

1 **PHARMACY PRACTICE ACT AMENDMENTS**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Patrice Arent**

5 AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; AUTHORIZING THE
6 DIVISION OF OCCUPATIONS AND PROFESSIONAL LICENSING TO CONDUCT
7 ADMINISTRATIVE INSPECTIONS AND TO SEIZE ADULTERATED OR MISBRANDED
8 DRUGS AND DEVICES; CLARIFYING THAT THE FAILURE TO PERMIT AN
9 INSPECTION CONSTITUTES UNLAWFUL CONDUCT; AND AMENDING LICENSING
10 PROVISIONS RELATED TO PHARMACY INTERNS.

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 AMENDS:

13 **58-17a-302**, as enacted by Chapter 247, Laws of Utah 1996

14 **58-17a-303**, as enacted by Chapter 247, Laws of Utah 1996

15 **58-17a-501**, as enacted by Chapter 247, Laws of Utah 1996

16 ENACTS:

17 **58-17a-103**, Utah Code Annotated 1953

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

19 Section 1. Section **58-17a-103** is enacted to read:

20 **58-17a-103. Administrative inspections.**

21 (1) The division may, for the purpose of ascertaining compliance with the provisions of
22 this chapter, enter and inspect on a routine basis the business premises of a person:

23 (a) licensed under Section 58-17a-303; or

24 (b) who holds himself out to the general public as providing a good or service for which
25 a license is required under Section 58-17a-303.

26 (2) Before conducting an inspection under Subsection (1), the division shall, after
27 identifying the person in charge:

- 1 (a) give proper identification;
- 2 (b) request to see the applicable license;
- 3 (c) describe the nature and purpose of the inspection; and
- 4 (d) if necessary, explain the authority of the division to conduct the inspection and the
- 5 penalty for refusing to permit the inspection as provided in Section 58-17a-501.

6 (3) In conducting an inspection under Subsection (1), the division may, after meeting the
7 requirements of Subsection (2):

8 (a) examine any record, prescription, order, drug, device, equipment, machine, or area
9 related to a good or service for which a license has been issued under or is required by Section
10 58-17a-303 for the purpose of ascertaining compliance with the applicable provisions of this
11 chapter;

12 (b) take a drug or device for further analysis if considered necessary; and

13 (c) temporarily seize a drug or device which is found to be adulterated, misbranded, or
14 otherwise in violation of this chapter, pending an adjudicative proceeding on the matter.

15 (4) An inspection conducted under Subsection (1) shall be during regular business hours.

16 (5) The division's authority to conduct an inspection is not affected by a person's failure
17 to:

18 (a) acknowledge the division's authority as is required by Section 58-17a-303; or

19 (b) receive notice under Subsection (6).

20 (6) Before July 1, 1998, the division shall mail a notice to the last-known address of each
21 person licensed under Section 58-17a-303, explaining the division's authority to conduct
22 inspections.

23 Section 2. Section **58-17a-302** is amended to read:

24 **58-17a-302. Qualifications for licensure of pharmacist, pharmacy technician, and**
25 **pharmacy intern.**

26 (1) Each applicant for licensure as a pharmacist and to practice pharmacy shall:

27 (a) submit an application in a form prescribed by the division;

28 (b) pay a fee as determined by the department under Section 63-38-3.2;

29 (c) have graduated and received a professional entry degree from a school or college of
30 pharmacy which is accredited by the American Council on Pharmaceutical Education;

31 (d) have completed an internship meeting standards established by division rule made in

1 collaboration with the board;

2 (e) have successfully passed examinations required by division rule made in collaboration
3 with the board;

4 (f) produce satisfactory evidence of good moral character as it relates to the applicant's
5 ability to practice pharmacy; and

6 (g) have no physical or mental condition of a nature which prevents the applicant from
7 engaging in the practice of pharmacy with reasonable skill, competency, and safety to the public.

8 (2) Each applicant for a license as a pharmacist by endorsement under Section 58-1-302
9 shall:

10 (a) submit a written application in the form prescribed by the division;

11 (b) pay the fee determined by the department under Section 63-38-3.2;

12 (c) be currently licensed in good standing as a pharmacist in another state, territory, or
13 possession of the United States;

14 (d) produce satisfactory evidence of completing the professional education and internship
15 required under Subsection (1);

16 (e) be of good moral character as required of applicants for licensure as pharmacists under
17 Subsection (1);

18 (f) produce satisfactory evidence of having met the examination requirements which
19 existed in this state at the time the applicant became licensed in the other state;

20 (g) pass the jurisprudence examination prescribed by division rule made in collaboration
21 with the board;

22 (h) have lawfully practiced as a licensed pharmacist a minimum of 2,000 hours in the four
23 years immediately preceding the date of application; and

24 [~~i) pass the Federal Drug Law Examination (FDLE) of the National Boards of Pharmacy~~
25 ~~if the applicant has not practiced pharmacy a minimum of 2,000 hours in the four years~~
26 ~~immediately preceding the date of application; and]~~

27 [(~~j~~) i] have no physical or mental condition of a nature which prevents the applicant from
28 engaging in the practice of pharmacy with reasonable skill, competency, and safety to the public.

29 (3) Each applicant for licensure as a pharmacist whose pharmacy education was completed
30 at a foreign pharmacy school, shall, in addition to the requirements under Subsection (1),
31 demonstrate educational equivalency of the foreign pharmacy school education with a

1 domestically accredited school of pharmacy by obtaining certification of equivalency from the
2 Foreign Pharmacy Graduate Examination Committee of the National Association of Boards of
3 Pharmacy Foundation.

4 (4) Each applicant for licensure as a pharmacy technician shall:

5 (a) submit an application in a form prescribed by the division;

6 (b) pay a fee determined by the department under Section 63-38-3.2;

7 (c) be of good moral character;

8 (d) have no physical or mental condition of a nature which prevents the applicant from
9 engaging in practice as a pharmacy technician with reasonable skill, competency, and safety to the
10 public; and

11 (e) (i) prior to July 1, 1998, have completed a program of education and training, meeting
12 standards established by division rule made in collaboration with the board, in either a formal
13 educational setting or on-the-job training in a licensed Utah pharmacy; or

14 (ii) after July 1, 1998:

15 (A) have completed a program of education and training, meeting standards established
16 by division rule made in collaboration with the board, in either a formal educational setting or
17 on-the-job training in a licensed Utah pharmacy; and

18 (B) successfully passed examinations required by division rule made in collaboration with
19 the board.

20 (5) Each applicant for a license to become a pharmacy intern shall:

21 (a) (i) be a current pharmacy student, or a resident or fellow in a program approved by the
22 division in collaboration with the board; [or]

23 [~~(ii) a pharmacist who is currently licensed in another U.S. state or territory, and has not
24 passed the examination required under this chapter for licensure as a pharmacist in Utah, but a
25 license issued under this Subsection (5)(a)(ii) may be for not longer than one year, and may be
26 issued only once;~~]

27 (ii) have graduated and received a professional entry degree from a school or college of
28 pharmacy which is accredited by the American Council on Pharmaceutical Education; or

29 (iii) have graduated from a foreign pharmacy school and received a certificate of
30 equivalency from the Foreign Pharmacy Graduate Examination Committee of the National
31 Association of Boards of Pharmacy foundation;

1 (b) meet the preliminary educational qualifications required by division rule made in
2 collaboration with the board, which rules shall require not less than completion of preprofessional
3 college training and ~~[one quarter or]~~ the equivalent of 15 semester hours or more of training in
4 professional pharmacy courses, or its equivalent, completed in a college or school of pharmacy
5 recognized by the division in collaboration with the board;

6 (c) submit an application in a form prescribed by the division; and

7 (d) pay a fee determined by the department under Section 63-38-3.2.

8 (6) (a) The duration of a pharmacy intern license may be no longer than:

9 (i) one year for a license issued under Subsection (5)(a)(ii) or (iii); and

10 (ii) four years for a license issued under Subsection (5)(a)(i).

11 (b) A pharmacy intern license issued under this chapter may not renewed, but may be
12 extended by the division in collaboration with the board.

13 Section 3. Section **58-17a-303** is amended to read:

14 **58-17a-303. License classifications of drug outlets and other facilities --**

15 **Qualifications for licensure.**

16 (1) A license is required as a condition precedent to engaging in activities regulated under
17 the license classifications set forth in Subsections (2) and (3), except as a person or activity is
18 specifically exempted from licensure under Section 58-1-307.

19 (2) The division shall issue to a person who qualifies under this chapter a license in the
20 drug outlet classifications:

21 (a) retail pharmacy;

22 (b) hospital pharmacy;

23 (c) institutional pharmacy;

24 (d) nuclear pharmacy;

25 (e) out-of-state mail order pharmacy;

26 (f) veterinary pharmaceutical outlet;

27 (g) branch pharmacy;

28 (h) pharmaceutical manufacturer; or

29 (i) pharmaceutical wholesaler/distributor.

30 (3) The division shall issue to a person who qualifies under this chapter a license in the
31 classifications:

- 1 (a) pharmaceutical researcher;
- 2 (b) pharmaceutical teaching organization;
- 3 (c) pharmaceutical dog trainer;
- 4 (d) animal euthanasia agency;
- 5 (e) analytical laboratory;
- 6 (f) pharmaceutical administration facility; and
- 7 (g) lethal injection use.

8 (4) Each applicant for licensure under this section shall:

- 9 (a) submit an application in a form prescribed by the division;
- 10 (b) pay a fee determined by the department under Section 63-38-3.2;

11 (c) satisfy the division that the applicant, and each owner, officer, or manager of the
 12 applicant has not engaged in any act, practice, or omission, which when considered with the duties
 13 and responsibilities of a licensee under this section indicates there is cause to believe that issuing
 14 a license to the applicant is inconsistent with the interests of the public's health, safety, or welfare;
 15 [and]

16 (d) demonstrate the licensee's operations will be in accordance with all federal, state, and
 17 local laws relating to the type of activity engaged in by the licensee, including regulations of the
 18 Federal Drug Enforcement Administration and Food and Drug Administration, and operating
 19 standards established in this chapter and by division rule made in collaboration with the board[-];
 20 and

21 (e) acknowledge the division's authority to inspect the licensee's business premises
 22 pursuant to Section 58-17a-103.

- 23 (5) Each license issued under this section:
- 24 (a) shall be issued for a single, specific location; and
- 25 (b) is not transferable or assignable.

26 Section 4. Section **58-17a-501** is amended to read:

27 **58-17a-501. Unlawful conduct.**

28 "Unlawful conduct" includes:

- 29 (1) knowingly preventing or refusing to permit any authorized agent of the division to
 30 [~~enter a pharmacy or any other place where prescription drugs or devices are kept, manufactured,~~
 31 ~~stored, dispensed, or distributed to a consumer, for the purpose of lawful]~~ conduct an inspection

1 [or other purpose in accordance with this chapter and rules made under it] pursuant to Section
2 58-17a-103;

3 (2) failing to deliver the license, permit, or certificate to the division upon demand, if it
4 has been revoked, suspended, or refused;

5 (3) (a) using the title "pharmacist," "druggist," "pharmacy intern," "pharmacy technician,"
6 "apothecary," or any term having similar meaning, except by a person licensed as a pharmacist,
7 pharmacy intern, or pharmacy technician; or

8 (b) conducting or transacting business under a name which contains, as part of that name,
9 the words "drugstore," "pharmacy," "drugs," "medicine store," "medicines," "drug shop,"
10 "apothecary," "prescriptions," or any term having a similar meaning, or in any manner advertising,
11 otherwise describing, or referring to the place of the conducted business or profession, unless the
12 place is a pharmacy issued a license by the division, except any establishment selling
13 nonprescription drugs and supplies may display signs bearing the words "packaged drugs", "drug
14 sundries", or "nonprescription drugs", and is not considered to be a pharmacy or drugstore by
15 reason of the display;

16 (4) buying, selling, or causing to be sold, or offering for sale, any drug or device which
17 bears, or the package bears or originally did bear, the inscription "sample," "not for resale," "for
18 investigational or experimental use only," or other similar words, except when a cost is incurred
19 in the bona fide acquisition of an investigational or experimental drug;

20 (5) using to his own advantage or revealing to anyone other than the division, board, and
21 its authorized representatives, or to the courts, when relevant to any judicial or administrative
22 proceeding under this chapter, any information acquired under authority of this chapter or
23 concerning any method or process which is a trade secret;

24 (6) procuring or attempting to procure any drug for himself or to have someone else
25 procure or attempt to procure any drug:

26 (a) by fraud, deceit, misrepresentation, or subterfuge;

27 (b) by forgery or alteration of a prescription or any written order;

28 (c) by concealment of a material fact;

29 (d) by use of a false statement in any prescription, chart, order, or report; or

30 (e) by theft;

31 (7) filling, refilling, or advertising the filling or refilling of prescriptions for any consumer

- 1 or patient residing in this state if that person is not licensed under this chapter;
- 2 (8) requiring any employed pharmacist, pharmacy intern, pharmacy technician, or
- 3 authorized supportive personnel to engage in any conduct in violation of this chapter;
- 4 (9) being in possession of a prescription drug for any unlawful purpose;
- 5 (10) dispensing a prescription drug to anyone who does not have a prescription from a
- 6 practitioner or to anyone who he knows or should know is attempting to obtain drugs by fraud or
- 7 misrepresentation;
- 8 (11) selling, dispensing, or otherwise trafficking in prescription drugs when not licensed
- 9 to do so or when not exempted from licensure; and
- 10 (12) engaging in the practice of pharmacy without a licensed pharmacist designated as the
- 11 pharmacist-in-charge.

Legislative Review Note
as of 1-19-98 10:22 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel