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Governor

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State of Utah Department of Commerce

Division of Occupational and Professional Licensing

FRANCINE A. GIANI
Executive Director

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Monday, July 29, 2019

Subject: House Bill 226 and House Bill 90

Dear Licensing Board and Commission Members:

Thank you for your service to the citizens of Utah! We couldn't do our jobs in DOPL without your expertise and dedication.

The purpose of this email is to highlight two bills that passed in the 2019 General Session and request your advice for each of them.

House Bill 226

The Legislature passed HB 226, Occupational Licensing Revisions, a copy of which is attached. The bill is related to an invitation many of you received from Representative Norm Thurston last December to view a presentation on competency-based licensing requirements. Representative Thurston's goal is to identify time-based licensing requirements and determine whether they can be converted into competency-based requirements.

One of Representative Thurston's earlier bill drafts required that DOPL and each licensing board complete a review and recommend changes to time-based requirements. As that mandate would have been an enormous workload for DOPL and each licensing board, the bill included a fiscal note that the Legislature wasn't willing to fund. This bill eliminates the mandate in favor of a voluntary effort. Representative Thurston understands that you might not recommend changes.

Will you please consider each time-based requirement for the profession(s) you regulate and determine whether a competency-based licensing requirement would be a viable alternative to completing the time-based requirement? I don't expect you to spend more time than you are comfortable unless it becomes a topic that interests you. However, I also want to show the Legislature that our occupations and professions appreciate the opportunity to first consider the issue before the Legislature begins altering the time-based licensing requirements in statute.

House Bill 90

The Legislature also passed HB 90, Occupational Licensing Modifications, a copy of which is attached. It accomplishes two things. First, it creates a process by which those with a criminal history may apply to DOPL to know whether their criminal history would pose an obstacle to

obtaining a license. That way, they won't expend time and money on an unnecessary educational or training program when they won't qualify for the license when they are done.

Second, the bill elevates from "reasonable" to "substantial" the relationship that must exist between the criminal behavior and the practice of the profession before DOPL can affect a license. For example, while it may be easy to find a "reasonable" relationship between a DUI and the practice of almost any profession, it is much tougher to find a "substantial" relationship between a DUI and the practice of many professions.

We need your advice to understand which criminal behaviors "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." Also attached is one example of a matrix a board developed with these issues in mind.

It would also be helpful in those instances where you determine the behavior is substantially related, for you to articulate how the behavior is substantially related.

Conclusion

Your service to the citizens of Utah on your assigned licensing board is important to the State of Utah. With these two requests from the Legislature, you have been further engaged in defining the regulation of your professions. Your willingness to tackle these two issues will assist not only DOPL and the Department of Commerce, but Governor Herbert and the Legislature in evaluating occupational and professional regulation in Utah.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Steinagel", with a stylized flourish at the end.

Mark Steinagel

Director

Division of Occupational and Professional Licensing

OCCUPATIONAL LICENSING REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Norman K. Thurston

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies the Division of Occupational and Professional Licensing (DOPL) Act.

Highlighted Provisions:

This bill:

- defines terms, including "competency-based licensing requirement";
- allows the director of DOPL to implement competency-based licensing requirements under certain circumstances; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-301, as last amended by Laws of Utah 2013, Chapter 426

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

Section 1. Section **58-1-301** is amended to read:

58-1-301. License application -- Licensing procedure.

(1) (a) Each license applicant shall apply to the division in writing upon forms available from the division.

(b) Each completed application shall:
(i) contain documentation of the particular qualifications required of the applicant;
~~shall~~;

(ii) include the applicant's social security number~~;~~~~shall~~;

(iii) be verified by the applicant~~;~~~~and shall~~; and

(iv) be accompanied by the appropriate fees.

~~(f)~~ (c) An applicant's social security number is a private record under Subsection 63G-2-302(1)(i).

(2) (a) ~~[A license shall be issued]~~ The division shall issue a license to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.

(b) ~~[A written notice of additional proceedings shall be provided]~~ The division shall provide a written notice of additional proceedings to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon the applicant's qualifications for licensure, if the outcome of additional proceedings is required to determine the division's response to the application.

(c) ~~[A written notice of denial of licensure shall be provided]~~ The division shall provide a written notice of denial of licensure to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.

(d) ~~[A written notice of incomplete application and conditional denial of licensure shall be provided]~~ The division shall provide a written notice of incomplete application and conditional denial of licensure to an applicant who submits an incomplete application~~[- This]~~, which notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all qualifications for licensure.

(3) ~~[Before any person is issued a license under this title, all requirements for that license as established under this title and by rule shall be met]~~ The division may only issue a

license to an applicant under this title if the applicant meets the requirements for that license as established under this title and by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) If an applicant meets all requirements ~~[are met for the]~~ for a specific license, the division shall issue the license to the applicant.

(5) (a) As used in this Subsection (5):

(i) (A) "Competency-based licensing requirement" means a practical assessment of knowledge and skills that clearly demonstrate a person is prepared to engage in an occupation or profession regulated by this title, and which the director determines is at least as effective as a time-based licensing requirement at demonstrating proficiency and protecting the health and safety of the public.

(B) "Competency-based licensing requirement" may include any combination of training, experience, testing, or observation.

(ii) (A) "Time-based licensing requirement" means a specific number of hours, weeks, months, or years of education, training, supervised training, or other experience that an applicant for licensure under this title is required to complete before receiving a license under this title.

(B) "Time-based licensing requirement" does not include an associate degree, a bachelor's degree, or a graduate degree from an accredited institution of higher education.

(b) Subject to Subsection (5)(c), for an occupation or profession regulated by this title that has a time-based licensing requirement, the director, after consultation with the appropriate board, may by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, allow an applicant to complete a competency-based licensing requirement as an alternative to completing the time-based licensing requirement.

(c) If a time-based licensing requirement involves a program that must be approved or accredited by a specific entity or board, the director may only allow an applicant to complete a competency-based licensing requirement as an alternative to completing the time-based licensing requirement under Subsection (5)(b) if the competency-based requirement is

86 approved or accredited by the specific entity or board as a replacement or alternative to the
87 time-based licensing requirement.

88 (d) By October 1 of each year, the director shall provide a written report to the
89 Occupational and Professional Licensure Review Committee describing any competency-based
90 licensing requirements implemented under this Subsection (5).

OCCUPATIONAL LICENSING MODIFICATIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Karen Mayne

Cosponsors:	Lee B. Perry	Mike Winder
Walt Brooks	Adam Robertson	
Brad M. Daw	Christine F. Watkins	
Sandra Hollins	Mark A. Wheatley	

LONG TITLE

General Description:

This bill modifies the Division of Occupational and Professional Licensing (DOPL) Act.

Highlighted Provisions:

This bill:

- provides for an individual with a criminal conviction to apply to the Division of Occupational and Professional Licensing for a determination of whether the individual's criminal history would disqualify the individual from receiving a specific occupational or professional license if all other requirements were met;
- describes the contents of such an application;
- describes DOPL's responsibilities in responding to such an application; and
- modifies the definition of "unprofessional conduct."

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-501, as last amended by Laws of Utah 2018, Chapter 318

ENACTS:

58-1-310, Utah Code Annotated 1953

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

Section 1. Section **58-1-310** is enacted to read:

58-1-310. Application for division determination regarding criminal conviction.

(1) An individual with a criminal record may apply to the division at any time for a determination of whether the individual's criminal record would disqualify the individual from obtaining a license in an occupation or profession regulated by this title if the individual has completed or were to complete all other licensing requirements for the occupation or profession.

(2) To receive a determination, the individual shall submit the application described in this section in a form prescribed by the division and shall include information regarding:

- (a) the individual's complete criminal conviction history;
- (b) what occupational or professional license the individual is interested in seeking;
- (c) what licensing requirements have been met by the individual;
- (d) what licensing requirements have not yet been met by the individual; and
- (e) any other information required by the division as established by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) The division may charge the individual a fee, established in accordance with Section 63J-1-504, to submit an application under this section.

(4) Within 30 days of the day on which the division receives a completed application from an individual for a determination under this section, based on the statutory authority and administrative rules governing the occupation or profession at the time of the application, the

55 division shall provide a written determination to the individual of whether the individual's
56 criminal record would disqualify the individual from obtaining a license in an occupation or
57 profession regulated by this title if the individual were to complete all other licensing
58 requirements.

59 (5) If the individual's criminal record would disqualify the individual from obtaining a
60 license in an occupation or profession regulated by this title, the written determination
61 described in Subsection (4) may also include information regarding additional steps the
62 individual could take to qualify for licensure.

63 Section 2. Section **58-1-501** is amended to read:

64 **58-1-501. Unlawful and unprofessional conduct.**

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

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

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

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

73 (b) (i) impersonating another licensee or practicing an occupation or profession under a
74 false or assumed name, except as permitted by law; or

75 (ii) for a licensee who has had a license under this title reinstated following disciplinary
76 action, practicing the same occupation or profession using a different name than the name used
77 before the disciplinary action, except as permitted by law and after notice to, and approval by,
78 the division;

79 (c) knowingly employing any other person to practice or engage in or attempt to
80 practice or engage in any occupation or profession licensed under this title if the employee is
81 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 ~~[reasonable]~~ 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;

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

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

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

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

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

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

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