

1                                   **UTAH MEDICAL PRACTICE ACT AMENDMENTS**

2   2011 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: J. Stuart Adams**

5                                   House Sponsor: Paul Ray

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7 **LONG TITLE**

8 **General Description:**

9                   This bill amends the Utah Medical Practice Act and the Utah Osteopathic Medical  
10 Practice Act by clarifying policies and procedures.

11 **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ amends definitions;
- 14                   ▶ prohibits an individual from using the title "doctor," "M.D." or "D.O." in a  
15 misleading manner;
- 16                   ▶ clarifies licensing requirements;
- 17                   ▶ clarifies disciplinary procedures; and
- 18                   ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20                   None

21 **Other Special Clauses:**

22                   None

23 **Utah Code Sections Affected:**

24 AMENDS:

25                   **58-1-501**, as last amended by Laws of Utah 2010, Chapter 180

26                   **58-37-6**, as last amended by Laws of Utah 2010, Chapter 287

27                   **58-67-102**, as last amended by Laws of Utah 2010, Chapter 101

28                   **58-67-302**, as last amended by Laws of Utah 2009, Chapter 183

29                   **58-67-302.5**, as last amended by Laws of Utah 2008, Chapter 250

- 30           **58-67-304**, as last amended by Laws of Utah 2005, Chapter 94
- 31           **58-67-305**, as last amended by Laws of Utah 2005, Chapter 2
- 32           **58-67-401**, as enacted by Laws of Utah 1996, Chapter 248
- 33           **58-67-403**, as enacted by Laws of Utah 1996, Chapter 248
- 34           **58-67-503**, as enacted by Laws of Utah 1996, Chapter 248
- 35           **58-68-102**, as last amended by Laws of Utah 2010, Chapter 101
- 36           **58-68-302**, as last amended by Laws of Utah 2009, Chapter 183
- 37           **58-68-304**, as last amended by Laws of Utah 2005, Chapter 94
- 38           **58-68-305**, as last amended by Laws of Utah 2005, Chapter 2
- 39           **58-68-401**, as enacted by Laws of Utah 1996, Chapter 248
- 40           **58-68-403**, as enacted by Laws of Utah 1996, Chapter 248
- 41           **58-68-503**, as enacted by Laws of Utah 1996, Chapter 248

42 REPEALS AND REENACTS:

- 43           **58-67-402**, as last amended by Laws of Utah 2008, Chapter 382
- 44           **58-68-402**, as last amended by Laws of Utah 2008, Chapter 382

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

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

48           **58-1-501. Unlawful and unprofessional conduct.**

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

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

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

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

57           (b) impersonating another licensee or practicing an occupation or profession under a

58 false or assumed name, except as permitted by law;

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

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

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

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

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

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

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

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

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

85 (b) violating, or aiding or abetting any other person to violate, any generally accepted

86 professional or ethical standard applicable to an occupation or profession regulated under this  
87 title;

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

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

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

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

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

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

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

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

113 (k) verbally, physically, mentally, or sexually abusing or exploiting any person through

114 conduct connected with the licensee's practice under this title or otherwise facilitated by the  
115 licensee's license;

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

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

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

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

128 (n) violating a provision of Section 58-1-501.5.

129 Section 2. Section **58-37-6** is amended to read:

130 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**  
131 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**  
132 **required -- Prescriptions.**

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

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

139 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,  
140 administers, conducts research with, or performs laboratory analysis upon any controlled  
141 substance in Schedules II through V within this state, or who proposes to engage in

142 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting  
143 research with, or performing laboratory analysis upon controlled substances included in  
144 Schedules II through V within this state shall obtain a license issued by the division.

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

148 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,  
149 administer, conduct research with, or perform laboratory analysis upon controlled substances in  
150 Schedules II through V within this state may possess, manufacture, produce, distribute,  
151 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon  
152 those substances to the extent authorized by their license and in conformity with this chapter.

153 (c) The following persons are not required to obtain a license and may lawfully possess  
154 controlled substances under this section:

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

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

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

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

169 (e) A separate license is required at each principal place of business or professional

170 practice where the applicant manufactures, produces, distributes, dispenses, conducts research  
171 with, or performs laboratory analysis upon controlled substances.

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

174 (3) (a) Upon proper application, the division shall license a qualified applicant to  
175 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon  
176 controlled substances included in Schedules I through V, unless it determines that issuance of a  
177 license is inconsistent with the public interest. The division shall not issue a license to any  
178 person to prescribe, dispense, or administer a Schedule I controlled substance. In determining  
179 public interest, the division shall consider whether or not the applicant has:

180 (i) maintained effective controls against diversion of controlled substances and any  
181 Schedule I or II substance compounded from any controlled substance into other than  
182 legitimate medical, scientific, or industrial channels;

183 (ii) complied with applicable state and local law;

184 (iii) been convicted under federal or state laws relating to the manufacture, distribution,  
185 or dispensing of substances;

186 (iv) past experience in the manufacture of controlled dangerous substances;

187 (v) established effective controls against diversion; and

188 (vi) complied with any other factors that the division establishes that promote the  
189 public health and safety.

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

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

196 (ii) The division need not require a separate license for practitioners engaging in  
197 research with nonnarcotic controlled substances in Schedules II through V where the licensee is

198 already licensed under this chapter in another capacity.

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

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

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

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

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

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

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

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

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

225 (iv) had a federal registration or license denied, suspended, or revoked by competent

226 federal authority and is no longer authorized to [~~engage in the manufacturing, distribution, or~~  
227 ~~dispensing of~~] manufacture, distribute, prescribe, or dispense controlled substances;

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

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

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

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

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

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

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

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

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

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

254 safety.

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

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

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

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

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

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

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

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

280 (ii) A person using small quantities or solutions or other preparations of those drugs for  
281 local application has complied with this Subsection (5)(b) if the person keeps a record of the

282 quantity, character, and potency of those solutions or preparations purchased or prepared by  
283 him, and of the dates when purchased or prepared.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

315 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I  
316 controlled substance.

317 (f) Except when administered directly to an ultimate user by a licensed practitioner,  
318 controlled substances are subject to the following restrictions:

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

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

322 (ii) A Schedule III or IV controlled substance may be filled only within six months of  
323 issuance, and may not be refilled more than six months after the date of its original issuance or  
324 be refilled more than five times after the date of the prescription unless renewed by the  
325 practitioner.

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

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

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

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

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

338 (C) a second or third prescription shall include the date of issuance and the date for  
339 dispensing; and

340 (D) unless the practitioner determines there is a valid medical reason to the contrary,  
341 the date for dispensing a second or third prescription may not be fewer than 30 days from the  
342 dispensing date of the previous prescription.

343 (vi) Each prescription for a controlled substance may contain only one controlled  
344 substance per prescription form and may not contain any other legend drug or prescription  
345 item.

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

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

353 (ii) authorized by the prescribing practitioner treating the patient and the prescribing  
354 practitioner designates the quantity ordered;

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

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

362 (h) A practitioner licensed under this chapter may not prescribe, administer, or  
363 dispense a controlled substance to a child, without first obtaining the consent required in  
364 Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except  
365 in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same

366 meaning as defined in Section 78A-6-105, and "emergency" means any physical condition  
367 requiring the administration of a controlled substance for immediate relief of pain or suffering.

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

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

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

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

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

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

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

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

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

394 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through  
395 [~~7~~](j) is:

- 396 (i) upon first conviction, guilty of a class B misdemeanor;
- 397 (ii) upon second conviction, guilty of a class A misdemeanor; and
- 398 (iii) on third or subsequent conviction, guilty of a third degree felony.

399 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through  
400 [~~7~~](o) shall upon conviction be guilty of a third degree felony.

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

404 Section 3. Section **58-67-102** is amended to read:

405 **58-67-102. Definitions.**

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

407 (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the  
408 American Medical Association.

409 (2) "Administrative penalty" means a monetary fine or citation imposed by the division  
410 for acts or omissions determined to constitute unprofessional or unlawful conduct, in  
411 accordance with a fine schedule established by the division in collaboration with the board, as a  
412 result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4,  
413 Administrative Procedures Act.

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

415 (4) "Diagnose" means:

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

420 (b) to attempt to conduct an examination or determination described under Subsection  
421 (4)(a);

422 (c) to hold oneself out as making or to represent that one is making an examination or  
423 determination as described in Subsection (4)(a); or

424 (d) to make an examination or determination as described in Subsection (4)(a) upon or  
425 from information supplied directly or indirectly by another person, whether or not in the  
426 presence of the person making or attempting the diagnosis or examination.

427 (5) "LCME" means the Liaison Committee on Medical Education of the American  
428 Medical Association.

429 (6) "Medical assistant" means an unlicensed individual working under the direct and  
430 immediate supervision of a licensed physician and surgeon and engaged in specific tasks  
431 assigned by the licensed physician and surgeon in accordance with the standards and ethics of  
432 the profession.

433 (7) "Physician" means both physicians and surgeons licensed under Section 58-67-301,  
434 Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section  
435 58-68-301, Utah Osteopathic Medical Practice Act.

436 (8) "Practice of medicine" means:

437 (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human  
438 disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real  
439 or imaginary, or to attempt to do so, by any means or instrumentality, and by an individual in  
440 Utah or outside the state upon or for any human within the state, except that conduct described  
441 in this Subsection (8)(a) that is performed by a person legally and in accordance with a license  
442 issued under another chapter of this title does not constitute the practice of medicine;

443 (b) when a person not licensed as a physician directs a licensee under this chapter to  
444 withhold or alter the health care services that the licensee has ordered, but practice of medicine  
445 does not include any conduct under Subsection 58-67-501(2);

446 (c) to maintain an office or place of business for the purpose of doing any of the acts  
447 described in Subsection (8)(a) whether or not for compensation; or

448 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or  
449 treatment of human diseases or conditions in any printed material, stationery, letterhead,

450 envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine,"  
451 "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these  
452 designations in any manner which might cause a reasonable person to believe the individual  
453 using the designation is a licensed physician and surgeon, and if the party using the designation  
454 is not a licensed physician and surgeon, the designation must additionally contain the  
455 description of the branch of the healing arts for which the person has a license, provided that an  
456 individual who has received an earned degree of doctor of medicine degree but is not a licensed  
457 physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not  
458 Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

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

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

466 (11) "SPEX" means the Special Purpose Examination of the Federation of State  
467 Medical Boards.

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

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

471 Section 4. Section **58-67-302** is amended to read:

472 **58-67-302. Qualifications for licensure.**

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

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

476 (i) submissions by the applicant of information maintained by practitioner data banks,  
477 as designated by division rule, with respect to the applicant; ~~and~~

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

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

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

483 (c) be of good moral character;

484 (d) provide satisfactory documentation of having successfully completed a program of  
485 professional education preparing an individual as a physician and surgeon, as evidenced by  
486 [~~having received an earned degree of doctor of medicine from~~]:

487 [~~(i) an LCME accredited medical school or college; or~~]

488 [~~(ii) a medical school or college located outside of the United States or its jurisdictions~~  
489 ~~which at the time of the applicant's graduation, met criteria for LCME accreditation;]~~

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

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

496 [~~(e) hold a current certification by the Educational Commission for Foreign Medical~~  
497 ~~Graduates or any successor organization approved by the division in collaboration with the~~  
498 ~~board, if the applicant graduated from a medical school or college located outside of the United~~  
499 ~~States or its jurisdictions;]~~

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

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

505 (ii) (A) has successfully completed 12 months of resident training in an ACGME

506 approved program after receiving a degree of doctor of medicine as required under Subsection  
507 (1)(d);

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

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

516 ~~(g)~~ (f) pass the licensing examination sequence required by division rule made in  
517 collaboration with the board;

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

520 ~~(i)~~ (h) meet with the board and representatives of the division, if requested, for the  
521 purpose of evaluating the applicant's qualifications for licensure;

522 ~~(j)~~ (i) designate:

523 (i) a contact person for access to medical records in accordance with the federal Health  
524 Insurance Portability and Accountability Act; and

525 (ii) an alternate contact person for access to medical records, in the event the original  
526 contact person is unable or unwilling to serve as the contact person for access to medical  
527 records; and

528 ~~(k)~~ (j) establish a method for notifying patients of the identity and location of the  
529 contact person and alternate contact person, if the applicant will practice in a location with no  
530 other persons licensed under this chapter.

531 (2) An applicant for licensure as a physician and surgeon by endorsement who is  
532 currently licensed to practice medicine in any state other than Utah, a district or territory of the  
533 United States, or Canada shall:

534 (a) be currently licensed with a full unrestricted license in good standing in any state,  
535 district, or territory of the United States, or Canada;

536 (b) have been actively engaged in the legal practice of medicine in any state, district, or  
537 territory of the United States, or Canada for not less than 6,000 hours during the five years  
538 immediately preceding the date of application for licensure in Utah;

539 [~~(c) not have any action pending against the applicant's license;~~]

540 [~~(d) not have a license that was suspended or revoked in any state, unless the license  
541 was subsequently reinstated as a full unrestricted license in good standing; and]~~

542 (c) comply with the requirements for licensure under Subsection (1)(a) through (d),  
543 (1)(e)(i), and (1)(g) through (j);

544 (d) have passed the licensing examination sequence required in Subsection (1)(f) or  
545 another medical licensing examination sequence in another state, district or territory of the  
546 United States, or Canada that the division in collaboration with the board by rulemaking  
547 determines is equivalent to its own required examination;

548 (e) not have any investigation or action pending against any health care license of the  
549 applicant, not have a health care license that was suspended or revoked in any state, district or  
550 territory of the United States, or Canada, and not have surrendered a health care license in lieu  
551 of a disciplinary action, unless:

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

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

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

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

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

562           ~~[(e)]~~ (g) produce satisfactory evidence ~~[of] that~~ the ~~[applicant's qualifications, identity,~~  
563 ~~and good standing]~~ applicant meets the requirements of this Subsection (2) to the satisfaction  
564 of the division in collaboration with the board.

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

568           (a) the applicant submits a complete application required for temporary licensure to the  
569 division;

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

571           (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility  
572 Licensing and Inspection Act, stating that the applicant is practicing under the invitation of the  
573 health care facility; or

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

576           (A) the applicant is practicing under the invitation of the individual; and

577           (B) the applicant will practice at the same clinical location as the individual;

578           (c) the applicant submits a signed certification to the division that the applicant meets  
579 the requirements of Subsection (2);

580           (d) the applicant does not engage in the practice of medicine until the division has  
581 issued a temporary license;

582           (e) the temporary license is only issued for and may not be extended beyond the  
583 duration of one year from issuance; and

584           (f) the temporary license expires immediately and prior to the expiration of one year  
585 from issuance, upon notification from the division that the applicant's application for licensure  
586 by endorsement is denied.

587           (4) The division shall issue a temporary license under Subsection (3) within 15  
588 business days after the applicant satisfies the requirements of Subsection (3).

589           Section 5. Section **58-67-302.5** is amended to read:

590 **58-67-302.5. Licensing of graduates of foreign medical schools.**

591 (1) Notwithstanding any other provision of law to the contrary, an individual enrolled  
592 in a medical school outside the United States, its territories, the District of Columbia, or  
593 Canada is eligible for licensure as a physician and surgeon in this state if the individual has  
594 satisfied the following requirements:

595 (a) meets all the requirements of [~~Section~~] Subsection 58-67-302(1), except for  
596 Subsection 58-67-302(1)(d);

597 (b) has studied medicine in a medical school located outside the United States which is  
598 recognized by an organization approved by the division;

599 (c) has completed all of the formal requirements of the foreign medical school except  
600 internship or social service;

601 (d) has attained a passing score on the educational commission for foreign medical  
602 graduates examination or other qualifying examinations such as the United States Medical  
603 Licensing Exam parts I and II, which are approved by the division or a medical school  
604 approved by the division;

605 (e) has satisfactorily completed one calendar year of supervised clinical training under  
606 the direction of a United States medical education setting accredited by the liaison committee  
607 for graduate medical education and approved by the division;

608 (f) has completed the postgraduate hospital training required by Subsection  
609 58-67-302(1)[~~(f)~~](e)(i); and

610 (g) has passed the examination required by the division of all applicants for licensure.

611 (2) Satisfaction of the requirements of Subsection (1) is in lieu of:

612 (a) the completion of any foreign internship or social service requirements; and

613 (b) the certification required by Subsection 58-67-302(1)[~~(e)~~](d).

614 (3) Individuals who satisfy the requirements of Subsections (1)(a) through (f) shall be  
615 eligible for admission to graduate medical education programs within the state, including  
616 internships and residencies, which are accredited by the liaison committee for graduate medical  
617 education.

618 (4) A document issued by a medical school located outside the United States shall be  
619 considered the equivalent of a degree of doctor of medicine for the purpose of licensure as a  
620 physician and surgeon in this state if:

621 (a) the foreign medical school is recognized by an organization approved by the  
622 division;

623 (b) the document granted by the foreign medical school is issued after the completion  
624 of all formal requirements of the medical school except internship or social service; and

625 (c) the foreign medical school certifies that the person to whom the document was  
626 issued has satisfactorily completed the requirements of Subsection (1)(c).

627 (5) The provisions for licensure under this section shall be known as the "fifth pathway  
628 program."

629 Section 6. Section **58-67-304** is amended to read:

630 **58-67-304. License renewal requirements.**

631 (1) As a condition precedent for license renewal, each licensee shall, during each  
632 two-year licensure cycle or other cycle defined by division rule:

633 (a) complete qualified continuing professional education requirements in accordance  
634 with the number of hours and standards defined by division rule made in collaboration with the  
635 board;

636 (b) appoint a contact person for access to medical records and an alternate contact  
637 person for access to medical records in accordance with Subsection 58-67-302(1)(~~j~~)(i); and

638 (c) if the licensee practices medicine in a location with no other persons licensed under  
639 this chapter, provide some method of notice to the licensee's patients of the identity and  
640 location of the contact person and alternate contact person for the licensee.

641 (2) If a renewal period is extended or shortened under Section 58-67-303, the  
642 continuing education hours required for license renewal under this section are increased or  
643 decreased proportionally.

644 Section 7. Section **58-67-305** is amended to read:

645 **58-67-305. Exemptions from licensure.**

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

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

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

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

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

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

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

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

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

665 (5) an individual authorized by the Department of Health under Section 26-1-30, to  
666 withdraw blood to determine the alcohol or drug content pursuant to Section 41-6a-523;

667 (6) a medical assistant while working under the direct and immediate supervision of a  
668 licensed physician and surgeon, to the extent the medical assistant is engaged in tasks  
669 appropriately delegated by the supervisor in accordance with the standards and ethics of the  
670 practice of medicine;

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

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

674 (b) the services are rendered as a public service and for a noncommercial purpose;  
675 (c) no fee or other consideration of value is charged, received, expected, or  
676 contemplated for the services rendered beyond an amount necessary to cover the proportionate  
677 cost of malpractice insurance; and

678 (d) the individual does not otherwise engage in unlawful or unprofessional conduct;  
679 [~~and~~]

680 (8) an individual providing expert testimony in a legal proceeding~~[-]; and~~

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

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

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

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

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

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

691 Section 8. Section **58-67-401** is amended to read:

692 **58-67-401. Grounds for denial of license -- Disciplinary proceedings.**

693 Grounds for division action [~~regarding the following are under Section~~] are set forth in  
694 Sections 58-1-401[:] and 58-67-503.

695 [~~(1) refusing to issue a license to an applicant or refusing to renew the license of a~~  
696 ~~licensee;]~~

697 [~~(2) revoking, suspending, restricting, or placing on probation the license of a~~  
698 ~~licensee;]~~

699 [~~(3) assessing an administrative penalty; and]~~

700 [~~(4) issuing a public or private reprimand to a licensee or issuing a cease and desist~~  
701 ~~order.]~~

702 Section 9. Section **58-67-402** is repealed and reenacted to read:

703 **58-67-402. Authority to assess penalty.**

704 The division in collaboration with the board may assess penalties as described in  
705 Section 58-67-503.

706 Section 10. Section **58-67-403** is amended to read:

707 **58-67-403. Revocation of license -- Nondisciplinary.**

708 Revocation by the division of a license under Subsection 58-67-302(1)~~(f)~~(e) for  
709 failure to continue on a resident training program for reasons other than unprofessional or  
710 unlawful conduct is a nondisciplinary action and may not be reported by the division as a  
711 disciplinary action against the licensee.

712 Section 11. Section **58-67-503** is amended to read:

713 **58-67-503. Penalties and administrative actions for unlawful and unprofessional**  
714 **conduct.**

715 (1) Any person who violates the unlawful conduct provisions of Section 58-67-501~~, or~~  
716 Subsection] or Section 58-1-501(1)(a) or 58-1-501(1)(c)] is guilty of a third degree felony.

717 ~~[(2) The division may assess administrative penalties in accordance with the provisions~~  
718 ~~of Section 58-67-402 for acts of unprofessional conduct.]~~

719 (2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful  
720 conduct by:

721 (i) assessing administrative penalties; or

722 (ii) taking other appropriate administrative action.

723 (b) A monetary administrative penalty imposed under this section shall be deposited in  
724 the Physician Education Fund created in Section 58-67a-1.

725 (3) If a licensee has been convicted of unlawful conduct, described in Section  
726 58-67-501, before an administrative proceeding regarding the same conduct, the division may  
727 not assess an additional administrative fine under this chapter for the same conduct.

728 (4) (a) If the division concludes that an individual has violated provisions of Section  
729 58-67-501, Section 58-67-502, the Division of Occupational and Professional Licensing Act,

730 the Utah Controlled Substances Act, or any rule or order issued with respect to these  
731 provisions, and disciplinary action is appropriate, the director or director's designee shall:

- 732 (i) issue a citation to the individual;
- 733 (ii) attempt to negotiate a stipulated settlement; or
- 734 (iii) notify the individual that an adjudicative proceeding conducted under Title 63G,  
735 Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to  
736 appear.

737 (b) The division may take the following action against an individual who is in violation  
738 of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a  
739 stipulated settlement, or a finding of violation in an adjudicative proceeding:

- 740 (i) assess a fine of up to \$10,000 per single violation or up to \$2,000 per day of  
741 ongoing violation, whichever is greater, in accordance with a fine schedule established by rule;  
742 or

743 (ii) order to cease and desist from the behavior that constitutes a violation of the  
744 provisions described in Subsection (4)(a).

745 (c) An individual's license may not be suspended or revoked through a citation.

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

- 747 (i) be in writing;
- 748 (ii) clearly describe or explain:  
749 (A) the nature of the violation, including a reference to the provision of the chapter,  
750 rule, or order alleged to have been violated;

751 (B) that the recipient must notify the division in writing within 20 calendar days from  
752 the day on which the citation is served if the recipient wishes to contest the citation at a hearing  
753 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

754 (C) the consequences of failure to timely contest the citation or pay the fine assessed by  
755 the citation within the time specified in the citation; and

756 (iii) be served in accordance with the Utah Rules of Civil Procedure.

757 (e) If the individual to whom the citation is issued fails to request a hearing to contest

758 the citation within 20 calendar days from the day on which the citation is served, the citation  
759 becomes the final order of the division and is not subject to further agency review. The period  
760 to contest the citation may be extended by the division for cause.

761 (f) The division may refuse to issue or renew or suspend, revoke, or place on probation  
762 the license of an individual who fails to comply with a citation after the citation becomes final.

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

765 (h) No citation may be issued under this section after six months from the day on  
766 which the violation last occurred.

767 Section 12. Section **58-68-102** is amended to read:

768 **58-68-102. Definitions.**

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

770 (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the  
771 American Medical Association.

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

776 (3) "AOA" means the American Osteopathic Association.

777 (4) "Board" means the Osteopathic [~~Physicians~~] Physician and Surgeon's Licensing  
778 Board created in Section 58-68-201.

779 (5) "Diagnose" means:

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

784 (b) to attempt to conduct an examination or determination described under Subsection  
785 (5)(a);

786 (c) to hold oneself out as making or to represent that one is making an examination or  
787 determination as described in Subsection (5)(a); or

788 (d) to make an examination or determination as described in Subsection (5)(a) upon or  
789 from information supplied directly or indirectly by another person, whether or not in the  
790 presence of the person making or attempting the diagnosis or examination.

791 (6) "Medical assistant" means an unlicensed individual working under the direct and  
792 immediate supervision of a licensed osteopathic physician and surgeon and engaged in specific  
793 tasks assigned by the licensed osteopathic physician and surgeon in accordance with the  
794 standards and ethics of the profession.

795 (7) "Physician" means both physicians and surgeons licensed under Section 58-67-301,  
796 Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section  
797 58-68-301, Utah Osteopathic Medical Practice Act.

798 (8) "Practice of osteopathic medicine" means:

799 (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human  
800 disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real  
801 or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part  
802 is based upon emphasis of the importance of the musculoskeletal system and manipulative  
803 therapy in the maintenance and restoration of health, by an individual in Utah or outside of the  
804 state upon or for any human within the state, except that conduct described in this Subsection  
805 (8)(a) that is performed by a person legally and in accordance with a license issued under  
806 another chapter of this title does not constitute the practice of medicine;

807 (b) when a person not licensed as a physician directs a licensee under this chapter to  
808 withhold or alter the health care services that the licensee has ordered, but practice of medicine  
809 does not include any conduct under Subsection 58-68-501(2);

810 (c) to maintain an office or place of business for the purpose of doing any of the acts  
811 described in Subsection (8)(a) whether or not for compensation; or

812 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or  
813 treatment of human diseases or conditions, in any printed material, stationery, letterhead,

814 envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine,"  
815 "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.,"  
816 "D.O.," or any combination of these designations in any manner which might cause a  
817 reasonable person to believe the individual using the designation is a licensed osteopathic  
818 physician, and if the party using the designation is not a licensed osteopathic physician, the  
819 designation must additionally contain the description of the branch of the healing arts for which  
820 the person has a license, provided that an individual who has received an earned degree of  
821 doctor of osteopathic medicine but is not a licensed osteopathic physician and surgeon in Utah  
822 may use the designation "D.O." if it is followed by "Not Licensed" or "Not Licensed in Utah"  
823 in the same size and style of lettering.

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

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

831 (11) "SPEX" means the Special Purpose Examination of the Federation of State  
832 Medical Boards.

833 (12) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

834 (13) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502 and as  
835 may be further defined by division rule.

836 Section 13. Section **58-68-302** is amended to read:

837 **58-68-302. Qualifications for licensure.**

838 (1) An applicant for licensure as an osteopathic physician and surgeon, except as set  
839 forth in Subsection (2) [~~or (3)~~], shall:

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

841 (i) submissions by the applicant of information maintained by practitioner data banks,

842 as designated by division rule, with respect to the applicant; ~~and~~

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

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

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

848 (c) be of good moral character;

849 (d) provide satisfactory documentation of having successfully completed a program of  
850 professional education preparing an individual as an osteopathic physician and surgeon, as  
851 evidenced by ~~[having received an earned degree of doctor of osteopathic medicine from:~~(i) ~~an~~  
852 ~~AOA approved medical school or college; or (ii)];~~

853 (i) having received an earned degree of doctor of osteopathic medicine from an AOA  
854 approved medical school or college; or

855 (ii) submitting a current certification by the Educational Commission for Foreign  
856 Medical Graduates or any successor organization approved by the division in collaboration  
857 with the board, if the applicant is graduated from an osteopathic medical school or college  
858 located outside of the United States or its [jurisdictions] territories which at the time of the  
859 applicant's graduation, met criteria for accreditation by the AOA;

860 ~~[(e) hold a current certification by the Educational Commission for Foreign Medical~~  
861 ~~Graduates or any successor organization approved by the division in collaboration with the~~  
862 ~~board, if the applicant graduated from a medical school or college located outside of the United~~  
863 ~~States or its jurisdictions;]~~

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

865 (i) has successfully completed 24 months of progressive resident training in an  
866 ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine  
867 required under Subsection (1)(d); or

868 (ii) (A) has successfully completed 12 months of resident training in an ACGME or  
869 AOA approved program after receiving a degree of doctor of osteopathic medicine as required

870 under Subsection (1)(d);

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

874 (C) has agreed to surrender to the division the applicant's license as an osteopathic  
875 physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative  
876 Procedures Act, and has agreed the applicant's license as an osteopathic physician and surgeon  
877 will be automatically revoked by the division if the applicant fails to continue in good standing  
878 in an ACGME or AOA approved progressive resident training program within the state;

879 ~~[(g)]~~ (f) pass the licensing examination sequence required by division rule, as made in  
880 collaboration with the board;

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

883 ~~[(i)]~~ (h) meet with the board and representatives of the division, if requested for the  
884 purpose of evaluating the applicant's qualifications for licensure;

885 ~~[(j)]~~ (i) designate:

886 (i) a contact person for access to medical records in accordance with the federal Health  
887 Insurance Portability and Accountability Act; and

888 (ii) an alternate contact person for access to medical records, in the event the original  
889 contact person is unable or unwilling to serve as the contact person for access to medical  
890 records; and

891 ~~[(k)]~~ (j) establish a method for notifying patients of the identity and location of the  
892 contact person and alternate contact person, if the applicant will practice in a location with no  
893 other persons licensed under this chapter.

894 (2) An applicant for licensure as an osteopathic physician and surgeon ~~[qualifying~~  
895 ~~under the]~~ by endorsement [provision of Section 58-1-302] who is currently licensed to  
896 practice osteopathic medicine in any state other than Utah, a district or territory of the United  
897 States, or Canada shall:

898 (a) be currently licensed with a full unrestricted license in good standing in [~~another~~  
899 ~~jurisdiction as set forth in Section 58-1-302]~~ any state, district or territory of the United States,  
900 or Canada;

901 (b) have been actively engaged in the legal practice of osteopathic medicine in any  
902 state, district or territory of the United States, or Canada for not less than 6,000 hours during  
903 the five years immediately preceding the day on which the applicant applied for licensure in  
904 Utah;

905 [~~(b) (i)] (c) [~~document having met all]~~ comply with the requirements for licensure  
906 under [~~Subsection]~~ Subsections (1)(a) through (d), (1)(e)(i), and (1)(g) through (j) [~~except, if an~~  
907 ~~applicant received licensure in another state or jurisdiction based upon only 12 months~~  
908 ~~residency training after graduation from medical school, the applicant may qualify for licensure~~  
909 ~~in Utah by endorsement only if licensed in the other state prior to July 1, 1996; or];~~~~

910 [~~(ii) document having obtained licensure in another state or jurisdiction whose~~  
911 ~~licensure requirements were at the time of obtaining licensure equal to licensure requirements~~  
912 ~~at that time in Utah;]~~

913 [~~(c) have passed the SPEX examination within 12 months preceding the date of~~  
914 ~~application for licensure in Utah if the date on which the applicant passed qualifying~~  
915 ~~examinations for licensure is greater than five years prior to the date of the application for~~  
916 ~~licensure in Utah, or meet medical specialty certification requirements which may be~~  
917 ~~established by division rule made in collaboration with the board;]~~

918 [~~(d) have been actively engaged in the practice as an osteopathic physician and surgeon~~  
919 ~~for not less than 6,000 hours during the five years immediately preceding the date of~~  
920 ~~application for licensure in Utah;]~~

921 [~~(e) meet with the board and representatives of the division, if requested for the~~  
922 ~~purpose of evaluating the applicant's qualifications for licensure; and]~~

923 [~~(f) not have a license that was suspended or revoked in any state, unless the license~~  
924 ~~was subsequently reinstated as a full unrestricted license in good standing.;~~]

925 (d) have passed the licensing examination sequence required in Subsection (1)(f) or

926 another medical licensing examination sequence in another state, district or territory of the  
927 United States, or Canada that the division in collaboration with the board by rulemaking  
928 determines is equivalent to its own required examination;

929 (e) not have any investigation or action pending against any health care license of the  
930 applicant, not have a health care license that was suspended or revoked in any state, district or  
931 territory of the United States, or Canada, and not have surrendered a health care license in lieu  
932 of a disciplinary action, unless:

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

935 (ii) the division in collaboration with the board determines, after full disclosure by the  
936 applicant, that:

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

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

941 (f) submit to a records review, a practice review history, and physical and  
942 psychological assessments, if requested by the division in collaboration with the board; and

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

945 ~~[(3) An applicant for licensure as an osteopathic physician and surgeon, who has been~~  
946 ~~licensed as an osteopathic physician in Utah, who has allowed the applicant's license in Utah to~~  
947 ~~expire for nonpayment of license fees, and who is currently licensed in good standing in~~  
948 ~~another state or jurisdiction of the United States shall:]~~

949 ~~[(a) submit an application in a form prescribed by the division;]~~

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

951 ~~[(c) be of good moral character;]~~

952 ~~[(d) have passed the SPEX examination within 12 months preceding the date of~~  
953 ~~application for licensure in Utah if the date on which the applicant passed qualifying~~

954 ~~examinations for licensure is greater than five years prior to the date of the application for~~  
955 ~~licensure in Utah;]~~

956 ~~[(e) have been actively engaged in the practice as an osteopathic physician for not~~  
957 ~~fewer than 6,000 hours during the five years immediately preceding the date of application for~~  
958 ~~licensure; and]~~

959 ~~[(f) meet with the board and representatives of the division, if requested for the purpose~~  
960 ~~of evaluating the applicant's qualifications for licensure.]~~

961 ~~[(4)]~~ (3) An applicant for licensure by endorsement may engage in the practice of  
962 medicine under a temporary license while the applicant's application for licensure is being  
963 processed by the division, provided:

964 (a) the applicant submits a complete application required for temporary licensure to the  
965 division;

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

967 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility  
968 Licensing and Inspection Act, stating that the applicant is practicing under the invitation of the  
969 health care facility; or

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

972 (A) the applicant is practicing under the invitation of the individual; and

973 (B) the applicant will practice at the same clinical location as the individual;

974 (c) the applicant submits a signed certification to the division that the applicant meets  
975 the requirements of Subsection (2);

976 (d) the applicant does not engage in the practice of medicine until the division has  
977 issued a temporary license;

978 (e) the temporary license is only issued for and may not be extended beyond the  
979 duration of one year from issuance; and

980 (f) the temporary license expires immediately and prior to the expiration of one year  
981 from issuance, upon notification from the division that the applicant's application for licensure

982 by endorsement is denied.

983           ~~[(5)]~~ (4) The division shall issue a temporary license under Subsection ~~[(4)]~~ (3) within  
984 15 business days after the applicant satisfies the requirements of Subsection ~~[(4)]~~ (3).

985           Section 14. Section **58-68-304** is amended to read:

986           **58-68-304. License renewal requirements.**

987           (1) As a condition precedent for license renewal, each licensee shall, during each  
988 two-year licensure cycle or other cycle defined by division rule:

989           (a) complete qualified continuing professional education requirements in accordance  
990 with the number of hours and standards defined by division rule in collaboration with the  
991 board;

992           (b) appoint a contact person for access to medical records and an alternate contact  
993 person for access to medical records in accordance with Subsection 58-68-302(1)~~[(j)]~~(i); and

994           (c) if the licensee practices osteopathic medicine in a location with no other persons  
995 licensed under this chapter, provide some method of notice to the licensee's patients of the  
996 identity and location of the contact person and alternate contact person for access to medical  
997 records for the licensee in accordance with Subsection 58-68-302(1)~~[(k)]~~(j).

998           (2) If a renewal period is extended or shortened under Section 58-68-303, the  
999 continuing education hours required for license renewal under this section are increased or  
1000 decreased proportionally.

1001           Section 15. Section **58-68-305** is amended to read:

1002           **58-68-305. Exemptions from licensure.**

1003           In addition to the exemptions from licensure in Section 58-1-307, the following  
1004 individuals may engage in the described acts or practices without being licensed under this  
1005 chapter:

1006           (1) an individual rendering aid in an emergency, when no fee or other consideration of  
1007 value for the service is charged, received, expected, or contemplated;

1008           (2) an individual administering a domestic or family remedy;

1009           (3) (a) (i) a person engaged in the lawful sale of vitamins, health foods, dietary

1010 supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited  
1011 by state or federal law; and

1012 (ii) a person acting in good faith for religious reasons, as a matter of conscience, or  
1013 based on a personal belief, when obtaining or providing any information regarding health care  
1014 and the use of any product under Subsection (3)(a)(i); and

1015 (b) Subsection (3)(a) does not:

1016 (i) permit a person to diagnose any human disease, ailment, injury, infirmity,  
1017 deformity, pain, or other condition; or

1018 (ii) prohibit providing truthful and non-misleading information regarding any of the  
1019 products under Subsection (3)(a)(i);

1020 (4) a person engaged in good faith in the practice of the religious tenets of any church  
1021 or religious belief without the use of prescription drugs;

1022 (5) an individual authorized by the Department of Health under Section 26-1-30, to  
1023 withdraw blood to determine the alcohol or drug content pursuant to Section 41-6a-523;

1024 (6) a medical assistant while working under the direct and immediate supervision of a  
1025 licensed osteopathic physician, to the extent the medical assistant is engaged in tasks  
1026 appropriately delegated by the supervisor in accordance with the standards and ethics of the  
1027 practice of medicine;

1028 (7) an individual engaging in the practice of osteopathic medicine when:

1029 (a) the individual is licensed in good standing as an osteopathic physician in another  
1030 state with no licensing action pending and no less than 10 years of professional experience;

1031 (b) the services are rendered as a public service and for a noncommercial purpose;

1032 (c) no fee or other consideration of value is charged, received, expected, or  
1033 contemplated for the services rendered beyond an amount necessary to cover the proportionate  
1034 cost of malpractice insurance; and

1035 (d) the individual does not otherwise engage in unlawful or unprofessional conduct;

1036 [~~and~~]

1037 (8) an individual providing expert testimony in a legal proceeding[~~]; and~~

1038 (9) an individual who is invited by a school, association, society, or other body  
 1039 approved by the division in collaboration with the board to conduct a clinic or demonstration of  
 1040 the practice of medicine in which patients are treated, if:

- 1041 (a) the individual does not establish a place of business in this state;  
 1042 (b) the individual does not regularly engage in the practice of medicine in this state;  
 1043 (c) the individual holds a current license in good standing to practice medicine issued  
 1044 by another state, district or territory of the United States, or Canada;  
 1045 (d) the primary purpose of the event is the training of others in the practice of  
 1046 medicine; and  
 1047 (e) neither the patient nor an insurer is billed for the services performed.

1048 Section 16. Section **58-68-401** is amended to read:

1049 **58-68-401. Grounds for denial of license -- Disciplinary proceedings.**

1050 Grounds for division action [~~regarding the following are under Section~~] are set forth in  
 1051 Sections 58-1-401[:] and 58-68-503.

1052 [~~(1) refusing to issue a license to an applicant or refusing to renew the license of a~~  
 1053 ~~licensee;]~~

1054 [~~(2) revoking, suspending, restricting, placing on probation the license of a licensee;]~~

1055 [~~(3) assessing an administrative penalty; and]~~

1056 [~~(4) issuing of a public or private reprimand to a licensee or issuance of a cease and~~  
 1057 ~~desist order.]~~

1058 Section 17. Section **58-68-402** is repealed and reenacted to read:

1059 **58-68-402. Authority to assess penalties.**

1060 The division in collaboration with the board may assess penalties as described in  
 1061 Section 58-67-503.

1062 Section 18. Section **58-68-403** is amended to read:

1063 **58-68-403. Revocation of license -- Nondisciplinary.**

1064 Revocation by the division of a license under Subsection 58-68-302(1)[~~(f)~~](e) for  
 1065 failure to continue on a resident training program for reasons other than unprofessional or

1066 unlawful conduct is a nondisciplinary action and may not be reported by the division as a  
1067 disciplinary action against the licensee.

1068 Section 19. Section **58-68-503** is amended to read:

1069 **58-68-503. Penalties and administrative actions for unlawful and unprofessional**  
1070 **conduct.**

1071 (1) Any person who violates the unlawful conduct provisions of Section 58-68-501~~[, or~~  
1072 ~~Subsection]~~ or Section 58-1-501[(1)(a) or 58-1-501(1)(c)] is guilty of a third degree felony.

1073 ~~[(2) The division may assess administrative penalties in accordance with Section~~  
1074 ~~58-68-402, for acts of unprofessional conduct.]~~

1075 (2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful  
1076 conduct by:

1077 (i) assessing administrative penalties; or

1078 (ii) taking any other appropriate administrative action.

1079 (b) A monetary administrative penalty imposed under this section shall be deposited in  
1080 the Physician Education Fund described in Section 58-67a-1.

1081 (3) If a licensee is convicted of unlawful conduct, described in Section 58-68-501,  
1082 before an administrative proceeding regarding the same conduct, the licensee may not be  
1083 assessed an administrative fine under this chapter for the same conduct.

1084 (4) (a) If the division concludes that an individual has violated the provisions of  
1085 Section 58-68-501, Section 58-68-502, the Division of Occupational and Professional  
1086 Licensing Act, the Utah Controlled Substances Act, or any rule or order issued with respect to  
1087 these provisions, and disciplinary action is appropriate, the director or director's designee shall:

1088 (i) issue a citation to the individual;

1089 (ii) attempt to negotiate a stipulated settlement; or

1090 (iii) notify the individual that an adjudicative proceeding conducted under Title 63G,  
1091 Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to  
1092 appear.

1093 (b) The division may take the following action against an individual who is in violation

1094 of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a  
1095 stipulated settlement, or a finding of violation in an adjudicative proceeding:

1096 (i) assess a fine of up to \$10,000 per single violation or \$2,000 per day of ongoing  
1097 violation, whichever is greater, in accordance with a fine schedule established by rule; or

1098 (ii) order to cease and desist from the behavior that constitutes a violation of provisions  
1099 described in Subsection (4)(a).

1100 (c) Except for an administrative fine and a cease and desist order, the licensure  
1101 sanctions cited in Section 58-1-401 may not be assessed through a citation.

1102 (d) Each citation issued under this section shall:

1103 (i) be in writing;

1104 (ii) clearly describe or explain:

1105 (A) the nature of the violation, including a reference to the provision of the chapter,  
1106 rule, or order alleged to have been violated;

1107 (B) that the recipient must notify the division in writing within 20 calendar days from  
1108 the day on which the citation is served if the recipient wishes to contest the citation at a hearing  
1109 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

1110 (C) the consequences of failure to timely contest the citation or pay the fine assessed by  
1111 the citation within the time specified in the citation; and

1112 (iii) be served in accordance with the requirements of the Utah Rules of Civil  
1113 Procedure.

1114 (e) If the individual to whom the citation is issued fails to request a hearing to contest  
1115 the citation within 20 calendar days from the day on which the citation is served, the citation  
1116 becomes the final order of the division and is not subject to further agency review. The period  
1117 to contest the citation may be extended by the division for cause.

1118 (f) The division may refuse to issue or renew or suspend, revoke, or place on probation  
1119 the license of an individual who fails to comply with a citation after the citation becomes final.

1120 (g) The failure of an applicant for licensure to comply with a citation after it becomes  
1121 final is a ground for denial of a license.

1122            (h) No citation may be issued under this section after six months from the day on  
1123 which the last violation occurred.