

Report for SUDC Licensing Board Members 2013 Investigation Statistics for Substance Use Disorder Counselors

40 Total Cases Note: Multiple cases on a licensee were consolidated into one case for an actual total of 29 cases)

- 1 Administration Discretion** Allegation: unlicensed practice of medicine and pharmacy – problem: unreliable complainant, lack of evidence and witnesses.
- 4 Citations Issued** 3 practicing w/o licenses; 1 pharmacy abandon drugs (and patient files)
- 4 Lack of evidence**
- 4 Letters of Concern** Four letters issued to owners of facility profiled in the February 22, 2013 Letter of Concern handout.
- 1 No Jurisdiction**
- 2 Unfounded**
- 3 Verbal Warning** Three unlicensed practice cases – Citations could not be issued due to insufficient evidence or a lack of evidence to support licensed activity within the last 6 months.

Voluntary Compliance 1

Administrative Sanctions: 10

- William Collins **MOU**
- Kendelin Newton **MOU**
- Robin O'Dell **MOU**
- Brittany Roberts **MOU**
- Julie Murdock December 2011 **MOU** ; December 2012 - **probation violations and order to show cause**; March 2013 – **License Revoked**
- Joanie Jones May 2005 - **MOU**; May 2007 – **MOU**; April 2010 – **Probation**; November 2011 – **Probation**; March 2013 – **Surrendered License**
- James Gibson May 2012 – **MOU**; April 2013 - **Surrendered license**
- Michael Garrett November 2010 - **MOU**; October 2012 **Probation**; Aug 2013 – October 2013 – **Revocation of License**
- Lilia Riggan February 2011 – **MOU**; June 2013 – **Surrender**
- Michael Paget – **Surrender** (Drug use by Respondent; selling drugs; selling certificates of completion for money and drugs)



February 22, 2013

[REDACTED]

Note regarding this case: The facility received a citation for the practice of pharmacy without a license

SUBJECT: LETTER OF CONCERN

Dear Mr. [REDACTED]:

The Division of Occupational and Professional Licensing has received a complaint concerning you in your capacity as a licensed advanced substance use disorder counselor.

The information or complaint received raises concerns that you may have engaged in unlawful or unprofessional conduct. However, we have declined, at this time, to investigate the matter any further or to seek formal action against your license. Instead, we have decided that a letter of concern should be sufficient motivation for you to carefully examine and adjust your practices in the future. This decision was, in part, based on your representation to our investigator that you would examine and adjust your practices.

The Division received a complaint regarding abandoned prescription medication and substance abuse treatment records at an old address your business, [REDACTED], occupied. Evidence was collected from the property which included a large pickle jar filled with a variety of capsules and medications mixed together, expired sample medication, patient specific medication, adulterated prescription bottles with medication inside, relabeled medication, and loose unidentified medications. Additionally, a complete client record, discharge paperwork for several clients, a client's progress note, treatment plans for two clients, aftercare roll call and minute logs, and program material for your agency were recovered. The evidence collected clearly revealed former clients names and dates of birth violating their confidentiality.

A Division investigator reviewed your medication destruction logs and found them insufficient in documenting the means of destruction for legend and controlled substances. However, various policies were reviewed and witness interviews indicate controlled substances and legend drugs were transported from the facility to a local pharmacy for incineration or were destroyed onsite with a liquid solution and thrown away or buried. Policy indicated this was to occur weekly, but the evidence recovered indicates policies were not being followed with the amount of medication recovered. Additionally, it appears when the facility was under the name, [REDACTED], there was a policy allowing the dispensing of a limited formulary of drugs, including some controlled substances, on an emergency basis.

Please familiarize yourself with the following statutes, rules, ethical or practice standards which are relevant to these allegations:

Utah Code Annotated subsection 58-1-501(1)(a)(i) (2)(a)(b)(g) provides:

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

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

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

(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;

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

Utah Code Annotated subsection 58-17b-102 (56) provides:

(56) "Practice of pharmacy" includes the following:

(c) compounding, packaging, labeling, dispensing, administering, and the coincident distribution of prescription drugs or devices, provided that the administration of a prescription drug or device is:

(i) pursuant to a lawful order of a practitioner when one is required by law;

(e) ensuring proper and safe storage of drugs and devices;

(f) maintaining records of drugs and devices in accordance with state and federal law and the standards and ethics of the profession;

Utah Code Annotated subsection 58-17b-501 (11) provides:

Unlawful conduct includes:

(11) selling, dispensing, or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure;

Utah Code Annotated subsection 58-17b-504 (1) provides:

(1) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(i) and Subsections 58-17b-501(7) and (11) is guilty of a third degree felony.

Utah Code Annotated subsection 58-37-8 (1) provides:

(1) Prohibited acts A - Penalties:

- (a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally:
- (i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;
 - (b) Any person convicted of violating Subsection (1)(a) with respect to:
 - (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gamma hydroxybutyric acid as listed in Schedule III is guilty of a second degree felony and upon a second or subsequent conviction is guilty of a first degree felony;
 - (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or
 - (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

Utah Administrative Code subsection R156-37-502(2)(4)(5), provides:

"Unprofessional conduct" includes:

- (2) violating any federal or state law relating to controlled substances;
- (4) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances;
- (5) being unable to account for shortages of any controlled substance inventory for which the licensee has responsibility;

Utah Administrative Code subsection R156-37-602 (1) provides:

- (1) Records of purchase, distribution, dispensing, prescribing, and administration of controlled substances shall be kept according to state and federal law.

Utah Administrative Code subsection R156-37-606(1)(2) provides:

- (1) Any disposal of controlled substances by licensees shall:
 - (a) be consistent with the provisions of 1307.21 of the Code of Federal Regulations; or
 - (b) require the authorization of the Division after submission to the Division to the attention of Chief Investigator of a detailed listing of the controlled substances and the quantity of each. Disposal shall be conducted in the presence of one of its investigators or a Division authorized agent as is specifically instructed by the Division in its written authorization.
- (2) Records of disposal of controlled substances shall be maintained and made available on request to the Division or its agents for inspection for a period of five years.

CFR Title 21 1307.21

Any person in possession of any controlled substance and desiring or required to dispose of such substance may request assistance from the Special Agent in Charge of the Administration in the area in which the person is located for authority and instruction to dispose of such substance.

Utah Code Annotated subsection 58-60-110(1)(c) provides:

(1) As used in this chapter, "unprofessional conduct" includes:
(c) disclosing or refusing to disclose any confidential communication under Section 58-60-114 or 58-60-509.

Utah Administrative Code subsection R156-60d-502 (1) provides:

"Unprofessional conduct" includes:

(1) violation of any provision of the NAADAC Code of Ethics: Teaching Tool, January 2011 edition, which is hereby incorporated by reference;

NAADAC Code of Ethics (2011 edition) provides:

III. Confidentiality/Privileged Communication and Privacy

Addiction professionals shall provide information to clients regarding confidentiality and any reasons for releasing information in adherence with confidentiality laws. When providing services to families, couples or groups, the limits and exceptions to confidentiality must be reviewed and a written document describing confidentiality must be provided to each person. Once private information is obtained by the addiction professional, standards of confidentiality apply. Confidential information is disclosed when appropriate with valid consent from a client or guardian. Every effort is made to protect the confidentiality of client information, except in very specific cases or situations.

2. The addiction professional will do everything possible to safeguard the privacy and confidentiality of client information, except where the client has given specific, written, informed and limited consent or when the client poses a risk of harm to themselves or others.

IV. Professional Responsibility

Standard 2: Legal and Ethical Standards

Addiction professionals will uphold the legal and ethical standards of the profession by being fully cognizant of all federal laws and laws that govern practice of substance use disorder counseling in their respective state.

Standard 3: Records and Data

The addiction professional maintains records of professional services rendered, research conducted, interactions with other individuals, agencies, legal and medical entities regarding professional responsibilities to clients and to the profession as a whole.

1. The addiction professional creates, maintains, disseminates, stores, retains and disposes of records related to research, practice, payment for services, payment of debts and other work in accordance with legal standards and in a manner that permits/satisfies the ethics standards established. Documents will include data relating to the date, time and place of client contact, the services provided, referrals made, disclosures of confidential information, consultation regarding the client, notation of supervision meetings and the outcome of every service provided.

2. Client records are maintained and disposed of in accordance with law and in a manner that meets the current ethical standards.

4. Records shall be kept in a locked file cabinet or room that is not easily accessed by professionals other than those performing essential services in the care of clients or the operation of agency.

CFR Title 42 U.S.C. 290ee-3

(a) Disclosure authorization

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the US shall, except provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section

CFR Title 42 U.S.C 2.4

Criminal penalty for violation

Under 42 USC 290ee-3(f) and 42 USC 290dd-3f, any person who violates any provision of the statutes of these regulations shall be fined not more than \$500 in the case of the first offense, and not more than \$5,000 in the case of each subsequent offense

The Division's website, www.dopl.utah.gov, may be useful to ensure you have a clear understanding of these and other statutes, rules, ethical and professional standards that apply to your practice.

This letter is issued in accordance with Utah Code Annotated subsection 58-1-108(3) and Utah Administrative Code subsection R156-1-102(33). This letter does not constitute a legal finding that you have or have not engaged in unprofessional or unlawful conduct, nor does it constitute disciplinary action against you. This letter is classified under the Government Records Management Act as a protected record. If you would like to comment regarding any issues raised herein, please feel free to do so.

Please be aware that this letter of concern may be used to support a pattern of unprofessional conduct if future problems in this area of concern are substantiated. This could result in formal disciplinary action by the division. Also be aware that if other information regarding the allegations of the conduct described in this letter is brought to our attention, we may reopen our investigation and take action as may be appropriate.

If you have any questions about this letter, please contact Brittany Butsch, Division Investigator at (801) 530-6493.

Sincerely,

Larry Gooch
Investigative Supervisor

22 R

Senator Todd Weiler proposes the following substitute bill:

1 **HEALTH CARE PROFESSIONAL TRUTH IN ADVERTISING**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Ryan D. Wilcox

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the unprofessional and unlawful conduct provisions of the Division of
10 Occupational and Professional Licensing Act to require all licensed health care
11 providers to disclose to a patient the health care provider's type of license and name.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ beginning January 1, 2015, requires a health care provider, in a patient encounter, to
16 wear a badge or clothing that identifies the health care provider's name and license
17 type;
- 18 ▶ establishes certain exemptions for the requirement for health care provider
19 identification;
- 20 ▶ requires an individual in training to obtain a health care license to wear
21 identification in patient encounters;
- 22 ▶ prohibits deceptive or misleading representations by a healthcare provider;
- 23 ▶ makes it unprofessional conduct for a health care provider to fail to wear
24 identification in a patient encounter;
- 25 ▶ makes it unlawful conduct for an individual to wear identification in a patient



26 encounter that suggests the individual is licensed to perform health care services for which the
27 individual is not licensed to perform; and
28 ▶ makes it unlawful conduct to engage in deceptive or misleading representations.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 ENACTS:

35 58-1-501.8, Utah Code Annotated 1953

36

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

38 Section 1. Section **58-1-501.8** is enacted to read:

39 **58-1-501.8. Occupational and professional identification of health care providers**

40 -- **Unlawful and unprofessional conduct.**

41 (1) For purposes of this section:

42 (a) "Badge" means a tag or badge in plain view:

43 (i) attached to a health care provider's clothing; or

44 (ii) hanging from a lanyard around a health care provider's neck.

45 (b) "Clothing" means a health care provider's outermost article of clothing that is
46 visible to others.

47 (c) "Deceptive or misleading conduct" means any affirmative communication or
48 representation that falsely states, describes, holds out, or details an individual's licensure,
49 training, education, or profession.

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

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

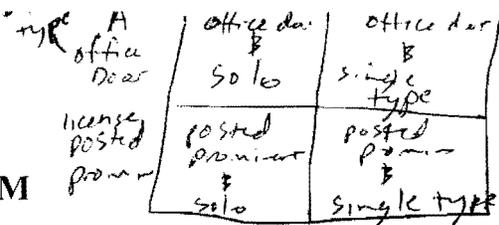
52 (ii) licensed under this title.

53 (e) "Identification" means a badge or stitching, or permanent writing in plain view on
54 clothing that:

55 (i) includes the health care provider's name;

56 (ii) includes the license type held by the health care provider;

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1st Sub. (Green) S.B. 137

57 (iii) is worn in a manner that is visible and apparent to others; and
 58 (iv) contains the information required by Subsections (1)(e)(i) and (ii);
 59 (A) in a manner and of sufficient size that can be easily read; and
 60 (B) on both sides of the badge, unless the badge or tag is attached to clothing in a way
 61 that prevents the badge from rotating.

62 (f) "License type" means a designation of the license type that satisfies the
 63 requirements of Section 58-1-501.6.

64 (g) "Patient encounter" means an interaction in ~~in~~ a health care facility, health care
 64a clinic ~~in~~ or office ~~in~~ or other location as defined by the division by rule; ~~in~~ in
 64a1 which a patient can
 64b see a health care
 65 provider delivering services directly to a patient.

66 (2) Beginning January 1, 2015 except as provided in Subsections (3) and (4), a health
 67 care provider shall wear identification during any patient encounter.

68 (3) A health care provider's identification may be covered if required under sterilization
 69 or isolation protocols.

70 (4) A health care provider is not required to wear identification:

71 (a) if wearing identification would jeopardize the health care provider's safety; ~~and~~
 71a or

72 (b) (i) in an office in which:

73 (A) the license type and names of all health care providers working in the office are
 74 displayed on the office door; ~~and~~ or

75 (B) each health care provider working in the office has the health care provider's
 76 license posted prominently in the office and readily visible to a patient; ~~and~~

77 (ii) if the office is an office:

78 (A) of a solo health care provider; ~~or~~

79 (B) of a single type of health care provider ~~or~~ ;

80 ~~or~~ (C) with no more than two types of health care providers in which each patient is seen
 81 by only one health care provider in the office, a patient does not receive services from another
 82 health care provider in the office, and the health care providers do not provide cross coverage
 83 of services for the patients of other health care providers in the office; ~~or~~

84 (5) An individual who is a student or is in training to obtain a license as a health care
 85 provider shall:

86 (a) wear identification during patient encounters that identifies the person as in
 87 training, or a student, for the particular license type; and

- 88 (b) otherwise comply with the provisions of this section.
- 89 (6) It is unprofessional conduct if a health care provider violates this section.
- 90 (7) It is unlawful conduct if an individual:
- 91 (a) wears identification in a patient encounter that suggests that the individual is
- 92 practicing or engaging in an occupation or profession that the individual may not lawfully
- 93 practice or engage in under this title; or
- 94 (b) engages in deceptive or misleading conduct.
- 95 (8) An individual who violates this section is subject to Section 58-1-502.

State of Utah
Administrative Rule Analysis

- * The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- * Please address questions regarding information on this notice to the agency.
- * The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- * The full text of all rule filings may also be inspected at the Division of Administrative Rules.

		Agency No.		Rule No.		Section No.
Utah Admin. Code Ref (R no.):	R	156	-	60	-	102
Changed to Admin. Code Ref. (R no.):	R		-		-	

1.	Agency:	Commerce/Division of Occupational and Professional Licensing		
	Room no.:			
	Building:	Heber M. Wells Building		
	Street address 1:	160 East 300 South		
	Street address 2:			
	City, state, zip:	Salt Lake City UT 84111-2316		
	Mailing address 1:	PO Box 146741		
	Mailing address 2:			
	City, state, zip:	Salt Lake City UT 84114-6741		
	Contact person(s):			
	Name:	Phone:	Fax:	E-mail:
	Rich Oborn	801-530-6767	801-530-6511	roborn@utah.gov

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

2.	Title of rule or section (catchline):
	Definitions
3.	Type of notice:
	New ; Amendment XXX; Repeal ; Repeal and Reenact
4.	Purpose of the rule or reason for the change:
	The Division is proposing this rule filing to further define an existing license exemption established in Subsection 58-60-107(8). The rule filing is made at the request of the affected mental health licensing boards and professional associations.
5.	This change is a response to comments from the Administrative Rules Review Committee.
	No XX; Yes
6.	Summary of the rule or change:
	In Section 102, paragraph (6) is added to define the term "on-the-job training program" as used in Subsection 58-60-107(2)(g). The proposed amendment creates a 45-day exemption applicable to individuals who completed all required coursework for a degree but who do not yet qualify for a license because they are waiting for their school to formally award the degree. The gap between the completion date of a final course of a program and the formal awarding of a degree can sometimes be several weeks. It takes additional time for an individual to mail transcripts to the Division and for the Division to issue a license after receipt of the transcripts. This proposed amendment allows these individuals to continue to legally work under an exemption while they wait to obtain a license for a maximum of 45 days under certain conditions specified in the rule.

7.	Aggregate anticipated cost or savings to:	
	A) State budget:	
	Affected:	No <input type="checkbox"/> ; Yes XXX <input checked="" type="checkbox"/>
	The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. No other cost impact to the Division is anticipated because the exemption is self-executing.	
	B) Local government:	
	Affected:	No XXX <input checked="" type="checkbox"/> ; Yes <input type="checkbox"/>
	The proposed amendments only apply to applicants for licensure in mental health therapy and substance use disorder counseling classifications. As a result, the proposed amendments do not apply to local governments.	
	C) Small businesses ("small business" means a business employing fewer than 50 persons):	
	Affected:	No <input type="checkbox"/> ; Yes XXX <input checked="" type="checkbox"/>
	Many mental health agencies and private practices are small businesses that employ individuals as they transition from being a student to a licensee. These businesses may experience a cost savings under the proposed amendment because it enables individuals to continue therapy or counseling with their clients for up to 45 days after the individual completes their coursework. If a business decides to keep the student on staff after completion of their internship course, businesses will avoid the expense of hiring a new employee to perform the services provided by the student. The Division is not able to quantify this impact due to a wide range of circumstances.	
	D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):	
	Affected:	No <input type="checkbox"/> ; Yes XXX <input checked="" type="checkbox"/>
	Many individuals working in the mental health field transitioning from being a student to a licensee may experience a cost savings because this proposed amendment enables them to continue therapy or counseling with clients for up to 45 days after the individual completes their coursework. It may also increase the likelihood that an internship site will continue to employ an individual after they complete their internship. The Division is not able to quantify this impact due to a wide range of circumstances.	
8.	Compliance costs for affected persons:	
	Many individuals working in the mental health field transitioning from being a student to a licensee may experience a cost savings because this proposed amendment enables them to continue therapy or counseling with clients for up to 45 days after the individual completes their coursework. It may also increase the likelihood that an internship site will continue to employ an individual after they complete their internship. The Division is not able to quantify this impact due to a wide range of circumstances.	
9.	A) Comments by the department head on the fiscal impact the rule may have on businesses:	
	This filing creates a program under which an individual who has recently completed pre-licensing education can work for a period of up to 45 days while the licensing process is completed. Businesses that wish to employ such an individual might realize a financial benefit from being able to streamline their hiring processes. Such benefits will vary and cannot be estimated.	
	B) Name and title of department head commenting on the fiscal impacts:	
	Francine A. Gian, Executive Director	
10.	This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.	
	State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :	
	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
	Section 58-60-101	
11.	This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; <i>if none, leave blank</i>):	
	First Incorporation	Second Incorporation
	Official Title of Materials Incorporated (from title page)	

	Publisher		
	Date Issued		
	Issue, or version		
	ISBN Number (optional)		
	ISSN Number (optional)		
	Cost of Incorporated Reference		
	Action: Adds, updates, or removes		
(If this rule incorporates more than two items by reference, please attach additional pages)			
12.	<p>The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)</p>		
	A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):	05/15/2014	
	B) A public hearing (optional) will be held:		
	On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):
	04/23/2014	10:00 AM	160 East 300 South, Conference Room 474 (4th floor), Salt Lake City, Utah
13.	This rule change may become effective on (mm/dd/yyyy):	05/22/2014	
	<p>NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.</p>		
14.	Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid"); may not include the name of the agency:		
	licensing	mental health	
	therapists		
15.	Attach an RTF document containing the text of this rule change (filename):	R156-60.pro	
<p>To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i>, and delaying the first possible effective date.</p>			
AGENCY AUTHORIZATION			
Agency head or designee, and title:	Mark B. Steinagel, Director	Date (mm/dd/yyyy):	04/01/2014

R156. Commerce, Occupational and Professional Licensing.

R156-60. Mental Health Professional Practice Act Rule.

R156-60-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the following:

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 or Fourth Edition: DSM-IV published by the American Psychiatric Association;

(b) 2013 ICD-9-CM for Physicians, Volumes 1 and 2 Professional Edition published by the American Medical Association; or

(c) ICD-10-CM 2013: The Complete Official Draft Code Set published by the American Medical Association.

(2) "Client or patient" means an individual who, when competent requests, or when not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist agrees verbally or in writing to provide professional services to that individual, or without an overt agreement does in fact provide professional services to that individual.

(3) "Direct supervision" of a supervisee in training, as used in Subsection 58-60-205(1)(f), 58-60-305(1)(f), and 58-60-405(1)(f), means:

(a) a supervisor meeting with the supervisee when both are physically present in the same room at the same time; or

(b) a supervisor meeting with the supervisee remotely via real-time electronic methods that allow for visual and audio interaction between the supervisor and supervisee under the following conditions:

(i) the supervisor and supervisee shall enter into a written supervisory agreement which, at a minimum, establishes the following:

(A) frequency, duration, reason for, and objectives of electronic meetings between the supervisor and supervisee;

(B) a plan to ensure accessibility of the supervisor to the supervisee despite the physical distance between their offices;

(C) a plan to address potential conflicts between clinical recommendations of the supervisor and the representatives of the agency employing the supervisee;

(D) a plan to inform a supervisee's client or patient and employer regarding the supervisee's use of remote supervision;

(E) a plan to comply with the supervisor's duties and responsibilities as established in rule; and

(F) a plan to physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision or at a lesser frequency as approved by the Division in collaboration with the Board;

(ii) the supervisee submits the supervisory agreement to the Division and obtains approval before counting direct supervision completed via live real-time methods toward the 100 hour direct supervision

requirement; and

(iii) in evaluating a supervisory agreement, the Division shall consider whether it adequately protects the health, safety, and welfare of the public.

(4) "Employee" means an individual who is or should be treated as a W-2 employee by the Internal Revenue Service.

(5) "General supervision" means that the supervisor is available for consultation with the supervisee by personal face to face contact, or direct voice contact by telephone, radio, or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

(6) "On-the-job training program" means a program that:

(a) is applicable to individuals who have completed all courses required for graduation in a degree or formal training program that would qualify for licensure under this chapter;

(b) starts immediately upon completion of all courses required for graduation;

(c) ends 45 days from the date it begins, or upon licensure, whichever is earlier, and may not be extended or used a second time;

(d) is completed while the individual is an employee of a public or private agency engaged in mental health therapy or substance use disorder counseling; and

(e) is under supervision by a qualified individual licensed under this chapter which includes supervision meetings on at least a weekly basis when the supervisee and supervisor are physically present in the same room at the same time.

KEY: licensing, mental health, therapists

Date of Enactment or Last Substantive Amendment: [~~October 22, 2013~~]2014

Notice of Continuation: July 27, 2009

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-60-101

