

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:

40917

Date filed:

10-27-2016

State Admin Rule Filing Id:

Time filed:

	Agency No.	Rule No.	Section No.
Utah Admin. Code Ref (R no.):	R 156	- 37	- 402
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

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**City, state, zip:** Salt Lake City UT 84111-2316

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**Contact person(s):**

Name:	Phone:	Fax:	E-mail:
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(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):**  
Continuing Professional Education for Controlled Substance Prescribers
3. **Type of notice:**  
New \_\_\_; Amendment XXX; Repeal \_\_\_; Repeal and Reenact \_\_\_
4. **Purpose of the rule or reason for the change:**

Subsection 58-37f- 304(3)(b), enacted by H.B. 375 during the 2016 Legislative General Session, requires the Division to make rules to reduce or waive the Division's continuing education requirements regarding opioid prescriptions described in Section 58-37- 6.5, for prescribers whose individual utilization of the controlled substance database contribute to the life-saving and public safety purposes of that section and chapter (i.e., identifying and reducing the prescribing and dispensing of opioids in an unprofessional or unlawful manner, or in quantities or frequencies inconsistent with generally recognized standards of dosage for an opioid). The Division is filing this amendment to the rule to accomplish that mandate. The proposed language of the amendment also eliminates surplus language, reorganizes and renumbers the rule for clarity, and replaces unclear and outdated citations regarding the Division-approved continuing education courses with a reference to those courses on the Division's website.

**5. This change is a response to comments from the Administrative Rules Review Committee.**

No XXX; Yes

**6. Summary of the rule or change:**

The rule was renumbered throughout for clarity and amended to: (1) eliminate former Subsection R156-37- 402(1)'s surplus and misleading language referencing four hours of continuing professional education for prescribers; (2) replace former Subsection R156-37- 402(4)(a)'s unclear and outdated citations to 58-37- 6.5(1)(b)(ii) and (iii), regarding the Division-approved continuing education courses, with correct references to Subsections 58-37- 6.5(5), 58-37- 6.5(7) and 58-37-6.5(8), and a reference to the appropriate Division-approved courses on the Division's website; (3) add a new Subsection R156-37- 402(3)(c), which provides that in accordance with Subsection 58-37f- 304(3), the Division shall waive the 1/2 hour continuing education requirement for the controlled substance database's online tutorial and test for a prescriber renewing a license, if the prescriber attests that in the past license period the prescriber accessed the controlled substance database, and upon information and belief such use reduced the prescribing, dispensing, and use of opioids in an unprofessional or unlawful manner, or in quantities or frequencies inconsistent with generally recognized standards of dosage for an opioid; and (4) new language was added to renumbered Subsection R156-37-402(4), stating that the Division may review controlled substance database usage to audit an attestation provided under Subsection R156-37- 402(3)(c).

**7. Aggregate anticipated cost or savings to:**

**A) State budget:**

Affected: No ; Yes XXXX

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 ; Yes XXXX

The proposed substantive amendments only apply to licensed prescribers who choose to utilize the controlled substance database. However, this rule may incentivize prescribers to utilize the database in a manner that will help ameliorate the effects of opioid abuse within communities and contribute to life-saving and public safety efforts. This may reduce the cost of services provided by local government. The division is not able to determine any exact amount of cost or savings due to varying circumstances.

**C) Small businesses ("small business" means a business employing fewer than 50 persons):**

Affected: No ; Yes XXX

Prescribers who own or operate a small business, and who choose to increase their utilization of the database, will be impacted by using some of their time to review the database information of their patients prior to prescribing. This may translate into a loss of income relative to the time required for reviewing and analysis. The cost may be partially offset by the waiver of continuing education requirements. The Division is not able to determine any exact amount of cost or savings due to varying circumstances.

**D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):**

Affected: No ; Yes XXXX

Prescribers who choose to increase their utilization of the database will be impacted by using some of their time to review the database information of their patients prior to prescribing. This may translate into a loss of income relative to the time required for reviewing and analysis. The cost may be partially offset by the waiver of continuing education requirements. The increased utilization of the database that may result from this amended rule, may allow prescribers insight into their patients' utilization of controlled substances and potential abuse of opioids and benzodiazepines. This may result in less opioid misuse by patients and less addictions, and in increased health and quality of life for patients. This may even save the lives of some patients. The Division is not able to determine any exact amount of costs or savings due to varying circumstances.

**8. Compliance costs for affected persons:**

A prescriber that chooses to increase his or her utilization of the database, will be impacted by using the prescriber's time to review the database information of the prescriber's patients prior to prescribing. This may translate into a loss of income for that prescriber, relative to the time required for reviewing and analysis. The cost may be partially offset by the prescriber providing the required attestation upon license renewal and receiving the half-hour waiver of continuing education requirements. The increased utilization of the database that may result from this amended rule, may allow insight into a particular patient's use of controlled substances and potential abuse of opioids and benzodiazepines. This may reduce that patient's opioid misuse and addiction and increase his or her quality of life, and it may even save that patient's life. The Division is not able to determine any exact amount of costs or savings due to varying circumstances.

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

The amendments to the rules fulfill the mandate to the division to reduce or waive the division's continuing education requirements regarding opioid prescriptions as directed by H.B. 375 adopted during the 2016 Legislative Session. The continuing education requirement is waived if a prescriber attests that in the past license period the prescribed accessed the controlled substance database and believes that such use reduced the prescribing, dispensing and use of opioids in an unprofessional or unlawful manner. Prescribers who own or operate a small business, and who choose to increase their utilization of the database, will be impacted by using some of their time to review the database information of their patients prior to prescribing. These costs may be partially offset by the waiver of the continuing education requirements. The division is not able to determine any exact amount of costs or savings due to varying circumstances.

**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)

Subsection 58-37-6(1)(a)

Subsection 58-37f-301(1)

**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
<b>Official Title of Materials Incorporated (from title page)</b>		
<b>Publisher</b>		
<b>Date Issued</b>		
<b>Issue, or version</b>		
<b>ISBN Number (optional)</b>		
<b>ISSN Number (optional)</b>		
<b>Cost of Incorporated Reference</b>		
<b>Action: Adds, updates, or removes</b>		

(If this rule incorporates more than two items by reference, please attach additional pages)



R156. Commerce, Occupational and Professional Licensing.

R156-37. Utah Controlled Substances Act Rule.

R156-37-402. Continuing Professional Education for Controlled Substance Prescribers.

In accordance with Section 58-37-6.5, qualified continuing professional education requirements for controlled substance prescribers are further established as follows:

~~(1) [All licensed controlled substance prescribers shall complete four hours of qualified continuing professional education during each two year period of licensure.~~

~~(2) Qualified continuing professional education hours for licensees who have not been licensed for the entire two year period will be prorated from the date of licensure.~~

~~(3)~~ Continuing education under this section shall:

(a) be prepared and presented by individuals who are qualified by education, training and experience to provide the controlled substance prescriber continuing education; and

(b) have a method of verification of attendance and a post course knowledge assessment or examination ~~and~~

~~(c) teach content as set forth in Subsection 58-37-6.5(2)].~~

(2) In accordance with Subsections 58-37-65.(5), 58-37-6.5(7), and 58-37-6.5(8), the controlled substance prescribing classes that satisfy the division's continuing education requirements for license renewal, and that are delivered by an accredited or approved continuing education provider recognized by the division as offering appropriate continuing education, shall be posted on the division's website at <http://dopl.utah.gov/>.

([4]3) Credit for continuing education shall be recognized as follows [in accordance with the following]:

~~(a) [continuing education shall be presented by an organization accredited to provide continuing medical education as set forth in Subsection 58-37-6.5(1)(b)(ii) and be approved as set forth in Subsection 58-37-6.5(1)(b)(iii); and~~

~~(b) u] Unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes [-];~~

(b) Continuing education hours for licensees who have not been licensed for the entire two-year period shall be prorated from the date of licensure;

(c) In accordance with Subsection 58-37f-304(3), the required 1/2 hour of continuing education for the online tutorial and test relating to the controlled substance database shall be waived by the division for a controlled substance prescriber renewing a license, if the prescriber attests on the license renewal form that:

(i) in the past license period, the prescriber accessed the controlled substance database; and

(ii) upon the prescriber's information and belief, the prescriber's use of the database reduced the prescribing, dispensing, and use of opioids in an unprofessional or unlawful manner, or in quantities or frequencies

inconsistent with generally recognized standards of dosage for an opioid.

(~~5~~4) A licensee shall [~~be responsible for~~]maintain[ing] competent records of completed qualified continuing professional education for a period of four years after close of the two-year period to which the records pertain. The division may review controlled substance database usage by the prescriber or proxy to audit an attestation provided under Subsection R156-37-402(3)(c).

KEY: controlled substances, licensing

Date of Enactment or Last Substantive Amendment: [~~April 21,~~] 2016

Notice of Continuation: February 21, 2012

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-37-6(1)(a); 58-37f-301(1)