

PROFESSIONAL LICENSING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill modifies provisions of Title 58, Occupations and Professions.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to the authority of the Division of Occupational and Professional Licensing (DOPL) to refuse to issue or renew a license based on an applicant's criminal history;

- ▶ modifies provisions related to an applicant requesting an agency review from DOPL for the refusal to issue or renew a license;

- ▶ modifies the definition of "unlawful conduct" related to the criminal record of an applicant or licensee; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-401, as last amended by Laws of Utah 2016, Chapter 238

58-1-402, as last amended by Laws of Utah 2010, Chapter 286

58-1-501, as last amended by Laws of Utah 2019, Chapter 198

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

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

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

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

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

(a) subject to the provisions of Subsection (7), the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title;

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

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

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

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

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

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

(b) a person who engages in or represents that the person is engaged in an occupation

or profession regulated under this title; and

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

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

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

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

(ii) Notwithstanding Subsection (6)(b)(i), the division may refuse to issue a license due to unprofessional or unlawful conduct that occurred more than 10 years before a request or application for licensure is made.

(7) When the division is determining whether to refuse to issue a license to an applicant, or to refuse to renew the license of a licensee, based solely on the criminal conviction of an applicant or licensee, the division shall:

(a) provide individualized consideration to the applicant or licensee;

(b) determine whether the criminal conviction bears a substantial relationship to the applicant's or licensee's ability to safely or competently practice the occupation or profession; and

(c) consider the applicant's or licensee's current circumstances, which may include any of the following:

(i) the age of the applicant or licensee when the applicant or licensee committed the offense;

(ii) the time that has elapsed since the applicant or licensee committed the offense;

(iii) whether the applicant or licensee has completed the applicant's or licensee's

86 criminal sentence;

87 (iv) whether the applicant has completed or is actively participating in rehabilitative
88 drug or alcohol treatment;

89 (v) any testimonials or recommendations from other individuals provided by the
90 applicant or licensee, including a progress report from the applicant's or licensee's probation or
91 parole officer;

92 (vi) other evidence of rehabilitation provided by the applicant or licensee;

93 (vii) the education and training of the applicant or licensee;

94 (viii) the employment history of the applicant or licensee; and

95 (ix) other relevant information provided by the applicant or licensee.

96 Section 2. Section **58-1-402** is amended to read:

97 **58-1-402. Administrative review -- Special appeals boards.**

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

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

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

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

113 (b) one member from the general public who is neither an attorney nor a practitioner in

an occupation or profession regulated by the division; and

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

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

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

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

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

(a) Section 63A-3-106;

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

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

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

Section 3. Section 58-1-501 is amended to read:

58-1-501. Unlawful and unprofessional conduct.

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

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

- 142 (i) not licensed to do so or not exempted from licensure under this title; or
143 (ii) restricted from doing so by a suspended, revoked, restricted, temporary,
144 probationary, or inactive license;
- 145 (b) (i) impersonating another licensee or practicing an occupation or profession under a
146 false or assumed name, except as permitted by law; or
147 (ii) for a licensee who has had a license under this title reinstated following disciplinary
148 action, practicing the same occupation or profession using a different name than the name used
149 before the disciplinary action, except as permitted by law and after notice to, and approval by,
150 the division;
- 151 (c) knowingly employing any other person to practice or engage in or attempt to
152 practice or engage in any occupation or profession licensed under this title if the employee is
153 not licensed to do so under this title;
- 154 (d) knowingly permitting the person's authority to practice or engage in any occupation
155 or profession licensed under this title to be used by another, except as permitted by law;
- 156 (e) obtaining a passing score on a licensure examination, applying for or obtaining a
157 license, or otherwise dealing with the division or a licensing board through the use of fraud,
158 forgery, or intentional deception, misrepresentation, misstatement, or omission; or
- 159 (f) (i) issuing, or aiding and abetting in the issuance of, an order or prescription for a
160 drug or device to a person located in this state:
- 161 (A) without prescriptive authority conferred by a license issued under this title, or by
162 an exemption to licensure under this title; or
- 163 (B) with prescriptive authority conferred by an exception issued under this title or a
164 multistate practice privilege recognized under this title, if the prescription was issued without
165 first obtaining information, in the usual course of professional practice, that is sufficient to
166 establish a diagnosis, to identify underlying conditions, and to identify contraindications to the
167 proposed treatment; and
- 168 (ii) Subsection (1)(f)(i) does not apply to treatment rendered in an emergency, on-call
169 or cross coverage situation, provided that the person who issues the prescription has

prescriptive authority conferred by a license under this title, or is exempt from licensure under this title.

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

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

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

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

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

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

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

(g) practicing or attempting to practice an occupation or profession regulated under this

198 title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

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

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

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

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

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

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

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

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

221 (n) violating a provision of Section 58-1-501.5; or

222 (o) violating the terms of an order governing a license.

223 (3) Unless otherwise specified by statute or administrative rule, in a civil or
224 administrative proceeding commenced by the division under this title, a person subject to any
225 of the unlawful and unprofessional conduct provisions of this title is strictly liable for each

226 violation.

227 (4) The following are not evidence of engaging in unprofessional conduct under
228 Subsection (2)(c):

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

230 (b) a conviction for which an individual's incarceration has ended more than seven
231 years before the date of the division's consideration, unless:

232 (i) after the incarceration the individual has engaged in additional conduct that results
233 in another conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere that is
234 held in abeyance pending the successful completion of probation; or

235 (ii) the conviction was for:

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

237 (B) a felony related to a criminal sexual act pursuant to Title 76, Chapter 4, Part 4,
238 Sexual Offenses, or Title 76, Chapter 5b, Sexual Exploitation Act; or

239 (C) a felony related to criminal fraud or embezzlement, including a felony pursuant to
240 Title 76, Chapter 6, Part 5, Fraud, or Title 76, Chapter 6, Part 4, Theft.