

State of Utah  
Administrative Rule Analysis  
Revised June 2021

OAR FILE NO. 53945

DATE FILED 9-14-2021

NOTICE OF PROPOSED RULE

TYPE OF RULE: New \_\_\_; Amendment XXX; Repeal \_\_\_; Repeal and Reenact \_\_\_

Title No. - Rule No. - Section No.

Utah Admin. Code Ref (R no.):

R156-70a

Filing ID (Office Use Only)

Changed to Admin. Code Ref. (R no.):

Agency Information

1. Department:	Department of Commerce	
Agency:	Division of Occupational and Professional Licensing	
Room no.:		
Building:	Heber M. Wells Building	
Street address:	160 East 300 South	
City, state and zip:	Salt Lake City UT 84111-2316	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Larry Marx	801-530-6254	lmarx@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Physician Assistant Practice Act Rule

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The Physician Assistant Practice Act Rule is amended in accordance with changes made by S.B. 27 and S.B. 28 during the 2021 Legislative General Session. Additionally, numerous formatting and other changes are made throughout the rule in accordance with Executive Order 2021-12 to clarify and update the rule to facilitate compliance and enforcement, and additional amendments are made in accordance with Executive Order 2021-1 to eliminate unnecessary regulation and reduce barriers to working.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

Nonsubstantive formatting changes are made throughout the rule for clarity. In addition, the following substantive amendments are proposed:

Section R156-70a-102 is amended to add definitions.

Section R156-70a-302 is amended to clarify existing examination requirements.

Section R156-70a-303 is amended under the authority of Subsection 58-1-308(5)(a)(ii)(B) to allow a physician assistant (PA) whose license was active and in good standing at the time of expiration to apply for reinstatement between two years and five years after the date of expiration. The proposed amendments will allow former Utah PA licensees whose licenses expired while active and in good standing, easier re-entry into practice by extending their reinstatement period from two years to five years. If these former PA licensees meet certain requirements they will not need to demonstrate that they meet all current qualifications and submit a new application complete with all supporting documents as is required of an individual making an initial application for license.

Section R156-70a-304 is amended to clarify and simplify the PA continuing medical education (CME) requirements, and under Subsection 58-70a-501.1(5) as amended by 2021 S.B. 28, to require a PA who specializes in mental health care to fulfill their CME by completing the CME required to maintain their Certificate of Added Qualifications (CAQ) in psychiatry.

Section R156-70a-305 is deleted in its entirety because it is obsolete after changes made by S.B. 27 and S.B. 28.

Section R156-70a-501 is amended and renumbered to R156-70a-501.2. The proposed amendments: (1) update the rule in accordance with the changes in S.B. 27 and S.B. 28 from delegation of duties to collaborative practice; and (2) as mandated by Subsection 58-70a-501.2(6) as amended by S.B. 28, to establish supervision requirements for a PA engaging in the practice of mental health therapy while completing clinical practice hours to become specialized in mental health care.

New Section R156-70a-503 is added under the authority of Subsection 58-70a-102(10) to define certain conduct as "unprofessional conduct" in accordance with the changes made by S.B. 27 and S.B. 28 to a PA's scope of practice.

### Fiscal Information

#### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

##### A) State budget:

The Division estimates that the proposed reinstatement amendments to Section R156-70a-303 may indirectly benefit state agencies acting as businesses who employ Physician Assistants, if these state agencies are able to more easily hire one or more experienced Physician Assistants who have been able to reinstate their license and enter into practice. The full fiscal and non-fiscal impacts on these state agencies cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits the state agencies may experience from any resulting employment will vary widely depending on the requirements of the agencies and the individual characteristics of each PA. The remainder of these proposed amendments are expected to have no measurable impact on state government revenues or expenditure as none of the amendments are expected to impact state government practices or procedures beyond the mandates of S.B. 27 and SB. 28.

##### B) Local governments:

These amendments will affect health care entities that employ Physician Assistants, which may include certain local government entities acting as businesses. The Division estimates that the proposed reinstatement amendments to Section R156-70a-303 may indirectly benefit local governments acting as businesses who employ Physician Assistants, if they are able to more easily hire one or more experienced Physician Assistants who have been able to reinstate their license and enter into practice. The full fiscal and non-fiscal impacts cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that local government may experience from any resulting employment will vary widely depending on the requirements of the local government and the individual characteristics of each PA. The remainder of these proposed amendments are expected to have no measurable impact on local government revenues or expenditures as none of the amendments are expected to impact local government practices or procedures beyond the mandates of S.B. 27 and SB. 28.

##### C) Small businesses ("small business" means a business employing 1-49 persons):

These amendments will affect small businesses that employ Physician Assistants (NAICS 621399, 621112, 621111, 621330, 622110, 622310, 621493, 623220, 621420, 621420, 623110). The Division estimates that the proposed reinstatement amendments to Section R156-70a-303 may indirectly benefit small businesses who employ Physician Assistants, if they are able to more easily hire one or more experienced Physician Assistants who have been able to reinstate their license and enter into practice. The full fiscal and non-fiscal impacts cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that a business may experience from any resulting employment will vary widely depending on the requirements of the business and the individual characteristics of each PA. The remainder of the proposed amendments are expected to have no measurable impact on small business revenues or expenditures as they only conform the rule to the statutory changes enacted by 2021 S.B. 27 and S.B. 28, with no fiscal impact to small business beyond those identified in the fiscal note available at <https://le.utah.gov/~2021/bills/static/SB0027.html> and <https://le.utah.gov/~2021/bills/static/SB0028.html>.

##### D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

These amendments will affect non-small businesses that employ Physician Assistants (NAICS 621399, 621112, 621111, 621330, 622110, 622310, 621493, 623220, 621420, 621420, 623110). The Division estimates that the proposed reinstatement amendments to Section R156-70a-303 may indirectly benefit non-small businesses who employ Physician Assistants, if they are able to more easily hire one or more experienced Physician Assistants who have been able to reinstate their license and enter into practice. The full fiscal and non-fiscal impacts cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that a business may experience from any resulting employment will vary widely depending on the requirements of the business and the individual characteristics of each PA. The remainder of the proposed amendments are expected to have no measurable impact on non-small business revenues or expenditures as they only conform the rule to the statutory changes enacted by 2021 S.B. 27 and S.B. 28, with no fiscal impact to non-small business beyond those identified in the fiscal note available at <https://le.utah.gov/~2021/bills/static/SB0027.html> and <https://le.utah.gov/~2021/bills/static/SB0028.html>.

E) Persons other than small businesses, non-small businesses, state, 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*):

These amendments will affect licensed Physician Assistants, and the health care providers who collaborate with Physician Assistants or supervise Physician Assistants who are completing clinical practice hours to become specialized in mental health care. The proposed reinstatement amendments to Section R156-70a-303 will allow easier re-entry into practice for persons formerly licensed as a PA in Utah whose license expired while active and in good standing, and these amendments are expected to benefit those experienced Physician Assistants who choose to re-enter into practice. However, the full fiscal and non-fiscal benefits for such persons cannot be estimated because the resulting employment will vary substantially depending on the individual choices and characteristics of each formerly licensed PA. The remainder of the proposed amendments are not expected to result in a fiscal impact to these persons beyond those identified in the fiscal notes for 2021 S.B. 27 and S.B. 28, as the amendments only conform the rule to and implement the statutory changes enacted by S.B. 27 and S.B. 28.

**F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):**

There are no compliance costs expected for affected persons.

**G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):**

The Division of Occupational and Professional Licensing ("Division") proposes amendments to the Physician Assistant Practice Act Rule. Changes and updates were made in accordance with S.B. 27 and S.B. 28 during the 2021 Legislative General Session. Further, the Division has made formatting changes throughout the rule to conform the rule to the Office of Administrative Rules' Formatting Manual in accordance with Executive Orders 2021-1 and 2021-12.

Small Businesses (less than 50 employees): The Division has found many small businesses employing Physician Assistants (NAICS 621399, 621112, 621111, 621330, 622110, 622310, 621493, 623220, 621420, 621420, 623110). The proposed reinstatement amendments to Section R156-70a-303 may benefit small businesses who employ Physician Assistants, if they are able to more easily hire one or more experienced Physician Assistants who have been able to reinstate their license and enter into practice. However, the fiscal impacts cannot be estimated due to the lack of data necessary for such a calculation. Further, the expected measurable fiscal impact on small business revenues are identified in the fiscal notes under 2021 S.B. 27 and S.B. 28.

Regulatory Impact to Non-Small Businesses (50 or more employees); There are currently several non-small businesses that employ Physician Assistants (NAICS 621399, 621112, 621111, 621330, 622110, 622310, 621493, 623220, 621420, 621420, 623110) in Utah. There is expected to be a similar economic benefit for licensees with the proposed reinstatement amendments to Section R156-70a-303, thus, the same rationale applies for non-small business as described above for small business. However, the full benefits are inestimable for the reasons stated above with the expected measurable fiscal impact on non-small business revenues are identified in the fiscal notes under 2021 S.B. 27 and S.B. 28.

Margaret W. Busse, Executive Director

**6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)**

**Regulatory Impact Table**

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

**Citation Information**

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a

**citation to that requirement:**

Section 58-70a-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) 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 Office of Administrative Rules; if none, leave blank):

First Incorporation	
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

B) 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 Office of Administrative Rules; if none, leave blank):

Second Incorporation	
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

**Public Notice Information**

9. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy): 11/01/2021

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

On (mm/dd/yyyy): 10/18/2021	At (hh:mm AM/PM): 9:00 AM	At (place): Rule hearing will be held electronically only before the Division via Google Meet Meeting ID <a href="https://meet.google.com/uyc-wavm-zqu">meet.google.com/uyc-wavm-zqu</a> Phone Numbers (US)+1 617-675-4444 PIN: 132 761 555 0815#
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10. This rule change MAY become effective on (mm/dd/yyyy): 11/08/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

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 head or designee, and title: 

Date (mm/dd/yyyy): Sept 14, 2021

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

**R156-70a. Physician Assistant Practice Act Rule.**

**R156-70a-101. Title.**

This rule is known as the "Physician Assistant Practice Act Rule." [-]

**R156-70a-102. Definitions.**

In addition to the definitions in Title 58, [~~Chapters 1 and 70a, as used in this rule~~] Chapter 1, Division of Occupational and Professional Licensing Act, and Title 58, Chapter 70a, Physician Assistant Practice Act, the following rule definitions supplement the statutory definitions:

(1) [~~"Full-time equivalent" or "FTE" means the equivalent of 2,080 hours of staff time for a one-year period.~~] "ACCME" means the Accreditation Council for Continuing Medical Education.

(2) "CAQ" means a Certification for Added Qualification issued by the NCCPA.

(3) "CME" means continuing medical education.

(4) "NCCPA" means the National Commission on Certification of Physician Assistants.

(5) "PANCE" means the NCCPA's Physician Assistant National Certifying Examination.

(6) "PANRE" means the NCCPA's Physician Assistant National Recertifying Examination.

**R156-70a-103. Authority - Purpose.**

This rule is adopted by the [d] Division under the authority of Subsection 58-1-106(1)(a) to enable the [d] Division to administer Title 58, Chapter 70a, Physician Assistant Practice Act.

**R156-70a-104. Organization - Relationship to Rule R156-1.**

The organization of this rule and its relationship to Rule R156-1, General Rule of the Division of Occupational and Professional Licensing, is as described in Section R156-1-107.

**R156-70a-302. Qualification for Licensure - Examination Requirements.**

[~~In accordance with~~] Under Subsection 58-70a-302([5]4), the examination requirement for licensure as a physician assistant is a passing score on: [~~the National Commission on Certification of Physician Assistants (NCCPA) examination.~~

(1) the PANCE; or

(2) the PANRE.

**R156-70a-303. Renewal Cycle - Procedures.**

(1) [~~In accordance with~~] Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle [~~applicable to~~] for licensees under Title 58, Chapter 70a, Physician Assistant Practice Act, is established [~~by rule~~] in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308[e]b through R156-1-308l.

(3) Under Subsection 58-1-308(5)(a)(ii)(B), and subject to Subsection R156-1-308g(3)(b), an applicant whose license was active and in good standing at the time of expiration may apply for reinstatement between two years and five years after the date of expiration, as follows:

(a) submit a reinstatement application demonstrating compliance with the requirements and conditions of license renewal;

(b) pay the license renewal and reinstatement fees for the current licensure cycle;

(c) submit evidence that the applicant:

(i) has completed the qualified CME hours required for each preceding two-year licensure cycle in which the license was expired; or

(ii) has current NCCPA certification;

(d) for an applicant who seeks to practice in the mental health specialties outside of a collaborative agreement with a psychiatrist:

(i) submit evidence of a current CAQ in psychiatry; and

(ii) if required by the Division under Subsection 58-70a-501.2(5), collaborate for a specified duration with a physician who is board certified in psychiatry; and

(e) upon request:

(i) meet with the Board to evaluate the applicant's ability to safely and competently practice; and

(ii) comply with Division requirements as recommended by the Board, such as collaboration with or practice under the supervision of a physician or physician assistant for a specified duration.

#### **R156-70a-304. Continuing Education.**

[In accordance with] (1) Under Subsection 58-70a-304(1)([a]b), the [requirements for] qualified [continuing professional education (CPE)] CME requirements for a physician assistant are [as follows:] established in this section.

([1]2)(a) A physician assistant shall complete at least 40 CME [—CPE shall consist of 40] hours during each two-year licensure cycle, that include: [—]

(i) at least 34 CME hours in category 1 offerings as established by the ACCME;

(ii) under Subsection 58-70a-501.1(5), if the physician assistant specializes in mental health care, the CME required to maintain their CAQ in psychiatry; and

(iii) under Subsection 58-70a-303(4), if the physician assistant is a recommending medical provider, continuing education required under Section 26-61a-106.

(b) A licensee's documentation to the Division of current [national] NCCPA certification [by NCCPA] shall fulfill [be deemed to meet] the requirements [in this section] of Subsections (2)(a)(i) or (ii).

([2]c) [Licensees] Under Section 58-13-3, a physician assistant may fulfill up to 15% of their [CPE] CME requirement by providing volunteer services within the scope of their license at a qualified location [—, in accordance with Section 58-13-3]. For every four documented hours of volunteer services, the licensee may earn one hour of [CPE] CME credit.

(3) [A minimum of 34 hours shall be in category 1 offerings as established by the Accreditation Council for Continuing Medical Education (ACCME)].

[—(4)—] Approved providers for ACCME offerings include the following:

(a) approved programs sponsored by the American Academy of Physician Assistants (AAPA); or

(b) programs approved by other health-related continuing education approval organizations, ~~[provided]~~ if the education is:

~~(i) [the continuing education is]~~ nationally recognized by a healthcare accredited agency; and

~~(ii) [the education is]~~ related to ~~[the]~~ practice as a physician assistant.

~~[(5) A maximum of six CPE hours may be recognized for non-ACCME offerings of continuing education provided by the Division of Occupational and Professional Licensing.]~~

~~[(6)4] [CPE under this section] CME shall:~~

~~(a) be relevant to the licensee's professional practice;~~

~~(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and~~

~~(c) have a method of verification of attendance and completion.~~

~~[(7)5] [CPE] CME credit shall be recognized in accordance with ACCME accreditation [50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (6) above]).~~

~~[(8)6] A licensee shall maintain [competent records of completed continuing professional education] documentation sufficient to prove compliance with this section, for [a period of four] two years after close of the two-year licensure cycle. [period. It is the responsibility of the licensee to demonstrate that their continuing education meets the requirements of this section.]~~

~~[(9)7] [Continuing professional education for licensees who have not been licensed for the entire two-year period shall be prorated from the date of licensure.] The Division may defer or waive CME requirements under Section 58-1-308d.~~

#### ~~[R156-70a-305. Exemptions from Licensure.~~

~~"Temporary basis", as used in Subsection 58-70a-305(1)(b)(ii), shall be limited as defined by the Delegation of Service Agreement and shall include the following:~~

~~(1) the circumstances and purpose under which any temporary supervision is permitted;~~

~~(2) the temporary supervision duties to be performed by the physician assistant;~~

~~(3) the amount of temporary supervision that is allowed; and~~

~~(4) how the physician will review the activities of students while under temporary supervision.]~~

#### ~~R156-70a-501.2. [Working Relationship and Delegation of Duties] Supervision Requirements for Engaging in the Practice of Mental Health Therapy While Completing Clinical Practice Hours.~~

~~[In accordance with Section 58-70a-501, the working relationship and delegation of duties between the supervising physician and the physician assistant are specified as follows:~~

~~(1) The supervising physician shall provide supervision to the physician assistant to adequately serve the health care needs of the practice population and ensure that the patient's health, safety and~~

welfare will not be adversely compromised. Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature.

~~(2) There shall be a method of immediate consultation by electronic means whenever the physician assistant is not under the direct supervision of the supervising physician.~~

~~(3) The physician and physician assistant shall review sufficient practice information which may include patient charts and medical records to ensure that the patient's health, safety, and welfare will not be adversely compromised. The Delegation of Services Agreement, maintained at the site of practice, shall outline specific parameters for quality review that are appropriate for the working relationship.~~

~~(4) A supervising physician may not supervise more than four full time equivalent (FTE) physician assistants without the prior approval of the division in collaboration with the board, and only for extenuating circumstances with a written request with justification. The supervising physician shall ensure that patient health, safety, and welfare is not adversely compromised by supervising more physician assistants than the physician can competently supervise.]~~

Under Subsections 58-70a-501.2(6)(b) and (c), a physician assistant specializing in mental health care who is in the process of completing supervised clinical practice hours under Subsection 58-70a-501.1(4)(d)(i) or (ii), or completing collaborative clinical practice hours under Subsection 58-70a-501.1(4)(d)(iii), may engage in the practice of mental health therapy in accordance with the following supervision standards:

(1) A supervisor shall be licensed in good standing in the jurisdiction in which the supervision occurs.

(2)(a) The duties of the supervisor to mentor and advocate for the appropriate and ethical treatment of patients shall be observed above any other interest or consideration within the supervisor relationship.

(b) The supervisor and supervisee shall maintain a relationship in which the supervisor is independent from the supervisee's control, and the supervisor's ability to supervise and direct the practice of the supervisee is not compromised.

(3) A supervisor shall:

(a) ensure that the supervisee complies with confidentiality requirements and meets the local standards of care in the provision of services while under supervision; and

(b) monitor the performance of the supervisee for compliance with applicable mental health statutes for appropriate and humane treatment of patients, and recognize a duty to report violations to the Division.

(4) The supervisor and supervisee shall submit appropriate documentation to the Division for work completed by the supervisee evidencing the performance of the supervisee during the period of supervision, including the supervisor's evaluation of the supervisee's competence to practice mental health therapy.

### R156-70a-503. Unprofessional Conduct.

Under Subsection 58-70a-102(10), "unprofessional conduct" includes:

(1) violating a federal or state law relating to controlled substances, including unprofessional conduct defined in Section R156-37-502;



(2) misrepresentation of the physician assistant's education, training, or qualifications to practice independently;

(3) failing to comply with:

(a) collaboration policies and procedures;

(b) a collaborative practice agreement; or

(c) a requirement of supervision while completing clinical psychotherapy practice hours;

(4) failing to comply with Section 58-37-19, regarding discussion with a patient or the patient's guardian before issuing an initial opiate prescription; or

(5) failing to practice within the physician assistant's skills and scope of competence, in accordance with Subsection 58-70a-102(2) and Sections 58-70a-501 and 58-70a-501.2.

KEY: licensing, physician assistants

Date of Enactment or Last Substantive Amendment: ~~[June 21, 2018]~~ 2021

Notice of Continuation: June 22, 2021

Authorizing, and Implemented or Interpreted Law: 58-70a-101; 58-1-106(1)(a); 58-1-202(1)(a)