

28 controls in performing drug monitoring or drug screening analysis if the prescription drugs are
29 prediluted in a human or animal body fluid, human or animal body fluid components, organic
30 solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when
31 labeled or otherwise designated as being for in-vitro diagnostic use.

32 (3) "Animal euthanasia agency" means an agency performing euthanasia on animals by
33 the use of prescription drugs.

34 (4) "Board" means the State Board of Pharmacy created in Section 58-17a-201.

35 (5) "Branch pharmacy" means a drug outlet or other facility in a rural or medically
36 underserved area, used for the storage and dispensing of prescription drugs, which is dependent
37 upon, stocked by, and supervised by a pharmacist in another licensed pharmacy designated and
38 approved by the division as the parent pharmacy.

39 (6) "Compounding":

40 (a) means the preparation, mixing, assembling, packaging, or labeling of reasonable
41 quantities of a prescription drug or device by a licensed pharmacist or pharmacy intern upon
42 receipt of a valid prescription or medication order from a practitioner for an individually identified
43 patient;

44 (b) includes preparation, mixing, assembling, packaging, or labeling of reasonable
45 quantities of a prescription drug for the purpose of, or incidental to research, teaching, or chemical
46 analysis on the condition the prescription drug is not offered for sale or dispensing;

47 (c) includes the preparation of a reasonable quantity of a prescription drug by a licensed
48 pharmacist or pharmacy intern in anticipation of a valid prescription or medication order to be
49 dispensed or administered to a patient based on routine, regularly observed prescribing patterns
50 of a practitioner; and

51 (d) does not include the preparation of prescription drugs by a pharmacist or pharmacy
52 intern for sale to another pharmacist, drug outlet, or the preparation by a pharmacist or pharmacy
53 intern of any prescription drug in a dosage form which is regularly and commonly available from
54 a manufacturer in quantities and strengths prescribed by a practitioner.

55 (7) "Controlled substance" has the same definition as in Section 58-37-2.

56 (8) "Device" means an instrument, apparatus, implement, machine, contrivance, implant,
57 in-vitro reagent, or other similar or related article, including any component part or accessory,
58 which is required under federal or state law to be prescribed by a practitioner and dispensed by a

59 pharmacist or pharmacy intern.

60 (9) "Dispense" means to prepare and deliver a prescription drug or device or
61 nonprescription drug or device under a lawful order of a practitioner in a suitable container
62 appropriately labeled for subsequent administration to or use by a patient, research subject, an
63 animal, or other individual entitled to receive the prescription drug or device.

64 (10) "Distribute" means to deliver a drug or device other than by administering or
65 dispensing.

66 (11) "Drug" or "drugs" means a prescription drug as defined in this chapter.

67 (12) "Drug outlet" means any person, other than an individual licensed as a pharmacist,
68 pharmacy technician, or pharmacy intern, who engages in dispensing, delivering, distributing,
69 manufacturing, or wholesaling prescription drugs or devices within or into this state.

70 (13) "Drug product equivalent" means a drug product that is designated the therapeutic
71 equivalent of another drug product in the Approved Drug Products with Therapeutic Equivalence
72 Evaluations prepared by the Center for Drug Evaluation and Research of the Federal Food and
73 Drug Administration.

74 (14) "Drug sample" means a prescription drug packaged in small quantities consistent with
75 limited dosage therapy of the particular drug, which is marked "sample," is not intended to be sold,
76 and is intended to be provided to practitioners for the immediate needs of patients for trial
77 purposes or to provide the drug to the patient until a prescription can be filled by the patient.

78 (15) "Extern" means a college of pharmacy student enrolled in a college coordinated
79 practical experience program in a licensed pharmacy under the supervision of a preceptor, as
80 defined in Subsection (45), and approved by the college of pharmacy.

81 (16) "Filling" or "refilling" have same meaning as dispense.

82 (17) "General supervision" means the supervising pharmacist is in the pharmacy or the
83 facility in which the pharmacy is located and is available for immediate oral contact with the
84 supervised pharmacy technician or pharmacy intern.

85 (18) "Hospital pharmacy" means a drug outlet providing pharmaceutical service to
86 inpatients of a general acute hospital or specialty hospital licensed by the Department of Health
87 under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

88 (19) "Institutional pharmacy":

89 (a) means a drug outlet providing pharmaceutical service to a defined and exclusive group

90 of patients who have access to the services of the pharmacy because they are treated by or have an
91 affiliation with a specific entity including health maintenance organizations and infusion
92 companies; and

93 (b) does not include hospital pharmacies, drug outlets engaged in retail sales of
94 prescription drugs and devices to the general public, or the offices of practitioners.

95 (20) "Labeling" means the process of preparing and affixing a label to the container of any
96 drug or device, exclusive of the labeling by a manufacturer, packer, or distributor of a
97 nonprescription drug or commercially packaged legend drug or device. Any label shall include
98 all information required by federal and state law or rule.

99 (21) "Licensee" means any person to whom a license has been granted under this chapter.

100 (22) "Manufacture":

101 (a) means the production, preparation, propagation, compounding, conversion, or
102 processing of a prescription drug or a device, either directly or indirectly by extraction from
103 substances of natural origin or independently by means of chemical synthesis or by a combination
104 of extraction and chemical synthesis and includes any packaging or repackaging of a substance or
105 labeling or relabeling of its container; and

106 (b) does not include the preparation or compounding of a noncontrolled substance drug
107 by an individual for that individual's own use or the preparation, compounding, packaging, or
108 labeling of a drug:

109 (i) by a pharmacist, pharmacy intern, or practitioner incident to administering or
110 dispensing of a drug in the course of professional practice; or

111 (ii) by a practitioner or by that practitioner's authorization under supervision for the
112 purpose of or incident to research, teaching, or chemical analysis and not for sale.

113 (23) "Medication profile" or "profile" means a record system maintained as to drugs or
114 devices prescribed for a pharmacy patient to enable a pharmacist, or pharmacy intern to analyze
115 for potential harmful or dangerous interactions, or other factors, or other drugs or devices
116 prescribed for the patient.

117 (24) "Nonprescription drugs" means medicines or drugs which may be sold without a
118 prescription and which are prepackaged for use by the consumer and labeled in accordance with
119 the requirements of the statutes and rules of this state and of the federal government.

120 (25) "Nuclear pharmacy" means a drug outlet providing radiopharmaceutical service.

121 (26) "Out-of-state mail service pharmacy" means a drug outlet located outside the state
122 that:

123 (a) ships, mails, or delivers by any lawful means a dispensed legend drug to a resident in
124 this state pursuant to a legally issued prescription;

125 (b) provides information to a resident of this state on drugs or devices which may include,
126 but is not limited to, advice relating to therapeutic values, potential hazards, and uses; or

127 (c) counsels pharmacy patients residing in this state concerning adverse and therapeutic
128 effects of drugs.

129 (27) "Person" means an individual, corporation, partnership, association, or any other legal
130 entity.

131 (28) "Pharmaceutical administration facility" means a health care facility or agency,
132 including birthing centers, ambulatory surgical facilities, abortion clinics, home health agencies,
133 hospices, nursing care facilities, end stage renal disease facilities, and penal institutions in which:

134 (a) a licensed drug outlet is not located;

135 (b) prescription drugs are held, stored, or are otherwise under the control of the facility or
136 agency for administration to patients of that facility or agency;

137 (c) prescription drugs are dispensed to the facility or agency by a licensed pharmacist or
138 pharmacy intern with whom the facility has established a prescription drug supervising relationship
139 under which the pharmacist or pharmacy intern provides counseling to the facility or agency staff
140 as required, and oversees drug control, accounting, and destruction; and

141 (d) prescription drugs are professionally administered in accordance with the order of a
142 practitioner by an employee or agent of the facility or agency.

143 (29) (a) "Pharmaceutical care" means carrying out the following in collaboration with a
144 prescribing practitioner, and in accordance with division rule:

145 (i) designing, implementing, and monitoring a therapeutic drug plan intended to achieve
146 favorable outcomes related to a specific patient for the purpose of curing or preventing the patient's
147 disease;

148 (ii) eliminating or reducing a patient's symptoms; or

149 (iii) arresting or slowing a disease process.

150 (b) "Pharmaceutical care" does not include prescribing of drugs without consent of a
151 prescribing practitioner.

152 (30) "Pharmaceutical dog trainer" means a person who is employed by or under contract
153 to a law enforcement agency who uses prescription drugs for the purpose of training dogs in the
154 detection of prescription drugs.

155 (31) "Pharmaceutical manufacturer" means a person engaged in the manufacture of
156 prescription drugs or devices.

157 (32) "Pharmaceutical researcher" means a person who is engaged in conducting scientific
158 research regarding drugs and their use in accordance with standard research protocols and
159 techniques, who maintains competent documentation with respect to the research, and who uses
160 prescription drugs in the conduct of the research.

161 (33) "Pharmaceutical teaching organization" means an accredited school of pharmacy
162 within the state, or a school or program meeting the requirements established in accordance with
163 Subsection 58-17a-302(4) providing education for pharmacy technicians within the state.

164 (34) "Pharmaceutical wholesaler/distributor":

165 (a) means a drug outlet engaged in the business of wholesale vending or selling of any
166 prescription drug or device to other than the consumer or user of the prescription drug or device,
167 which the drug outlet has not produced, manufactured, compounded, or dispensed; and

168 (b) does not include a drug outlet carrying out the following business activities:

169 (i) intracompany sales;

170 (ii) the sale, purchase, or trade of a prescription drug or device, or offer to sell, purchase,
171 or trade a prescription drug or device between hospitals or other health care facilities that are under
172 common ownership or control of the management and operation of the facilities;

173 (iii) the sale, purchase, or trade of a prescription drug or device, or offer to sell, purchase,
174 or trade a prescription drug or device for emergency medical reasons, or to supply another drug
175 outlet to alleviate a temporary shortage; or

176 (iv) the distribution of a prescription drug or device as a sample by representatives of a
177 manufacturer.

178 (35) "Pharmacist" means an individual licensed by this state to engage in the practice of
179 pharmacy.

180 (36) "Pharmacy" means a facility or location where the practice of pharmacy is carried out.

181 (37) "Pharmacy intern" means an individual licensed by this state to engage in practice as
182 a pharmacy intern.

183 (38) "Pharmacy patient" or "patient" means an individual for whom a practitioner has
184 prescribed a drug or device which is to be administered to or taken or used by that individual or
185 an animal.

186 (39) "Pharmacy technician" means an individual licensed by this state to engage in practice
187 as a pharmacy technician.

188 (40) "Physician" means an individual licensed by this state to engage in the practice of
189 medicine.

190 (41) "Practice as a pharmacy intern" means engaging in the practice of pharmacy under
191 the general supervision of a licensed pharmacist approved by the division in collaboration with the
192 board and in accordance with a scope of practice as defined by division rule made in collaboration
193 with the board.

194 (42) "Practice as a pharmacy technician":

195 (a) means engaging in practice as a pharmacy technician under the general supervision of
196 a licensed pharmacist and in accordance with a scope of practice as defined by division rule made
197 in collaboration with the board; and

198 (b) does not include performing a final review of the prescription and prescribed drug
199 prepared for dispensing, dispensing of the drug, or counseling a patient with respect to a
200 prescription drug or nonprescription drug.

201 (43) "Practice of pharmacy" includes any of the following:

202 (a) interpreting prescription orders;

203 (b) compounding, packaging, labeling, dispensing, administering, and the coincident
204 distribution of prescription drugs and devices, provided that the administration of a prescription
205 drug or device is:

206 (i) pursuant to a lawful order of a practitioner when one is required by law; and

207 (ii) in accordance with written guidelines or protocols:

208 (A) established by the licensed facility in which the prescription drug or device is to be
209 administered on an inpatient basis; or

210 (B) approved by the division, in collaboration with the board and the Physician's Licensing
211 Board, created in Section 58-67-201, if the prescription drug or device is to be administered on an
212 outpatient basis solely by a licensed pharmacist;

213 (c) participating in drug utilization review;

214 (d) ensuring proper and safe storage of drugs and devices;

215 (e) maintaining records of drugs and devices in accordance with state and federal law and
216 the standards and ethics of the profession;

217 (f) providing information on drugs or devices, which may include advice relating to
218 therapeutic values, potential hazards, and uses;

219 (g) providing drug product equivalents;

220 (h) supervising pharmacist's supportive personnel, pharmacy interns, and pharmacy
221 technicians;

222 (i) providing patient counseling, including ~~h~~ :

222a ~~(i) h~~ adverse and therapeutic effects of drugs; ~~h [f] and [j]~~

222b ~~(ii) DRUG INTERACTIONS WITH FOOD, NUTRIENTS, AND SUPPLEMENTS; AND h~~

223 ~~h [(j) providing nutritional] h § [assessment, therapy, and] § h [counseling] h § [;however, this~~

223a Subsection

224 ~~(43)(j) does not limit the scope of practice of a naturopathic physician licensed under Chapter 71,~~

225 ~~Naturopathic Physician Practice Act, or a dietitian certified under Chapter 49, Dietitian]~~

226 ~~[Certification Act] h [INCLUDING DRUG INTERACTIONS AND THERAPEUTIC EFFECTS OF DRUGS § ;~~

226a ~~and] h~~

227 ~~[(j)] h [(k)] (j) h~~ providing pharmaceutical care.

228 (44) "Practitioner" means any person licensed by the state to prescribe drugs, medications,
229 or devices dispensed by prescription only.

230 (45) "Preceptor" means a licensed pharmacist approved by the division in collaboration
231 with the board to serve as a teacher, example of professional conduct, and supervisor of interns and
232 externs in the professional practice of pharmacy.

233 (46) "Prescription" means an order issued by a licensed practitioner, in the course of that
234 practitioner's professional practice, for a controlled substance, other prescription drug or device
235 with the intent the prescription drug or device will be used by a patient or an animal. The order
236 may be issued by word of mouth, written document, telephone, facsimile transmission, computer,
237 or other electronic means of communication as defined by division rule.

238 (47) "Prescription drug or device" or "legend drug or device" means:

239 (a) a drug or device which, under federal law, is required to be labeled with either of the
240 following statements or their equivalent:

241 (i) "CAUTION: Federal law prohibits dispensing without prescription"; or

242 (ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed
243 veterinarian"; or

244 (b) a drug or device that is required by any applicable federal or state law or rule to be

245 dispensed on prescription only or is restricted to use by practitioners only.

246 (48) "Prescription drug or device order" means a lawful written or oral order of a
247 practitioner for a prescription drug or device for use in humans or animals.

248 (49) "Retail pharmacy" means a drug outlet dispensing prescription drugs and devices to
249 the general public.

250 (50) "Supportive personnel" means unlicensed individuals who:

251 (a) may assist a pharmacist, pharmacy intern, or pharmacy technician in nonjudgmental
252 duties not included in the definition of the practice of pharmacy, and as those duties may be further
253 defined by division rule made in collaboration with the board; and

254 (b) are supervised by a pharmacist in accordance with rules made by the division in
255 collaboration with the board.

256 (51) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-17a-501.

257 (52) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-17a-502, and as
258 may be further defined by rule.

259 (53) "Veterinary pharmaceutical outlet" means a drug outlet dispensing veterinary
260 prescription drugs.

261 Section 2. Section **58-17a-502** is amended to read:

262 **58-17a-502. Unprofessional conduct.**

263 "Unprofessional conduct" includes:

264 (1) willfully deceiving or attempting to deceive the division, the board, or their agents as
265 to any relevant matter regarding compliance under this chapter;

266 (2) (a) paying rebates to practitioners or any other health care providers, or entering into
267 any agreement with a medical practitioner or any other person for the payment or acceptance of
268 compensation or its economic equivalent for recommending of the professional services of either
269 party, except as allowed under Subsection (2)(b); and

270 (b) price discounts conditional upon volume purchases are not prohibited under Subsection
271 (2)(a);

272 (3) misbranding or adulteration of any drug or device or the sale, distribution, or
273 dispensing of any misbranded or adulterated drug or device;

274 (4) engaging in the sale or purchase of drugs or devices that are samples or packages
275 bearing the inscription "sample" or "not for resale" or similar words or phrases;

276 (5) accepting back and redistributing of any unused drug, or a part of it, after it has left the
 277 premises of any pharmacy, unless the drug is in the original sealed unit dose package or
 278 manufacturer's sealed container;

279 (6) being employed as a pharmacist, pharmacy intern, or pharmacy technician, or sharing
 280 or receiving compensation in any form arising out of an act incidental to professional activities in
 281 the course of which any person requires him to engage in any aspects of the practice of pharmacy
 282 in violation of this chapter;

283 (7) violation of Federal Title II, P.L. 91, Controlled Substances Act, or Title 58, Chapter
 284 37, Utah Controlled Substances Act, or rules and regulations adopted under either of them;

285 (8) requiring or permitting pharmacy interns or technicians to engage in activities outside
 286 the scope of practice for their respective license classifications as defined in this chapter and
 287 division rules made in collaboration with the board, or beyond an individual's scope of training and
 288 ability; [and]

289 (9) administering without:

290 (a) appropriate training as defined by rule;

291 (b) written guidelines or protocols of a practitioner or in conflict with such guidelines or
 292 protocols; or

293 (c) a lawful order, when one is required by law[-]; and

294 (10) ~~§ [violating a patient's right to privacy regarding the patient's person, condition,
 295 diagnosis, or other confidential information to any person who does not have:~~

296 ~~— (a) a legal right to the information concerning the patient; or~~

297 ~~— (b) a professional need to know the information concerning the patient based on generally
 298 recognized professional or ethical standards that authorize or require disclosure.] DISCLOSING~~

298a ~~CONFIDENTIAL PATIENT INFORMATION IN VIOLATION OF THE PROVISIONS OF THE HEALTH~~

298b ~~INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 OR OTHER APPLICABLE LAW. §~~

Legislative Review Note

as of 12-19-01 1:10 PM

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

Office of Legislative Research and General Counsel