

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:

44138

Date filed:

10-17-2019

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: Larry Marx
Phone: 801-530-6254
Fax: 801-530-6511
E-mail: 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 XXXX; Repeal ___; Repeal and Reenact ___

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

As authorized by Sections 58-1-502 and 58-68-503, the Osteopathic Physicians and Surgeons Board recommends proposed amendments to provide a monetary fine for a physician that fails to provide an opiate prescription consultation in accordance with new Section 58-37-19, enacted by 2019 HB 191 and to provide a monetary fine for a physician that violates 58-68-502(1)(d) as enacted by 2018 HB 3001.

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 R156-68-502(16): This proposed amendment includes the definition of unprofessional conduct for physicians failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription in accordance with Section 58-37-19. Section R156-68-503: This proposed amendment adds to the unprofessional conduct rule and fine schedule for physicians to include the following sanctions for a physician who violates 58-68-502(1)(d) or R156-68-502(16): initial offense \$500 to \$1,500; second offense \$1,500 to \$5,000. In addition, the amendments replace the fine schedule language with a table listing the reference and fine.

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No ; Yes

No negative fiscal impact to the State is expected beyond a minimal cost to the Division of approximately \$75 to disseminate the rule once the proposed amendment is made effective. The fiscal note for 2019 HB 191 estimated that two prescribers annually would pay a fine of \$500 to \$1,000 for non-compliance, for aggregate revenue of approximately \$1,500 annually. The fiscal note for 2018 HB 3001 estimated the impact and is available at: <https://le.utah.gov/~2018S3/bills/static/HB3001.html>. Any fines levied would be paid into the Physicians Education Fund. The Division estimates that the proposed amendment may result in two additional investigations of violations or complaints at a cost of \$300 each for a total of \$600. This amendment is 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.

B) Local government:

Affected: No Yes

The Division estimates that the proposed amendments will have no measurable impact on local government. None of these amendments are expected to impact existing 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 of licensees to experience any measurable fiscal impacts.

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

Affected: No ; Yes

The proposed amendment will regulate licensed physicians practicing in Utah, which may indirectly affect the estimated 1,933 small businesses in Utah comprising establishments of licensed physicians or who employ licensed physicians, such as private or group practices, hospitals, or medical centers (NAICS 621110, 621420, 621112, 622210, and 622310). However, the proposed amendments are not expected to result in any measurable fiscal impact to small business. First, the amendment only imposes a penalty for noncompliance with the Utah Code requirements, and the practices of most small businesses are, or should be, already consistent with existing requirements. Second, the proposed amendment will only affect licensees who violate the statute and are sanctioned, and as described below for other persons, for the typical licensee the proposed 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. Finally, although a small business employing 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 from any potential sanctions will vary widely depending on the unique characteristics of the employer 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) 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

There are approximately 1,222 licensed osteopathic physicians that may be affected by these proposed amendments. No measurable fiscal impact to these persons is expected. First, the proposed amendments will only affect licensees who violate the statute and are sanctioned, so that most licensees will never be impacted. The amendment only imposes a penalty for noncompliance with existing Utah Code requirements, and the practices of most licensees are or should be already consistent with existing professional practice requirements. Further, 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 to sanction a licensee for noncompliance. Therefore, for the typical licensee, the proposed amendments are expected to have no direct or indirect fiscal impact. Second, although a licensee who is sanctioned may experience a fiscal impact, it is impossible to estimate what such 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.

8. 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.

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

As authorized by Sections 58-1-502 and 58-68-503, the Osteopathic Physicians and Surgeons Board recommends proposed amendments for a monetary fine for a physician that fails to provide an opiate prescription consultation in accordance with new Section 58-37-19, which was enacted by 2019 HB 191, and to provide a monetary fine for a physician that violates 58-68-502(1)(d) as enacted by 2018 HB 3001. Small Businesses (less than 50 employees): The proposed amendment will regulate licensed physicians practicing in Utah, which may indirectly affect the estimated 1,933 small businesses of Utah licensed physicians or who employ licensed physicians, such as private or group practices, hospitals, or medical centers (NAICS 621110, 621420, 621112, 622210, and 622310). However, the proposed amendments are not expected to result in any measurable fiscal impact to small business. First, the amendment only imposes a penalty for noncompliance with the Utah Code requirements, and the practices of most small businesses should be consistent with existing requirements. Second, the proposed amendment will only affect licensees who violate the statute and are sanctioned. For the typical licensee the proposed 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. Finally, although a small business employing a licensee who is sanctioned may face indirect financial costs, it is impossible to estimate what those costs might be as these are unforeseeable; any indirect costs that a small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer 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. Regulatory Impact to Non-Small Businesses (50 or more employees): The proposed amendment will regulate licensed physicians practicing in Utah, which may indirectly affect 169 non-small businesses in Utah comprising establishments of licensed physicians or who employ licensed physician, such as hospitals or medical centers (NAICS 621110, 622210, 621111, 621112, 622310). However, the proposed amendments are not expected to result in any measurable fiscal impact for non-small business for the same reasons as described above for small business. They are either inestimable, for the reasons stated, or there is no fiscal impact

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)**

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$675	\$600	\$600
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$675	\$600	\$600
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$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:	\$(675)	\$(600)	\$(600)

*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 for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

The proposed amendment will regulate licensed physicians practicing in Utah, which may indirectly affect the estimated 169 non-small businesses in Utah comprising establishments of licensed physicians or who employ licensed physician, such as private or group practices, hospitals, or medical centers (NAICS 621110, 622210, 621111, 621112, 622310). However, the proposed amendment is not expected to result in any measurable fiscal impact for non-small business. First, the amendment only imposes a penalty for noncompliance with the Utah Code requirements, and the practices of most non-small businesses are, or should be, already consistent with existing requirements. Second, the proposed amendment will only affect licensees who violate the statute and are sanctioned, and as described above for other persons, for the typical licensee the proposed amendments will have no fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most non-small businesses will never be impacted.

Finally, although a non-small business employing 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 non-small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer 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.

Include agency head sign-off here. The head of the Department of Commerce, Francine Giani, has reviewed and approved this fiscal analysis.

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)~~] 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;

(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~~ 17b-620;

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

(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; and

(16) failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription, in accordance with Section 58-37-19.

R156-68-503. Administrative Penalties.

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

TABLE
FINE SCHEDULE

<u>VIOLATION</u>	<u>FIRST OFFENSE</u>	<u>SUBSEQUENT OFFENSE</u>
58-1-501(1)	\$ 5,000 - \$10,000	\$10,000
58-1-501(2) (a)	\$ 100 - \$ 500	\$ 500 - \$ 3,000
58-1-501(2) (b)	\$ 500 - \$ 5,000	\$ 1,500 - \$10,000
58-1-501(2) (c)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2) (d)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2) (e)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2) (f)	\$ 500 - \$ 5,000	\$ 1,500 - \$10,000
58-1-501(2) (g)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2) (h)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2) (i)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2) (j)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2) (k)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2) (l)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2) (m)	\$ 5,000 - \$10,000	\$10,000
58-37-8	\$ 500 - \$ 5,000	\$ 1,500 - \$10,000
58-68-501(1)	\$ 1,000 - \$5,000	\$ 2,000 - \$10,000
58-68-502 (1)	\$ 500 - \$5,000	\$ 5,000 - \$10,000
58-68-502.5 (1)	\$ 5,000	\$10,000
58-68-502.5 (2)	\$ 5,000	\$10,000
58-68-502.5 (3)	\$ 5,000 - \$10,000	\$10,000
58-1-501.5 (5)	\$ 500 - \$ 1,500	\$ 1,500 - \$10,000
R156-1-501(1)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-1-501(2)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-1-501(3)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-1-501(4)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-1-501(5)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-1-501(6)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-37-502(1) (a)	\$ 5,000 - \$10,000	\$10,000
R156-37-502(1) (b)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-37-502(2)	\$ 500 - \$ 5,000	\$ 1,500 - \$10,000
R156-37-502(3)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-37-502(4)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-37-502(5)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-37-502(6)	\$ 5,000 - \$10,000	\$10,000
R156-37-502(7)	\$ 5,000 - \$10,000	\$10,000
R156-68-502(1)	\$ 500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(2)	\$ 500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(3)	\$ 500 - \$ 1,500	\$ 1,500 - \$10,000

R156-68-502(4)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(5)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(6)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(7)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(8)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(9)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(10)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(11)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(12)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(13)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(14)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(15)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
R156-68-502(16)	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
Any other conduct that constitutes unprofessional or unlawful conduct	\$	500 - \$ 1,500	\$ 1,500 - \$10,000
Ongoing offense(s):	\$	2,000 per day but not less than second offense	

~~[(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) administering sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, without first obtaining the required consent from the patient in writing, in violation of Subsection 58-68-502.5(1):~~

~~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:~~

~~(f) failing to report any adverse event under Section 26-1-40, with respect to the administering of sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, in violation of Subsection 58-68-502.5(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:~~

~~(g) during a procedure for which sedation or anesthesia will be administered intravenously to a patient in an outpatient setting that is not an emergency department, failing to have access to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association, in violation of Subsection 58-68-502.5(3):~~

~~First Offense: \$5,000~~

~~Second Offense: \$10,000~~

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

~~(h) 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~~

~~(i) 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: \$5,000-\$10,000~~

~~Second Offense: \$10,000~~

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

~~—— (j) 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~~

~~—— (k) 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~~

~~—— (l) 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~~

~~—— (m) 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~~

~~—— (n) 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~~

~~—— (o) 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~~

~~—— (p) 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~~

~~—— (q) 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~~

~~—— (r) 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~~

~~—— (s) 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~~

~~—— (t) 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~~

~~—— (u) 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~~

~~—— (v) 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~~

~~—— (w) 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~~

~~—— (x) 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~~

~~—— (y) 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~~

~~—— (z) 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~~

~~——(aa) 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~~

~~——(bb) 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~~

~~——(cc) 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~~

~~——(dd) 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~~

~~——(ee) 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~~

~~——(ff) 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~~

~~(gg) 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~~

~~(hh) 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~~

~~(ii) 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~~

~~(jj) 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~~

~~(kk) 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~~

~~(ll) 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 R156-1-501(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~~

~~—— (mm) 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 R156-1-501(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~~

~~—— (nn) 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 R156-1-501(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~~

~~—— (oo) 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 R156-1-501(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~~

~~—— (pp) 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 R156-1-501(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~~

~~—— (qq) 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~~

~~—— (rr) 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: \$5000-\$10,000~~

~~Second Offense: \$10,000~~

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

~~——(ss) 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~~

~~——(tt) 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~~

~~——(uu) 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~~

~~——(vv) 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~~

~~——(ww) 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~~

~~——(xx) 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~~

~~—— (yy) 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~~

~~—— (zz) 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: [~~October 9, 2018~~]2019

Notice of Continuation: January 8, 2018

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