UNPROFESSIONAL CONDUCT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill modifies and enacts provisions relating to the provision of conversion therapy to minors.

Highlighted Provisions:

This bill:

- defines terms;
- prohibits certain health care professionals from providing conversion therapy to a minor client;
- includes a severability clause; and

- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-501, as last amended by Laws of Utah 2020, Chapters 289, 339

ENACTS:

58-1-511, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **58-1-501** is amended to read:

58-1-501. Unlawful and unprofessional conduct.

(1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful under this title and includes:

(a) 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 if the person is:

(i) not licensed to do so or not exempted from licensure under this title; or

(ii) restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license;

(b) (i) impersonating another licensee or practicing an occupation or profession under a false or assumed name, except as permitted by law; or

(ii) for a licensee who has had a license under this title reinstated following disciplinary action, practicing the same occupation or profession using a different name than the name used before the disciplinary action, except as permitted by law and after notice to, and approval by, the division;

(c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this title if the employee is not licensed to do so under this title;

(d) knowingly permitting the person's authority to practice or engage in any occupation or profession licensed under this title to be used by another, except as permitted by law;

(e) obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the division or a licensing board through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission;

(f) (i) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state:

(A) without prescriptive authority conferred by a license issued under this title, or by an exemption to licensure under this title; or

(B) with prescriptive authority conferred by an exception issued under this title or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment; and

(ii) Subsection (1)(f)(i) does not apply to treatment rendered in an emergency, on-call or cross coverage situation, provided that the person who issues the prescription has prescriptive authority conferred by a license under this title, or is exempt from licensure under this title; or

(g) aiding or abetting any other person to violate any statute, rule, or order regulating an occupation or profession under this title.

(2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined as unprofessional conduct under this title or under any rule adopted under this title and includes:

(a) violating any statute, rule, or order regulating an occupation or profession under this title;

(b) 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;

(c) subject to the provisions of Subsection (4), engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere that 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 substantial relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession;

(d) 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;

(e) 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;

(f) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so;

(g) 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;

(h) 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;

(i) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education;

(j) practicing or attempting to practice an occupation or profession regulated under this

title beyond the scope of the licensee's license;

(k) 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;

(l) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule;

(m) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device:

(i) without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or

(ii) with prescriptive authority conferred by an exception issued under this title, or a multi-state practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment;

(n) violating a provision of Section 58-1-501.5; [~~or~~]

(o) violating the terms of an order governing a license[~~.~~]; or

(p) violating Section 58-1-511.

(3) Unless otherwise specified by statute or administrative rule, in a civil or administrative proceeding commenced by the division under this title, a person subject to any of the unlawful and unprofessional conduct provisions of this title is strictly liable for each violation.

(4) The following are not evidence of engaging in unprofessional conduct under Subsection (2)(c):

(a) an arrest not followed by a conviction; or

(b) a conviction for which an individual's incarceration has ended more than seven years before the date of the division's consideration, unless:

(i) after the incarceration the individual has engaged in additional conduct that results in another conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere that is held in abeyance pending the successful completion of probation; or

(ii) the conviction was for:

(A) a violent felony as defined in Section 76-3-203.5;

(B) a felony related to a criminal sexual act pursuant to Title 76, Chapter 5, Part 4, Sexual Offenses, or Title 76, Chapter 5b, Sexual Exploitation Act; or

(C) a felony related to criminal fraud or embezzlement, including a felony pursuant to Title 76, Chapter 6, Part 5, Fraud, or Title 76, Chapter 6, Part 4, Theft.

Section 2. Section **58-1-511** is enacted to read:

58-1-511. Prohibition on providing conversion therapy to a minor.

(1) As used in this section:

(a) "Conversion therapy" means a practice or treatment by which a health care professional intends to change a minor client's sexual orientation or gender identity, or to impose a different sexual orientation or gender identity upon a minor client, including a practice or treatment that:

(i) subjects a minor client to physical discomfort through aversive treatment that causes nausea, vomiting, or other unpleasant physical sensation;

(ii) provides electric shock or other electrical therapy, including electroconvulsive therapy or transcranial magnetic stimulation;

(iii) subjects a minor client to touching themself or another individual as part of the therapy; or

(iv) causes the minor client to engage in physical self-harm or physical self-inflicted pain.

(b) "Health care professional" means an individual who is licensed, or an individual who provides mental health therapy as part of the individual's training for a profession that is licensed, under:

(i) Chapter 31b, Nurse Practice Act;

(ii) Chapter 60, Mental Health Professional Practice Act;

(iii) Chapter 61, Psychologist Licensing Act;

(iv) Chapter 67, Utah Medical Practice Act;

(v) Chapter 68, Utah Osteopathic Medical Practice Act; or

(vi) Chapter 70a, Utah Physician Assistant Act.

(c) "Minor client" means an individual who is younger than 18 years old and who consults, is examined or interviewed by, or receives services, care, or treatment from a health care professional who is acting in their professional capacity.

(d) "Religious advisor" means an individual who is designated by a religious organization or association as clergy, minister, pastor, priest, rabbi, imam, bishop, stake president, or other spiritual advisor.

(e) (i) "Sexual orientation" means the same as that term is defined in Section 34A-5-102.

(ii) "Sexual orientation" does not include an action that would constitute sexual abuse or sexual exploitation as those terms are defined in Section 80-1-102.

(2) A health care professional who is acting in their professional capacity may not provide conversion therapy to a minor client.

(3) A health care professional who is not intending to change a minor client's sexual orientation or gender identity, or to impose a different sexual orientation or gender identity upon a minor client, may engage in any professional and lawful conduct, including a practice or treatment by which the health care professional:

(a) is neutral with respect to sexual orientation and gender identity;

(b) provides a minor client with acceptance, support, and understanding;

(c) provides treatment to a minor client who is considering a gender transition in any direction, including exploration of the timing thereof;

(d) facilitates a minor client's social support, ability to cope, or the exploration and development of the minor client's identity, including sexual orientation or gender identity;

(e) addresses unlawful, unsafe, premarital, or extramarital sexual activities in a manner

that is neutral with respect to sexual orientation and gender identity;

(f) discusses moral, philosophical, or religious beliefs or practices;

(g) addresses body-image issues, social pressure, or sex or gender stereotypes;

(h) addresses co-occurring mental health, neurological, developmental, trauma, or family issues;

(i) helps a minor client to understand and assess the stages and timing of identity development;

(j) consistent with other applicable laws, rules, orders, and ethical standards, discusses with a minor client's parent or guardian the mental health or development of a minor client; or

(k) assists the minor client to understand the medical, social, or other implications of decisions related to sexual orientation or gender identity.

(4) Subsection (2) does not apply to:

(a) an individual who is both a health care professional and a religious advisor, when the individual is acting substantially in the capacity of a religious advisor and not in the capacity of a health care professional; or

(b) an individual who is both a health care professional and a parent or grandparent, when the individual is acting substantially in the capacity of a parent or grandparent and not in the capacity of a health care professional.

(5) A violation of this section is unprofessional conduct.

(6) A rule adopted under this title that defines "unprofessional conduct" shall be consistent with this section.

(7) If any provision of this section or the application of any provision to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.