

1 **ONLINE PHARMACY AMENDMENTS**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Rebecca D. Lockhart

6 Cosponsor: Peter C. Knudson

7

8 **LONG TITLE**

9 **General Description:**

10 This bill creates an Online Prescribing, Dispensing, and Facilitation Licensing Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends unlawful conduct provisions;
- 14 ▶ defines terms;
- 15 ▶ requires licenses with the state to engage in online prescribing, online dispensing,
16 or Internet facilitation;
- 17 ▶ establishes requirements for the licenses;
- 18 ▶ allows certain online prescribers, online contract pharmacies, and Internet
19 facilitators to continue delivering online pharmaceutical services while their
20 applications for licensure are pending with the division;
- 21 ▶ establishes duties for a licensed online prescriber, online contract pharmacy, and
22 Internet facilitator;
- 23 ▶ limits the type of drugs that can be prescribed online;
- 24 ▶ requires the use of an Internet facilitator and an online contract pharmacy to
25 prescribe online; and
- 26 ▶ provides enforcement mechanisms for the division.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **58-1-501**, as last amended by Laws of Utah 2007, Chapter 162

34 ENACTS:

35 **58-83-101**, Utah Code Annotated 1953

36 **58-83-102**, Utah Code Annotated 1953

37 **58-83-201**, Utah Code Annotated 1953

38 **58-83-301**, Utah Code Annotated 1953

39 **58-83-302**, Utah Code Annotated 1953

40 **58-83-303**, Utah Code Annotated 1953

41 **58-83-304**, Utah Code Annotated 1953

42 **58-83-305**, Utah Code Annotated 1953

43 **58-83-306**, Utah Code Annotated 1953

44 **58-83-307**, Utah Code Annotated 1953

45 **58-83-308**, Utah Code Annotated 1953

46 **58-83-401**, Utah Code Annotated 1953

47 **58-83-501**, Utah Code Annotated 1953

48 **58-83-502**, Utah Code Annotated 1953

49 **58-83-503**, Utah Code Annotated 1953

50

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

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

53 **58-1-501. Unlawful and unprofessional conduct.**

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

56 (a) practicing or engaging in, representing oneself to be practicing or engaging in, or
57 attempting to practice or engage in any occupation or profession requiring licensure under this

58 title if the person is:

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

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

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

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

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

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

73 (f) (i) [~~unless Subsection (2)(m) or (4) applies,~~] issuing, or aiding and abetting in the
74 issuance of, an order or prescription for a drug or device to a person located in this state:

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

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

82 [~~(H) based on a questionnaire completed by the patient on the internet, or toll-free~~
83 ~~telephone number, when there exists no other bona fide patient-practitioner relationship; or]~~

84 [~~(C) in violation of Subsection (2)(m), when the licensed person who issued, or aided~~
85 ~~and abetted another in the issuance of the prescription has violated Subsection (2)(m) on more~~

86 ~~than 100 prescriptions within a 30-day period of time; and]~~

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

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

94 (a) violating, or aiding or abetting any other person to violate, any statute, rule, or
95 order regulating an occupation or profession under this title;

96 (b) violating, or aiding or abetting any other person to violate, any generally accepted
97 professional or ethical standard applicable to an occupation or profession regulated under this
98 title;

99 (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea
100 of guilty or nolo contendere which is held in abeyance pending the successful completion of
101 probation with respect to a crime of moral turpitude or any other crime that, when considered
102 with the functions and duties of the occupation or profession for which the license was issued
103 or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to
104 safely or competently practice the occupation or profession;

105 (d) engaging in conduct that results in disciplinary action, including reprimand,
106 censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory
107 authority having jurisdiction over the licensee or applicant in the same occupation or
108 profession if the conduct would, in this state, constitute grounds for denial of licensure or
109 disciplinary proceedings under Section 58-1-401;

110 (e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar
111 chemicals, to the extent that the conduct does, or might reasonably be considered to, impair
112 the ability of the licensee or applicant to safely engage in the occupation or profession;

113 (f) practicing or attempting to practice an occupation or profession regulated under

114 this title despite being physically or mentally unfit to do so;

115 (g) practicing or attempting to practice an occupation or profession regulated under
116 this title through gross incompetence, gross negligence, or a pattern of incompetency or
117 negligence;

118 (h) practicing or attempting to practice an occupation or profession requiring licensure
119 under this title by any form of action or communication which is false, misleading, deceptive,
120 or fraudulent;

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

123 (j) practicing or attempting to practice an occupation or profession regulated under
124 this title beyond the scope of the licensee's license;

125 (k) verbally, physically, mentally, or sexually abusing or exploiting any person through
126 conduct connected with the licensee's practice under this title or otherwise facilitated by the
127 licensee's license;

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

130 (m) ~~[unless Subsection (4) applies,]~~ issuing, or aiding and abetting in the issuance of,
131 an order or prescription for a drug or device:

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

135 ~~[(ii) based on a questionnaire completed by the patient on the internet, or toll free
136 telephone number when there exists no other bona fide patient-practitioner relationship or
137 bona fide referral by a practitioner involved in an existing patient-practitioner relationship; or]~~

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

142 proposed treatment; or

143 (n) violating a provision of Section 58-1-501.5.

144 [~~(3) Subsection (2)(m) does not apply to treatment rendered in an emergency, on-call,~~
145 ~~or cross coverage situation.]~~

146 [~~(4) Notwithstanding Subsections (1)(f) and (2)(m), the division may permit a person~~
147 ~~licensed to prescribe under this title to prescribe a legend drug to a person located in this state~~
148 ~~if the division in collaboration with the appropriate professional board has permitted the~~
149 ~~specific prescriptive practice of the legend drug by rule.]~~

150 Section 2. Section **58-83-101** is enacted to read:

151 **CHAPTER 83. ONLINE PRESCRIBING, DISPENSING,**
152 **AND FACILITATION LICENSING ACT**

153 **Part 1. General Provisions**

154 **58-83-101. Title.**

155 This chapter is known as the "Online Prescribing, Dispensing, and Facilitation
156 Licensing Act."

157 Section 3. Section **58-83-102** is enacted to read:

158 **58-83-102. Definitions.**

159 In addition to the definitions in Section 58-1-102, as used in this chapter:

160 (1) "Board" means the Online Prescribing, Dispensing, and Facilitation Licensing
161 Board created in Section 58-83-201.

162 (2) "Branching questionnaire" means an adaptive and progressive assessment tool
163 approved by the board.

164 (3) "Delivery of online pharmaceutical services" means the process in which a
165 prescribing practitioner diagnoses a patient and prescribes one or more of the drugs authorized
166 by Section 58-83-306, using:

167 (a) a branching questionnaire or other assessment tool approved by the division for the
168 purpose of diagnosing and assessing a patient's health status;

169 (b) an Internet contract pharmacy to:

- 170 (i) dispense the prescribed drug; or
- 171 (ii) transfer the prescription to another pharmacy; and
- 172 (c) an Internet facilitator to facilitate the practices described in Subsections (3)(a) and
- 173 (b).

174 (4) "Division" means the Utah Division of Occupational and Professional Licensing.

175 (5) "Internet facilitator" means a licensed provider of a web-based system for
176 electronic communication between and among an online prescriber, the online prescriber's
177 patient, and the online contract pharmacy.

178 (6) "Online contract pharmacy" means a pharmacy licensed and in good standing
179 under Chapter 17b, Pharmacy Practice Act, as either a Class A Retail Pharmacy or a Class B
180 Closed Door Pharmacy and licensed under this chapter to fulfill prescriptions issued by an
181 online prescriber through a specific Internet facilitator.

182 (7) "Online prescriber" means a person:

183 (a) licensed under another chapter of this title;

184 (b) whose license under another chapter of this title includes assessing, diagnosing,
185 and prescribing authority for humans; and

186 (c) who has obtained a license under this chapter to engage in online prescribing.

187 (8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-83-501.

188 (9) "Unprofessional conduct" is as defined in Sections 58-1-203 and 58-83-502, and
189 as further defined by the division in accordance with Title 63G, Chapter 3, Utah
190 Administrative Rulemaking Act.

191 Section 4. Section **58-83-201** is enacted to read:

192 **Part 2. Board**

193 **58-83-201. Board.**

194 (1) There is created the Online Prescribing, Dispensing, and Facilitation Licensing
195 Board consisting of the following seven members:

196 (a) two members who are licensed under either Chapter 67, Utah Medical Practices
197 Act, or Chapter 68, Utah Osteopathic Medical Practices Act, of which:

- 198 (i) one shall be engaged in the delivery of online pharmaceutical services; and
199 (ii) one may not be an online prescriber licensed under this chapter;
200 (b) two members who are licensed as a pharmacist under Chapter 17b, Pharmacy
201 Practice Act, of which:
202 (i) one shall be associated with an online contract pharmacy; and
203 (ii) one may not be associated with an online contract pharmacy;
204 (c) two members of the general public who are not associated with:
205 (i) an online prescriber;
206 (ii) an online contract pharmacy; or
207 (iii) an Internet facilitator; and
208 (d) one member who is licensed under this chapter as an Internet facilitator.
209 (2) Notwithstanding any other requirement for membership on the board, no more
210 than one member of the board may be associated in any of the following ways with the same
211 Internet facilitator:
212 (a) as an owner;
213 (b) as an employee;
214 (c) as an officer;
215 (d) as a director;
216 (e) contracted with;
217 (f) as an agent of; or
218 (g) having any direct or indirect financial interest.
219 (3) The board shall be appointed and serve in accordance with Section 58-1-201.
220 (4) (a) The duties and responsibilities of the board shall be in accordance with
221 Sections 58-1-202 and 58-1-203, and as otherwise provided in this chapter.
222 (b) The board may designate one of its members on a permanent or rotating basis to:
223 (i) assist the division in reviewing complaints concerning the unlawful or
224 unprofessional conduct of a licensee; and
225 (ii) advise the division in its investigation of a complaint.

226 (5) A board member who has, under Subsection (4), reviewed a complaint or advised
227 in its investigation may be disqualified from participating with the board when the board
228 serves as a presiding officer of an administrative proceeding concerning the complaint.

229 Section 5. Section **58-83-301** is enacted to read:

230 **Part 3. Licensing**

231 **58-83-301. Licensure required -- Issuance of licenses.**

232 (1) Beginning July 1, 2010, and except as provided in Section 58-1-307:

233 (a) a physician licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68,
234 Utah Osteopathic Medical Practice Act, shall be licensed under this chapter to engage in the
235 delivery of online pharmaceutical services;

236 (b) an online contract pharmacy shall be licensed under this chapter to engage in the
237 delivery of online pharmaceutical services; and

238 (c) an Internet facilitator shall be licensed under this chapter to engage in the delivery
239 of online pharmaceutical services.

240 (2) The division shall issue, to any person who qualifies under this chapter, a license:

241 (a) to prescribe online;

242 (b) to operate as an online contract pharmacy; or

243 (c) to operate as an Internet facilitator.

244 (3) (a) A license under this chapter is not required to engage in electronic prescribing
245 under Chapter 82, Electronic Prescribing Act; and

246 (b) nothing in this chapter shall prohibit a physician licensed under Chapter 67, Utah
247 Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act, from electronic
248 prescribing or Internet prescribing as permitted by Chapter 67 or 68, or other law.

249 Section 6. Section **58-83-302** is enacted to read:

250 **58-83-302. Qualifications for licensure.**

251 (1) Each applicant for licensure as an online prescriber under this chapter shall:

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

253 (b) pay a fee determined by the department under Section 63J-1-504;

- 254 (c) be of good moral character;
- 255 (d) document that the applicant holds a Utah license that is active and in good
- 256 standing and authorizes the licensee to engage in the assessment, diagnosis, and treatment of
- 257 human ailments and the prescription of medications;
- 258 (e) document that any other professional license the applicant possesses from other
- 259 jurisdictions is in good standing;
- 260 (f) (i) submit to the division an outline of the applicant's proposed online assessment,
- 261 diagnosis, and prescribing tool, such as a branching questionnaire; and
- 262 (ii) demonstrate the proposed online assessment, diagnosis, and prescribing tool to the
- 263 board and establish to the board's satisfaction that the utilization of that assessment tool to
- 264 facilitate the prescription of the drugs approved for online prescribing under Section
- 265 58-83-305 does not compromise the public's health, safety, or welfare;
- 266 (g) submit policies and procedures that address patient confidentiality, including
- 267 measures that will be taken to ensure that the age and other identifying information of the
- 268 person completing the online branching questionnaire are accurate;
- 269 (h) describe the mechanism by which the online prescriber and patient will
- 270 communicate with one another, including electronic and telephonic communication;
- 271 (i) describe how the online prescriber/patient relationship will be established and
- 272 maintained;
- 273 (j) submit the name, address, and contact person of the Internet facilitator with whom
- 274 the online prescriber has contracted to provide services that the online prescriber will use to
- 275 engage in online assessment, diagnosis, and prescribing; and
- 276 (k) submit documentation satisfactory to the board regarding public health, safety, and
- 277 welfare demonstrating:
- 278 (i) how the online prescriber will comply with the requirements of Section 58-83-305;
- 279 (ii) the contractual services arrangement between the online prescriber and:
- 280 (A) the Internet facilitator; and
- 281 (B) the online contract pharmacy; and

282 (iii) how the online prescriber will allow and facilitate the division's ability to conduct
283 audits in accordance with Section 58-83-308.

284 (2) An online prescriber may not use the services of an Internet facilitator or online
285 contract pharmacy whose license is not active and in good standing.

286 (3) Each applicant for licensure as an online contract pharmacy under this chapter
287 shall:

288 (a) be licensed in good standing in Utah as a Class A Retail Pharmacy or a Class B
289 Closed Door Pharmacy;

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

291 (c) pay a fee as determined by the department under Section 63J-1-504;

292 (d) submit any contract between the applicant and the Internet facilitator with which
293 the applicant is or will be affiliated;

294 (e) submit proof of liability insurance acceptable to the division that expressly covers
295 all activities the online contract pharmacy will engage in under this chapter, which coverage
296 shall be in a minimum amount of \$1,000,000 per occurrence with a policy limit of not less
297 than \$3,000,000;

298 (f) submit a signed affidavit to the division attesting that the online contract pharmacy
299 will not dispense a drug that is prescribed by an online prescriber engaged in the delivery of
300 online pharmaceutical services under the provisions of this chapter unless:

301 (i) the drug is specifically approved by the division under Section 58-83-306; and

302 (ii) both the prescribing and the dispensing of the drug were facilitated by the Internet
303 facilitator with whom the Internet contract pharmacy is associated under Subsection
304 58-83-302(3)(d);

305 (g) document that any other professional license the applicant possesses from other
306 jurisdictions is active and in good standing; and

307 (h) demonstrate to the division that the applicant has satisfied any background check
308 required by Section 58-17b-307, and each owner, officer, or manager of the applicant online
309 contract pharmacy has not engaged in any act, practice, or omission, which when considered

310 with the duties and responsibilities of a licensee under this chapter indicates there is cause to
311 believe that issuing a license under this chapter is inconsistent with the public's health, safety,
312 or welfare.

313 (4) Each applicant for licensure as an Internet facilitator under this chapter shall:

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

315 (b) pay a fee as determined by the department under Section 63J-1-504;

316 (c) submit any contract between the applicant and the following with which the
317 applicant will be affiliated:

318 (i) each online prescriber; and

319 (ii) the single online contract pharmacy;

320 (d) submit written policies and procedures satisfactory to the division that:

321 (i) address patient privacy, including compliance with 45 C.F.R. Parts 160, 162, and
322 164, Health Insurance Portability and Accountability Act of 1996;

323 (ii) ensure compliance with all applicable laws by health care personnel and the online
324 prescriber who will process patient communications;

325 (iii) list the hours of operation;

326 (iv) describe the types of services that will be permitted electronically;

327 (v) describe the required patient information to be included in the communication,
328 such as patient name, identification number, and type of transaction;

329 (vi) establish procedures for archiving and retrieving information; and

330 (vii) establish quality oversight mechanisms;

331 (e) submit written documentation of the applicant's security measures to ensure the
332 confidentiality and integrity of any user-identifiable medical information;

333 (f) submit a description of the mechanism for:

334 (i) patients to access, supplement, and amend patient-provided personal health
335 information;

336 (ii) back-up regarding the Internet facilitator electronic interface;

337 (iii) the quality of information and services provided via the interface; and

- 338 (iv) patients to register complaints regarding the Internet facilitator, the online
- 339 prescriber, or the online contract pharmacy;
- 340 (g) submit a copy of the Internet facilitator's website;
- 341 (h) sign an affidavit attesting that:
- 342 (i) the applicant will not access any medical records or information contained in the
- 343 medical record except as necessary to administer the website and the branching questionnaire;
- 344 and
- 345 (ii) the applicant and its principals, and any entities affiliated with them, will only use
- 346 the services of a single online contract pharmacy named on the license approved by the
- 347 division; and
- 348 (i) submit any other information required by the division.

349 Section 7. Section **58-83-303** is enacted to read:

350 **58-83-303. Term of license -- Expiration -- Renewal.**

351 (1) The online prescriber's license shall be associated with the online prescriber's

352 primary professional license and may be renewed at the time the primary license is renewed in

353 accordance with Subsection 58-1-308(1).

354 (2) The online contract pharmacy license shall be associated with the online contract

355 pharmacy's primary professional license and may be renewed at the time the primary license is

356 renewed in accordance with Subsection 58-1-308(1).

357 (3) The Internet facilitator license shall be renewed in accordance with Section

358 58-1-308.

359 (4) Each licensee shall, at the time of applying for renewal, demonstrate compliance

360 with this chapter.

361 (5) Each license shall automatically expire on the expiration date shown on the license

362 unless the licensee renews it in accordance with Section 58-1-308.

363 Section 8. Section **58-83-304** is enacted to read:

364 **58-83-304. Existing written agreements for online prescribing -- Pending**

365 **applications.**

366 (1) (a) Subject to the provisions of this section, and until December 31, 2010, an entity
367 or individual not licensed by the division to engage in the delivery of online pharmaceutical
368 services under this chapter may nevertheless engage in the delivery of online pharmaceutical
369 services if permitted by the division to do so prior to December 31, 2009, under either:

370 (i) a non-disciplinary stipulation and consent order with the division; or

371 (ii) a letter agreement with the division.

372 (b) An entity or individual subject to Subsection (1)(a) shall only be permitted to
373 engage in the delivery of online pharmaceutical services after December 31, 2010, if, on or
374 before that date, it has obtained a license in accordance with the provisions of this chapter.

375 (2) An entity or individual engaged in the delivery of online pharmaceutical services
376 under the provisions of Subsection (1), may continue to operate in accordance with the terms
377 and conditions of the written consent or agreement subject to the following:

378 (a) On or before June 1, 2010, the entity or individual shall file an application with the
379 division in accordance with this chapter for:

380 (i) an online prescriber license;

381 (ii) an online contract pharmacy license; or

382 (iii) an Internet facilitator license.

383 (b) After the application for a license under this chapter is filed in accordance with
384 Subsection (2)(a), the applicant may continue to operate under the terms and conditions of the
385 written consent agreement under Subsection (1)(a) until the division has issued its decision on
386 the application.

387 (c) If the application is approved and a license is issued, the licensee:

388 (i) shall operate under the terms of the license under this chapter; and

389 (ii) may not operate under the terms and conditions of the prior written consent or
390 agreement of the division.

391 (d) If the application for license under this chapter is denied, the applicant may not
392 operate under the prior written consent or agreement with the division after the date the
393 application for a license under this chapter is denied by the division.

394 (3) (a) The following provisions apply to any application for authorization to engage
395 in the delivery of online pharmaceutical services that was pending with the division on the
396 effective date of this chapter:

397 (i) the applicant shall:

398 (A) no later than June 30, 2010, provide supplemental documentation to the division
399 to correct any deficiency in the application; and

400 (B) notify the division in writing that the application is ready to be acted upon by the
401 division; or

402 (ii) the applicant may rely upon the existing application submitted to the division
403 without any supplementation under Subsection (1)(a)(i), if the applicant notifies the division
404 in writing that the application is ready to be acted upon by the division.

405 (b) The division shall not, prior to June 30, 2010, act on an application pending with
406 the division on the effective date of this chapter unless the division prior to June 30, 2010,
407 receives a notification from the applicant that the application is ready to be acted upon by the
408 division.

409 Section 9. Section **58-83-305** is enacted to read:

410 **58-83-305. Duties and responsibilities.**

411 (1) The online prescriber shall:

412 (a) be held to the same standards of appropriate practice as those applicable in
413 traditional settings which, for purposes of this chapter, include the delivery of online
414 pharmaceutical services;

415 (b) conduct an assessment and diagnosis based upon a comprehensive health history
416 and an assessment tool such as a branching questionnaire;

417 (c) ensure that a comprehensive health history, assessment, and diagnosis have been
418 made before prescribing any medication;

419 (d) conduct the online assessment and diagnosis only through the approved Internet
420 facilitator identified in the online prescriber's application;

421 (e) comply with all applicable state and federal laws, rules, regulations, and orders;

- 422 (f) inform the patient electronically of the benefits and risks of appropriate treatment;
- 423 (g) guide the patient regarding the optimal course of action;
- 424 (h) treat the patient with courtesy, respect, dignity, responsiveness, and timely
- 425 attention to the patient's needs;
- 426 (i) comply with the requirements for confidentiality as required by this title and
- 427 applicable federal law;
- 428 (j) continue to provide the user with reasonable assistance and sufficient opportunity
- 429 to make alternative arrangements for care;
- 430 (k) be available for ongoing consultation with the patient through e-mail or other
- 431 forms of communication;
- 432 (l) not delegate to a third party the professional responsibility to:
- 433 (i) review and evaluate the results of the branching questionnaire;
- 434 (ii) consult with the patient electronically or through other means about the patient's
- 435 medical condition; and
- 436 (iii) diagnose and prescribe medications to the patient;
- 437 (m) conduct the online assessment and diagnosis and the electronic communication
- 438 between the online prescriber and the patient only through the approved Internet facilitator;
- 439 (n) (i) maintain the online medical records of the patient; and
- 440 (ii) if maintenance of the records is delegated by the online prescriber, delegate that
- 441 authority only to the approved Internet facilitator;
- 442 (o) inform a patient of the patient's freedom of choice to select the pharmacy to
- 443 dispense the patient's prescription by providing the patient with the phone number of the
- 444 online contract pharmacy so that the patient may contact the online contract pharmacy and
- 445 request a transfer of the prescription to another pharmacy; and
- 446 (p) authorize the Internet facilitator to provide the online contract pharmacy with the
- 447 patient's:
- 448 (i) full name;
- 449 (ii) current address and telephone number;

450 (iii) date of birth or age and gender;
451 (iv) height, weight, and vital signs (if known);
452 (v) medication allergies or drug reactions; and
453 (vi) current medications, including over-the-counter products, and any additional
454 comments relevant to the patient's drug use.
455 (2) The online contract pharmacy shall:
456 (a) only dispense prescription drugs that:
457 (i) are approved by the division in accordance with Section 58-83-306; and
458 (ii) were prescribed by an online prescriber who is using the Internet facilitator that is
459 under contract with the online contract pharmacy;
460 (b) maintain a toll-free number with a pharmacist available for patients using the
461 services of the online contract pharmacy to receive medications prescribed online;
462 (c) use a tracking identification number system when shipping medications prescribed
463 for patients by an online prescriber; and
464 (d) provide to the division a quarterly report of all drugs dispensed in accordance with
465 this chapter.
466 (3) The Internet facilitator shall:
467 (a) provide services that the online prescriber will use in implementing the branching
468 questionnaire;
469 (b) provide electronic or telephonic communication between the online prescriber and
470 the patient that:
471 (i) is secure and confidential;
472 (ii) allows the online prescriber to be directly accessible to a patient to answer
473 questions regarding the patient's treatment plan; and
474 (iii) provides privacy and security that complies with the provisions of 45 C.F.R. Parts
475 160, 162, and 164, Health Insurance Portability and Accountability Act of 1996;
476 (c) facilitate secure and confidential communication of the prescription issued by the
477 online prescriber to the online contract pharmacy in accordance with Subsection (1)(p);

- 478 (d) disclose on its website:
479 (i) the owner of the website;
480 (ii) the specific services provided by any associated online prescribers; and
481 (iii) other information the division may require by rule; and
482 (e) (i) only facilitate the delivery of online pharmaceutical services for the specific
483 legend drugs approved by the division in accordance with Section 58-83-306; or
484 (ii) not facilitate, directly or indirectly, through related entities or affiliates, the
485 dispensing or online prescribing of any drug whether controlled or legend that is not
486 specifically approved under Section 58-83-306.

487 Section 10. Section **58-83-306** is enacted to read:

488 **58-83-306. Drugs approved for online prescribing, dispensing, and facilitation.**

489 (1) An online prescriber may only prescribe, an online contract pharmacy may only
490 dispense, and an Internet facilitator may only facilitate the prescribing and dispensing of,
491 non-controlled, legend drugs that have been:

- 492 (a) approved by the Food and Drug Administration;
493 (b) prescribed to treat the condition for which the drug was approved; and
494 (c) specifically approved by the division for online prescribing by administrative rule
495 adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

496 (2) If, after January 1, 2010, the Food and Drug Administration issues a clinical black
497 box warning with respect to any drug approved by the board under Subsection (1), the division
498 shall determine what action, if any, is necessary to protect the public health or welfare as a
499 result of the black box warning.

500 Section 11. Section **58-83-307** is enacted to read:

501 **58-83-307. Approval of additional drugs -- Request to facilitate.**

502 (1) An Internet facilitator licensed under this chapter may seek the division's approval
503 to facilitate the online prescribing and dispensing of prescriptions for additional drugs.

504 (2) The Internet facilitator shall make a request for approval of additional drugs by
505 petitioning for an amendment to the administrative rule adopted by the division in accordance

506 with Section 58-83-306 and Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

507 Section 12. Section **58-83-308** is enacted to read:

508 **58-83-308. Audits.**

509 (1) Each licensee under this chapter shall allow and facilitate an audit by the division
510 regarding the licensee's delivery of online pharmaceutical services to ensure compliance with
511 state and federal statutes, rules, and regulations including ensuring that:

512 (a) a comprehensive history and assessment have been obtained and a diagnosis has
513 been made for a patient before any medications are prescribed; and

514 (b) only the approved medications are being prescribed and dispensed.

515 (2) The division shall be provided with the following, in the manner that allows access
516 from the division's office for the purpose of conducting an audit:

517 (a) full remote, read-only access rights to the data related to the online prescribing and
518 dispensing of a drug under this chapter and that is used and stored in the Internet facilitator's
519 system; and

520 (b) the information available to the online prescriber.

521 (3) An Internet facilitator licensed under this chapter shall provide to the division, at
522 the times designated by the division by administrative rule, a report containing the following
523 information:

524 (a) the number of prescriptions issued by the online prescribers associated with the
525 Internet facilitator by drug name;

526 (b) the number of comprehensive histories/assessments received by the Internet
527 facilitator;

528 (c) the number of comprehensive histories/assessments reviewed by an online
529 prescriber;

530 (d) the demographic data of the patients receiving prescriptions through the Internet
531 facilitator;

532 (e) the number of prescriptions:

533 (i) dispensed by the online contract pharmacy; or

- 534 (ii) transferred to a different pharmacy at the patient's request; and
- 535 (f) any other information specified by the division by administrative rule.
- 536 (4) The division's authority to conduct an audit pursuant to this chapter shall survive
- 537 any termination or expiration of any prescriptive authority for online prescribing, dispensing,
- 538 or facilitation.

539 Section 13. Section **58-83-401** is enacted to read:

540 **Part 4. License Denial and Discipline**

541 **58-83-401. Grounds for denial of license -- Disciplinary proceedings --**

542 **Termination of authority to prescribe -- Immediate and significant danger.**

543 (1) Grounds for refusing to issue a license to an applicant, for refusing to renew the

544 license of a licensee, for revoking, suspending, restricting, or placing on probation the license

545 of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease

546 and desist order:

547 (a) shall be in accordance with Section 58-1-401; and

548 (b) includes:

549 (i) prescribing, dispensing, or facilitating the prescribing or dispensing of a drug not

550 approved by the board under Section 58-83-306; or

551 (ii) any other violation of this chapter.

552 (2) The termination or expiration of a license under this chapter for any reason does

553 not limit the division's authority to start or continue any investigation or adjudicative

554 proceeding.

555 (3) Because of the working business relationship between and among the online

556 prescriber, the Internet facilitator, and the online contract pharmacy, each entity's ability to

557 comply with this chapter may depend in some respects on the actions of the others. It is

558 possible that a particular action or inaction by the online prescriber, the Internet facilitator, or

559 the online contract pharmacy could have the effect of causing the other licensed entities to be

560 out of compliance with this chapter, and each entity may, therefore, be held accountable for

561 any related party's non-compliance, if the party knew or reasonably should have known of the

562 other person's non-compliance.

563 (4) An online prescriber may lose the practitioner's professional license to prescribe
564 any drug under this title if the online prescriber knew or reasonably should have known that
565 the provisions of this chapter were violated by the online prescriber, the Internet facilitator, or
566 the online contract pharmacy. It is not a defense to an alleged violation under this chapter that
567 the alleged violation was a result of an action or inaction not by the charged party but by the
568 related online prescriber, the online contract pharmacy, or the Internet facilitator.

569 (5) The following actions may result in an immediate suspension of the online
570 prescriber's license, the online contract pharmacy's license, or the Internet facilitator's license,
571 and each is considered an immediate and significant danger to the public health, safety, or
572 welfare requiring immediate action by the division pursuant to Section 63G-4-502 to terminate
573 the delivery of online pharmaceutical services by the licensee:

574 (a) online prescribing, dispensing, or facilitation with respect to:

575 (i) a person under the age of 18 years;

576 (ii) a legend drug not authorized by the division in accordance with Section
577 58-83-306; and

578 (iii) any controlled substance;

579 (b) violating this chapter after having been given reasonable opportunity to cure the
580 violation;

581 (c) using the name or official seal of the state, the Utah Department of Commerce, or
582 the Utah Division of Occupational and Professional Licensing, or their boards, in an
583 unauthorized manner; or

584 (d) failing to respond to a request from the division within the time frame requested
585 for:

586 (i) an audit of the website; or

587 (ii) records of the online prescriber, the Internet facilitator, or the online contract
588 pharmacy.

589 Section 14. Section **58-83-501** is enacted to read:

590 **Part 5. Unlawful and Unprofessional Conduct - Penalties**591 **58-83-501. Practice without a license.**

592 "Unlawful conduct" includes, in addition to the definition in Section 58-1-501,
593 engaging in the practice of Internet prescribing without a license under this chapter.

594 Section 15. Section **58-83-502** is enacted to read:

595 **58-83-502. Unprofessional conduct.**

596 "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501
597 and as may be further defined by administrative rule:

598 (1) online prescribing, dispensing, or facilitation with respect to a person under the
599 age of 18 years;

600 (2) using the name or official seal of the state, the Utah Department of Commerce, or
601 the Utah Division of Occupational and Professional Licensing, or their boards, in an
602 unauthorized manner;

603 (3) failing to respond promptly to a request by the division for information including:

604 (a) an audit of the website; or

605 (b) records of the online prescriber, the Internet facilitator, or the online contract
606 pharmacy;

607 (4) using an online prescriber, online contract pharmacy, or Internet facilitator without
608 approval of the division;

609 (5) failing to inform a patient of the patient's freedom of choice in selecting who will
610 dispense a prescription in accordance with Subsection 58-83-305(1)(n); and

611 (6) failing to keep the division informed of the name and contact information of the
612 Internet facilitator or online contract pharmacy.

613 Section 16. Section **58-83-503** is enacted to read:

614 **58-83-503. Unlawful conduct.**

615 Unlawful conduct includes, in addition to the definition in Section 58-1-501:

616 (1) online prescribing, dispensing or facilitating of a legend drug not authorized by the
617 division in accordance with Section 58-83-306; or

618

(2) online prescribing, dispensing or facilitating of a controlled substance.