

State of Utah
Administrative Rule Analysis
Revised May 2020

DAR File NO. 52821

Date filed: 6-9-2020

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ___; Amendment XXXX Repeal ___; Repeal and Reenact ___

Title No. - Rule No. - Section No.

Utah Admin. Code Ref (R no.):

R156-73-501

Filing No. (Office Use Only)

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

R

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:	Salt Lake City UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Allyson Pettley	801-530-6179	apettley@utah.gov

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

General Information

2. Rule or section catchline:

Unprofessional Conduct

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

The Division in collaboration with the Chiropractic Physician Licensing Board recommends these proposed amendments to define certain actions as unprofessional conduct.

4. Summary of the new rule or change:

Paragraph (2) – minor wording changes to delete the term "which". Paragraph (7) clarified that licensed chiropractors are to keep the Division informed of a current mailing address, current email address and a current telephone number. Paragraph (15) – the proposed rule amendment will establish unprofessional conduct for soliciting, receiving, or paying compensation to another party for sending or referring a patient in excess of \$50 per patient. Paragraph (16) – the proposed rule amendment will establish unprofessional conduct for soliciting, receiving, or paying compensation to another party for commission, rebates, kickbacks, or bribes. Also, other minor wording or punctuation changes have also been made.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The Division estimates that the proposed amendments may result in an additional investigation of violations or complaints annually at a cost of \$300. The amendments are not expected to impact any existing state practices or procedures, and as described below in the analysis for small business and non-small business, the Division does not expect any state agencies that may be acting as employers of licensees to experience any measurable fiscal impacts. No other impact to the State is expected beyond a minimal cost to the Division of approximately \$75 to disseminate the rules once the proposed amendments are made effective.

B) Local governments:

The Division estimates that the proposed amendments will have no measurable impact on local government. None of these amendments are expected to impact local government practices or procedures. Additionally, as described below in the analysis for small business and non-small business, the Division does not expect any local governments that may be acting as employers or licensees to experience any measurable fiscal impacts.

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

The proposed amendments will regulate chiropractic physicians practicing in Utah, which may indirectly affect the estimated 470 small businesses in Utah owned by individuals in the chiropractic profession (NAICS 621310). However, the amendments are not expected to result in any measurable fiscal impact to small business. The amendments will only affect licensees who violate the rule and as described below for other persons, for the typical licensee the amendments will have no fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most small businesses will never be impacted. Although a small business owned by a licensee who is sanctioned may face indirect financial costs, it is impossible to estimate what those costs might be because any such violations are unforeseeable, and because any indirect costs that a small business may potentially experience will vary widely depending on the unique characteristics of the entity and the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

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

These proposed rule changes will not impact non-small business because there are no non-small businesses in Utah in this industry.

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):

There are approximately 1,021 licensed chiropractic physicians who may be affected by these proposed amendments. No measurable fiscal impact to these persons is expected. The goal of the rules is to provide a deterrent, such that there is a \$0 net impact on all parties involved and minimal occasions for noncompliance. Therefore for the typical licensee the amendments are expected to have no direct or indirect fiscal impact. Further, although a licensee who is found to have violated the rule may experience a fiscal impact, it is impossible to estimate what those costs might be with any accuracy at present, both because they would apply only in cases of unforeseeable violations, and because any potential costs would depend on the unique characteristics and actions of each individual licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

F) Compliance costs for affected persons:

As described above for other persons, the Division does not anticipate any compliance costs for any affected persons from these proposed amendments.

G) 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	FY2021	FY2022	FY2023
State Government	\$375	\$300	\$300
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$375	\$300	\$300
Fiscal Benefits			
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$(-375)	\$(-300)	\$(-300)

H) Department head approval of regulatory impact analysis:

The head of the Department of Commerce, Chris Parker, has reviewed and approved this fiscal analysis.

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

The Division of Occupational and Professional Licensing is proposing two amendments to the Chiropractic Physician Practice Act Rule. Section R156-73-501 concerns unprofessional conduct. The new subsection 15 proposes patient referral compensation limits and standards. The new subsection 16 establishes standards for bribery, kickbacks, rebates and commissions. There are also minor edits made to improve clarity. Small Businesses (less than 50 employees): In Utah, there are an estimated 470 small businesses in Utah owned by individuals in the chiropractic profession (NAICS 621310). There are approximately 1,021 licensed chiropractic physicians who may be affected by these proposed amendments. The purpose of this rule is for deterrence and the usual licensee will have no direct or indirect fiscal impact. The Division estimates that the proposed amendments may result in one additional investigation of violations or complaints annually at a cost of \$300. No other impact to the State is expected beyond a minimal cost to the Division of approximately \$75 to disseminate the rules once the proposed amendments are made effective. Accordingly, no fiscal impact is expected for small businesses over and above any fiscal impact described in the fiscal note for the legislation as these costs are either inestimable or there is no fiscal impact. Non-Small Businesses: The proposed rules for the Chiropractic Physician Practice Act are not expected to impact non-small businesses because there are no non-small businesses that are exclusively in the chiropractic profession (NAICS 621310) in Utah. For the same reasons as described above for small business as to the costs being inestimable for the reasons stated, or there is no fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Chris Parker, Executive Director

Citation Information

7. 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):

58-73-101	58-1-106(1)(a)	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. 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 (mm/dd/yyyy): 07/31/2020

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

On (mm/dd/yyyy): **At (hh:mm AM/PM):** **At (place):**

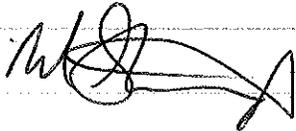
07/28/2020	9:00 am	160 East 300 South – 4th floor – Salt Lake City, Utah – Rule hearing will be held electronically

10. This rule change MAY become effective on (mm/dd/yyyy): 08/07/2020

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 10, the agency must submit a Notice of Effective Date to the Office 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.

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):	June 9, 2020
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R156. Commerce, Occupational and Professional Licensing.

R156-73. Chiropractic Physician Practice Act Rule.

R156-73-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) keeping the office, instruments, laboratory, equipment, appliances or supplies in an unsafe or unsanitary condition;

(2) engaging in advertising [~~which~~]that:

(a) is misleading because of omission of necessary material information[~~7~~];

(b) [~~which~~]contains false or misleading statements[~~7~~]; or

(c) [~~which~~]otherwise operates to deceive;

(3) engaging in or abetting deceptive or fraudulent billing practices;

(4) engaging in sexual contact with a patient, with or without patient consent, within 12 months of last treatment;

(5) engaging in sexual activities or contact with a former patient, with or without consent, after 12 months of last treatment if there is a risk of exploitation or potential harm to the former patient;

(6) engaging in behaviors in a patient/doctor relationship, including verbal, intended to sexually arouse any person or encourage sexual activity;

(7) failing to keep the division informed of a current mailing address or email address in accordance with Section 58-1-301.7, or[and] of a current telephone number;

(8) advertising acupuncture services or practicing clinical acupuncture techniques beyond the scope of the certification held;

(9) advertising as an "acupuncturist" either verbally or in print;

(10) failing to maintain responsibility for care, billing, and documentation in a group practice, multidisciplinary practice, or third-party ownership practice;

(11) engaging in any act or practice in a professional capacity [~~which~~]that the licensee is not competent to perform through education or training;

(12) administering injections through the skin, limited to subcutaneous or intramuscular administration, of any substances other than non-prescription drugs as defined in Subsections 58-17b-102(39) or non-controlled substances as defined in Subsection 58-37-2(1)(f)(ii)(C);

(13) administering injections of non-prescription drugs or non-controlled substances without sufficient competency and training as demonstrated by the following:

(a) completion of a recognized course on injectables and their administration, under the sponsorship of or approved by an institution, organization, or association meeting the continuing education standards as defined in Section R156-73-303b; and

(b) receiving a passing score on a certifying examination; [~~and~~]

(14) delegating the administration of injections to a chiropractic assistant;

(15) soliciting, receiving, or paying compensation to any person or entity for sending or referring a patient, in excess of \$50 per patient; and

(16) soliciting, receiving, or paying compensation to any person or entity for a product or service to or from a chiropractic physician or

chiropractic facility, including commissions, rebates, kickbacks, or bribes.

KEY: chiropractors, licensing, chiropractic physician

Date of Enactment or Last Substantive Amendment: [~~August 24, 2009~~] 2020

Notice of Continuation: February 11, 2016

Authorizing, and Implemented or Interpreted Law: 58-73-101; 58-1-106(1)(a); 58-1-202(1)(a)