

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            | -                  |
| <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>      |
|           | April Ellis               | 801-530-6254   | 801-530-6511 | aprilellis@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>  |
|           | Utah Osteopathic Medical Practice Act Rule  |
| <b>3.</b> | <b>Type of notice:</b>  |
|           | New ___; Amendment XXX; Repeal ___; Repeal and Reenact ___  |
| <b>4.</b> | <b>Purpose of the rule or reason for the change:</b>  |
|           | The Division and the Physicians Licensing Board and Osteopathic Physician and Surgeon's Licensing Board reviewed the rule and determined amendments needed to be made to reflect current standards.   |
| <b>5.</b> | <b>This change is a response to comments from the Administrative Rules Review Committee.</b>  |
|           | No XXXX; Yes ___  |
| <b>6.</b> | <b>Summary of the rule or change:</b>   |
|           | Section 302b: Paragraph (l) is added to require a candidate who has failed exams three times to provide a narrative to the Division and Board as part of the application process. The narrative will assist in determining qualifications for licensure. Section 302c: Amendments in this section deletes the requirement for a candidate who fails specific exams three times to complete additional education before being able to sit for the final exam. The reason for the change is that, starting in August 2014, the Division will not be responsible for testing approvals and management of testing issues. Instead, the Federation of State Medical Boards will approve and manage all testing issues for all member states. Sections 502 and 602 are updated to reflect the current edition (2012-2013) of the American Medical Association (AMA) Code of Ethics. |
| <b>7.</b> | <b>Aggregate anticipated cost or savings to:</b>  |

**A) State budget:****Affected:** No \_\_\_; Yes XXXX

The Division will incur minimal costs of approximately \$50.00 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. It should also be noted that an AMA Code of Ethics book costs approximately \$60.00 to purchase on the American Medical Association website.

**B) Local government:****Affected:** No XXXX; Yes

The proposed amendments only licensed osteopathic physicians/surgeons and applicants for licensure in that classification. 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 \_\_\_

The proposed amendments only apply to licensed osteopathic physicians/surgeons and applicants for licensure in that classification. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

**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 XXXXX

The proposed amendments only apply to licensed osteopathic physicians/surgeons and applicants for licensure in that classification. If an individual wishes to purchase an updated copy of the AMA Code of Ethics book, it costs approximately \$60.00 to purchase on the American Medical Association website.

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

The proposed amendments only apply to licensed osteopathic physicians/surgeons and applicants for licensure in that classification. If an individual wishes to purchase an updated copy of the AMA Code of Ethics book, it costs approximately \$60.00 to purchase on the American Medical Association website.

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

This rule filing clarifies the licensing procedures for an individual who fails the licensing exam multiple times. In addition, it adopts and incorporates by reference an updated code of medical ethics to govern the medical practice of licensees. Both amendments affect individuals rather than businesses. Therefore, no fiscal impact to businesses is anticipated.

**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 58-1-202(1)(a)

Section 58-68-101

**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> | Code of Medical Ethics             |                      |
| <b>Publisher</b>  | American Medical Association (AMA) |                      |
| <b>Date Issued</b>  |                                    |                      |
| <b>Issue, or version</b>  | 2012-2013                          |                      |
| <b>ISBN Number (optional)</b>                                     |                                    |                      |

|  |   |                           |   |
|--|---|---------------------------|---|
|  | <b>ISSN Number (optional)</b>   |                           |   |
|  | <b>Cost of Incorporated Reference</b>   |                           |   |
|  | <b>Action: Adds, updates, or removes</b>  | Updates                   |   |
| (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>  | 07/15/2014                |   |
|  | <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>  |
|  | 06/24/2014  | 9:30 AM                   | 160 East 300 South, Conference Room 403, Salt Lake City, Utah |
|  |   |                           |   |
|  |   |                           |   |
|  |   |                           |   |
| <b>13.</b>   | <b>This rule change may become effective on (mm/dd/yyyy):</b>   |                           | 07/22/2014  |
|  | 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</b> (filename):   |                           | 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> | 05/22/2014  |

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

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

**R156-68-302b. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:

- (a) the NBOME parts I, II and III;
- (b) the NBOME parts I, II and the NBOME COMPLEX Level III;
- (c) the NBOME part I and the NBOME COMPLEX Level II and III;
- (d) the NBOME COMPLEX Level I, II and III;
- (e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component;
- (f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part;
- (g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;
- (h) the LMCC examination, Parts 1 and 2;
- (i) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;
- (j) the FLEX component 1 and the USMLE step 3; or
- (k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(l) A candidate who fails any combination of the USMLE, FLEX, NBME and NBOME three times shall provide a narrative regarding the failure and may be requested to meet with the Board and Division.

(2) In accordance with Subsections 58-68-302(1)(g), (2)(c) and (3)(d), an applicant may be required to take the SPEX examination if the applicant:

- (a) has not practiced in the past five years;
- (b) has had disciplinary action within the past five years; or
- (c) has had a substance use disorder, physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

(4) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA, ABMS, or AAPS member specialty board.

**R156-68-302c. Qualifications for Licensure - Requirements for Admission to the Examinations.**

(1) Admission to the NBOME examination shall be in accordance with policies and procedures of the NBOME. The division and the board have no responsibility for or ability to facilitate an individual's admission to the NBOME examination.

(2) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME. The division and the board have no responsibility for or ability to facilitate an individual's admission to steps 1 and 2

of the USMLE.

(3) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsection 58-68-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years; and

(d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times. [

~~(4) Candidates who fail a combination of USMLE step 3, FLEX component II and NBME part III three times must successfully complete additional education as required by the board before being allowed to retake the USMLE step 3.]~~

**R156-68-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) the prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing, or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) 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(14) 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;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) 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;

(5) 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;

(6) 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 osteopathic physicians licensed under the Utah Osteopathic Medical Practice Act;

(7) 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 physician and surgeon or osteopathic physician who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) 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 Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, 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 an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician 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;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) engaging in alternative medical practice except as provided in Section R156-68-603; and

(14) violation of any provision of the American Medical Association's (AMA) "Code of Medical Ethics", [~~2008-2009~~2012-2013 edition, which is hereby incorporated by reference.

#### **R156-68-602. Medical Records.**

In accordance with Subsection 58-68-803(1), medical records shall be maintained to be consistent with the following:

- (1) all applicable laws, regulations, and rules; and
- (2) the AMA "Code of Medical Ethics", [~~2008-2009~~2012-2013

edition, which is hereby incorporated by reference.

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

**Date of Enactment or Last Substantive Amendment: [~~January 7,~~  
]2014**

**Notice of Continuation: February 7, 2013**

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