

**Applicable provisions: Utah Code**

Title 58 Occupations and Professions

Chapter 1 Division of Occupational and Professional Licensing Act

**Part 1**

**Division Administration**

**58-1-106 Division -- Duties, functions, and responsibilities.**

(1) The duties, functions, and responsibilities of the division include the following:

- (a) prescribing, adopting, and enforcing rules to administer this title;
- (b) investigating the activities of any person whose occupation or profession is regulated or governed by the laws and rules administered and enforced by the division;
- (c) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the production of any books, papers, documents, records, contracts, recordings, tapes, correspondence, or information relevant to an investigation upon a finding of sufficient need by the director or by the director's designee;
- (d) taking administrative and judicial action against persons in violation of the laws and rules administered and enforced by the division, including the issuance of cease and desist orders;
- (e) seeking injunctions and temporary restraining orders to restrain unauthorized activity;
- (f) complying with Title 52, Chapter 4, Open and Public Meetings Act ;
- (g) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew, or otherwise acting upon any license;
- (h) preparing and submitting to the governor and the Legislature an annual report of the division's operations, activities, and goals;
- (i) preparing and submitting to the executive director a budget of the expenses for the division;
- (j) establishing the time and place for the administration of examinations; and
- (k) preparing lists of licensees and making these lists available to the public at cost upon request unless otherwise prohibited by state or federal law.

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(5) All rules made by the division under this title shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

*Amended by Chapter 318, 2018 General Session*

## Part 2 Boards

### **58-1-202 Boards -- Duties, functions, and responsibilities.**

**(1) The duties, functions, and responsibilities of each board established under this title include the following:**

- (a) recommending to the director appropriate rules;**
- (b) recommending to the director policy and budgetary matters;
- (c) approving and establishing a passing score for applicant examinations;
- (d) screening applicants and recommending licensing, renewal, reinstatement, and relicensure actions to the director in writing;
- (e) assisting the director in establishing standards of supervision for students or persons in training to become qualified to obtain a license in the occupation or profession it represents; and
- (f) acting as presiding officer in conducting hearings associated with adjudicative proceedings and in issuing recommended orders when so designated by the director.

(2) Subsection (1) does not apply to boards created in Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(3)

(a) Each board or commission established under this title may recommend to the appropriate legislative committee whether the board or commission supports a change to a licensing act.

(b) This Subsection (3) does not:

- (i) require a board's approval to amend a practice act; and
- (ii) apply to technical or clarifying amendments to a practice act.

*Amended by Chapter 129, 2018 General Session*

### **58-1-203 Duties, functions, and responsibilities of division in collaboration with board -- Construction Services Commission.**

**(1) The following duties, functions, and responsibilities of the division shall be performed by the division with the collaboration and assistance of the appropriate board:**

- (a) defining which schools, colleges, universities, departments of universities, military educational and training programs, or other institutions of learning are reputable and in good standing with the division;
- (b) prescribing license qualifications;
- (c) prescribing rules governing applications for licenses;
- (d) providing for a fair and impartial method of examination of applicants;
- (e) defining unprofessional conduct, by rule, to supplement the definitions under this chapter or other licensing chapters;**
- (f) establishing advisory peer committees to the board and prescribing their scope of authority; and
- (g) establishing conditions for reinstatement and renewal of licenses.

(2) Notwithstanding Subsection (1), the duties, functions, and responsibilities of the division outlined in Subsection (1) shall, instead, be performed by the Construction Services Commission for all purposes of Title 58, Chapter 55, Utah Construction Trades Licensing Act.

*Amended by Chapter 181, 2011 General Session*

**Part 3**  
**Licensing**

**58-1-307 Exemptions from licensure.**

- (1) Except as otherwise provided by statute or rule, the following individuals may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:
- (a) an individual serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the individual holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;
  - (b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;
  - (c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified individuals;
  - (d) an individual residing in another state and licensed to practice a regulated occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;
  - (e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;
  - (f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;
  - (g) an individual licensed in a health care profession in another state who performs that profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state;
  - (h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator;
  - (i) an individual licensed and in good standing in another state, who is in this state:
    - (i) temporarily, under the invitation and control of a sponsoring entity;
    - (ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division; and
    - (iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods; and
  - (j) the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, provided:
    - (i) the spouse holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division; and
    - (ii) the license is current and the spouse is in good standing in the state of licensure.
- (2)
- (a) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice.
  - (b) Violation of a limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.
- (3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.

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*Amended by Chapter 136, 2019 General Session*  
*Amended by Chapter 349, 2019 General Session*

**Part 4**  
**License Denial**

**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) 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.

**Part 5**  
**Unlawful and Unprofessional Conduct - Penalties**

**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:
    - (i) not licensed to do so or not exempted from licensure under this title; or
    - (ii) restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license;
  - (b)
    - (i) impersonating another licensee or practicing an occupation or profession under a false or assumed name, except as permitted by law; or
    - (ii) for a licensee who has had a license under this title reinstated following disciplinary action, practicing the same occupation or profession using a different name than the name used before the disciplinary action, except as permitted by law and after notice to, and approval by, the division;
  - (c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this title if the employee is not licensed to do so under this title;
  - (d) knowingly permitting the person's authority to practice or engage in any occupation or profession licensed under this title to be used by another, except as permitted by law;
  - (e) obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the division or a licensing board through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission; or
  - (f)
    - (i) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state:
      - (A) without prescriptive authority conferred by a license issued under this title, or by an exemption to licensure under this title; or
      - (B) with prescriptive authority conferred by an exception issued under this title or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment; and
    - (ii) Subsection (1)(f)(i) does not apply to treatment rendered in an emergency, on-call 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) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which 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 title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

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

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

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

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

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

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

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

or

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

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

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

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

*Amended by Chapter 198, 2019 General Session*

**Applicable provisions: Utah Code**

**Title 58 Occupations and Professions**

**Chapter 61 Psychologist Licensing Act**

**Part 1  
General Provisions**

**58-61-102 Definitions.**

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

- (1) "Board" means the Psychologist Licensing Board created in Section 58-61-201.
- (2) "Client" or "patient" means an individual who consults or is examined or interviewed by a psychologist acting in his professional capacity.
- (3) "Confidential communication" means information, including information obtained by the psychologist's examination of the client or patient, which is:
  - (a)
    - (i) transmitted between the client or patient and a psychologist in the course of that relationship; or
    - (ii) transmitted among the client or patient, the psychologist, and individuals who are participating in the diagnosis or treatment under the direction of the psychologist, including members of the client's or patient's family; and
  - (b) made in confidence, for the diagnosis or treatment of the client or patient by the psychologist, and by a means not intended to be disclosed to third persons other than those individuals:
    - (i) present to further the interest of the client or patient in the consultation, examination, or interview;
    - (ii) reasonably necessary for the transmission of the communications; or
    - (iii) participating in the diagnosis and treatment of the client or patient under the direction of the psychologist.

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- (5) "Individual" means a natural person.
- (6) "Mental health therapist" means an individual licensed under this title as a:
  - (a) physician and surgeon, or osteopathic physician engaged in the practice of mental health therapy;
  - (b) an advanced practice registered nurse, specializing in psychiatric mental health nursing;
  - (c) an advanced practice registered nurse intern, specializing in psychiatric mental health nursing;
  - (d) psychologist qualified to engage in the practice of mental health therapy;
  - (e) a certified psychology resident qualifying to engage in the practice of mental health therapy;
  - (f) clinical social worker;
  - (g) certified social worker;
  - (h) marriage and family therapist;
  - (i) an associate marriage and family therapist;
  - (j) a clinical mental health counselor; or
  - (k) an associate clinical mental health counselor.

(7) "Mental illness" means a mental or emotional condition defined in an approved diagnostic and statistical manual for mental disorders generally recognized in the professions of mental health therapy listed under Subsection (6).

- (8) "Practice of mental health therapy" means the treatment or prevention of mental illness, whether in person or remotely, including:
- (a) conducting a professional evaluation of an individual's condition of mental health, mental illness, or emotional disorder;
  - (b) establishing a diagnosis in accordance with established written standards generally recognized in the professions of mental health therapy listed under Subsection (6);
  - (c) prescribing a plan for the prevention or treatment of a condition of mental illness or emotional disorder;
- and

(d) engaging in the conduct of professional intervention, including psychotherapy by the application of established methods and procedures generally recognized in the professions of mental health therapy listed under Subsection (6).

(9)

(a) "Practice of psychology" includes:

(i) the practice of mental health therapy by means of observation, description, evaluation, interpretation, intervention, and treatment to effect modification of human behavior by the application of generally recognized professional psychological principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunction, the symptoms of any of these, or maladaptive behavior;

(ii) the observation, description, evaluation, interpretation, or modification of human behavior by the application of generally recognized professional principles, methods, or procedures requiring the education, training, and clinical experience of a psychologist, for the purpose of assessing, diagnosing, preventing, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health;

(iii) psychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning;

(iv) counseling, marriage and family therapy, psychoanalysis, psychotherapy, hypnosis, and behavior analysis and therapy;

(v) diagnosis and treatment of mental and emotional disorders of disability, alcoholism and substance abuse, disorders of habit or conduct, and the psychological aspects of physical illness, accident, injury, or disability; and

(vi) psychoeducational evaluation, therapy, remediation, and consultation.

(b) An individual practicing psychology may provide services to individuals, couples, families, groups of individuals, members of the public, and individuals or groups within organizations or institutions.

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(11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-61-501.

(12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-61-502, and may be further defined by division rule.

*Amended by Chapter 16, 2013 General Session*

*Amended by Chapter 123, 2013 General Session*

## **Part 2 Board**

### **58-61-201 Board.**

(1)

(a) There is created the Psychologist Licensing Board consisting of four licensed psychologists, one licensed behavior analyst, and one member from the general public.

(b) The licensed behavior analyst shall participate as a member of the board only for issues relevant to Part 7, Behavior Analyst Licensing Act.

(2) The board shall be appointed, serve terms, and be compensated in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall:

(a) designate one of its members on a permanent or rotating basis to assist the division in review of complaints concerning unlawful or unprofessional practice by a licensee in the profession regulated by the



board and to advise the division regarding the conduct of investigations of the complaints; and  
(b) disqualify a member from acting as presiding officer in an administrative procedure in which that member has previously reviewed the complaint or advised the division.

*Amended by Chapter 367, 2015 General Session*

### **Part 3 Licensing**

#### **58-61-307 Exemptions from licensure.**

(1) Except as modified in Section 58-61-301, the exemptions from licensure in Section 58-1-307 apply to this chapter.

(2) In addition to the exemptions from licensure in Section 58-1-307, the following when practicing within the scope of the license held, may engage in acts included within the definition of practice as a psychologist, subject to the stated circumstances and limitations, without being licensed under this chapter:

(a) a physician and surgeon or osteopathic physician licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;

(b) a registered psychiatric mental health nurse specialist licensed under Chapter 31b, Nurse Practice Act;

(c) a recognized member of the clergy while functioning in his ministerial capacity as long as he does not represent himself as or use the title of psychologist;

(d) an individual who is offering expert testimony in any proceeding before a court, administrative hearing, deposition upon the order of any court or other body having power to order the deposition, or proceedings before any master, referee, or alternative dispute resolution provider;

(e) an individual engaged in performing hypnosis who is not licensed under this title in a profession which includes hypnosis in its scope of practice, and who:

(i)

(A) induces a hypnotic state in a client for the purpose of increasing motivation or altering lifestyles or habits, such as eating or smoking, through hypnosis;

(B) consults with a client to determine current motivation and behavior patterns;

(C) prepares the client to enter hypnotic states by explaining how hypnosis works and what the client will experience;

(D) tests clients to determine degrees of suggestibility;

(E) applies hypnotic techniques based on interpretation of consultation results and analysis of client's motivation and behavior patterns; and

(F) trains clients in self-hypnosis conditioning;

(ii) may not:

(A) engage in the practice of mental health therapy;

(B) represent himself using the title of a license classification in Subsection 58-60-102(5); or

(C) use hypnosis with or treat a medical, psychological, or dental condition defined in generally recognized diagnostic and statistical manuals of medical, psychological, or dental disorders;

(f) an individual's exemption from licensure under Subsection 58-1-307(1)(b) terminates when the student's training is no longer supervised by qualified faculty or staff and the activities are no longer a defined part of the degree program;

(g) an individual holding an earned doctoral degree in psychology who is employed by an accredited institution of higher education and who conducts research and teaches in that individual's professional field, but only if the individual does not engage in providing delivery or supervision of professional services regulated under this chapter to individuals or groups regardless of whether there is compensation for the services;

(h) any individual who was employed as a psychologist by a state, county, or municipal agency or other

political subdivision of the state prior to July 1, 1981, and who subsequently has maintained employment as a psychologist in the same state, county, or municipal agency or other political subdivision while engaged in the performance of his official duties for that agency or political subdivision;

(i) an individual licensed as a school psychologist under Section 53E-6-201:

(i) may represent himself as and use the terms “school psychologist” or “licensed school psychologist”;  
and

(ii) is restricted in his practice to employment within settings authorized by the State Board of Education;

(j) an individual providing advice or counsel to another individual in a setting of their association as friends or relatives and in a nonprofessional and noncommercial relationship, if there is no compensation paid for the advice or counsel; and

(k) an individual who is licensed, in good standing, to practice mental health therapy in a state or territory of the United States outside of Utah may provide short term transitional mental health therapy remotely to a client in Utah only if:

(i) the individual is present in the state or territory where the individual is licensed to practice mental health therapy;

(ii) the client relocates to Utah;

(iii) the client is a client of the individual immediately before the client relocates to Utah;

(iv) the individual provides the short term transitional mental health therapy to the client only during the 45 day period beginning on the day on which the client relocates to Utah;

(v) within 10 days after the day on which the client relocates to Utah, the individual provides written notice to the division of the individual’s intent to provide short term transitional mental health therapy remotely to the client; and

(vi) the individual does not engage in unlawful conduct or unprofessional conduct.

*Amended by Chapter 415, 2018 General Session*

**58-61-308 Scope of practice -- Limitations.**

(1) A psychologist may engage in all acts and practices defined as the practice of psychology without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee’s education, training, and competence.

(2) An individual certified as a psychology resident may engage in all acts and practices defined as the practice of psychology only under conditions of employment as a psychology resident and under the supervision of a licensed psychologist who is an approved psychology training supervisor as defined by division rule. A certified psychology resident shall not engage in the independent practice of psychology.

*Enacted by Chapter 281, 2001 General Session*

**Part 4  
License Denial and Discipline**

**58-61-401 Grounds for action regarding license -- Disciplinary proceedings.**

The division’s grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order are under Section 58-1-401.

*Enacted by Chapter 32, 1994 General Session*

**Part 5**  
**Unlawful and Unprofessional Conduct - Penalties**

**58-61-501 Unlawful conduct.**

As used in this chapter, “unlawful conduct” includes:

- (1) practice of psychology unless licensed as a psychologist or certified psychology resident under this chapter or exempted from licensure under this title;
- (2) practice of mental health therapy by a licensed psychologist who has not acceptably documented to the division his completion of the supervised training in psychotherapy required under Subsection 58-61-304(1)(f); or
- (3) representing oneself as or using the title of psychologist, or certified psychology resident unless currently licensed under this chapter.

*Amended by Chapter 281, 2001 General Session*

**58-61-502 Unprofessional conduct.**

**(1) As used in this chapter, “unprofessional conduct” includes:**

- (a) 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 for which the individual is licensed, or the laws of the state;
- (b) failure to confine practice conduct to those acts or practices:
  - (i) in which the individual is competent by education, training, and experience within limits of education, training, and experience; and
  - (ii) which are within applicable scope of practice laws of this chapter; and
- (c) disclosing or refusing to disclose any confidential communication under Section 58-61-602.

**(2) “Unprofessional conduct” under this chapter may be further defined by division rule.**

*Amended by Chapter 281, 2001 General Session*

**58-61-503 Penalty for unlawful conduct.**

An individual who commits any act of unlawful conduct as defined in:

- (1) Subsection 58-61-501(1) or (2) is guilty of a third degree felony; or
- (2) Subsection 58-61-501(3) is guilty of a class A misdemeanor.

Enacted by Chapter 32, 1994 General Session

**58-61-504 Reporting of unprofessional or unlawful conduct -- Immunity from liability.**

(1) Upon learning of **an act of unlawful or unprofessional conduct as defined in Section 58-61-102** by a person licensed under this chapter or an individual not licensed under this chapter and engaged in acts or practices regulated under this chapter, that **results in disciplinary action** by a licensed health care facility, professional practice group, or professional society, **or that results in a significant adverse impact upon the public health, safety, or welfare**, the following shall report the conduct in writing to the division within 10 days after learning of the disciplinary action or the conduct unless the individual or person knows it has been reported:

- (a) a licensed health care facility or organization in which an individual licensed under this chapter engages in practice;
- (b) an individual licensed under this chapter; and
- (c) a professional society or organization whose membership is comprised of individuals licensed under this chapter and which has the authority to discipline or expel a member for acts of unprofessional or unlawful

conduct.

(2) Any individual reporting acts of unprofessional or unlawful conduct by an individual licensed under this chapter is immune from liability arising out of the disclosure to the extent the individual furnishes the information in good faith and without malice.

*Enacted by Chapter 32, 1994 General Session*

**Part 6**  
**Evidentiary Privilege and Confidentiality**

**58-61-601 Evidentiary privilege.**

Evidentiary privilege for psychologists regarding admissibility of any confidential communication in administrative, civil, or criminal proceedings is in accordance with Rule 506 of the Utah Rules of Evidence.

*Enacted by Chapter 32, 1994 General Session*

**58-61-602 Confidentiality -- Exemptions.**

(1) A psychologist under this chapter may not disclose any confidential communication with a client or patient without the express consent of:

- (a) the client or patient;
- (b) the parent or legal guardian of a minor client or patient; or
- (c) the authorized agent of a client or patient.

**(2)** A psychologist under this chapter is not subject to Subsection (1) if:

- (a) the psychologist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:
  - (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult;
  - (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;
  - (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or
  - (iv) reporting of a communicable disease as required under Section 26-6-6;
- (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or
- (c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

*Amended by Chapter 366, 2011 General Session*

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**Part 7**  
**Behavior Analyst Licensing Act**

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**R156. Commerce, Occupational and Professional Licensing.**

**R156-61. Psychologist Licensing Act Rule.**

**R156-61-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 61, as used in Title 58, Chapters 1 and 61 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.

\* \* \*

**R156-61-103. Authority - Purpose.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 61.

**R156-61-104. Organization - Relationship to Rule R156-1.**

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107. {Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.}

**R156-61-201. Advisory Peer Committee Created - Membership - Duties.**

(1) There is hereby enabled in accordance with Subsection 58-1-203(1)(f), the Ethics Committee as an advisory peer committee to the Psychologist Licensing Board on either a permanent or ad hoc basis consisting of members licensed in good standing as psychologists qualified to engage in the practice of mental health therapy, in number and area of expertise necessary to fulfill the duties and responsibilities of the committee as set forth in Subsection (3).

(2) The committee shall be appointed and serve in accordance with Section R156-1-205.

(3) The committee shall assist the Division in its duties, functions, and responsibilities defined in Section 58-1-202 including:

(a) upon the request of the Division, reviewing reported violations of Utah law or the standards and ethics of the profession by a person licensed as a psychologist and advising the Division if allegations against or information known about the person presents a reasonable basis to initiate or continue an investigation with respect to the person;

(b) upon the request of the Division providing expert advice to the Division with respect to conduct of an investigation; and

(c) when appropriate serving as an expert witness in matters before the Division.

**R156-61-502. Unprofessional Conduct.**

**"Unprofessional conduct" includes:**

- (1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, June 1, 2010 edition, which is adopted and incorporated by reference;
- (2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, 2005 edition, which is adopted and incorporated by reference;
- (3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-61-302d and R156-61-302e;
- (4) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;
- (5) engaging in or aiding or abetting deceptive or fraudulent billing practices;
- (6) failing to establish and maintain appropriate professional boundaries with a client or former client;
- (7) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;
- (8) engaging in sexual activities or sexual contact with a client with or without client consent;
- (9) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;
- (10) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and the client;
- (11) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and that individual;
- (12) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;
- (13) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;
- (14) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;
- (15) exploiting a client for personal gain;
- (16) using a professional client relationship to exploit a client or other person for personal gain;
- (17) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;
- (18) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care

or records;

(19) failure to cooperate with the Division during an investigation

(20) participating in a residency program or other post degree experience without being certified as a psychology resident for post-doctoral training and experience;

(21) supervising a residency program of an individual who is not certified as a psychology resident; or

(22) when providing services remotely:

(a) failing to practice according to professional standards of care in the delivery of services remotely;

(b) failing to protect the security of electronic, confidential data and information; or

(c) failing to appropriately store and dispose of electronic, confidential data and information.

**KEY: licensing, psychologists**

**Date of Enactment or Last Substantive Amendment: June 15, 2015**

**Notice of Continuation: September 18, 2018**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-61-101**

## Rule R156-1. General Rule of the Division of Occupational and Professional Licensing.

*Note:* IF the Division finds that a person has violated an unprofessional conduct provision as defined under Title 58 or under any rule adopted under Title 58 -- such as, for example, violating any generally accepted professional or ethical standard -- then the Division will consider the harm to the public, and any aggravating or mitigating circumstances, when determining the severity of the action to be imposed upon the licensee.

### R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or this rule:

\* \* \*

**(2) "Aggravating circumstances"** means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

- (a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;
- (b) dishonest or selfish motive;
- (c) pattern of misconduct;
- (d) multiple offenses;
- (e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;
- (f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;
- (g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;
- (h) vulnerability of the victim;
- (i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;
- (j) illegal conduct, including the use of controlled substances; and
- (k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

\* \* \*



**(17) "Mitigating circumstances"** means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iii) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(iv) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(v) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii) remorse.

(b) The following factors may not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

(v) complainant's recommendation as to sanction; and

(vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):

(A) argument that a prior proceeding was conducted unfairly, contrary to law, or in violation of due process or any other procedural safeguard;

(B) argument that a prior finding or sanction was contrary to the evidence or entered without due consideration of relevant evidence;

(C) argument that a respondent was not adequately represented by counsel in a prior proceeding; and

(D) argument or evidence that former statements of a respondent made in conjunction with a plea or settlement agreement are not, in fact, true.

\* \* \*

(31) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-501.

(32) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

- (a) Division concerns;
- (b) allegations upon which those concerns are based;
- (c) potential for administrative or judicial action; and
- (d) disposition of Division concerns.

#### **R156-1-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

\* \* \*

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference;

(7) failing, as a prescribing practitioner, to follow the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain", July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference;

\* \* \*

(9) failing, as a health care provider, to follow the health care claims practices of Subsection 31A-26-301.5(4), in violation of Subsection 58-1-508(2).