

R156. Commerce. Occupational and Professional Licensing.

R156-4a. Utah Professionals Health Program Rule.

R156-4a-101a. Title.

This rule is known as the "Utah Professionals Health Program Rule."

R156-4a-101b. Authority - Purpose - Organization.

(1) This rule is adopted by the Division under the authority of Section 58-4a-103 to enable the Division to administer Title 58, Chapter 4a, Utah Professionals Health Program.

(2) 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.

R156-4a-102. Definitions.

In addition to the definitions in Title 58, Occupations and Professions, as used in Title 58, Occupations and Professions, or in Title R156, Commerce, Occupational and Professional Licensing, the following rule definitions supplement the statutory definitions:

(1) "Abstinence" means the same as defined in the FSPHP Guidelines: The absence of substances that are UPHP nonapproved mind or mood altering, including alcohol and other substance use disorder potentiating substances.

(2) "Abstinence-based self-help group" means a self-help group having a foundation in abstinence that is approved by the Division for a participant to attend.

(3) "Aftercare" means the same as Continuing Care.

(4) "Acknowledgment of Participation" means a document signed by a UPHP participant and a party required by the participant's program contract in which:

(a) the participant certifies that the participant has informed the required party of the participant's participation in UPHP; and

(b) the required party certifies that they have reviewed the program contract.

(5) "Compliance Monitoring" means the coordination of services on behalf of the participant to ensure the integrity of monitoring and continuing care accountability.

(6) "Comprehensive Clinical Evaluation" means a Division-approved independent evaluation of a participant that:

(a) is diagnostically rigorous;

(b) is tailored to the specific needs of the participant;

(c) includes collateral information; and

(d) assesses the presence of a substance use disorder and of any other conditions that may affect the participant's physical or psychological fitness for practice.

(7) "Continuing Care" means the same as defined in the FSPHP Guidelines: Care that follows the acute phase of intervention and initial treatment, sometimes referred to as aftercare. Professional health programs oversee and monitor the continuity of care to ensure progress and continued compliance. Continuing Care includes PHP guidance, support, toxicology collection, and accountability through a formal monitoring contract concurrent with or following an evaluation or treatment process.

(8) "Evaluators" means the same as defined in the FSPHP Guidelines: Qualified clinical experts who are consulted to investigate possible psychiatric or physical illness that potentially can cause impairment. Evaluators are used to formulate impressions, diagnoses, treatment plans, and suggestions for effective monitoring.

(9) "FSPHP" means the Federation of State Physician Health Programs.

(10) "FSPHP Guidelines" means the FSPHP's Physician Health Program Guidelines, April 16, 2019, 1st Edition, which is hereby incorporated by reference.

(11) "Impairment" means the inability of a participant to safely engage in the participant's profession as a result of their substance use disorder.

(12) "Intake Session" means the procedure described in Subsection R156-4a-3(3) to gather information from a licensee regarding entry into UPHP and to provide information about UPHP to the licensee.

(13) "Misconduct" means a licensee's acts or omissions alleged to constitute either unprofessional or unlawful conduct, or both, that serve as the basis to consider the licensee for participation in UPHP.

(14) "Participant" means a licensee participating in UPHP pursuant to an executed program contract or diversion agreement.

(15) "Private Agreement to Not Practice" means a voluntary and private agreement between the licensee and the UPHP to withdraw from practice and not return to practice until authorized by the UPHP.

(16) "Program contract," as defined in Subsection 58-4a-102(4), includes each written agreement entered into by a participant and the Division and may include multiple documents.

(17) "Qualifying condition" means a participant's substance use disorder that makes the participant eligible to participate in the UPHP.

(18) "Record" means the stored documentation of a potential participant's or participant's contacts and interaction with and participation in the UPHP.

(19) "Relapse" means the same as Return to use behavior.

(20) "Report" means a report from a collateral source addressing a participant's compliance with UPHP agreements, including a program contract or diversion agreement.

(21) "Return to use behavior" means a spectrum of thoughts and behaviors suggestive of increased risk for use or actual use of unapproved substances.

(22) "Return to work plan" means the Division approval of a participant's return to practice after a period of leave during which a participant was determined fit to practice, and includes identification of the steps that shall be taken to ensure safe and supported return to practice.

(23) "Screening" means the UPHP's initial meeting with a licensee to gather basic demographic information and information about the circumstances of the referral, and to schedule the intake session. A screening may also include discussion of UPHP confidentiality and its limits.

(24) "Substance" means the same as defined in the FSPHP Guidelines: Mind or mood altering substances defined in law as controlled substances; for example, alcohol or other legal or illegal substances that are mood altering and can potentially impact the ability to practice.

(25) "Substance abuse" means the same as defined in the FSPHP Guidelines: The essential feature of substance abuse is a maladaptive pattern of substance use manifested by recurrent and significant adverse consequences related to the repeated use of substances.

(26) "Toxicology testing" means the collection of urine, blood, oral fluid, hair, nails, sweat, or breath used to deter and detect unauthorized drug or alcohol use by a participant.

(27) "Treatment" means the same as defined in the FSPHP Guidelines: The delivery of care and rehabilitation to a participant experiencing a potentially impairing illness, including a course of inpatient or outpatient care, treatment, or rehabilitation services provided or supervised by a person authorized to provide such services for the purpose of alleviation of impairment and improvement of illness.

(28) "Treatment provider" means the same as defined in the FSPHP Guidelines: Individuals, organizations, or another entity composed of licensed professionals who are providing care and treatment to a participant.

(29) "UPHP" means the Utah Professionals Health Program.

(30) "UPHP Medication Policy" means the policy identified in Subsection R156-4a-103b(3) regarding participant use of medication.

(31) "UPHP participation standards" means the criteria identified in Subsection R156-4a-103b(3) for licensee participation in UPHP.

(32) "UPHP Return to Use Behavior Policy" means the policy identified in Subsection R156-4a-103b(3) regarding participant return to use behavior.

(33) "Worksite practice liaison" means a participant's UPHP approved nonsubordinate support person who:

- (a) has regular contact with the participant in the participant's practice setting;
- (b) understands the signs and symptoms of substance use disorder;
- (c) can make independent objective judgments regarding the participant without risk of undue influence by the participant;
- (d) is authorized by the participant to communicate with the UPHP; and
- (e) reports to the UPHP on the participant's worksite practice behavior and performance.

R156-4a-103a. UPHP Eligibility and Entry.

(1) Under Subsection 58-4a-103(2)(a) and Section 58-4a-105, each licensee applying to participate in the UPHP shall complete the following steps in accordance with UPHP eligibility process policies and procedures, including time deadlines:

- (a) complete an intake session;
- (b) complete a comprehensive clinical evaluation;
- (c) comply with toxicology testing as requested by the UPHP;
- (d) submit documentation satisfactory to the UPHP that the licensee meets UPHP eligibility criteria;
- (e) comply with additional eligibility process requirements as determined by the UPHP, including for example one or more of the following:
 - (i) practice accommodations or limitations;
 - (ii) increased frequency of toxicology testing; or
 - (iii) restrictions on access to mind or mood altering substances and use of medication treatment; and
- (f) execute a program contract.

(2) A licensee may not participate in the UPHP if:

- (a) the licensee has harmed a patient by providing care below the expected standard of care that resulted in an adverse consequence for the patient;
- (b) the licensee has engaged in unlawful conduct or unprofessional conduct as defined by statute or rule under Title 58, Occupations and Professions, with respect to:
 - (i) a criminal sexual act; or
 - (ii) a boundary violation that the licensee's comprehensive clinical evaluation determines is unrelated to the licensee's substance use disorder;
- (c) the licensee has a currently active or pending criminal action, adjudicative proceeding, or charge alleging:
 - (i) a criminal sexual act; or
 - (ii) a boundary violation that the licensee's comprehensive clinical evaluation determines is unrelated to the licensee's substance use disorder;

- (d) the licensee's license to practice in another jurisdiction was surrendered while under investigation, or is currently publicly conditioned, curtailed, limited, restricted, suspended, on probation, or otherwise subject to public discipline; or
- (e) the UPHP otherwise determines that the licensee is not a good candidate for participation in UPHP.
- (3) Intake session procedures shall include the following:
 - (a) the UPHP shall:
 - (i) provide UPHP information to the licensee, to include UPHP confidentiality and its limits and the types of information the UPHP is mandated to and will report to a regulatory authority including the Division;
 - (ii) gather information about the circumstances that led the licensee to contact the UPHP;
 - (iii) gather clinical information regarding the licensee's potential substance use disorder, to include a preliminary diagnosis and need for immediate treatment;
 - (iv) determine if the licensee may be eligible for participation in the UPHP, and if the UPHP may be mandated to report licensee information to a regulatory authority, and discuss this information with the licensee; and
 - (v) if the UPHP determines that the licensee may be eligible for participation in the UPHP, the UPHP shall provide the licensee with a list of UPHP approved evaluators.
 - (b) the licensee shall complete an initial Release of Information that includes evaluators and additional sources as determined by the UPHP.
- (4) The licensee's comprehensive clinical evaluation shall be completed by:
 - (a) a multidisciplinary team at an evaluation center that has established expertise in the assessment of healthcare providers or other safety-sensitive professions with substance use disorders; or
 - (b) a qualified specialist approved by UPHP.
- (5)(a) The licensee shall obtain the required comprehensive clinical evaluation within 30 days after the day of the licensee's intake session.
 - (b) The UPHP may grant an extension of time to a licensee to obtain the comprehensive clinical evaluation if:
 - (i) there is a lack of available evaluators or a waiting list to access an evaluation;
 - (ii) the licensee needs further evaluation; or
 - (iii) upon reasonable cause as determined by the UPHP.
- (6)(a) An evaluator shall provide the licensee's comprehensive clinical evaluation report to the UPHP.
 - (b) An evaluator may not recommend a specific treatment provider for a licensee.
- (7) The UPHP shall make the final determination of a licensee's eligibility to participate in the UPHP based upon the UPHP's review of:
 - (a) the licensee's comprehensive clinical evaluation report, treatment records, and other applicable medical records;
 - (b) the licensee's documentation that the licensee meets the UPHP eligibility criteria; and
 - (c) other information determined relevant by the UPHP to the licensee's participation.
- (8)(a) After the UPHP determines a licensee is eligible to participate in the UPHP, the UPHP shall develop the terms and conditions of the licensee's program contract and offer the program contract to the licensee.
 - (b)(i) A licensee shall meet with the UPHP to review and execute the program contract within 30 days after the day the UPHP offers the program contract to the licensee.
 - (ii) The UPHP may grant an extension of time to a licensee to execute the program contract upon reasonable cause as determined by the UPHP.
- (9)(a) The following do not constitute disciplinary action by the Division, and the Division may not report them to a disciplinary database:
 - (i) a licensee's execution of a program contract; or
 - (ii) a licensee's agreement with the UPHP to comply with practice accommodations or limitations under Subsection R156-4a-103a(1).
- (b) Notwithstanding Subsection (9)(a), to the extent required by statute or rule pertaining to a compact in which Utah is a member, the UPHP may report non-confidential data to a compact database.

R156-4a-103b. Participation - UPHP Components and UPHP Participation Standards.

- (1) Under Section 58-4a-103, participation in the UPHP shall include the following components, as determined by the UPHP:
 - (a) an executed program contract or diversion agreement;
 - (b) a comprehensive clinical evaluation;
 - (c) participation and attendance in treatment and continuing care with the treatment providers approved by the UPHP;
 - (d) compliance monitoring;
 - (e) interstate monitoring;
 - (f) participant contact, including at least quarterly reports by a worksite practice liaison;
 - (g) monthly or quarterly reports, including at least quarterly reports by a therapist;
 - (h) medication logs;
 - (i) support group attendance;
 - (j) toxicology testing; and
 - (k) other components as determined by the UPHP.

(2)(a) Monitoring of a participant pursuant to the terms and conditions of the program contract shall begin upon the participant's execution of the program contract.

(b) If the program contract requires residential or inpatient treatment instead of outpatient treatment, monitoring under the program contract may commence after the participant completes the residential or inpatient treatment.

(3) The following are established as the UPHP participation standards:

(a) A participant shall abstain from the use of mind or mood altering substances, including alcohol, medical cannabis, substances containing THC, inhalants, and illegal, non-prescribed, and certain identified psychotropic over-the-counter medications.

(b) A participant shall abstain from the use of mind or mood altering, addictive, or potentially addictive prescription medications, including amphetamine preparations, opioids, sedatives, and benzodiazepines, except in an emergency such as hospitalization due to emergency surgery, illness, or accident.

(c) A participant shall follow the UPHP Medication Policy, which shall include the following participant requirements:

(i) provide UPHP with copies of prescriptions, including controlled substances, received by the participant during the term of the program contract;

(ii) receive medications for a participant's own use only from treatment providers:

(A) with whom the participant has a legitimate patient relationship; and

(B) who have signed an Acknowledgment of Participation from UPHP regarding the participant's terms and conditions for participating in UPHP;

(iii) provide UPHP information, or request information for UPHP, regarding medications prescribed to the participant;

(iv) if a participant has a medical condition requiring potentially addictive substance use, or is prescribed a controlled medication for any reason, comply with UPHP required practice accommodations or limitations; and

(v) pursue effective alternatives or require a second opinion prior to using any controlled or mind or mood altering substances in a non-emergency situation.

(d) If a participant is at risk of impairment for any reason, the participant shall comply with UPHP required practice accommodations or limitations and not return to work until approved by the UPHP.

(e) A participant may not prescribe scheduled drugs for family members or for others who are not the participant's legitimate patients within the scope of the participant's practice, in accordance with applicable law, rule, or regulation.

(f) A participant shall prescribe only within the scope of the participant's medical specialty, in accordance with applicable law, rule, or regulation.

(g) A participant shall provide current authorizations for the UPHP as determined necessary by the UPHP, including authorization to:

(i) communicate with the participant's care providers and treatment providers as needed to verify medical issues;

(ii) communicate with the participant's worksite practice liaison;

(iii) communicate with third parties such as emergency contacts and treatment providers as determined necessary by the UPHP;

(iv) obtain information on medications prescribed to the participant; and

(v) release information about the participant's participation to the Division if required by the program contract or Utah law.

(h) A participant shall identify a primary care provider to manage the participant's medical care and to comply with the participant's treatment plan, including complying with the treatment provider recommendations and not self-prescribing or independently discontinuing any medications.

(i) A participant shall follow the initial treatment, medication management, and continuing care recommendations with providers approved by the UPHP until treatment objectives are met as determined by the treatment provider, and treatment is discontinued with the UPHP's approval.

(j) A participant shall attend a minimum number of mutual help group meetings or an alternative approved by the UPHP, documented in a manner acceptable to the UPHP.

(k) A participant may not change or discontinue therapy or treatment without approval of the participant's therapist and UPHP.

(l) A participant shall identify and cooperate with a worksite practice liaison.

(m) A participant shall comply with practice accommodations or limitations as required by:

(i) the participant's program contract;

(ii) UPHP policies and procedures; and

(iii) statutes and rules pertaining to a compact in which Utah is a member.

(n) A participant shall submit to biological specimen testing if requested by the UPHP.

(o) A participant shall participate in the UPHP in good faith, and cooperate with UPHP staff.

(p) A participant shall comply with each UPHP policy, including:

(i) the UPHP Return to Use Behavior Policy; and

(ii) the UPHP Medication Policy.

(q) A participant shall notify the UPHP within 24 hours if the participant:

(i) has a medical or mental health hospitalization;

(ii) has an arrest, investigation, charge, or complaint, including a Division or other regulatory agency complaint;

(iii) receives a disciplinary notice from a regulatory agency, hospital, employer, or other third party;

- (iv) has any adverse events affecting patient care including malpractice claims; or
- (v) returns to use of any substances not approved by UPHP, including in cases of emergency use due to illness or accident.
- (r) A participant shall notify the UPHP at least 24 hours:
 - (i) prior to the participant's anticipated use of any controlled or mind or mood altering prescriptions or substances; and
 - (ii) prior to the participant's:
 - (A) travel outside UPHP's jurisdiction;
 - (B) change of address or phone number;
 - (C) change of employment;
 - (D) engaging in practice in another jurisdiction, state, or territory;
 - (E) applying for a license to practice in another jurisdiction, state, or territory; or
 - (F) applying to participate in another alternative to public discipline program.
- (s) A participant shall maintain their Utah license in active status while participating in UPHP.

R156-4a-104. Committees.

Reserved.

R156-4a-105. Program Contract - Successful Completion.

- (1) Under Subsection 58-4a-103(2) and Section 58-4a-105, each program contract shall comply with this section.
- (2)(a) A program contract shall identify the program contract period, and other time frames that may be required by the program contract, including tolling under Subsection 58-4a-106(4).
 - (b) A program contract shall provide that:
 - (i) the program contract period may be extended at the discretion of the UPHP in accordance with UPHP policy, if at the end of or during the program contract period, the UPHP determines that there is reasonable cause to support the need for additional monitoring or extended treatment; and
 - (ii) unless otherwise agreed in writing by the UPHP, the program contract period is tolled during any period that the participant:
 - (A) is not practicing; or
 - (B) resides or practices outside Utah for 30 consecutive days or longer.
 - (3) A program contract shall provide that the participant's monitoring may be transferred or shared with another appropriate health monitoring program if the participant moves or holds an active license in another jurisdiction, state, or territory.
 - (4) A program contract shall include a statement of UPHP confidentiality and its limitations, including conditions when the UPHP may be required to report to the Division.
 - (5) A program contract shall require the participant to adhere to the UPHP Participation Standards, as determined by the UPHP.
 - (6)(a) A program contract shall identify the potential consequences for a participant's violation, including when violation constitutes a violation of the program contract that requires an order to show cause under Section 58-4a-107.
 - (b) Consequences for violation may include the following:
 - (i) fine under Section R156-4a-110;
 - (ii) referral to a higher level of care;
 - (iii) increased frequency or intensification of treatment;
 - (iv) increased frequency of toxicology testing or requiring additional testing methods;
 - (v) additional biologic testing;
 - (vi) independent evaluation;
 - (vii) inpatient evaluation;
 - (viii) refrain from or limit practice as determined appropriate by the UPHP;
 - (ix) revision of the program contract, such as extending the period of monitoring; or
 - (x) a UPHP report to the Division for potential disciplinary action against the participant's license.
 - (7) A participant shall have successfully completed the UPHP if the UPHP has determined that the participant has fulfilled each term and condition of the participant's program contract or diversion agreement.

R156-4a-106. Effect on Other Disciplinary Proceedings.

Reserved.

R156-4a-107. Violation of a Program Contract.

- (1) Under Subsection 58-4a-107(4), the procedures for discovery in formal adjudicative proceedings are in Rule R151-4, Department of Commerce Administrative Procedures Act Rule.
- (2) Formal adjudicative proceedings to terminate a program contract under Section 58-4a-107 include a right to agency review and a right to reconsideration as described in Title 63G, Chapter 4, Administrative Procedures Act, and Rule R151-4, Department of Commerce Administrative Procedures Act Rule.

R156-4a-110. Fine Schedule.

Under Subsection 58-4a-110(2), the following fine schedule shall apply for violation of these requirements in a program contract:

TABLE
FINE SCHEDULE

VIOLATION	FIRST OFFENSE	SUBSEQUENT OFFENSE
R156-4a-103b(3)(f)(ii)	\$ 50	\$250 - \$1,000
R156-4a-103b(3)(g)	\$ 50	\$250 - \$1,000
R156-4a-103b(3)(k)	\$ 50	\$250 - \$1,000
R156-4a-103b(3)(o)	\$ 50	\$250 - \$1,000
R156-4a-103b(3)(q)	\$ 50	\$250 - \$1,000
R156-4a-103b(3)(w)(ii)	\$ 50	\$250 - \$1,000

R156-4a-111. Reporting - UPHP Agreements for Evaluation, Treatment, or Other Services.

(1) Under Section 58-4a-103, the Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies, or other persons to provide evaluations, treatments, monitoring, rehabilitation, education, or any other services necessary to facilitate a participant's successful completion of a program contract.

(2) Each agreement shall be in writing and shall have the terms and conditions necessary to permit each party to fulfill its duties and obligations.

(3) Each agreement shall address the circumstances and conditions under which information concerning the participant will be shared with the Division and other persons.

(4)(a) The cost of administering an agreement and providing the services shall be borne by the participant benefiting from the services.

(b) Costs paid by a participant shall be reasonable and in proportion to the value of the service provided.

(c) Timely payment of costs shall be a condition of each program contract.

KEY: licensing, program contract, fines

Date of Last Change: November 23, 2021

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-4a-103(2); 58-4a-107(4); 58-4a-110(2)