

UTAH MEDICAL PRACTICE ACT

Part 1 - General Provisions

58-67-101. Title.

This chapter is known as the "Utah Medical Practice Act."

58-67-102. Definitions.

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

- (1) "Ablative procedure" means a procedure that is expected to excise, vaporize, disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium:YAG lasers, and excluding hair removal.
- (2) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.
- (3) "Administrative penalty" means a monetary fine or citation imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, in accordance with a fine schedule established by the division in collaboration with the board, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (4) "Board" means the Physicians Licensing Board created in Section 58-67-201.
- (5) (a) "Cosmetic medical device" means tissue altering energy based devices that have the potential for altering living tissue and that are used to perform ablative or nonablative procedures, such as American National Standards Institute (ANSI) designated Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices, and excludes ANSI designated Class IIIa and lower powered devices.
(b) Notwithstanding Subsection (5)(a), if an ANSI designated Class IIIa and lower powered device is being used to perform an ablative procedure, the device is included in the definition of cosmetic medical device under Subsection (5)(a).
- (6) "Cosmetic medical procedure":
 - (a) includes the use of cosmetic medical devices to perform ablative or nonablative procedures; and
 - (b) does not include a treatment of the ocular globe such as refractive surgery.
- (7) "Diagnose" means:
 - (a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;
 - (b) to attempt to conduct an examination or determination described under Subsection (7)(a);
 - (c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (7)(a); or
 - (d) to make an examination or determination as described in Subsection (7)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.
- (8) "LCME" means the Liaison Committee on Medical Education of the American Medical Association.
- (9) "Medical assistant" means an unlicensed individual working under the indirect supervision of a licensed physician and surgeon and engaged in specific tasks assigned by the licensed physician and surgeon in accordance with the standards and ethics of the profession.
- (10) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to alter living tissue, but is not intended or expected to excise, vaporize, disintegrate, or remove living tissue.
(ii) Notwithstanding Subsection (10)(a)(i), nonablative procedure includes hair removal.
(b) "Nonablative procedure" does not include:
 - (i) a superficial procedure as defined in Section 58-1-102;
 - (ii) the application of permanent make-up; or
 - (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are performed by an individual licensed under this title who is acting within their scope of practice.
- (11) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.
- (12) (a) "Practice of medicine" means:
 - (i) to diagnose, treat, correct, administer anesthesia or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any means or

- instrumentality, and by an individual in Utah or outside the state upon or for any human within the state;
- (ii) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered;
 - (iii) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (12)(a) whether or not for compensation; or
 - (iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor", "doctor of medicine", "physician", "surgeon", "physician and surgeon", "Dr.," "M.D.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed physician and surgeon, and if the party using the designation is not a licensed physician and surgeon, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an individual who has received an earned degree of doctor of medicine degree but is not a licensed physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.
- (b) The practice of medicine does not include:
- (i) except for an ablative medical procedure as provided in Subsection (12)(b)(ii), the conduct described in Subsection (12)(a)(i) that is performed in accordance with a license issued under another chapter of this title;
 - (ii) an ablative cosmetic medical procedure if the scope of practice for the person performing the ablative cosmetic medical procedure includes the authority to operate or perform a surgical procedure; or
 - (iii) conduct under Subsection 58-67-501(2).
- (13) "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.
- (14) "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.
- (15) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.
- (16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.
- (17) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

Part 2 - Board

58-67-201. Board.

- (1) There is created the Physicians Licensing Board consisting of nine physicians and surgeons and two members of the general public.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3)
 - (a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
 - (b) The board may also designate one of its members on a permanent or rotating basis to:
 - (i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
 - (ii) advise the division in its investigation of these complaints.
- (4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning that complaint.

Part 3 - Licensing

58-67-301. Licensure required - License classifications.

- (1) A license is required to engage in the practice of medicine, on or for any person in Utah, as a physician and surgeon, except as specifically provided in Section 58-1-307 or 58-67-305.

- (2) The division shall issue to a person who qualifies under this chapter a license in the classification of physician and surgeon.

58-67-302. Qualifications for licensure.

- (1) An applicant for licensure as a physician and surgeon, except as set forth in Subsection (2), shall:
- (a) submit an application in a form prescribed by the division, which may include:
 - (i) submissions by the applicant of information maintained by practitioner data banks, as designated by division rule, with respect to the applicant;
 - (ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and
 - (iii) authorization to use a record coordination and verification service approved by the division in collaboration with the board;
 - (b) pay a fee determined by the department under Section 63J-1-504;
 - (c) be of good moral character;
 - (d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as a physician and surgeon, as evidenced by:
 - (i) having received an earned degree of doctor of medicine from an LCME accredited medical school or college; or
 - (ii) if the applicant graduated from a medical school or college located outside the United States or its territories, submitting a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board;
 - (e) satisfy the division and board that the applicant:
 - (i) has successfully completed 24 months of progressive resident training in a program approved by the ACGME, the Royal College of Physicians and Surgeons, the College of Family Physicians of Canada, or any similar body in the United States or Canada approved by the division in collaboration with the board; or
 - (ii) (A) has successfully completed 12 months of resident training in an ACGME approved program after receiving a degree of doctor of medicine as required under Subsection (1)(d);
 - (B) has been accepted in and is successfully participating in progressive resident training in an ACGME approved program within Utah, in the applicant's second or third year of postgraduate training; and
 - (C) has agreed to surrender to the division the applicant's license as a physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as a physician and surgeon will be automatically revoked by the division if the applicant fails to continue in good standing in an ACGME approved progressive resident training program within the state;
 - (f) pass the licensing examination sequence required by division rule made in collaboration with the board;
 - (g) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board;
 - (h) meet with the board and representatives of the division, if requested, for the purpose of evaluating the applicant's qualifications for licensure;
 - (i) designate:
 - (i) a contact person for access to medical records in accordance with the federal Health Insurance Portability and Accountability Act; and
 - (ii) an alternate contact person for access to medical records, in the event the original contact person is unable or unwilling to serve as the contact person for access to medical records; and
 - (j) establish a method for notifying patients of the identity and location of the contact person and alternate contact person, if the applicant will practice in a location with no other persons licensed under this chapter.
- (2) An applicant for licensure as a physician and surgeon by endorsement who is currently licensed to practice medicine in any state other than Utah, a district or territory of the United States, or Canada shall:
- (a) be currently licensed with a full unrestricted license in good standing in any state, district, or territory of the United States, or Canada;
 - (b) have been actively engaged in the legal practice of medicine in any state, district, or territory of the United States, or Canada for not less than 6,000 hours during the five years immediately preceding the date of application for licensure in Utah;

- (c) comply with the requirements of licensure under Subsections (1)(a) through (d), (1)(e)(i), and (1)(g) through (j);
 - (d) have passed the licensing examination sequence required in Subsection (1)(f) or another medical licensing examination sequence in another state, district or territory of the United States, or Canada that the division in collaboration with the board by rulemaking determines is equivalent to its own required examination;
 - (e) not have any investigation or action pending against any health care license of the applicant, not have a health care license that was suspended or revoked in any state, district or territory of the United States, or Canada, and not have surrendered a health care license in lieu of a disciplinary action, unless:
 - (i) the license was subsequently reinstated as a full unrestricted license in good standing; or
 - (ii) the division in collaboration with the board determines to its satisfaction, after full disclosure by the applicant, that:
 - (A) the conduct has been corrected, monitored, and resolved; or
 - (B) a mitigating circumstance exists that prevents its resolution, and the division in collaboration with the board is satisfied that, but for the mitigating circumstance, the license would be reinstated;
 - (f) submit to a records review, a practice history review, and comprehensive assessments, if requested by the division in collaboration with the board; and
 - (g) produce satisfactory evidence that the applicant meets the requirements of this Subsection (2) to the satisfaction of the division in collaboration with the board.
- (3) An applicant for licensure by endorsement may engage in the practice of medicine under a temporary license while the applicant's application for licensure is being processed by the division, provided:
- (a) the applicant submits a complete application required for temporary licensure to the division;
 - (b) the applicant submits a written document to the division from:
 - (i) a health care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, stating that the applicant is practicing under the:
 - (A) invitation of the health care facility; and
 - (B) the general supervision of a physician practicing at the facility; or
 - (ii) two individuals licensed under this chapter, whose license is in good standing and who practice in the same clinical location, both stating that:
 - (A) the applicant is practicing under the invitation and general supervision of the individual; and
 - (B) the applicant will practice at the same clinical location as the individual;
 - (c) the applicant submits a signed certification to the division that the applicant meets the requirements of Subsection (2);
 - (d) the applicant does not engage in the practice of medicine until the division has issued a temporary license;
 - (e) the temporary license is only issued for and may not be extended or renewed beyond the duration of one year from issuance; and
 - (f) the temporary license expires immediately and prior to the expiration of one year from issuance, upon notification from the division that the applicant's application for licensure by endorsement is denied.
- (4) The division shall issue a temporary license under Subsection (3) within 15 business days after the applicant satisfies the requirements of Subsection (3).
- (5) The division may not require a post-residency board certification as a requirement for licensure.

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

- (1) Notwithstanding any other provision of law to the contrary, an individual enrolled in a medical school outside the United States, its territories, the District of Columbia, or Canada is eligible for licensure as a physician and surgeon in this state if the individual has satisfied the following requirements:
 - (a) meets all the requirements of Subsection 58-67-302(1), except for Subsection 58-67-302(1)(d);
 - (b) has studied medicine in a medical school located outside the United States which is recognized by an organization approved by the division;
 - (c) has completed all of the formal requirements of the foreign medical school except internship or social service;
 - (d) has attained a passing score on the educational commission for foreign medical graduates examination or other qualifying examinations such as the United States Medical Licensing Exam parts I and II, which are approved by the division or a medical school approved by the division;

- (e) has satisfactorily completed one calendar year of supervised clinical training under the direction of a United States medical education setting accredited by the liaison committee for graduate medical education and approved by the division;
 - (f) has completed the postgraduate hospital training required by Subsection 58-67-302(1)(e)(i); and
 - (g) has passed the examination required by the division of all applicants for licensure.
- (2) Satisfaction of the requirements of Subsection (1) is in lieu of:
- (a) the completion of any foreign internship or social service requirements; and
 - (b) the certification required by Subsection 58-67-302(1)(d).
- (3) Individuals who satisfy the requirements of Subsections (1)(a) through (f) shall be eligible for admission to graduate medical education programs within the state, including internships and residencies, which are accredited by the liaison committee for graduate medical education.
- (4) A document issued by a medical school located outside the United States shall be considered the equivalent of a degree of doctor of medicine for the purpose of licensure as a physician and surgeon in this state if:
- (a) the foreign medical school is recognized by an organization approved by the division;
 - (b) the document granted by the foreign medical school is issued after the completion of all formal requirements of the medical school except internship or social service; and
 - (c) the foreign medical school certifies that the person to whom the document was issued has satisfactorily completed the requirements of Subsection (1)(c).
- (5) The provisions for licensure under this section shall be known as the "fifth pathway program."

58-67-302.7. Licensing of physician-educators.

- (1) As used in this section:
- (a) "Foreign country" means a country other than the United States, its territories, or Canada.
 - (b) "Foreign medical school" means a medical school that is outside the United States, its territories, and Canada.
- (2) Notwithstanding any provision of law to the contrary, an individual may receive a type I foreign teaching license if the individual:
- (a) submits an application in a form prescribed by the division, which may include:
 - (i) submission by the applicant of information maintained in a practitioner data bank, as designed by division rule, with respect to the applicant;
 - (ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and
 - (iii) the applicant's curriculum vitae;
 - (b) is a graduate of a foreign medical school that is accepted for certification by the Educational Commission for Foreign Medical Graduates;
 - (c) is licensed in good standing in a foreign country, the United States, its territories, or Canada;
 - (d) does not have an investigation or action pending against the physician's healthcare license, does not have a healthcare license that was suspended or revoked, and has not surrendered a healthcare license in lieu of disciplinary action, unless:
 - (i) the license was subsequently reinstated in good standing; or
 - (ii) the division in collaboration with the board determines to its satisfaction, after full disclosure by the applicant and full consideration by the division in collaboration with the board, that:
 - (A) the conduct has been corrected, monitored, and resolved; or
 - (B) a mitigating circumstance exists that prevents resolution, and the division in collaboration with the board is satisfied that but for the mitigating circumstance, the license would be reinstated;
 - (e) submits documentation of legal status to work in the United States;
 - (f) meets at least three of the following qualifications:
 - (i)
 - (A) published original results of clinical research, within 10 years before the day on which the application is submitted, in a medical journal listed in the Index Medicus or an equivalent scholarly publication; and
 - (B) submits the publication to the Board in English or in a foreign language with a verifiable, certified English translation;
 - (ii) held an appointment at a medical school approved by the LCME or at any medical school listed in the World Health Organization directory at the level of associate or full professor, or its equivalent, for at least five years;

- (iii) (A) developed a treatment modality, surgical technique, or other verified original contribution to the field of medicine within 10 years before the day on which the application is submitted; and
 - (B) has the treatment modality, surgical technique, or other verified original contribution attested to by the dean of an LCME accredited school of medicine in Utah;
 - (iv) actively practiced medicine cumulatively for 10 years; or
 - (v) is board certified in good standing of a board of the American Board of Medical Specialties or equivalent specialty board;
 - (g) is of good moral character;
 - (h) is able to read, write, speak, understand, and be understood in the English language and demonstrates a proficiency to the satisfaction of the division in collaboration with the board, if requested;
 - (i) is invited by an LCME accredited medical school in Utah to serve as a full-time member of the medical school's academic faculty, as evidenced by written certification from:
 - (i) the dean of the medical school, stating that the applicant has been appointed to a full-time faculty position, that because the applicant has unique expertise in a specific field of medicine the medical school considers the applicant to be a valuable member of the faculty, and that the applicant is qualified by knowledge, skill, and ability to practice medicine in the state; and
 - (ii) the head of the department to which the applicant is to be appointed, stating that the applicant will be under the direction of the head of the department and will be permitted to practice medicine only as a necessary part of the applicant's duties, providing detailed evidence of the applicant's qualifications and competence, including the nature and location of the applicant's proposed responsibilities, reasons for any limitations of the applicant's practice responsibilities, and the degree of supervision, if any, under which the applicant will function;
 - (j) pays a licensing fee set by the division under Section 63J-1-504; and
 - (k) has practiced medicine for at least 10 years as an attending physician.
- (3) Notwithstanding any provision of law to the contrary, an individual may receive a type II foreign teaching license if the individual:
- (a) satisfies the requirements of Subsections (2)(a) through (e) and (g) through (j);
 - (b) has delivered clinical care to patients cumulatively for five years after graduation from medical school; and
 - (c)
 - (i) will be completing a clinical fellowship while employed at the medical school described in Subsection (2)(i); or
 - (ii) has already completed a medical residency accredited by the Royal College of Physicians and Surgeons of Canada, the United Kingdom, Australia, or New Zealand, or a comparable accreditation organization as determined by the division in collaboration with the board.
- (4) After an initial term of one year, a type I license may be renewed for periods of two years if the licensee continues to satisfy the requirements described in Subsection (2) and completes the division's continuing education renewal requirements established under Section 58-67-303.
- (5) A type II license may be renewed on an annual basis, up to four times, if the licensee continues to satisfy the requirements described in Subsection (3) and completes the division's continuing education renewal requirements established under Section 58-67-303.
- (6) A license issued under this section:
- (a) authorizes the licensee to practice medicine:
 - (i) within the scope of the licensee's employment at the medical school described in Subsection (2)(i) and the licensee's academic position; and
 - (ii) at a hospital or clinic affiliated with the medical school described in Subsection (2)(i) for the purpose of teaching, clinical care, or pursuing research;
 - (b) shall list the limitations described in Subsection (6)(a); and
 - (c) shall expire on the earlier of:
 - (i) one year after the day on which the type I or type II license is initially issued, unless the license is renewed;
 - (ii) for a type I license, two years after the day on which the license is renewed;
 - (iii) for a type II license, one year after the day on which the license is renewed; or
 - (iv) the day on which employment at the medical school described in Subsection (2)(i) ends.
- (7) A person who holds a type I license for five consecutive years may apply for licensure as a physician and surgeon in this state and shall be licensed if the individual satisfies the requirements described in Subsection (8). If the person fails to obtain licensure as a physician and surgeon in this state, the person may apply for a renewal of the type I

- (8) An individual who holds a type I or type II license for five consecutive years is eligible for licensure as a physician and surgeon in this state if the individual:
 - (a) worked an average of at least 40 hours per month at the level of an attending physician during the time the individual held the type I or type II license;
 - (b) holds the rank of associate professor or higher at the medical school described in Subsection (2)(i);
 - (c) obtains certification from the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board;
 - (d) spent a cumulative 20 hours per year while holding a type I or type II license:
 - (i) teaching or lecturing to medical students or house staff;
 - (ii) participating in educational department meetings or conferences that are not certified to meet the continuing medical education license renewal requirement; or
 - (iii) attending continuing medical education classes in addition to the requirements for continuing education described in Subsections (4) and (5);
 - (e) obtains a passing score on the final step of the licensing examination sequence required by division rule made in collaboration with the board; and
 - (f) satisfies the requirements described in Subsections 58-67-302(1)(a) through (c) and (h) through (k).
- (9) If a person who holds a type II license fails to obtain licensure as a physician and surgeon in this state after applying under the procedures described in Subsection (8), the person may not:
 - (a) reapply for or renew a type II license; or
 - (b) apply for a type I license.
- (10) The division or the board may require an applicant for licensure under this section to meet with the board and representatives of the division for the purpose of evaluating the applicant's qualifications for licensure.
- (11) The division in collaboration with the board may withdraw a license under this section at any time for material misrepresentation or unlawful or unprofessional conduct.

58-67-303. Term of license - Expiration - Renewal.

- (1) (a) Except as provided in Section 58-67-302.7, the division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.
- (b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
- (2) At the time of renewal, the licensee shall show compliance with:
 - (a) continuing education renewal requirements; and
 - (b) the requirement for designation of a contact person and alternate contact person for access to medical records and notice to patients as required by Subsections 58-67-304(1)(b) and (c).
- (3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

58-67-304. License renewal requirements.

- (1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:
 - (a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board;
 - (b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-67-302(1)(i); and
 - (c) if the licensee practices medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for the licensee.
- (2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.
- (3) An application to renew a license under this chapter shall:
 - (a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and
 - (b) immediately following the question, contain the following statement: "For purposes of the immediately

fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

- (4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health in writing:
- (a) of the name and business address of the physician; and
 - (b) that the physician responded positively to the question described in Subsection (3)(a).

58-67-305. Exemptions from licensure.

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

- (1) an individual rendering aid in an emergency, when no fee or other consideration of value for the service is charged, received, expected, or contemplated;
- (2) an individual administering a domestic or family remedy;
- (3)
 - (a)
 - (i) a person engaged in the sale of vitamins, health foods, dietary supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited by state or federal law; and
 - (ii) a person acting in good faith for religious reasons, as a matter of conscience, or based on a personal belief, when obtaining or providing any information regarding health care and the use of any product under Subsection (3)(a)(i); and
 - (b) Subsection (3)(a) does not:
 - (i) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity, pain, or other condition; or
 - (ii) prohibit providing truthful and non-misleading information regarding any of the products under Subsection (3)(a)(i);
- (4) a person engaged in good faith in the practice of the religious tenets of any church or religious belief, without the use of prescription drugs;
- (5) an individual authorized by the Department of Health under Section 26-1-30, to draw blood pursuant to Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), or 72-10-502(5)(a)(vi);
- (6) a medical assistant while working under the indirect supervision of a licensed physician and surgeon, to the extent the medical assistant:
 - (a) is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of medicine;
 - (b) does not perform surgical procedures;
 - (c) does not prescribe prescription medications;
 - (d) does not administer anesthesia, anesthesia does not mean a local anesthetic for minor procedural use; and
 - (e) does not engage in other medical practices or procedures as defined by division rule in collaboration with the board;
- (7) an individual engaging in the practice of medicine when:
 - (a) the individual is licensed in good standing as a physician in another state with no licensing action pending and no less than ten years of professional experience;
 - (b) the services are rendered as a public service and for a noncommercial purpose;
 - (c) no fee or other consideration of value is charged, received, expected, or contemplated for the services rendered beyond an amount necessary to cover the proportionate cost of malpractice insurance; and
 - (d) the individual does not otherwise engage in unlawful or unprofessional conduct;
- (8) an individual providing expert testimony in a legal proceeding; and
- (9) an individual who is invited by a school, association, society, or other body approved by the division to conduct a clinic or demonstration of the practice of medicine in which patients are treated if:
 - (a) the individual does not establish a place of business in this state;
 - (b) the individual does not regularly engage in the practice of medicine in this state;
 - (c) the individual holds a current license in good standing to practice medicine issued by another state, district or territory of the United States, or Canada;
 - (d) the primary purpose of the event is the training of others in the practice of medicine; and
 - (e) neither the patient nor an insurer is billed for the services performed.

58-67-306. Status of licenses held on the effective date of this chapter.

An individual holding a current license as a physician and surgeon that was issued under any prior state law is considered to hold a current license in the same classification under this chapter.

Part 4 - License Denial and Discipline

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

Grounds for division action are set forth in Sections 58-1-401 and 58-67-503.

58-67-402. Authority to assess penalty.

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

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

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

Part 5 - Unlawful and Unprofessional Conduct - Penalties

58-67-501. Unlawful conduct.

- (1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:
 - (a) buying, selling, or fraudulently obtaining, any medical diploma, license, certificate, or registration;
 - (b) aiding or abetting the buying, selling, or fraudulently obtaining of any medical diploma, license, certificate, or registration;
 - (c) substantially interfering with a licensee's lawful and competent practice of medicine in accordance with this chapter by:
 - (i) any person or entity that manages, owns, operates, or conducts a business having a direct or indirect financial interest in the licensee's professional practice; or
 - (ii) anyone other than another physician licensed under this title, who is engaged in direct clinical care or consultation with the licensee in accordance with the standards and ethics of the profession of medicine; or
 - (d) entering into a contract that limits a licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients.
- (2) "Unlawful conduct" does not include:
 - (a) establishing, administering, or enforcing the provisions of a policy of disability insurance by an insurer doing business in this state in accordance with Title 31A, Insurance Code;
 - (b) adopting, implementing, or enforcing utilization management standards related to payment for a licensee's services, provided that:
 - (i) utilization management standards adopted, implemented, and enforced by the payer have been approved by a physician or by a committee that contains one or more physicians; and
 - (ii) the utilization management standards does not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;
 - (c) developing and implementing clinical practice standards that are intended to reduce morbidity and mortality or developing and implementing other medical or surgical practice standards related to the standardization of effective health care practices, provided that:
 - (i) the practice standards and recommendations have been approved by a physician or by a committee that contains one or more physicians; and
 - (ii) the practice standards do not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;
 - (d) requesting or recommending that a patient obtain a second opinion from a licensee;

- (e) conducting peer review, quality evaluation, quality improvement, risk management, or similar activities designed to identify and address practice deficiencies with health care providers, health care facilities, or the delivery of health care;
- (f) providing employment supervision or adopting employment requirements that do not interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients, provided that employment requirements that may not be considered to interfere with an employed licensee's exercise of independent professional judgment include:
 - (i) an employment requirement that restricts the licensee's access to patients with whom the licensee's employer does not have a contractual relationship, either directly or through contracts with one or more third-party payers; or
 - (ii) providing compensation incentives that are not related to the treatment of any particular patient;
- (g) providing benefit coverage information, giving advice, or expressing opinions to a patient or to a family member of a patient to assist the patient or family member in making a decision about health care that has been recommended by a licensee; or
- (h) any otherwise lawful conduct that does not substantially interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients and that does not constitute the practice of medicine as defined in this chapter.

58-67-502. Unprofessional conduct.

"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:

- (1) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule;
- (2) making a material misrepresentation regarding the qualifications for licensure under Section 58-67-302.7; or
- (3) violating the dispensing requirements of Section 58-17b-309 or 58-17b-309.5 if applicable.

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

- (1) Any person who violates the unlawful conduct provisions of Section 58-67-501 or Section 58-1-501 is guilty of a third degree felony.
- (2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful conduct by:
 - (i) assessing administrative penalties; or
 - (ii) taking other appropriate administrative action.
 (b) A monetary administrative penalty imposed under this section shall be deposited in the Physician Education Fund created in Section 58-67a-1.
- (3) If a licensee has been convicted of unlawful conduct, described in Section 58-67-501, before an administrative proceeding regarding the same conduct, the division may not assess an additional administrative fine under this chapter for the same conduct.
- (4) (a) If the division concludes that an individual has violated provisions of Section 58-67-501, Section 58-67-502, Chapter 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and disciplinary action is appropriate, the director or director's designee shall:
 - (i) issue a citation to the individual;
 - (ii) attempt to negotiate a stipulated settlement; or
 - (iii) notify the individual that the adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to appear.
 (b) The division may take the following action against an individual who is in violation of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding:
 - (i) assess a fine of up to \$10,000 per single violation or up to \$2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; or
 - (ii) order to cease and desist from the behavior that constitutes a violation of the provisions described in Subsection (4)(a).
 (c) An individual's license may not be suspended or revoked through a citation.
 (d) Each citation issued under this section shall:
 - (i) be in writing;
 - (ii) clearly describe or explain:

- (A) the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;
 - (B) that the recipient must notify the division within 20 calendar days from the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
 - (C) the consequences of failure to timely contest the citation or pay the fine assessed by the citation within the time specified in the citation; and
- (iii) be served in accordance with the Utah Rules of Civil Procedure.
- (e) If the individual to whom the citation is issued fails to request a hearing to contest the citation within 20 calendar days from the day on which the citation is served, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.
 - (f) The division may refuse to issue or renew or suspend, revoke, or place on probation the license of an individual who fails to comply with a citation after the citation becomes final.
 - (g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
 - (h) No citation may be issued under this section after six months from the day on which the violation last occurred.

Part 6 - Impaired Physician

58-67-601. Mentally incompetent or incapacitated physician.

- (1) As used in this section:
 - (a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.
 - (b) "Mental illness" is as defined in Section 62A-15-602.
- (2) If a court of competent jurisdiction determines a physician is an incapacitated person or that the physician has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the physician upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the physician, in writing, of the suspension.
- (3)
 - (a) If the division and a majority of the board find reasonable cause to believe a physician, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the physician with a notice of hearing on the sole issue of the capacity of the physician to competently and safely engage in the practice of medicine.
 - (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).
- (4)
 - (a) Every physician who accepts the privilege of being licensed under this chapter gives consent to:
 - (i) submitting at the physician's own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and
 - (ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.
 - (b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:
 - (i) the physician has a mental illness, is incapacitated or otherwise unable to practice medicine with reasonable skill and safety; and
 - (ii) immediate action by the division and the board is necessary to prevent harm to the physician's patients or the general public.
 - (c)
 - (i) Failure of a physician to submit to the examination ordered under this section is a ground for the division's immediate suspension of the physician's license by written order of the director.
 - (ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the physician and was not related directly to the illness or incapacity of the physician.

- (5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within ten days after the license is suspended.
- (b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the physician's patients or the general public.
- (6) A physician whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the physician, under procedures established by division rule, regarding any change in the physician's condition, to determine whether:
 - (a) the physician is or is not able to safely and competently engage in the practice of medicine; and
 - (b) the physician is qualified to have the physician's license to practice under this chapter restored completely or in part.

Part 7 - Immunity Provisions

58-67-701. Immunity provisions apply.

Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, applies to licensees under this chapter.

Part 8 - Practice Standards

58-67-801. Disclosure of financial interest by licensee.

- (1) Licensees under this chapter may not refer patients, clients, or customers to any clinical laboratory, ambulatory or surgical care facilities, or other treatment or rehabilitation services such as physical therapy, cardiac rehabilitation, radiology services, dispensing optical lens facility, or lithotripsy, in which the licensee or a member of the licensee's immediate family has any financial relationship as that term is described in 42 U.S.C. 1395nn, unless the licensee at the time of making the referral discloses that relationship, in writing, to the patient, client, or customer.
- (2) The written disclosure under Subsection (1) shall also state the patient may choose any facility or service center for purpose of having the laboratory work or treatment service performed.

58-67-802. Form of practice.

- (1) A physician and surgeon licensed under this chapter may engage in practice as a physician and surgeon, or in the practice of medicine only as an individual licensee; but as an individual licensee, he may be:
 - (a) an individual operating as a business proprietor;
 - (b) an employee of another person;
 - (c) a partner in a lawfully organized partnership;
 - (d) a lawfully formed professional corporation;
 - (e) a lawfully organized limited liability company;
 - (f) a lawfully organized business corporation; or
 - (g) any other form of organization recognized by the state which is not prohibited by division rule made in collaboration with the board.
- (2) Regardless of the form in which a licensee engages in the practice of medicine, the licensee may only permit the practice of medicine in that form of practice to be conducted by an individual:
 - (a) licensed in Utah as a physician and surgeon under Section 58-67-301 or as an osteopathic physician and surgeon under Section 58-68-301; and
 - (b) who is able to lawfully and competently engage in the practice of medicine.

58-67-803. Medical records - Electronic records.

- (1) Medical records maintained by a licensee shall:
 - (a) meet the standards and ethics of the profession; and
 - (b) be maintained in accordance with division rules made in collaboration with the board.
- (2) Medical records under this section may be maintained by an electronic means if the records comply with Subsection (1).

58-67-804. Consumer access to provider charges.

Beginning January 1, 2011, a physician licensed under this chapter shall, when requested by a consumer:

- (1) make a list of prices charged by the physician available for the consumer which includes the physician's 25 most frequently performed:
 - (a) clinic procedures or clinic services;
 - (b) out-patient procedures; and
 - (c) in-patient procedures; and
- (2) provide the consumer with information regarding any discount available for:
 - (a) services not covered by insurance; or
 - (b) prompt payment of billed charges.

58-67-805. Supervision of cosmetic medical procedures.

- (1) Except as provided in Subsection (2), a physician may not delegate the performance of an ablative cosmetic medical procedure to an individual who is not licensed under this chapter or Chapter 68, Utah Osteopathic Medical Practice Act.
- (2) A physician may delegate to an advanced practice registered nurse with an unrestricted license under Chapter 31b, Nurse Practice Act, the performance of an erbium full ablation resurfacing procedure or a CO2 fractionated resurfacing procedure, if the physician:
 - (a) prescribes that specific procedure for the patient who is to receive the procedure;
 - (b) ensures that the advanced practice registered nurse performs the procedure under the indirect supervision of the physician; and
 - (c) verifies that the advanced practice registered nurse is qualified to perform the procedure by having received at least 50 hours of training specific to the procedure to be performed and the laser to be used.

58-67-806. Representation of medical specialization.

- (1) A physician may not represent to another person that the physician is certified in a medical specialty or certified by a particular board unless:
 - (a) the physician includes in the representation the name of:
 - (i) the certification board or entity; or
 - (ii) the medical specialty for which the physician is certified; and
 - (b) the board or certification entity meets the requirements of Subsection (2).
- (2) A certification entity or board under Subsection (1) shall meet the following qualifications:
 - (a) be included in the American Board of Medical Specialties or an American Osteopathic Association Certifying Board; or
 - (b)
 - (i) require an Accreditation Council for Graduate Medical Education or American Osteopathic Association approved postgraduate training program that provides complete training in the specialty or subspecialty; and
 - (ii) be certified or had prior certification by the member board of the American Board of Medical Specialties or an American Osteopathic Certifying Board.

UTAH MEDICAL PRACTICE ACT

**Title 58, Chapter 67
Utah Code Annotated 1953
As Amended by
Session Laws of Utah 2013
Issued May 14, 2013**

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