

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:		Date filed:	
State Admin Rule Filing Id:		Time filed:	
	<b>Agency No.</b>	<b>Rule No.</b>	<b>Section No.</b>
<b>Utah Admin. Code Ref (R no.):</b>	<b>R</b> 156	- 68	- 503
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	-	-

<b>1.</b>	<b>Agency:</b>	Commerce/Division of Occupational and Professional Licensing		
	<b>Room no.:</b>			
	<b>Building:</b>	Heber M. Wells Building		
	<b>Street address 1:</b>	160 East 300 South		
	<b>Street address 2:</b>			
	<b>City, state, zip:</b>	Salt Lake City UT 84111-2316		
	<b>Mailing address 1:</b>	PO Box 146741		
	<b>Mailing address 2:</b>			
	<b>City, state, zip:</b>	Salt Lake City UT 84114-6741		
	<b>Contact person(s):</b>			
	<b>Name:</b>	<b>Phone:</b>	<b>Fax:</b>	<b>E-mail:</b>
	Noel Taxin	801-530-6621	801-530-6511	ntaxin@utah.gov

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

<b>2.</b>	<b>Title of rule or section (catchline):</b>
	Administrative Penalties
<b>3.</b>	<b>Type of notice:</b>
	New ___; Amendment XX; Repeal ___; Repeal and Reenact ___
<b>4.</b>	<b>Purpose of the rule or reason for the change:</b>
	The Division and Osteopathic Physician and Surgeon's Licensing Board are proposing amendments to comply with S.B. 186 which was passed during the 2011 Legislature. S.B. 186 amended Title 58, Chapter 68 to allow the Division to assess administrative penalties as described in Section 58-687-503.
<b>5.</b>	<b>This change is a response to comments from the Administrative Rules Review Committee.</b>
	No XXX; Yes ___
<b>6.</b>	<b>Summary of the rule or change:</b>
	Proposed new section establishes a fine and citation schedule for violations which apply to licensed osteopathic physicians and surgeons and would also apply to any persons who are determined to be engaging in the unlicensed practice of osteopathic medicine. The proposed schedule will steer and keep the Division consistent with respect to fines issued. Individual modifications can be authorized by exception by the investigative supervisor. In addition, fines issued through a citation can be appealed to a hearing officer and be potentially reduced.
<b>7.</b>	<b>Aggregate anticipated cost or savings to:</b>
	<b>A) State budget:</b>

	<b>Affected:</b> No <input type="checkbox"/> ; Yes <input checked="" type="checkbox"/>				
<p>The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division anticipates the amount in the Physician Education Fund will increase as any fine amounts collected are deposited into this account. The authority for fines and citations should make the Division's investigation process more efficient to immediately address violations and decrease the time spent in a disciplinary process.</p>					
<b>B) Local government:</b>					
	<b>Affected:</b> No <input checked="" type="checkbox"/> ; Yes <input type="checkbox"/>				
<p>The proposed amendments apply to licensed osteopathic physicians/surgeons as they clarify violations and create a new standard for discipline which protects the public in a timely manner. The proposed amendments also apply to other persons who may unlawfully engaged in the unlicensed practice of osteopathic medicine. As a result, the proposed amendments do not apply to local governments.</p>					
<b>C) Small businesses ("small business" means a business employing fewer than 50 persons):</b>					
	<b>Affected:</b> No <input checked="" type="checkbox"/> ; Yes <input type="checkbox"/>				
<p>The proposed amendments apply to licensed osteopathic physicians/surgeons as well as other persons who may be unlawfully engaged in the unlicensed practice of osteopathic medicine. Licensed osteopathic physicians/surgeons and other persons who may be unlawfully engaged in the unlicensed practice of osteopathic medicine may work in a small business; however, the proposed amendments would not directly affect the business.</p>					
<b>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):</b>					
	<b>Affected:</b> No <input type="checkbox"/> ; Yes <input checked="" type="checkbox"/>				
<p>The proposed amendments apply to licensed osteopathic physicians/surgeons as well as other persons who may be unlawfully engaged in the unlicensed practice of osteopathic medicine. Individual fine amounts for various offenses are set forth in the proposed amendments. The Division is not able to determine how many persons may receive a fine or citation for such violations since it is unknown how many osteopathic physicians/surgeons are out of compliance with these proposed amendments or how many persons may be unlawfully engaging in the unlicensed practice of osteopathic medicine.</p>					
8.	<b>Compliance costs for affected persons:</b>				
<p>The proposed amendments apply to licensed osteopathic physicians/surgeons as well as other persons who may be unlawfully engaged in the unlicensed practice of osteopathic medicine. Individual fine amounts for various offenses are set forth in the proposed amendments. The Division is not able to determine how many persons may receive a fine or citation for such violations since it is unknown how many osteopathic physicians/surgeons are out of compliance with these proposed amendments or how many persons may be unlawfully engaging in the unlicensed practice of osteopathic medicine. There should be no costs to licensed osteopathic physicians/surgeons as long as they remain in compliance with the proposed amendments and do not engage in unprofessional and/or unlawful conduct as defined by statute or rule.</p>					
9.	<b>A) Comments by the department head on the fiscal impact the rule may have on businesses:</b>				
<p>This rule filing establishes a fine schedule to implement statutory changes made by the Legislature in Senate Bill 186 in the 2011 General Session. No fiscal impact to businesses is anticipated beyond those described in passage of the statutory amendments.</p>					
<b>B) Name and title of department head commenting on the fiscal impacts:</b>					
<p>Francine A. Giani, Executive Director</p>					
10.	<b>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.</b>				
<b>State code or constitution citations (required)</b> (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :					
Section 58-68-101	Subsection 58-1-106(1)(a)				
Subsection 58-1-202(1)(a)					
11.	<b>This rule adds, updates, or removes the following title of materials incorporated by references</b> (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; <i>if none, leave blank</i> ):				
	<table border="1"> <thead> <tr> <th data-bbox="634 1801 1036 1927">First Incorporation</th> <th data-bbox="1036 1801 1485 1927">Second Incorporation</th> </tr> </thead> <tbody> <tr> <td data-bbox="634 1879 1036 1927"></td> <td data-bbox="1036 1879 1485 1927"></td> </tr> </tbody> </table>	First Incorporation	Second Incorporation		
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)		
<b>12.</b>	<b>The public may submit written or oral comments to the agency identified in box 1.</b> (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.)		
	<b>A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):</b>	12/15/2011	
	<b>B) A public hearing (optional) will be held:</b>		
	<b>On (mm/dd/yyyy):</b>	<b>At (hh:mm AM/PM):</b>	<b>At (place):</b>
	12/13/2011	9:00 am	160 East 300 South, Conference Room 475 (4th floor) , Salt Lake City, Utah
<b>13.</b>	<b>This rule change may become effective on (mm/dd/yyyy):</b>	12/22/2011	
	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.		
<b>14.</b>	<b>Indexing information -- keywords</b> (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:		
	osteopaths	licensing	
	osteopathic physician		
<b>15.</b>	<b>Attach an RTF document containing the text of this rule change (filename):</b>	R156-68.pro	
<b>To the agency:</b> Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.			
<b>AGENCY AUTHORIZATION</b>			
<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Director	<b>Date (mm/dd/yyyy):</b>	10/31/2011

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

**R156-68. Utah Osteopathic Medical Practice Act Rule.**

**R156-68-503. Administrative Penalties.**

(1) In accordance with Subsection 58-68-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-68-501(1):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-68-501(1)(c)(i) or (ii):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-68-501(1)(d):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(d) 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, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-68-502:

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-68-502(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-68-502(2):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second

offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-68-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-68-502(4):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-68-502(5):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Utah Osteopathic Medical Practice Act in violation of Subsection R156-68-502(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed osteopathic physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-68-502(7):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-68-502(8):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of

breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-68-502(9):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-68-502(10):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-68-502(11):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection 58-1-501(2)(a) and Section 58-1-301.7:

First Offense: \$100-\$500

Second Offense: \$500-\$3,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-68-603 in violation of Subsection R156-68-502(13):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-68-502(14):

First Offense: \$100-\$5,000

Second Offense: \$500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-68-602:

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(t) 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 in

violation of Subsection 58-1-501(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2) (a):

First Offense: \$500-\$5,000

Second Offense: \$1,500-10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(v) 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 in violation of Subsection 58-1-501(2) (a):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(w) 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 in violation of Subsection 58-1-501(2) (b):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(x) 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 relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2) (c):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(y) 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 in violation of Subsection 58-1-501(2) (d):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(z) 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 in violation of Subsection 58-1-501(2) (e):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(aa) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2) (f):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(bb) 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 in violation of Subsection 58-1-501(2) (g):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(cc) 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 in violation of Subsection 58-1-501(2) (h):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2) (h):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ee) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2) (i):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ff) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2) (j):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(gg) 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 in violation of Subsection 58-1-501(2) (k):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(hh) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2) (l):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ii) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2) (m):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(jj) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2) (n):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(kk) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-502(1):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ll) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-502(2):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(mm) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(nn) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the

words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-502(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(oo) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-502(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(pp) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(qq) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: \$500-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(rr) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ss) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(tt) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(uu) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(vv) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ww) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(xx) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(yy) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

**KEY: osteopaths, licensing, osteopathic physician**

**Date of Enactment or Last Substantive Amendment: ~~August 11, 2009~~ 2011**

**Notice of Continuation: March 27, 2008**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-68-101**