendant shall establish the affirmative defense by a preponderance of the
1192 evidence. If the defense is established, it is a complete defense to the charges.

1193 (4) Subsection (1) does not apply to:

1194 (a) a chemistry or chemistry-related laboratory maintained by:

1195 (i) a public or private regularly established secondary school; or

1196 (ii) a public or private institution of higher education that is accredited by a regional or
1197 national accrediting agency recognized by the United States Department of Education; or

1198 (b) a retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or
1199 an agent of any of these persons who possesses red phosphorus in the regular course of lawful
1200 business activities.

1201 Section 22. Section **58-37c-19.9** is amended to read:

1202 **58-37c-19.9. Anhydrous ammonia is a precursor -- Requirements regarding**
1203 **purposes and containers.**

1204 (1) A person is guilty of a class A misdemeanor who is not licensed to engage in a
1205 regulated transaction and is not excepted from licensure or exempted under Subsection (2), and

1206 who possesses any amount of anhydrous ammonia under circumstances not amounting to a
1207 violation of Subsection 58-37c-3~~(+2)~~(11)(k) or 58-37d-4(1)(a).

1208 (2) A person who possesses anhydrous ammonia has an affirmative defense to a charge
1209 under Subsection (1) if the person is:

1210 (a) directly involved in or actively operating land in agricultural use as defined in
1211 Section 59-2-502;

1212 (b) a retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or
1213 an agent of any of these persons, who possesses anhydrous ammonia in the regular course of
1214 lawful business activities;

1215 (c) directly involved in or actively operating a business or other lawful activity
1216 providing or using anhydrous ammonia for refrigeration applications; or

1217 (d) directly involved in or actively operating a lawful business enterprise, including an
1218 industrial enterprise, that uses anhydrous ammonia in the regular course of its business
1219 activities.

1220 Section 23. Section **58-37c-20** is amended to read:

1221 **58-37c-20. Possession of ephedrine, pseudoephedrine, or phenylpropanolamine --**

1222 **Penalties.**

1223 (1) ~~Any~~ A person is guilty of a class A misdemeanor:

1224 (a) who is not licensed to engage in regulated transactions and is not excepted from
1225 licensure; and

1226 (b) who, under circumstances not amounting to a violation of Subsection
1227 58-37c-3~~(+2)~~(11)(k) or Subsection 58-37d-4(1)(a), possesses more than 9 grams of ephedrine,
1228 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a
1229 combination of any of these substances.

1230 (2) It is an affirmative defense to a charge under Subsection (1) that the person in
1231 possession of ephedrine, pseudoephedrine, phenylpropanolamine, or a combination of these
1232 two substances:

1233 (a) (i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer,
1234 warehouseman, or common carrier, or an agent of any of these persons; and

1235 (ii) possesses the substances in the regular course of lawful business activities; or

1236 (b) possesses the substance pursuant to a valid prescription as defined in Section

1237 58-37-2.

1238 (3) (a) ~~[The]~~ A defendant shall provide written notice of intent to claim an affirmative
1239 defense under this section as soon as practicable, but not later than 10 days prior to trial. The
1240 court may waive the notice requirement in the interest of justice for good cause shown, if the
1241 prosecutor is not unfairly prejudiced by the lack of timely notice.

1242 (b) The notice shall include the specifics of the asserted defense.

1243 (c) The defendant shall establish the affirmative defense by a preponderance of the
1244 evidence. If the defense is established, it is a complete defense to the charges.

1245 (4) This section does not apply to dietary supplements, herbs, or other natural products,
1246 including concentrates or extracts, which:

1247 (a) are not otherwise prohibited by law; and

1248 (b) may contain naturally occurring ephedrine, ephedrine alkaloids, or
1249 pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these
1250 substances, that:

1251 (i) are contained in a matrix of organic material; and

1252 (ii) do not exceed 15% of the total weight of the natural product.

1253 Section 24. Section **58-37d-3** is amended to read:

1254 **58-37d-3. Definitions.**

1255 (1) As used in this chapter:

1256 (a) (i) "Booby trap" means ~~[any]~~ a concealed or camouflaged device designed to cause
1257 bodily injury when triggered by ~~[any]~~ the action of a person making contact with the device.
1258 ~~[This term]~~

1259 (ii) "Booby trap" includes guns, ammunition, or explosive devices attached to trip
1260 wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines
1261 or wires with hooks attached, and devices for the production of toxic fumes or gases.

1262 (b) "Clandestine laboratory operation" means the:

1263 (i) purchase or procurement of chemicals, supplies, equipment, or laboratory location
1264 for the illegal manufacture of specified controlled substances;

1265 (ii) transportation or arranging for the transportation of chemicals, supplies, or
1266 equipment for the illegal manufacture of specified controlled substances;

1267 (iii) setting up of equipment or supplies in preparation for the illegal manufacture of

1268 specified controlled substances;

1269 (iv) activity of compounding, synthesis, concentration, purification, separation,
1270 extraction, or other physical or chemical processing of ~~[any]~~ a substance, including a controlled
1271 substance precursor, or the packaging, repackaging, labeling, or relabeling of a container
1272 holding a substance that is a product of any of these activities, when the substance is to be used
1273 for the illegal manufacture of specified controlled substances;

1274 (v) illegal manufacture of specified controlled substances; or

1275 (vi) distribution or disposal of chemicals, equipment, supplies, or products used in or
1276 produced by the illegal manufacture of specified controlled substances.

1277 (c) "Controlled substance precursor" means those chemicals designated in Title 58,
1278 Chapter 37c, Utah Controlled Substance Precursor Act, except those substances designated in
1279 Subsections 58-37c-3~~(2)~~(1)(kk) and (ll).

1280 (d) "Disposal" means the abandonment, discharge, deposit, injection, dumping,
1281 spilling, leaking, or placing of ~~[any]~~ hazardous or dangerous material into or on ~~[any]~~ property,
1282 land, or water so that the material may enter the environment, be emitted into the air, or
1283 discharged into any waters, including groundwater.

1284 (e) "Hazardous or dangerous material" means ~~[any]~~ a substance ~~[which]~~ that because of
1285 its quantity, concentration, physical characteristics, or chemical characteristics may cause or
1286 significantly contribute to an increase in mortality, an increase in serious illness, or may pose a
1287 substantial present or potential future hazard to human health or the environment when
1288 improperly treated, stored, transported, disposed of, or otherwise improperly managed.

1289 (f) "Illegal manufacture of specified controlled substances" means in violation of Title
1290 58, Chapter 37, Utah Controlled Substances Act, the:

1291 (i) compounding, synthesis, concentration, purification, separation, extraction, or other
1292 physical or chemical processing for the purpose of producing methamphetamine, other
1293 amphetamine compounds as listed in Schedule I of the Utah Controlled Substances Act,
1294 phencyclidine, narcotic analgesic analogs as listed in Schedule I of the Utah Controlled
1295 Substances Act, lysergic acid diethylamide, or mescaline;

1296 (ii) conversion of cocaine or methamphetamine to their base forms; or

1297 (iii) extraction, concentration, or synthesis of marijuana as that drug is defined in
1298 Section 58-37-2.

1299 (2) Unless otherwise specified, the definitions in Section 58-37-2 also apply to this
1300 chapter.

1301 Section 25. Section **58-37f-301** is amended to read:

1302 **58-37f-301. Access to database.**

1303 (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
1304 Administrative Rulemaking Act, to:

1305 (a) effectively enforce the limitations on access to the database as described in this
1306 part; and

1307 (b) establish standards and procedures to ensure accurate identification of individuals
1308 requesting information or receiving information without request from the database.

1309 (2) The division shall make information in the database and information obtained from
1310 other state or federal prescription monitoring programs by means of the database available only
1311 to the following individuals, in accordance with the requirements of this chapter and division
1312 rules:

1313 (a) personnel of the division specifically assigned to conduct investigations related to
1314 controlled substance laws under the jurisdiction of the division;

1315 (b) authorized division personnel engaged in analysis of controlled substance
1316 prescription information as a part of the assigned duties and responsibilities of their
1317 employment;

1318 (c) in accordance with a written agreement entered into with the department,
1319 employees of the Department of Health:

1320 (i) whom the director of the Department of Health assigns to conduct scientific studies
1321 regarding the use or abuse of controlled substances, provided that the identity of the individuals
1322 and pharmacies in the database are confidential and are not disclosed in any manner to any
1323 individual who is not directly involved in the scientific studies; or

1324 (ii) when the information is requested by the Department of Health in relation to a
1325 person or provider whom the Department of Health suspects may be improperly obtaining or
1326 providing a controlled substance;

1327 (d) a licensed practitioner having authority to prescribe controlled substances, to the
1328 extent the information:

1329 (i) (A) relates specifically to a current or prospective patient of the practitioner; and

- 1330 (B) is provided to or sought by the practitioner for the purpose of:
- 1331 (I) prescribing or considering prescribing any controlled substance to the current or
- 1332 prospective patient;
- 1333 (II) diagnosing the current or prospective patient;
- 1334 (III) providing medical treatment or medical advice to the current or prospective
- 1335 patient; or
- 1336 (IV) determining whether the current or prospective patient:
- 1337 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;
- 1338 or
- 1339 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
- 1340 substance from the practitioner;
- 1341 (ii) (A) relates specifically to a former patient of the practitioner; and
- 1342 (B) is provided to or sought by the practitioner for the purpose of determining whether
- 1343 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a
- 1344 controlled substance from the practitioner;
- 1345 (iii) relates specifically to an individual who has access to the practitioner's Drug
- 1346 Enforcement Administration identification number, and the practitioner suspects that the
- 1347 individual may have used the practitioner's Drug Enforcement Administration identification
- 1348 number to fraudulently acquire or prescribe a controlled substance;
- 1349 (iv) relates to the practitioner's own prescribing practices, except when specifically
- 1350 prohibited by the division by administrative rule;
- 1351 (v) relates to the use of the controlled substance database by an employee of the
- 1352 practitioner, described in Subsection (2)(e); or
- 1353 (vi) relates to any use of the practitioner's Drug Enforcement Administration
- 1354 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
- 1355 controlled substance;
- 1356 (e) in accordance with Subsection (3)(a), an employee of a practitioner described in
- 1357 Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:
- 1358 (i) the employee is designated by the practitioner as an individual authorized to access
- 1359 the information on behalf of the practitioner;
- 1360 (ii) the practitioner provides written notice to the division of the identity of the

1361 employee; and

1362 (iii) the division:

1363 (A) grants the employee access to the database; and

1364 (B) provides the employee with a password that is unique to that employee to access

1365 the database in order to permit the division to comply with the requirements of Subsection

1366 58-37f-203(3)(b) with respect to the employee;

1367 (f) an employee of the same business that employs a licensed practitioner under

1368 Subsection (2)(d) if:

1369 (i) the employee is designated by the practitioner as an individual authorized to access

1370 the information on behalf of the practitioner;

1371 (ii) the practitioner and the employing business provide written notice to the division of

1372 the identity of the designated employee; and

1373 (iii) the division:

1374 (A) grants the employee access to the database; and

1375 (B) provides the employee with a password that is unique to that employee to access

1376 the database in order to permit the division to comply with the requirements of Subsection

1377 58-37f-203(3)(b) with respect to the employee;

1378 (g) a licensed pharmacist having authority to dispense a controlled substance to the

1379 extent the information is provided or sought for the purpose of:

1380 (i) dispensing or considering dispensing any controlled substance; or

1381 (ii) determining whether a person:

1382 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

1383 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled

1384 substance from the pharmacist;

1385 (h) federal, state, and local law enforcement authorities, and state and local

1386 prosecutors, engaged as a specified duty of their employment in enforcing laws:

1387 (i) regulating controlled substances;

1388 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; or

1389 (iii) providing information about a criminal defendant to defense counsel, upon request

1390 during the discovery process, for the purpose of establishing a defense in a criminal case;

1391 (i) employees of the Office of Internal Audit and Program Integrity within the

1392 Department of Health who are engaged in their specified duty of ensuring Medicaid program
1393 integrity under Section 26-18-2.3;

1394 (j) a mental health therapist, if:

1395 (i) the information relates to a patient who is:

1396 (A) enrolled in a licensed substance abuse treatment program; and

1397 (B) receiving treatment from, or under the direction of, the mental health therapist as
1398 part of the patient's participation in the licensed substance abuse treatment program described
1399 in Subsection (2)(j)(i)(A);

1400 (ii) the information is sought for the purpose of determining whether the patient is
1401 using a controlled substance while the patient is enrolled in the licensed substance abuse
1402 treatment program described in Subsection (2)(j)(i)(A); and

1403 (iii) the licensed substance abuse treatment program described in Subsection
1404 (2)(j)(i)(A) is associated with a practitioner who:

1405 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
1406 pharmacist; and

1407 (B) is available to consult with the mental health therapist regarding the information
1408 obtained by the mental health therapist, under this Subsection (2)(j), from the database;

1409 (k) an individual who is the recipient of a controlled substance prescription entered into
1410 the database, upon providing evidence satisfactory to the division that the individual requesting
1411 the information is in fact the individual about whom the data entry was made;

1412 (l) the inspector general, or a designee of the inspector general, of the Office of
1413 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
1414 Title 63J, Chapter 4a, Part 2, Office Duties and Powers; and

1415 (m) the following licensed physicians for the purpose of reviewing and offering an
1416 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
1417 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

1418 (i) a member of the medical panel described in Section 34A-2-601; or

1419 (ii) a physician offering a second opinion regarding treatment.

1420 (3) (a) A practitioner described in Subsection (2)(d) may designate up to three
1421 employees to access information from the database under Subsection (2)(e), (2)(f), or (4)(c).

1422 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah

1423 Administrative Rulemaking Act, to:

1424 (i) establish background check procedures to determine whether an employee
1425 designated under Subsection (2)(e), (2)(f), or (4)(c) should be granted access to the database;
1426 and

1427 (ii) establish the information to be provided by an emergency room employee under
1428 Subsection (4).

1429 (c) The division shall grant an employee designated under Subsection (2)(e), (2)(f), or
1430 (4)(c) access to the database, unless the division determines, based on a background check, that
1431 the employee poses a security risk to the information contained in the database.

1432 (4) (a) An individual who is employed in the emergency room of a hospital may
1433 exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if
1434 the individual is designated under Subsection (4)(c) and the licensed practitioner:

1435 (i) is employed in the emergency room;

1436 (ii) is treating an emergency room patient for an emergency medical condition; and

1437 (iii) requests that an individual employed in the emergency room and designated under
1438 Subsection (4)(c) obtain information regarding the patient from the database as needed in the
1439 course of treatment.

1440 (b) The emergency room employee obtaining information from the database shall,
1441 when gaining access to the database, provide to the database the name and any additional
1442 identifiers regarding the requesting practitioner as required by division administrative rule
1443 established under Subsection (3)(b).

1444 (c) An individual employed in the emergency room under this Subsection (4) may
1445 obtain information from the database as provided in Subsection (4)(a) if:

1446 (i) the employee is designated by the practitioner as an individual authorized to access
1447 the information on behalf of the practitioner;

1448 (ii) the practitioner and the hospital operating the emergency room provide written
1449 notice to the division of the identity of the designated employee; and

1450 (iii) the division:

1451 (A) grants the employee access to the database; and

1452 (B) provides the employee with a password that is unique to that employee to access
1453 the database in order to permit the division to comply with the requirements of Subsection

1454 58-37f-203(3)(b) with respect to the employee.

1455 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a
1456 practitioner who designates an employee under Subsection (2)(e), (2)(f), or (4)(c) to pay for the
1457 costs incurred by the division to conduct the background check and make the determination
1458 described in Subsection (3)(b).

1459 (5) (a) An individual who is granted access to the database based on the fact that the
1460 individual is a licensed practitioner or a mental health therapist shall be denied access to the
1461 database when the individual is no longer licensed.

1462 (b) An individual who is granted access to the database based on the fact that the
1463 individual is a designated employee of a licensed practitioner shall be denied access to the
1464 database when the practitioner is no longer licensed.

1465 Section 26. Section **58-40a-501** is amended to read:

1466 **58-40a-501. Unprofessional conduct.**

1467 In addition to the provisions of Subsection 58-1-501(2), "unprofessional conduct"
1468 includes:

1469 (1) failing to report to the [~~board~~] division an act or omission [~~of~~] that violates a
1470 provision of this chapter by a licensee, applicant, or [~~any other~~] another individual [~~which~~
1471 ~~violates a provision of this chapter~~];

1472 (2) interfering with an investigation of a disciplinary proceeding by willful
1473 misrepresentation of facts or by use of threats or harassment against a client or witness to
1474 prevent that individual from providing evidence in a disciplinary proceeding, investigation, or
1475 other legal action;

1476 (3) failing to maintain client confidentiality unless otherwise required by law;

1477 (4) promoting an unnecessary device, treatment, intervention, or service for financial
1478 gain by the athletic trainer or a third party; and

1479 (5) failing to maintain adequate records.

1480 Section 27. Section **58-56-17** is amended to read:

1481 **58-56-17. Fees on sale -- Escrow agents -- Sales tax.**

1482 (1) A dealer shall collect and remit a fee of [~~\$75~~] \$25 to the division for each factory
1483 built home the dealer sells that, as of the date of the sale, has not been permanently affixed to
1484 real property and converted to real property as provided in Section 70D-2-401. The fee shall be

1485 payable within 30 days following the close of each calendar quarter for all units sold during
1486 that calendar quarter. The fee shall be deposited in a restricted account as provided in Section
1487 58-56-17.5.

1488 (2) A principal real estate broker, associate broker, or sales agent exempt from
1489 registration as a dealer under Section 58-56-16 who sells a factory built home that has not been
1490 permanently affixed to real property shall close the sale only through a qualified escrow agent
1491 in this state registered with the Insurance Department or the Department of Financial
1492 Institutions.

1493 (3) An escrow agent through which a sale is closed under Subsection (2) shall remit all
1494 required sales tax to the state.

1495 Section 28. Section **58-60-205** is amended to read:

1496 **58-60-205. Qualifications for licensure or certification as a clinical social worker,**
1497 **certified social worker, and social service worker.**

1498 (1) An applicant for licensure as a clinical social worker shall:

1499 (a) submit an application on a form provided by the division;

1500 (b) pay a fee determined by the department under Section 63J-1-504;

1501 (c) be of good moral character;

1502 (d) produce certified transcripts from an accredited institution of higher education
1503 recognized by the division in collaboration with the board verifying satisfactory completion of
1504 an education and earned degree as follows:

1505 (i) an earned master's degree in social work resulting from completion of an education
1506 program accredited by the Council on Social Work Education; or

1507 (ii) an earned doctoral degree in social work that results from successful completion of
1508 a clinical concentration and practicum approved by the division and defined by rule under
1509 Section 58-1-203;

1510 (e) have completed a minimum of 4,000 hours of clinical social work training as
1511 defined by division rule under Section 58-1-203 in not less than two years and under the
1512 supervision of a clinical social worker supervisor approved by the division in collaboration
1513 with the board;

1514 (f) document successful completion of not less than 1,000 hours of supervised training
1515 in mental health therapy obtained after completion of the education requirement in Subsection

1516 (1)(d), which training may be included as part of the 4,000 hours of training in Subsection
1517 (1)(e), and of which documented evidence demonstrates not less than 100 of the hours were
1518 obtained under the direct personal face to face supervision of a clinical social worker approved
1519 by the division in collaboration with the board;

1520 (g) have completed a case work, group work, or family treatment course sequence with
1521 a clinical practicum in content as defined by rule under Section 58-1-203; and

1522 (h) pass the examination requirement established by rule under Section 58-1-203.

1523 (2) An applicant for licensure as a certified social worker shall:

1524 (a) submit an application on a form provided by the division;

1525 (b) pay a fee determined by the department under Section 63J-1-504;

1526 (c) be of good moral character;

1527 (d) produce certified transcripts from an accredited institution of higher education
1528 recognized by the division in collaboration with the Social Worker Licensing Board verifying
1529 satisfactory completion of an education and an earned degree as follows:

1530 (i) a social work education program accredited by the Council on Social Work
1531 Education and an earned master's degree resulting from completion of that program; or

1532 (ii) an education program that contains approved clinical social work concentration and
1533 practicum in content as defined by rule under Section 58-1-203 and an earned doctorate
1534 resulting from completion of that program; and

1535 (e) pass the examination requirement established by rule under Section 58-1-203.

1536 (3) (a) An applicant for certification as a certified social worker intern shall meet the
1537 requirements of Subsections (2)(a), (b), (c), and (d).

1538 (b) Certification under Subsection (3)(a) is limited to the time necessary to pass the
1539 examination required under Subsection (2)(e) or six months, whichever occurs first.

1540 (c) A certified social worker intern may provide mental health therapy under the
1541 general supervision of a clinical social worker.

1542 (4) An applicant for licensure as a social service worker shall:

1543 (a) submit an application on a form provided by the division;

1544 (b) pay a fee determined by the department under Section 63J-1-504;

1545 (c) be of good moral character;

1546 (d) produce certified transcripts from an accredited institution of higher education

1547 recognized by the division in collaboration with the Social Worker Licensing Board verifying
1548 satisfactory completion of an earned degree resulting from education as follows:

1549 (i) a bachelor's degree in a social work program accredited by the Council on Social
1550 Work Education;

1551 (ii) a master's degree in a field approved by the division in collaboration with the social
1552 worker board;

1553 (iii) a bachelor's degree in any field if the applicant:

1554 (A) [~~except as provided in Subsection 58-60-205.2(2);~~] has completed at least three
1555 semester hours, or the equivalent, in each of the following areas:

1556 (I) social welfare policy;

1557 (II) human growth and development; and

1558 (III) social work practice methods, as defined by rule; and

1559 (B) provides documentation that the applicant has completed at least 2,000 hours of
1560 qualifying experience under the supervision of a mental health therapist, which experience is
1561 approved by the division in collaboration with the Social Worker Licensing Board, and which
1562 is performed after completion of the requirements to obtain the bachelor's degree required
1563 under this Subsection (4); or

1564 (iv) successful completion of the first academic year of a Council on Social Work
1565 Education approved master's of social work curriculum and practicum; and

1566 (e) pass the examination requirement established by rule under Section 58-1-203.

1567 (5) The division shall ensure that the rules for an examination described under
1568 Subsections (1)(h), (2)(e), and (4)(e) allow additional time to complete the examination if
1569 requested by an applicant who is:

1570 (a) a foreign born legal resident of the United States for whom English is a second
1571 language; or

1572 (b) an enrolled member of a federally recognized Native American tribe.

1573 Section 29. Section **58-60-206** is amended to read:

1574 **58-60-206. Qualifications for admission to examination.**

1575 All applicants for admission to [~~any~~] an examination qualifying an individual for
1576 licensure under this part shall, before taking the examination:

1577 (1) submit an application for examination [~~and licensure~~] on a form provided by the

1578 division;

1579 (2) pay the fee established for the examination; and

1580 (3) certify under penalty of perjury as evidenced by notarized signature on the
1581 application for examination [~~and licensure~~] that the applicant:

1582 (a) has completed the education requirement and been awarded the earned degree
1583 required for licensure; or

1584 (b) has only one semester, or the equivalent, remaining before the applicant completes
1585 the education requirement for earning the degree that is required for licensure.

1586 Section 30. Section **58-60-508** is amended to read:

1587 **58-60-508. Substance use disorder counselor supervisor's qualifications --**

1588 **Functions.**

1589 (1) A mental health therapist supervisor of a substance use disorder counselor shall:

1590 (a) be qualified by education or experience to treat substance use disorders;

1591 (b) be currently working in the substance use disorder treatment field;

1592 (c) review substance use disorder counselor assessment procedures and
1593 recommendations;

1594 (d) provide substance use disorder diagnosis and other mental health diagnoses in
1595 accordance with Subsection 58-60-102(7);

1596 (e) supervise the development of a treatment plan;

1597 (f) approve the treatment plan; and

1598 (g) provide direct supervision for not more than five persons, unless granted an
1599 exception in writing from the board and the division.

1600 (2) A supervisor of a certified substance use disorder counselor, certified substance use
1601 disorder counselor intern, certified advanced substance use disorder counselor, certified
1602 advanced substance use disorder counselor intern, or licensed substance use disorder counselor
1603 may:

1604 (a) be a licensed advanced substance use disorder counselor with:

1605 (i) until July 1, 2014, at least two years of experience as a substance use disorder
1606 counselor; or

1607 (ii) beginning on July 1, 2014, at least two years of experience as a licensed advanced
1608 substance use disorder counselor; [or]

- 1609 (b) be currently working in the substance use disorder field; and
- 1610 (c) provide direct supervision for no more than three persons, unless granted an
- 1611 exception in writing from the board and the division.

1612 Section 31. Section **58-61-201** is amended to read:

1613 **58-61-201. Board.**

1614 (1) There is created the Psychologist Licensing Board consisting of four licensed

1615 psychologists and one member from the general public.

1616 (2) The board shall be appointed, serve terms, and be compensated in accordance with

1617 Section 58-1-201.

1618 (3) The duties and responsibilities of the board are in accordance with Sections

1619 58-1-202 and 58-1-203. In addition, the board shall:

1620 (a) designate one of its members on a permanent or rotating basis to assist the division

1621 in review of complaints concerning unlawful or unprofessional practice by a licensee in the

1622 profession regulated by the board and to advise the division regarding the conduct of

1623 investigations of the complaints; and

1624 (b) disqualify [~~any~~] a member from acting as presiding officer in [~~any~~] an

1625 administrative procedure in which that member has previously reviewed the complaint or

1626 advised the division.

1627 Section 32. Section **58-61-304** is amended to read:

1628 **58-61-304. Qualifications for licensure by examination or endorsement.**

1629 (1) An applicant for licensure as a psychologist based upon education, clinical training,

1630 and examination shall:

1631 (a) submit an application on a form provided by the division;

1632 (b) pay a fee determined by the department under Section 63J-1-504;

1633 (c) be of good moral character;

1634 (d) produce certified transcripts of credit verifying satisfactory completion of a doctoral

1635 degree in psychology that includes specific core course work established by division rule under

1636 Section 58-1-203, from an institution of higher education whose doctoral program, at the time

1637 the applicant received the doctoral degree, met approval criteria established by division rule

1638 made in consultation with the board;

1639 (e) have completed a minimum of 4,000 hours of psychology training as defined by

1640 division rule under Section 58-1-203 in not less than two years and under the supervision of a
1641 psychologist supervisor approved by the division in collaboration with the board;

1642 (f) to be qualified to engage in mental health therapy, document successful completion
1643 of not less than 1,000 hours of supervised training in mental health therapy obtained after
1644 completion of a master's level of education in psychology, which training may be included as
1645 part of the 4,000 hours of training required in Subsection (1)(e), and for which documented
1646 evidence demonstrates not less than one hour of supervision for each 40 hours of supervised
1647 training was obtained under the direct personal face to face supervision of a psychologist
1648 approved by the division in collaboration with the board;

1649 (g) pass the examination requirement established by division rule under Section
1650 58-1-203; and

1651 (h) meet with the board, upon request for good cause, for the purpose of evaluating the
1652 applicant's qualifications for licensure.

1653 (2) An applicant for licensure as a psychologist by endorsement based upon licensure
1654 in another jurisdiction shall:

1655 (a) submit an application on a form provided by the division;

1656 (b) pay a fee determined by the department under Section 63J-1-504;

1657 (c) be of good moral character and professional standing, and not have any disciplinary
1658 action pending or in effect against the applicant's psychologist license in any jurisdiction;

1659 (d) have passed the Utah Psychologist Law and Ethics Examination established by
1660 division rule;

1661 (e) provide satisfactory evidence the applicant is currently licensed in another state,
1662 district, or territory of the United States, or in any other jurisdiction approved by the division in
1663 collaboration with the board;

1664 (f) provide satisfactory evidence the applicant has actively practiced psychology in that
1665 jurisdiction for not less than 2,000 hours or one year, whichever is greater;

1666 (g) provide satisfactory evidence that:

1667 (i) the education, supervised experience, examination, and all other requirements for
1668 licensure in that jurisdiction at the time the applicant obtained licensure were substantially
1669 equivalent to the licensure requirements for a psychologist in Utah at the time the applicant
1670 obtained licensure in the other jurisdiction; or

1671 (ii) the applicant is:

1672 (A) a current holder of [~~diplomate~~] Board Certified Specialist status in good standing
1673 from the American Board of Professional Psychology;

1674 (B) currently credentialed as a health service provider in psychology by the National
1675 Register of Health Service Providers in Psychology; or

1676 (C) currently holds a Certificate of Professional Qualification (CPQ) granted by the
1677 Association of State and Provincial Psychology Boards; and

1678 (h) meet with the board, upon request for good cause, for the purpose of evaluating the
1679 applicant's qualifications for licensure.

1680 (3) (a) An applicant for certification as a psychology resident shall comply with the
1681 provisions of Subsections (1)(a), (b), (c), (d), and (h).

1682 (b) (i) An individual's certification as a psychology resident is limited to the period of
1683 time necessary to complete clinical training as described in Subsections (1)(e) and (f) and
1684 extends not more than one year from the date the minimum requirement for training is
1685 completed, unless the individual presents satisfactory evidence to the division and the
1686 Psychologist Licensing Board that the individual is making reasonable progress toward passing
1687 the qualifying examination or is otherwise on a course reasonably expected to lead to licensure
1688 as a psychologist.

1689 (ii) The period of time under Subsection (3)(b)(i) may not exceed two years past the
1690 date the minimum supervised clinical training requirement has been completed.

1691 Section 33. Section **58-67-102** is amended to read:

1692 **58-67-102. Definitions.**

1693 In addition to the definitions in Section 58-1-102, as used in this chapter:

1694 (1) "Ablative procedure" means a procedure that is expected to excise, vaporize,
1695 disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium:
1696 YAG lasers, and excluding hair removal.

1697 (2) "ACGME" means the Accreditation Council for Graduate Medical Education of the
1698 American Medical Association.

1699 (3) "Administrative penalty" means a monetary fine or citation imposed by the division
1700 for acts or omissions determined to constitute unprofessional or unlawful conduct, in
1701 accordance with a fine schedule established by the division in collaboration with the board, as a

1702 result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4,
1703 Administrative Procedures Act.

1704 (4) "Board" means the Physicians Licensing Board created in Section 58-67-201.

1705 (5) (a) "Cosmetic medical device" means tissue altering energy based devices that have
1706 the potential for altering living tissue and that are used to perform ablative or nonablative
1707 procedures, such as American National Standards Institute (ANSI) designated Class IIIb and
1708 Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices, and
1709 excludes ANSI designated Class IIIa and lower powered devices.

1710 (b) Notwithstanding Subsection (5)(a), if an ANSI designated Class IIIa and lower
1711 powered device is being used to perform an ablative procedure, the device is included in the
1712 definition of cosmetic medical device under Subsection (5)(a).

1713 (6) "Cosmetic medical procedure":

1714 (a) includes the use of cosmetic medical devices to perform ablative or nonablative
1715 procedures; and

1716 (b) does not include a treatment of the ocular globe such as refractive surgery.

1717 (7) "Diagnose" means:

1718 (a) to examine in any manner another person, parts of a person's body, substances,
1719 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's
1720 body, to determine the source, nature, kind, or extent of a disease or other physical or mental
1721 condition;

1722 (b) to attempt to conduct an examination or determination described under Subsection
1723 (7)(a);

1724 (c) to hold oneself out as making or to represent that one is making an examination or
1725 determination as described in Subsection (7)(a); or

1726 (d) to make an examination or determination as described in Subsection (7)(a) upon or
1727 from information supplied directly or indirectly by another person, whether or not in the
1728 presence of the person making or attempting the diagnosis or examination.

1729 (8) "LCME" means the Liaison Committee on Medical Education of the American
1730 Medical Association.

1731 (9) "Medical assistant" means an unlicensed individual working under the [~~direct and~~
1732 ~~immediate~~] indirect supervision of a licensed physician and surgeon and engaged in specific

1733 tasks assigned by the licensed physician and surgeon in accordance with the standards and
1734 ethics of the profession.

1735 (10) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to
1736 alter living tissue, but is not intended or expected to excise, vaporize, disintegrate, or remove
1737 living tissue.

1738 (ii) Notwithstanding Subsection (10)(a)(i), nonablative procedure includes hair
1739 removal.

1740 (b) "Nonablative procedure" does not include:

1741 (i) a superficial procedure as defined in Section 58-1-102;

1742 (ii) the application of permanent make-up; or

1743 (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are
1744 performed by an individual licensed under this title who is acting within the individual's scope
1745 of practice.

1746 (11) "Physician" means both physicians and surgeons licensed under Section
1747 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
1748 Section 58-68-301, Utah Osteopathic Medical Practice Act.

1749 (12) (a) "Practice of medicine" means:

1750 (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
1751 disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real
1752 or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any
1753 means or instrumentality, and by an individual in Utah or outside the state upon or for any
1754 human within the state;

1755 (ii) when a person not licensed as a physician directs a licensee under this chapter to
1756 withhold or alter the health care services that the licensee has ordered;

1757 (iii) to maintain an office or place of business for the purpose of doing any of the acts
1758 described in Subsection (12)(a) whether or not for compensation; or

1759 (iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
1760 treatment of human diseases or conditions in any printed material, stationery, letterhead,
1761 envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine,"
1762 "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these
1763 designations in any manner which might cause a reasonable person to believe the individual

1764 using the designation is a licensed physician and surgeon, and if the party using the designation
1765 is not a licensed physician and surgeon, the designation must additionally contain the
1766 description of the branch of the healing arts for which the person has a license, provided that an
1767 individual who has received an earned degree of doctor of medicine degree but is not a licensed
1768 physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not
1769 Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

1770 (b) The practice of medicine does not include:

1771 (i) except for an ablative medical procedure as provided in Subsection (12)(b)(ii), the
1772 conduct described in Subsection (12)(a)(i) that is performed in accordance with a license issued
1773 under another chapter of this title;

1774 (ii) an ablative cosmetic medical procedure if the scope of practice for the person
1775 performing the ablative cosmetic medical procedure includes the authority to operate or
1776 perform a surgical procedure; or

1777 (iii) conduct under Subsection 58-67-501(2).

1778 (13) "Prescription device" means an instrument, apparatus, implement, machine,
1779 contrivance, implant, in vitro reagent, or other similar or related article, and any component
1780 part or accessory, which is required under federal or state law to be prescribed by a practitioner
1781 and dispensed by or through a person or entity licensed under this chapter or exempt from
1782 licensure under this chapter.

1783 (14) "Prescription drug" means a drug that is required by federal or state law or rule to
1784 be dispensed only by prescription or is restricted to administration only by practitioners.

1785 (15) "SPEX" means the Special Purpose Examination of the Federation of State
1786 Medical Boards.

1787 (16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

1788 (17) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and
1789 as may be further defined by division rule.

1790 Section 34. Section **58-67-305** is amended to read:

1791 **58-67-305. Exemptions from licensure.**

1792 In addition to the exemptions from licensure in Section 58-1-307, the following
1793 individuals may engage in the described acts or practices without being licensed under this
1794 chapter:

1795 (1) an individual rendering aid in an emergency, when no fee or other consideration of
 1796 value for the service is charged, received, expected, or contemplated;

1797 (2) an individual administering a domestic or family remedy;

1798 (3) (a) (i) a person engaged in the sale of vitamins, health foods, dietary supplements,
 1799 herbs, or other products of nature, the sale of which is not otherwise prohibited by state or
 1800 federal law; and

1801 (ii) a person acting in good faith for religious reasons, as a matter of conscience, or
 1802 based on a personal belief, when obtaining or providing any information regarding health care
 1803 and the use of any product under Subsection (3)(a)(i); and

1804 (b) Subsection (3)(a) does not:

1805 (i) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity,
 1806 pain, or other condition; or

1807 (ii) prohibit providing truthful and non-misleading information regarding any of the
 1808 products under Subsection (3)(a)(i);

1809 (4) a person engaged in good faith in the practice of the religious tenets of any church
 1810 or religious belief, without the use of prescription drugs;

1811 (5) an individual authorized by the Department of Health under Section 26-1-30, to
 1812 draw blood pursuant to Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), or
 1813 72-10-502(5)(a)(vi);

1814 (6) a medical assistant while working under the ~~[direct and immediate]~~ indirect
 1815 supervision of a licensed physician and surgeon, to the extent the medical assistant:

1816 (a) is engaged in tasks appropriately delegated by the supervisor in accordance with the
 1817 standards and ethics of the practice of medicine;

1818 (b) does not perform surgical procedures;

1819 (c) does not prescribe prescription medications; ~~H~~→ [and]

1819a (d) does not administer anesthesia, anesthesia does not mean a local anesthetic for
 1819b minor procedural use; and

1820 ~~(d)~~ (e) ~~H~~ does not engage in other medical practices or procedures as defined by
 1820a division rule

1821 in collaboration with the board;

1822 (7) an individual engaging in the practice of medicine when:

1823 (a) the individual is licensed in good standing as a physician in another state with no
 1824 licensing action pending and no less than 10 years of professional experience;

1825 (b) the services are rendered as a public service and for a noncommercial purpose;

1826 (c) no fee or other consideration of value is charged, received, expected, or
1827 contemplated for the services rendered beyond an amount necessary to cover the proportionate
1828 cost of malpractice insurance; and

1829 (d) the individual does not otherwise engage in unlawful or unprofessional conduct;

1830 (8) an individual providing expert testimony in a legal proceeding; and

1831 (9) an individual who is invited by a school, association, society, or other body
1832 approved by the division to conduct a clinic or demonstration of the practice of medicine in
1833 which patients are treated, if:

1834 (a) the individual does not establish a place of business in this state;

1835 (b) the individual does not regularly engage in the practice of medicine in this state;

1836 (c) the individual holds a current license in good standing to practice medicine issued
1837 by another state, district or territory of the United States, or Canada;

1838 (d) the primary purpose of the event is the training of others in the practice of
1839 medicine; and

1840 (e) neither the patient nor an insurer is billed for the services performed.

1841 Section 35. Section **58-67-806** is amended to read:

1842 **58-67-806. Representation of medical specialization.**

1843 (1) A physician may not represent to another person that the physician is certified in a
1844 medical specialty or certified by a particular board unless:

1845 (a) the physician includes in the representation the name of:

1846 (i) the certification board or entity; and

1847 (ii) the medical specialty for which the physician is certified; and

1848 (b) the board or certification entity meets the requirements of Subsection (2).

1849 (2) A certification entity or board under Subsection (1) shall meet the following
1850 qualifications:

1851 (a) be included in the American Board of Medical Specialties or an American
1852 Osteopathic Association Certifying Board; ~~and~~ or

1853 (b) (i) require an Accreditation Council for Graduate Medical Education or American
1854 Osteopathic Association approved ~~post-graduate~~ postgraduate training program that provides
1855 complete training in the specialty or ~~sub-specialty; or~~ subspeciality; and

1856 (ii) be certified or had prior certification by the member board of the American Board

1857 of Medical Specialties or an American Osteopathic Certifying Board.

1858 Section 36. Section **58-68-102** is amended to read:

1859 **58-68-102. Definitions.**

1860 In addition to the definitions in Section 58-1-102, as used in this chapter:

1861 (1) "Ablative procedure" means a procedure that is expected to excise, vaporize,
1862 disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium:
1863 YAG lasers, and excluding hair removal.

1864 (2) "ACGME" means the Accreditation Council for Graduate Medical Education of the
1865 American Medical Association.

1866 (3) "Administrative penalty" means a monetary fine imposed by the division for acts or
1867 omissions determined to constitute unprofessional or unlawful conduct, as a result of an
1868 adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
1869 Procedures Act.

1870 (4) "AOA" means the American Osteopathic Association.

1871 (5) "Board" means the Osteopathic Physician and Surgeon's Licensing Board created in
1872 Section 58-68-201.

1873 (6) (a) "Cosmetic medical device" means tissue altering energy based devices that have
1874 the potential for altering living tissue and that are used to perform ablative or nonablative
1875 procedures, such as American National Standards Institute (ANSI) designated Class IIIb and
1876 Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices and
1877 excludes ANSI designated Class IIIa and lower powered devices.

1878 (b) Notwithstanding Subsection (6)(a), if an ANSI designated Class IIIa and lower
1879 powered device is being used to perform an ablative procedure, the device is included in the
1880 definition of cosmetic medical device under Subsection (6)(a).

1881 (7) "Cosmetic medical procedure":

1882 (a) includes the use of cosmetic medical devices to perform ablative or nonablative
1883 procedures; and

1884 (b) does not include a treatment of the ocular globe such as refractive surgery.

1885 (8) "Diagnose" means:

1886 (a) to examine in any manner another person, parts of a person's body, substances,
1887 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's

1888 body, to determine the source, nature, kind, or extent of a disease or other physical or mental
1889 condition;

1890 (b) to attempt to conduct an examination or determination described under Subsection
1891 (8)(a);

1892 (c) to hold oneself out as making or to represent that one is making an examination or
1893 determination as described in Subsection (8)(a); or

1894 (d) to make an examination or determination as described in Subsection (8)(a) upon or
1895 from information supplied directly or indirectly by another person, whether or not in the
1896 presence of the person making or attempting the diagnosis or examination.

1897 (9) "Medical assistant" means an unlicensed individual working under the [~~direct and~~
1898 ~~immediate~~] indirect supervision of a licensed osteopathic physician and surgeon and engaged
1899 in specific tasks assigned by the licensed osteopathic physician and surgeon in accordance with
1900 the standards and ethics of the profession.

1901 (10) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to
1902 alter living tissue, but is not expected or intended to excise, vaporize, disintegrate, or remove
1903 living tissue.

1904 (ii) Notwithstanding Subsection (10)(a)(i), nonablative procedure includes hair
1905 removal.

1906 (b) "Nonablative procedure" does not include:

1907 (i) a superficial procedure as defined in Section 58-1-102;

1908 (ii) the application of permanent make-up; or

1909 (iii) the use of photo therapy lasers for neuromusculoskeletal treatments that are
1910 performed by an individual licensed under this title who is acting within the individual's scope
1911 of practice.

1912 (11) "Physician" means both physicians and surgeons licensed under Section
1913 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
1914 Section 58-68-301, Utah Osteopathic Medical Practice Act.

1915 (12) (a) "Practice of osteopathic medicine" means:

1916 (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
1917 disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real
1918 or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part

1919 is based upon emphasis of the importance of the musculoskeletal system and manipulative
1920 therapy in the maintenance and restoration of health, by an individual in Utah or outside of the
1921 state upon or for any human within the state;

1922 (ii) when a person not licensed as a physician directs a licensee under this chapter to
1923 withhold or alter the health care services that the licensee has ordered;

1924 (iii) to maintain an office or place of business for the purpose of doing any of the acts
1925 described in Subsection (12)(a) whether or not for compensation; or

1926 (iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
1927 treatment of human diseases or conditions, in any printed material, stationery, letterhead,
1928 envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine,"
1929 "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.,"
1930 "D.O.," or any combination of these designations in any manner which might cause a
1931 reasonable person to believe the individual using the designation is a licensed osteopathic
1932 physician, and if the party using the designation is not a licensed osteopathic physician, the
1933 designation must additionally contain the description of the branch of the healing arts for which
1934 the person has a license, provided that an individual who has received an earned degree of
1935 doctor of osteopathic medicine but is not a licensed osteopathic physician and surgeon in Utah
1936 may use the designation "D.O." if it is followed by "Not Licensed" or "Not Licensed in Utah"
1937 in the same size and style of lettering.

1938 (b) The practice of osteopathic medicine does not include:

1939 (i) except for an ablative medical procedure as provided in Subsection (12)(b)(ii), the
1940 conduct described in Subsection (12)(a)(i) that is performed in accordance with a license issued
1941 under another chapter of this title;

1942 (ii) an ablative cosmetic medical procedure if the scope of practice for the person
1943 performing the ablative cosmetic medical procedure includes the authority to operate or
1944 perform a surgical procedure; or

1945 (iii) conduct under Subsection 58-68-501(2).

1946 (13) "Prescription device" means an instrument, apparatus, implement, machine,
1947 contrivance, implant, in vitro reagent, or other similar or related article, and any component
1948 part or accessory, which is required under federal or state law to be prescribed by a practitioner
1949 and dispensed by or through a person or entity licensed under this chapter or exempt from

1950 licensure under this chapter.

1951 (14) "Prescription drug" means a drug that is required by federal or state law or rule to
1952 be dispensed only by prescription or is restricted to administration only by practitioners.

1953 (15) "SPEX" means the Special Purpose Examination of the Federation of State
1954 Medical Boards.

1955 (16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

1956 (17) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502 and as
1957 may be further defined by division rule.

1958 Section 37. Section **58-68-305** is amended to read:

1959 **58-68-305. Exemptions from licensure.**

1960 In addition to the exemptions from licensure in Section 58-1-307, the following
1961 individuals may engage in the described acts or practices without being licensed under this
1962 chapter:

1963 (1) an individual rendering aid in an emergency, when no fee or other consideration of
1964 value for the service is charged, received, expected, or contemplated;

1965 (2) an individual administering a domestic or family remedy;

1966 (3) (a) (i) a person engaged in the lawful sale of vitamins, health foods, dietary
1967 supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited
1968 by state or federal law; and

1969 (ii) a person acting in good faith for religious reasons, as a matter of conscience, or
1970 based on a personal belief, when obtaining or providing any information regarding health care
1971 and the use of any product under Subsection (3)(a)(i); and

1972 (b) Subsection (3)(a) does not:

1973 (i) permit a person to diagnose any human disease, ailment, injury, infirmity,
1974 deformity, pain, or other condition; or

1975 (ii) prohibit providing truthful and non-misleading information regarding any of the
1976 products under Subsection (3)(a)(i);

1977 (4) a person engaged in good faith in the practice of the religious tenets of any church
1978 or religious belief without the use of prescription drugs;

1979 (5) an individual authorized by the Department of Health under Section 26-1-30, to
1980 draw blood pursuant to Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), or

1981 72-10-502(5)(a)(vi);

1982 (6) a medical assistant while working under the [~~direct and immediate~~] indirect
1983 supervision of a licensed osteopathic physician, to the extent the medical assistant;

1984 (a) is engaged in tasks appropriately delegated by the supervisor in accordance with the
1985 standards and ethics of the practice of medicine;

1986 (b) does not perform surgical procedures;

1987 (c) does not prescribe prescription medications; ~~H~~→ [and]

1987a (d) does not administer anesthesia, anesthesia does not mean a local anesthetic for

1987b minor procedural use; and

1988 [~~(d)~~] (e) ~~←H~~ does not engage in other medical practices or procedures as defined by division

1988a rule

1989 in collaboration with the board;

1990 (7) an individual engaging in the practice of osteopathic medicine when:

1991 (a) the individual is licensed in good standing as an osteopathic physician in another
1992 state with no licensing action pending and no less than 10 years of professional experience;

1993 (b) the services are rendered as a public service and for a noncommercial purpose;

1994 (c) no fee or other consideration of value is charged, received, expected, or
1995 contemplated for the services rendered beyond an amount necessary to cover the proportionate
1996 cost of malpractice insurance; and

1997 (d) the individual does not otherwise engage in unlawful or unprofessional conduct;

1998 (8) an individual providing expert testimony in a legal proceeding; and

1999 (9) an individual who is invited by a school, association, society, or other body
2000 approved by the division in collaboration with the board to conduct a clinic or demonstration of
2001 the practice of medicine in which patients are treated, if:

2002 (a) the individual does not establish a place of business in this state;

2003 (b) the individual does not regularly engage in the practice of medicine in this state;

2004 (c) the individual holds a current license in good standing to practice medicine issued
2005 by another state, district or territory of the United States, or Canada;

2006 (d) the primary purpose of the event is the training of others in the practice of
2007 medicine; and

2008 (e) neither the patient nor an insurer is billed for the services performed.

2009 Section 38. **Repealer.**

2010 This bill repeals:

2011 Section **58-37c-4, Board.**

2012

Section 58-61-303, Status of licenses held on the effective date of this chapter.

Legislative Review Note
as of 11-15-12 1:08 PM

Office of Legislative Research and General Counsel