

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

- * 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.

DAR file no: 39630 Date filed: 8-31-2015
State Admin Rule Filing Id: _____ Time filed: _____

	Agency No.	Rule No.	Section No.
Utah Admin. Code Ref (R no.):	R 156	- 1	-
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:
W. Ray Walker	801-530-6256	801-530-6511	raywalker@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):**
General Rule of the Division of Occupational and Professional Licensing

3. **Type of notice:**
New ___; Amendment XXX; Repeal ___; Repeal and Reenact ___

4. **Purpose of the rule or reason for the change:**
The purpose of this filing is to: (1) add renewal dates to implement 2015 legislation (S.B. 92 and S.B. 246); (2) add a definition to the rule for clarification; (3) remove certain professions from eligibility to be on inactive status at the request of Bureau Managers who indicate there is no reason for these professions to be on inactive status; (4) clarify certain provisions in the rule; (5) remove inconsistency between Title 58, Chapter 1 and this rule; and (6) make technical corrections.

5. **This change is a response to comments from the Administrative Rules Review Committee.**
No XX; Yes ___

6. Summary of the rule or change:

Section R156-1-102: A new Subsection (5) is added to define "conditional licensure." The term is defined generally with more specific definition accomplished by reference to Section R156-1-308(f). Section R156-1-102 is renumbered accordingly after the insertion of this new Subsection (5). Section R156-1-109: Subsection (3)(e) is modified because it is inconsistent with and beyond the authority of Section 38-11-104(3). Section R156-1-302: This section entitled, "Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition" has been reworded and renumbered for clarity. The changes are not substantive. Section R156-1-305: This section is modified to remove certain professions from the list of professions eligible for inactive licensure. Section R156-1-308a: This section incorporates changes made by the 2015 Legislature in S.B. 92, Dental Practice Act Amendments, and S.B. 246, Licensing of Autism Providers. In regards to S.B. 246 which created a new licensing act, renewal dates are added for two new classifications of licensure: Behavior Analyst and Assistant Behavior Analyst. Renewal dates are also added for two new classifications of registration: Behavior Specialist and Assistant Behavior Specialist. In regards to S.B. 92, which repealed the licensure requirement for Dental Educators, opting instead for a licensure exemption, the renewal date designated for Dental Educators is removed from Section R156-1-308a.

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No ; Yes XXX

The Division will incur minimal costs of approximately \$75.00 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.

B) Local government:

Affected: No XXXX; Yes

The proposed amendments apply only to licensed occupations and professions regulated by the Division and applicants for licensure in those 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 XXX; Yes

S.B. 246 requires small businesses providing autism services to use licensed providers. In order to qualify for licensure, providers will be required to meet the requirements specified by this new licensing act as further implemented by rule. These costs cannot be quantified at this juncture. This filing only addresses changes applicable to the Division of Occupational and Professional Licensing's global umbrella rule, specifically the renewal dates for the new license classifications. A separate more specific licensing act rule filing will implement the bulk of the provisions of the new licensing act. It is anticipated that this separate filing will further address any cost impact to small businesses.

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 XXX; Yes

S.B. 246 requires entities providing autism services to use licensed providers. In order to qualify for licensure, providers will be required to meet the requirements specified by this new licensing act as further implemented by rule. These costs cannot be quantified at this juncture. This filing only addresses changes applicable to the Division of Occupational and Professional Licensing's global umbrella rule, specifically the renewal dates for the new license classifications. A separate more specific licensing act rule filing will implement the bulk of the provisions of the new licensing act. It is anticipated that this separate filing will further address any cost impact to other persons.

8. Compliance costs for affected persons:

S.B. 246 requires autism providers to be licensed. In order to qualify for licensure, applicants will be required to meet the requirements the new licensing act as further implemented by rule. These costs cannot be quantified at this juncture. This rule filing only addresses changes applicable to the Division of Occupational and Professional Licensing's global umbrella rule, specifically the renewal dates for the new license classifications. A separate more specific licensing act rule filing will implement the bulk of the provisions of the new licensing act. It is anticipated that this separate filing will further address cost impact to any affected persons.

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

This rule filing responds to Legislative action (S.B. 246, 2015 Session) that requires businesses to use licensed individuals in providing autism treatment and services. Any associated costs were considered by the Legislature in determining to implement regulation. In addition, the filing clarifies how the Division will evaluate the moral character of individual applicants and sets forth circumstances in which an individual may be granted a conditional licensure during an ongoing investigation or audit. No fiscal impact to businesses is anticipated from these amendments.

B) Name and title of department head commenting on the fiscal impacts:

Francine A. Giani, 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)

Section 58-1-308

Subsection 58-1-501(2)

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; if none, leave blank):

	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 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.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):

10/15/2015

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):

At (hh:mm AM/PM):

At (place):

13 This rule change may become effective on (mm/dd/yyyy):

10/22/2015

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.

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:

diversion programs

licensing

supervision

evidentiary restrictions

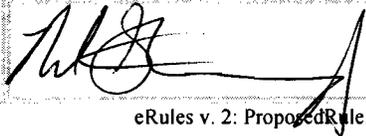
15 Attach an RTF document containing the text of this rule change (filename):

R156-1.pro

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 *Utah State Bulletin*, and delaying the first possible effective date.

AGENCY AUTHORIZATION

Agency head or designee, and title:



Date
(mm/dd/yyyy)
: 8/27/2015

R156. Commerce, Occupational and Professional Licensing.

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

R156-1-102. Definitions.

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

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(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.

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license:

(a) issued to a licensee in error, such as where a license is issued to an applicant:

(i) whose payment of the required application fee is dishonored when presented for payment;

(ii) who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards;

(iii) who has been issued the wrong classification of

licensure; or

(iv) due to any other error in issuing a license; or

(b) not issued erroneously, but where subsequently the licensee fails to maintain the ongoing qualifications for licensure, when such failure is not otherwise defined as unprofessional or unlawful conduct.

(4) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(5) "Conditional licensure" means an interim non-adverse licensure action, in which a license is issued to an applicant for initial, renewal, or reinstatement of licensure on a conditional basis in accordance with Section R156-1-308f, while an investigation or audit is pending.

(~~5~~6) "Denial of licensure" means action by the Division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(~~6~~7)(a) "Disciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(b) "Disciplinary action", as used in Subsection 58-1-401(5), shall not be construed to mean an adverse licensure action taken in response to an application for licensure. Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.

(~~7~~8) "Diversion agreement" means a formal written agreement between a licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(~~8~~9) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(~~9~~10) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(~~10~~11) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the Division under the authority of Subsection 58-1-108(2).

(~~11~~12) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;
(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or
(iii) upon the issuance of a new license which supersedes an old license, including a license which:
(A) replaces a temporary license;
(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or
(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(~~12~~13) "Inactive" or "inactivation" means action by the Division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(~~13~~14) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a Department administrative law judge, or if both the Division regulatory and compliance officer and a Department administrative law judge are unable to so serve for any reason, an alternate designated by the director in writing.

(~~14~~15) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(~~15~~16) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or
(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(~~16~~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.

([17]18) "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

([18]19) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the Division under the authority of Subsection 58-1-203(1)(f).

([19]20) "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

([20]21) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or

unlawful conduct, with the documentation of the action being classified as a public record.

(~~[21]~~22) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(~~[22]~~23) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(~~[23]~~24) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(~~[24]~~25) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.

(~~[25]~~26) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(~~[26]~~27) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.

(~~[27]~~28) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(~~[28]~~29) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(~~[29]~~30) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

(~~[30]~~31) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-502.

(~~[31]~~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.

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The Division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the Division regulatory and compliance officer is unable to so serve for any reason, a replacement specified by the director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the Division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(b), and R156-46b-201(2)(a) through (c), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (j), (l), (m), (o), (p), and (q), and R156-46b-202(2)(a), (b)(ii), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator

over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsection R156-46b-201(1)(c), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-15A-210(1) through (4); and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (d), (f), (h), (j), (n) and R156-46b-202(2)(b)(iii).

(iii) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Citation Hearing Officer. The regulatory and compliance officer or other citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(k).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(e) for convening a board of appeal under Subsection 15A-1-207(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for formal adjudicative proceedings [~~described in Subsection R156-46b-202(1)(f) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action~~].

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) informal adjudicative proceedings described in Subsections R156-46b-202(1)(l), (m), (o), (p), and (q), and R156-46b-202(2)(b)(i), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements;

(B) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(C) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial

recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. The director is designated as the presiding officer for the concurrence role on disciplinary proceedings under Subsections R156-46b-202(2)(b)(i), (c), and (d) as required by Subsection 58-55-103(1)(b)(iv).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (d), (h), and (n).

(e) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(f) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(g) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue

recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(h) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.

~~[Pursuant to the provisions of Subsection 58-1-401(1) and (2), if]~~ (1) This section applies in circumstances where an applicant or licensee:

(a) is not automatically disqualified from licensure pursuant to a statutory provision; and

(b)(i) has history that reflects negatively on the person's moral character, including past unlawful or unprofessional conduct; ~~[failed to demonstrate good moral character, has been involved in unlawful conduct, has been involved in unprofessional conduct,]~~ or

(ii) has a ~~[ny other]~~ mental or physical condition ~~[which conduct or condition]~~ that, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare. ~~[, the Division may consider various relevant factors in determining what action to take regarding licensure including the following]~~

(2) In a circumstance described in Section (1), the following factors are relevant to a licensing decision:

~~([1]a)~~ ([2]a) aggravating circumstances, as defined in Subsection R156-1-102(2);

~~([2]b)~~ ([3]b) mitigating circumstances, as defined in Subsection R156-1-102(~~[16]~~ 17);

~~([3]c)~~ ([4]c) the degree of risk to the public health, safety or welfare;

~~([4]d)~~ ([5]d) the degree of risk that a conduct will be repeated;

~~([5]e)~~ ([6]e) the degree of risk that a condition will continue;

~~([6]f)~~ ([7]f) the magnitude of the conduct or condition as it relates to the harm or potential harm;

~~([7]g)~~ ([8]g) the length of time since the last conduct or condition has occurred;

([8]h) the current criminal probationary or parole status of the applicant or licensee;

([9]i) the current administrative status of the applicant or licensee;

([10]j) results of previously submitted applications, for any regulated profession or occupation;

([11]k) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

([12]l) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

([13]m) psychological evaluations; or

([14]n) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

(a) ~~[advanced practice registered nurse,~~

~~(b)] architect;~~

([c]b) audiologist; [

~~(d) certified nurse midwife,]~~

([e]c) certified public accountant emeritus; [

~~(f) certified registered nurse anesthetist,]~~

([g]d) certified court reporter;

([h]e) certified social worker;

([i]f) chiropractic physician;

([j]g) clinical mental health counselor;

([k]h) clinical social worker;

([l]i) contractor;

([m]j) deception detection examiner;

([n]k) deception detection intern;

([o]l) dental hygienist;

([p]m) dentist; [

~~(q) direct-entry midwife,]~~

([r]n) dispensing medical practitioner - advanced practice registered nurse;

([s]o) dispensing medical practitioner - physician and surgeon;

([t]p) dispensing medical practitioner - physician assistant;

([u]g) dispensing medical practitioner - osteopathic
 physician and surgeon;
 ([v]r) dispensing medical practitioner - optometrist;
 ([w]s) dispensing medical practitioner - clinic pharmacy;
 ([x]t) genetic counselor;
 ([y]u) health facility administrator;
 ([z]v) hearing instrument specialist;
 ([aa]w) landscape architect;
 ([bb]x) licensed advanced substance use disorder counselor;
 ([cc]y) marriage and family therapist;
 ([dd]z) naturopath/naturopathic physician;
 ([ee]aa) optometrist;
 ([ff]bb) osteopathic physician and surgeon;
 ([gg]cc) pharmacist;
 ([hh]dd) pharmacy technician; [
~~(ii) physical therapist;~~
 ([jj]ee) physician assistant;
 ([kk]ff) physician and surgeon;
 ([ll]gg) podiatric physician;
 ([mm]hh) private probation provider;
 ([nn]ii) professional engineer;
 ([oo]jj) professional land surveyor;
 ([pp]kk) professional structural engineer;
 ([qq]ll) psychologist;
 ([rr]mm) radiology practical technician;
 ([ss]nn) radiologic technologist;
 ([tt]oo) security personnel;
 ([uu]pp) speech-language pathologist;
 ([vv]qq) substance use disorder counselor; and
 ([xx]rr) veterinarian.

(3) Applicants for inactive licensure shall apply to the Division in writing upon forms available from the Division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the Division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

[(a)] Acupuncturist years	May 31	even
[(b)] Advanced Practice Registered Nurse years	January 31	even
[(c)] Advanced Practice Registered Nurse-CRNA	January 31	even years
[(d)] Architect years	May 31	even
[(e)] Athlete Agent years	September 30	even
[(f)] Athletic Trainer	May 31	odd years
[(g)] Audiologist	May 31	odd years
[(h)] Barber	September 30	odd years
[(i)] Barber School Behavior Analyst and <u>Assistant Behavior Analyst</u>	September 30	odd years <u>even years</u>
<u>Behavior Specialist and Assistant Behavior Specialist</u>	September 30	<u>even years</u>
[(j)] Building Inspector	November 30	odd years
[(k)] Burglar Alarm Security	March 31	odd years
[(l)] C.P.A. Firm	September 30	even years
[(m)] Certified Court Reporter	May 31	even years
[(n)] Certified Dietitian	September 30	even years
[(o)] Certified Medical Language Interpreter	March 31	odd years
[(p)] Certified Nurse Midwife	January 31	even years
[(q)] Certified Public Accountant	September 30	even years
[(r)] Certified Social Worker	September 30	even years
[(s)] Chiropractic Physician	May 31	even years
[(t)] Clinical Mental Health Counselor	September 30	even years

[(u)]	Clinical Social Worker	September 30	even years
[(v)]	Construction Trades Instructor	November 30	odd years
[(w)]	Contractor	November 30	odd years
[(x)]	Controlled Substance License	Attached to primary license renewal	
[(y)]	Controlled Substance[-----] Precursor	May 31	odd years
[(z)]	Controlled Substance Handler	September 30	odd years
[(aa)]	Cosmetologist/Barber	September 30	odd years
[(bb)]	Cosmetology/Barber School	September 30	odd years
[(cc)]	Deception Detection	November 30	even years
[(dd)]	Dental Hygienist	May 31	even years
[(ee)]	Dentist	May 31	even years
[(ff)]	Direct-entry Midwife	September 30	odd years
[(gg)]	Dispensing Medical Practitioner Advanced Practice Registered Nurse, Optometrist, Osteopathic Physician and Surgeon, Physician and Surgeon, Physician Assistant	September 30	odd years
[(hh)]	Dispensing Medical Practitioner Clinic Pharmacy	September 30	odd years
[(ii)]	Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
[(jj)]	Electrologist	September 30	odd years
[(kk)]	Electrology School	September 30	odd years
[(ll)]	Elevator Mechanic	November 30	even years
[(mm)]	Environmental Health Scientist	May 31	odd years
[(nn)]	Esthetician	September 30	odd years
[(oo)]	Esthetics School	September 30	odd years
[(pp)]	Factory Built Housing Dealer	September 30	even years
[(qq)]	Funeral Service Director	May 31	even years
[(rr)]	Funeral Service Establishment	May 31	even years
[(ss)]	Genetic Counselor	September 30	even years
[(tt)]	Health Facility Administrator	May 31	odd years
[(uu)]	Hearing Instrument Specialist	September 30	even years
[(vv)]	Internet Facilitator	September 30	odd years
[(ww)]	Landscape Architect	May 31	even years
[(xx)]	Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
[(yy)]	Licensed Practical Nurse	January 31	even years
[(zz)]	Licensed Substance Use Disorder Counselor	May 31	odd years

[(aaa)]	Marriage and Family Therapist	September 30	even years
[(bbb)]	Massage Apprentice, Therapist	May 31	odd years
[(ccc)]	Master Esthetician	September 30	odd years
[(ddd)]	Medication Aide Certified	March 31	odd years
[(eee)]	Music Therapist	March 31	odd years
[(fff)]	Nail Technologist	September 30	odd years
[(ggg)]	Nail Technology School	September 30	odd years
[(hhh)]	Naturopath/Naturopathic Physician	May 31	even years
[(iii)]	Occupational Therapist	May 31	odd years
[(jjj)]	Occupational Therapy Assistant	May 31	odd years
[(kkk)]	Optometrist	September 30	even years
[(lll)]	Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years
[(mmm)]	Outfitter/Hunting Guide	May 31	even years
[(nnn)]	Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
[(ooo)]	Pharmacist	September 30	odd years
[(ppp)]	Pharmacy Technician	September 30	odd years
[(qqq)]	Physical Therapist	May 31	odd years
[(rrr)]	Physical Therapist Assistant	May 31	odd years
[(sss)]	Physician Assistant	May 31	even years
[(ttt)]	Physician and Surgeon, Online Prescriber	January 31	even years
[(uuu)]	Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
[(vvv)]	Podiatric Physician	September 30	even years
[(www)]	Pre Need Funeral Arrangement Sales Agent	May 31	even years
[(xxx)]	Private Probation Provider	May 31	odd years
[(yyy)]	Professional Engineer	March 31	odd years
[(zzz)]	Professional Geologist	March 31	odd years
[(aaaa)]	Professional Land Surveyor	March 31	odd years
[(bbbb)]	Professional Structural Engineer	March 31	odd years
[(cccc)]	Psychologist	September 30	even years
[(dddd)]	Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years
[(eeee)]	Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
[(ffff)]	Registered Nurse	January 31	odd years
[(gggg)]	Respiratory Care	September 30	even years

Practitioner

[(hhhh)] Security Personnel	November 30	even years
[(iiii)] Social Service Worker	September 30	even years
[(jjjj)] Speech-Language Pathologist	May 31	odd years
[(kkkk)] Veterinarian	September 30	even years
[(llll)] Vocational Rehabilitation Counselor	March 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(f) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(g) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(h) ~~[Dental Educator licenses shall be issued for a two year renewable term, until the date of termination of employment with the dental school as an employee, or until the failure to maintain any of the requirements of Section 58-69-302.5, whichever occurs first.]~~

~~(i)~~] Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(~~j~~)i) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(~~k~~)j) Pharmacy technician trainee licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward completing the requirements necessary for the next level of licensure.

(~~l~~)k) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(~~m~~)l) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(~~n~~)m) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

KEY: diversion programs, licensing, supervision, evidentiary restrictions

**Date of Enactment or Last Substantive Amendment: [~~August 21,~~
2014]2015**

Notice of Continuation: January 5, 2012

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a);
58-1-308; 58-1-501(2)**