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: 40865 Date filed: 10-11-2016

State Admin Rule Filing Id: Time filed:

		Agency No.		Rule No.		Section No.
Utah Admin. Code Ref (R no.):	**R**	156	-	68	-	
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:**
Larry Marx	801-530-6254	801-530-6511	lmarx@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):

Utah Osteopathic Medical Practice Act Rule

3. **Type of notice:**

New ___; Amendment XXX; Repeal ___; Repeal and Reenact ___

4. **Purpose of the rule or reason for the change:**

H.B. 240, passed by the Legislature during the 2016 General Session made changes to the newly defined Opiate Overdose Response Act, Title 26, Chapter 55, and to the Utah Osteopathic Medical Practice Act, Title 58, Chapter 68. These changes permit osteopathic physicians and surgeons to issue a standing order for the dispensing of an opiate antagonist by pharmacists, and require the Division to promulgate rules to address the standing order and the requirements for dispensing. The Division is filing this rule to accomplish that mandate.

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

No XXX; Yes ___

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

Section 502: Paragraph (16) is added to establish that failing to submit an annual report as required in Section R156-68-604 is unprofessional conduct. Section 604: Newly enacted Subsection 26-55-105(2)(c) requires physicians to review at least annually the dispensing practices of those the physician has authorized to dispense an opiate antagonist pursuant to a standing order. This new section requires the osteopathic physician and surgeon to submit an annual written report to the division indicating that the osteopathic physician and surgeon has done so.

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

A) State budget:

Affected: No ___; Yes XXX

The Division will incur minimal costs of approximately $75 to print and distribute the rule once the proposed amendments are made effective.

B) Local government:

Affected: No Yes XXXX

The proposed amendments only apply to licensed osteopathic physicians and surgeons who choose to issue a standing order for dispensing an opiate antagonist. If a local government employs an osteopathic physician and surgeon who issues a standing order for dispensing an opiate antagonist, then these reporting requirements may translate into a loss of employee services and loss of income relative to the time required for the osteopathic physician and surgeon to review and report the required information. However, whether or not an osteopathic physician and surgeon is employed by a local government, a standing order may result in saving the life of one or more residents within the local government's jurisdiction, which may translate into cost savings, and enhanced health services to the community impacted by the opioid overdose crisis. The Division is not able to determine any exact amount of costs or savings due to varying circumstances.

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

Affected: No Yes XXXX

Osteopathic physicians and surgeons who own or operate a small business, and who choose to issue a standing order for dispensing an opiate antagonist, will be impacted by using some of their time to comply with these reporting requirements. This may translate into a loss of income relative to the time required for reviewing and reporting. The Division is not able to determine any exact amount of costs 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

Osteopathic physicians and surgeons who issue standing orders for dispensing opiate antagonists will be impacted by using some of their time to comply with these review and reporting requirements. This may translate into a loss of income relative to the time required for reviewing and reporting. One or more persons may have their lives saved due to the overdose-reversing effects of prescriptions issued pursuant to these standing orders. This may translate into a cost savings for those persons as well as for their friends and family. The Division is not able to determine any exact amount of costs or savings due to varying circumstances.

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

An osteopathic physician and surgeon who chooses to issue a standing order for dispensing an opiate antagonist will be impacted by using some of their time to comply with these review and reporting requirements. This may translate into a loss of income relative to the time required for reviewing and reporting. 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:**

Osteopathic physicians and surgeons who own or operate a small business, and who choose to issue a standing order for dispensing an opiate antagonist, will be impacted by using some of their time to comply with these report requirements. This may translate into a loss of income relative to the time required for reviewing and reporting. These costs may vary depending on the number of persons the osteopathic physician and surgeon has authorized to dispense the opiate antagonist. Because the report is only made annually, the anticipated cost is negligible.

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
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): 12/01/2016

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

On (mm/dd/yyyy):	**At** (hh:mm AM/PM):	**At** (place):
11/17/2016	11:00 AM	160 East 300 South, Hearing Room 403 (4th floor), Salt Lake City, Utah

13. **This rule change may become effective on** (mm/dd/yyyy): 12/08/2016

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:

osteopaths | licensing

osteopathic physician

15. **Attach an RTF document containing the text of this rule change** (filename): R156-68.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): 10/11/2016

R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rule.
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", 2012-2013 edition, which is hereby incorporated by reference; and

(15) failing to timely submit an annual written report to the division indicating that the osteopathic physician has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense an opiate antagonist, pursuant to Section R156-68-604.

R156-68-604. Required Reporting of Annual Review by Osteopathic Physicians of Dispensing Practices of those Authorized to Dispense an Opiate Antagonist.

(1) In accordance with Subsection 26-55-105(2)(c), an osteopathic physician who issues a standing prescription drug order authorizing the dispensing of an opiate antagonist shall annually submit a written report to the division indicating that

he has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense the opiate antagonist.

(2) The report described above shall be submitted no later than January 31 of each calendar year and shall continue as long as the standing order remains in effect. Null reporting is not required.

(3) An osteopathic physician shall be considered to have satisfactorily reviewed the dispensing practices of those authorized by the osteopathic physician to dispense the opiate antagonist by reviewing the report of the licensee dispensing the opiate antagonist specified in Subsection R156-17b-625(1).

KEY: osteopaths, licensing, osteopathic physician
Date of Enactment or Last Substantive Amendment: [~~July 28, 2014~~]2016
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