

1 **PRESCRIPTION FOR CONTROLLED**
2 **SUBSTANCES**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Eli H. Anderson**

6 AN ACT RELATING TO CONTROLLED SUBSTANCES; EXTENDING THE TIME WITHIN
7 WHICH A PRESCRIPTION FOR A CONTROLLED SUBSTANCE MAY BE FILLED.

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

9 AMENDS:

10 **58-37-6**, as last amended by Chapter 13, Laws of Utah 1998

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

12 Section 1. Section **58-37-6** is amended to read:

13 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**
14 **conduct research -- Issuance by department -- Denial, suspension, or revocation -- Records**
15 **required -- Prescriptions.**

16 (1) (a) The department may adopt rules relating to the licensing and control of the
17 manufacture, distribution, production, prescription, administration, dispensing, conducting of
18 research with, and performing of laboratory analysis upon controlled substances within this state.

19 (b) The department may assess reasonable fees to defray the cost of issuing original and
20 renewal licenses under this chapter pursuant to Section 63-38-3.2.

21 (c) The director of the department may delegate to any division or agency within the
22 department, authority to perform the responsibilities and functions prescribed to the department
23 under this chapter if the delegated authority is consistent with the function of the division or
24 agency provided by law.

25 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,
26 administers, conducts research with, or performs laboratory analysis upon any controlled substance
27 in Schedules II through V within this state, or who proposes to engage in manufacturing,

28 producing, distributing, prescribing, dispensing, administering, conducting research with, or
29 performing laboratory analysis upon controlled substances included in Schedules II through V
30 within this state shall obtain a license issued by the department.

31 (ii) The division shall issue each license under this chapter in accordance with a two-year
32 renewal cycle established by rule. The division may by rule extend or shorten a renewal period
33 by as much as one year to stagger the renewal cycles it administers.

34 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense, administer,
35 conduct research with, or perform laboratory analysis upon controlled substances in Schedules II
36 through V within this state may possess, manufacture, produce, distribute, prescribe, dispense,
37 administer, conduct research with, or perform laboratory analysis upon those substances to the
38 extent authorized by their license and in conformity with this chapter.

39 (c) The following persons are not required to obtain a license and may lawfully possess
40 controlled substances under this section:

41 (i) an agent or employee, except a sales representative, of any registered manufacturer,
42 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the usual
43 course of his business or employment; however, nothing in this subsection shall be interpreted to
44 permit an agent, employee, sales representative, or detail man to maintain an inventory of
45 controlled substances separate from the location of his employer's registered and licensed place
46 of business;

47 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or warehouseman,
48 who possesses any controlled substance in the usual course of his business or employment; and

49 (iii) an ultimate user, or any person who possesses any controlled substance pursuant to
50 a lawful order of a practitioner.

51 (d) The department may enact rules waiving the license requirement for certain
52 manufacturers, producers, distributors, prescribers, dispensers, administrators, research
53 practitioners, or laboratories performing analysis if consistent with the public health and safety.

54 (e) A separate license is required at each principal place of business or professional
55 practice where the applicant manufactures, produces, distributes, prescribes, dispenses,
56 administers, conducts research with, or performs laboratory analysis upon controlled substances.

57 (f) The department may enact rules providing for the inspection of a licensee or applicant's
58 establishment, and may inspect the establishment according to those rules.

59 (3) (a) Upon proper application, the department shall license a qualified applicant to
60 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon
61 controlled substances included in Schedules I through V, unless it determines that issuance of a
62 license is inconsistent with the public interest. The department shall not issue a license to any
63 person to prescribe, dispense, or administer a Schedule I controlled substance. In determining
64 public interest, the department shall consider whether or not the applicant has:

65 (i) maintained effective controls against diversion of controlled substances and any
66 Schedule I or II substance compounded from any controlled substance into other than legitimate
67 medical, scientific, or industrial channels;

68 (ii) complied with applicable state and local law;

69 (iii) been convicted under federal or state laws relating to the manufacture, distribution,
70 or dispensing of substances;

71 (iv) past experience in the manufacture of controlled dangerous substances;

72 (v) established effective controls against diversion; and

73 (vi) complied with any other factors that the department establishes that promote the public
74 health and safety.

75 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,
76 produce, distribute, conduct research with, or perform laboratory analysis upon controlled
77 substances in Schedule I other than those specified in the license.

78 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with
79 substances in Schedules II through V if they are authorized to administer, dispense, or conduct
80 research under the laws of this state.

81 (ii) The department need not require a separate license for practitioners engaging in
82 research with nonnarcotic controlled substances in Schedules II through V where the licensee is
83 already licensed under this act in another capacity.

84 (iii) With respect to research involving narcotic substances in Schedules II through V, or
85 where the department by rule requires a separate license for research of nonnarcotic substances in
86 Schedules II through V, a practitioner shall apply to the department prior to conducting research.

87 (iv) Licensing for purposes of bona fide research with controlled substances by a
88 practitioner considered qualified may be denied only on a ground specified in Subsection (4), or
89 upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately

90 his supply of substances against diversion from medical or scientific use.

91 (v) Practitioners registered under federal law to conduct research in Schedule I substances
92 may conduct research in Schedule I substances within this state upon furnishing the department
93 evidence of federal registration.

94 (d) Compliance by manufacturers, producers, and distributors with the provisions of
95 federal law respecting registration, excluding fees, entitles them to be licensed under this chapter.

96 (e) The department shall initially license those persons who own or operate an
97 establishment engaged in the manufacture, production, distribution, dispensation, or administration
98 of controlled substances prior to April 3, 1980, and who are licensed by the state.

99 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed on
100 probation, or revoked by the department upon finding that the applicant or licensee has:

101 (i) materially falsified any application filed or required pursuant to this chapter;

102 (ii) been convicted of an offense under this chapter or any law of the United States, or any
103 state, relating to any substance defined as a controlled substance;

104 (iii) been convicted of a felony under any other law of the United States or any state within
105 five years of the date of the issuance of the license;

106 (iv) had a federal license denied, suspended, or revoked by competent federal authority and
107 is no longer authorized to engage in the manufacturing, distribution, or dispensing of controlled
108 substances;

109 (v) had his license suspended or revoked by competent authority of another state for
110 violation of laws or regulations comparable to those of this state relating to the manufacture,
111 distribution, or dispensing of controlled substances;

112 (vi) violated any department rule that reflects adversely on the licensee's reliability and
113 integrity with respect to controlled substances;

114 (vii) refused inspection of records required to be maintained under this chapter by a person
115 authorized to inspect them; or

116 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose
117 of manipulating human hormonal structure so as to:

118 (A) increase muscle mass, strength, or weight without medical necessity and without a
119 written prescription by any practitioner in the course of his professional practice; or

120 (B) improve performance in any form of human exercise, sport, or game.

121 (b) The department may limit revocation or suspension of a license to a particular
122 controlled substance with respect to which grounds for revocation or suspension exist.

123 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this
124 section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of
125 Occupational and Professional Licensing Act, and conducted in conjunction with the appropriate
126 representative committee designated by the director of the department.

127 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and Professional
128 Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses, except where
129 the department is designated by law to perform those functions, or, when not designated by law,
130 is designated by the executive director of the Department of Commerce to conduct the
131 proceedings.

132 (d) (i) The department may suspend any license simultaneously with the institution of
133 proceedings under this section if it finds there is an imminent danger to the public health or safety.

134 (ii) Suspension shall continue in effect until the conclusion of proceedings, including
135 judicial review, unless withdrawn by the department or dissolved by a court of competent
136 jurisdiction.

137 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled
138 substances owned or possessed by the licensee may be placed under seal in the discretion of the
139 department.

140 (ii) Disposition may not be made of substances under seal until the time for taking an
141 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application, orders
142 the sale of perishable substances and the proceeds deposited with the court.

143 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

144 (f) The department shall notify promptly the Drug Enforcement Administration of all
145 orders suspending or revoking a license and all forfeitures of controlled substances.

146 (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and inventories
147 in conformance with the record keeping and inventory requirements of federal and state law and
148 any additional rules issued by the department.

149 (b) (i) Every physician, dentist, veterinarian, practitioner, or other person who is authorized
150 to administer or professionally use a controlled substance shall keep a record of the drugs received
151 by him and a record of all drugs administered, dispensed, or professionally used by him otherwise

152 than by a prescription.

153 (ii) A person using small quantities or solutions or other preparations of those drugs for
154 local application has complied with Subsection (5)(b) if he keeps a record of the quantity,
155 character, and potency of those solutions or preparations purchased or prepared by him, and of the
156 dates when purchased or prepared.

157 (6) Controlled substances in Schedules I through V may be distributed only by a licensee
158 and pursuant to an order form prepared in compliance with department rules or a lawful order
159 under the rules and regulations of the United States.

160 (7) (a) A person may not write or authorize a prescription for a controlled substance unless
161 he is:

162 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state
163 or under the laws of another state having similar standards; and

164 (ii) licensed under this chapter or under the laws of another state having similar standards.

165 (b) A person other than a pharmacist licensed under the laws of this state, or his licensed
166 intern, as required by Section 58-17a-302, may not dispense a controlled substance.

167 (c) (i) A controlled substance may not be dispensed without the written prescription of a
168 practitioner, if the written prescription is required by the federal Controlled Substances Act.

169 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in
170 conformity with Subsection (7)(d).

171 (iii) In emergency situations, as defined by department rule, controlled substances may be
172 dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms
173 designated by the department and filed by the pharmacy.

174 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with
175 Subsection (7)(d).

176 (d) Except for emergency situations designated by the department, a person may not issue,
177 fill, compound, or dispense a prescription for a controlled substance unless the prescription is
178 signed in ink or indelible pencil by the prescriber and contains the following information:

179 (i) the name, address, and registry number of the prescriber;

180 (ii) the name, address, and age of the person to whom or for whom the prescription is
181 issued;

182 (iii) the date of issuance of the prescription; and

183 (iv) the name, quantity, and specific directions for use by the ultimate user of the
184 controlled substance.

185 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I
186 controlled substance.

187 (f) Except when administered directly to an ultimate user by a licensed practitioner,
188 controlled substances are subject to the following restrictions:

189 (i) A prescription for a Schedule II substance may be refilled only upon the written
190 prescription of an authorized practitioner, and a prescription for a Schedule II controlled substance
191 may not be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate
192 of the prescriptions.

193 (ii) A Schedule III or IV controlled substance may not be refilled more than six months
194 after the date of its original issuance or be refilled more than five times after the date of the
195 prescription unless renewed by the practitioner.

196 (iii) All other controlled substances in Schedule V may be refilled as the prescriber's
197 prescription directs, but they may not be refilled one year after the date the prescription was issued
198 unless renewed by the practitioner.

199 (iv) Any prescription for a Schedule II, III, and IV substance that is not presented to a
200 pharmacist for dispensing by a pharmacist, or, if an oral prescription, that is not obtained within
201 [~~ten days of the date the prescription was written or authorized;~~] the time periods established by
202 federal law may not be filled or dispensed.

203 (g) An order for a controlled substance in Schedules II through V for use by an inpatient
204 or an outpatient of a licensed hospital is exempt from all requirements of Subsection (7) if the
205 order is:

206 (i) issued or made by a prescribing practitioner who holds an unrestricted registration with
207 the federal Drug Enforcement Administration, and an active Utah controlled substance license in
208 good standing issued by the division under this section, or a medical resident who is exempted
209 from licensure under Subsection 58-1-307(1)(c);

210 (ii) authorized by the prescribing practitioner treating the patient and the prescribing
211 practitioner designates the quantity ordered;

212 (iii) entered upon the record of the patient, the record is signed by the prescriber affirming
213 his authorization of the order within 48 hours after filling or administering the order, and the

214 patient's record reflects the quantity actually administered; and

215 (iv) filled and dispensed by a pharmacist practicing his profession within the physical
216 structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital
217 and the amount taken from the supply is administered directly to the patient authorized to receive
218 it.

219 (h) A practitioner licensed under this chapter may not prescribe, administer, or dispense
220 a controlled substance to a minor, without first obtaining the consent required in Section 78-14-5
221 of a parent, guardian, or person standing in loco parentis of the minor except in cases of an
222 emergency. For purposes of this Subsection (7)(h), "minor" has the same meaning as defined in
223 Section 78-3a-103, and "emergency" means any physical condition requiring the administration
224 of a controlled substance for immediate relief of pain or suffering.

225 (i) A practitioner licensed under this chapter may not prescribe or administer dosages of
226 a controlled substance in excess of medically recognized quantities necessary to treat the ailment,
227 malady, or condition of the ultimate user.

228 (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense
229 any controlled substance to another person knowing that the other person is using a false name,
230 address, or other personal information for the purpose of securing the controlled substance.

231 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense a
232 controlled substance may not manufacture, distribute, or dispense a controlled substance to another
233 licensee or any other authorized person not authorized by this license.

234 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a symbol
235 required by this chapter or by a rule issued under this chapter.

236 (m) A person licensed under this chapter may not refuse or fail to make, keep, or furnish
237 any record notification, order form, statement, invoice, or information required under this chapter.

238 (n) A person licensed under this chapter may not refuse entry into any premises for
239 inspection as authorized by this chapter.

240 (o) A person licensed under this chapter may not furnish false or fraudulent material
241 information in any application, report, or other document required to be kept by this chapter or
242 willfully make any false statement in any prescription, order, report, or record required by this
243 chapter.

244 (8) (a) Any person licensed under this chapter who is found by the department to have

245 violated any of the provisions of Subsections (7)(k) through (7)(o) is subject to a fine not to exceed
246 \$5,000. The department shall determine the procedure for adjudication of any violations in
247 accordance with Sections 58-1-106 and 58-1-108.

248 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through (7)(j)
249 is:

250 (i) upon first conviction, guilty of a class B misdemeanor;

251 (ii) upon second conviction, guilty of a class A misdemeanor; and

252 (iii) on third or subsequent conviction, guilty of a third degree felony.

253 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through (7)(o)
254 shall upon conviction be guilty of a third degree felony.

255 (9) Any information communicated to any licensed practitioner in an attempt to unlawfully
256 procure, or to procure the administration of, a controlled substance is not considered to be a
257 privileged communication.

Legislative Review Note

as of 1-24-00 12:10 PM

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

Office of Legislative Research and General Counsel