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S.B. 114

AMENDMENTS TO PRESCRIBING, PREPARATION, AND DISPENSING OF PRESCRIPTION DRUGS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill repeals the current Pharmacy Practice Act and enacts a new Pharmacy Practice Act.

Highlighted Provisions:

This bill:

- enacts a new Pharmacy Practice Act and includes:
  - definitions;
  - administrative inspections;
  - board membership, qualifications, and terms;
  - license classifications for pharmacy facilities;
  - qualifications for licensure as a pharmacist;
  - qualifications for licensure as a pharmacy intern;
  - qualifications for licensure as a pharmacy technician;
  - qualifications for licensure as a pharmacy;
  - criminal background checks;
  - terms of license;
  - exemptions from licensure;
  - continuing education;
  - grounds for denial of licensure;

- provisions related to unlawful and unprofessional conduct;
- regulation of the practice of pharmacy operating standards; and
- provisions related to incapacitated pharmacists;

▸ amends the sunset date of the Pharmacy Practice Act to July 1, 2014; and

▸ makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:

16-11-2, as last amended by Chapter 185, Laws of Utah 2002

26-18-2.3, as last amended by Chapter 324, Laws of Utah 2003

26-18-101, as last amended by Chapters 79, 247 and 248, Laws of Utah 1996

26-47-101, as enacted by Chapter 310, Laws of Utah 2003

48-2c-1502, as last amended by Chapter 185, Laws of Utah 2002

58-1-307, as last amended by Chapter 3, Laws of Utah 2003

58-16a-102, as last amended by Chapter 270, Laws of Utah 2003

58-24a-105, as last amended by Chapter 247, Laws of Utah 1996

58-37-6, as last amended by Chapter 33, Laws of Utah 2003

58-37-7.5, as last amended by Chapter 33, Laws of Utah 2003

58-37c-19.5, as enacted by Chapter 272, Laws of Utah 2000

58-71-102, as last amended by Chapter 131, Laws of Utah 2003

58-71-801, as enacted by Chapter 282, Laws of Utah 1996

58-73-601, as last amended by Chapter 284, Laws of Utah 1998

63-55-258, as last amended by Chapters 49 and 254, Laws of Utah 2003

76-5-113, as enacted by Chapter 164, Laws of Utah 2001

76-8-311.3, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

78-11-22.2, as enacted by Chapter 152, Laws of Utah 2000

78-14-3, as last amended by Chapter 131, Laws of Utah 2002

ENACTS:

58-17b-101, Utah Code Annotated 1953
58-17b-102, Utah Code Annotated 1953
58-17b-103, Utah Code Annotated 1953
58-17b-201, Utah Code Annotated 1953
58-17b-301, Utah Code Annotated 1953
58-17b-302, Utah Code Annotated 1953
58-17b-303, Utah Code Annotated 1953
58-17b-304, Utah Code Annotated 1953
58-17b-305, Utah Code Annotated 1953
58-17b-306, Utah Code Annotated 1953
58-17b-307, Utah Code Annotated 1953
58-17b-308, Utah Code Annotated 1953
58-17b-309, Utah Code Annotated 1953
58-17b-310, Utah Code Annotated 1953
58-17b-401, Utah Code Annotated 1953
58-17b-501, Utah Code Annotated 1953
58-17b-502, Utah Code Annotated 1953
58-17b-503, Utah Code Annotated 1953
58-17b-504, Utah Code Annotated 1953
58-17b-505, Utah Code Annotated 1953
58-17b-506, Utah Code Annotated 1953
58-17b-601, Utah Code Annotated 1953
58-17b-602, Utah Code Annotated 1953
58-17b-603, Utah Code Annotated 1953
58-17b-604, Utah Code Annotated 1953
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58-17b-606, Utah Code Annotated 1953
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58-17b-611, Utah Code Annotated 1953
58-17b-612, Utah Code Annotated 1953
58-17b-613, Utah Code Annotated 1953
58-17b-614, Utah Code Annotated 1953
58-17b-615, Utah Code Annotated 1953
58-17b-616, Utah Code Annotated 1953
58-17b-617, Utah Code Annotated 1953
58-17b-618, Utah Code Annotated 1953
58-17b-619, Utah Code Annotated 1953
58-17b-620, Utah Code Annotated 1953
58-17b-621, Utah Code Annotated 1953
58-17b-701, Utah Code Annotated 1953

REPEALS:

58-17a-101, as enacted by Chapter 247, Laws of Utah 1996
58-17a-102, as last amended by Chapter 184, Laws of Utah 2002
58-17a-103, as enacted by Chapter 28, Laws of Utah 1998
58-17a-201, as enacted by Chapter 247, Laws of Utah 1996
58-17a-301, as enacted by Chapter 247, Laws of Utah 1996
58-17a-302, as last amended by Chapter 28, Laws of Utah 1998
58-17a-304, as enacted by Chapter 247, Laws of Utah 1996
58-17a-305, as last amended by Chapter 160, Laws of Utah 2000
58-17a-401, as enacted by Chapter 247, Laws of Utah 1996
58-17a-402, as enacted by Chapter 247, Laws of Utah 1996
58-17a-501, as last amended by Chapter 28, Laws of Utah 1998
58-17a-502, as last amended by Chapter 184, Laws of Utah 2002
58-17a-502.5, as enacted by Chapter 18, Laws of Utah 2002, Fifth Special Session
58-17a-503, as enacted by Chapter 247, Laws of Utah 1996
58-17a-601, as enacted by Chapter 247, Laws of Utah 1996
58-17a-602, as enacted by Chapter 247, Laws of Utah 1996
58-17a-603, as enacted by Chapter 247, Laws of Utah 1996
58-17a-604, as enacted by Chapter 247, Laws of Utah 1996

58-17a-605, as enacted by Chapter 247, Laws of Utah 1996
58-17a-606, as enacted by Chapter 247, Laws of Utah 1996
58-17a-607, as enacted by Chapter 247, Laws of Utah 1996
58-17a-608, as enacted by Chapter 247, Laws of Utah 1996
58-17a-609, as enacted by Chapter 247, Laws of Utah 1996
58-17a-610, as enacted by Chapter 247, Laws of Utah 1996
58-17a-611, as last amended by Chapter 344, Laws of Utah 2001
58-17a-612, as enacted by Chapter 247, Laws of Utah 1996
58-17a-613, as enacted by Chapter 247, Laws of Utah 1996
58-17a-614, as enacted by Chapter 247, Laws of Utah 1996
58-17a-615, as enacted by Chapter 247, Laws of Utah 1996
58-17a-616, as enacted by Chapter 247, Laws of Utah 1996
58-17a-617, as enacted by Chapter 247, Laws of Utah 1996
58-17a-618, as enacted by Chapter 247, Laws of Utah 1996
58-17a-619, as enacted by Chapter 247, Laws of Utah 1996
58-17a-620, as last amended by Chapter 3, Laws of Utah 2003
58-17a-701, as enacted by Chapter 247, Laws of Utah 1996
58-17a-801, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

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

Section 1. Section **16-11-2** is amended to read:

16-11-2. Definitions.

As used in this chapter:

(1) "Filed" means the division has received and approved, as to form, a document submitted under the provisions of this chapter, and has marked on the face of the document a stamp or seal indicating the time of day and date of approval, the name of the division, the division director's signature and division seal, or facsimiles of the signature or seal.

(2) "Professional corporation" means a corporation organized under this chapter.

(3) "Professional service" means the personal service rendered by:

(a) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of

medicine;

(b) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, and any subsequent laws regulating the practice of dentistry;

(c) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;

(d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, and any subsequent laws regulating the practice of chiropractic;

(e) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

(f) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, and any subsequent laws regulating the practice of optometry;

(g) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine;

(h) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;

(i) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

(j) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, and any subsequent laws regulating the practice of naturopathy;

(k) a pharmacist holding a license under Title 58, Chapter [~~17a~~] 17b, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;

(l) an attorney granted the authority to practice law by:

(i) the Utah Supreme Court; or

(ii) the Supreme Court, other court, agency, instrumentality, or regulating board that licenses or regulates the authority to practice law in any state or territory of the United States other than Utah;

(m) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyor Licensing Act;

(n) a real estate broker or real estate agent holding a license under Title 61, Chapter 2,

Division of Real Estate, and any subsequent laws regulating the selling, exchanging, purchasing, renting, or leasing of real estate;

(o) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, and any subsequent laws regulating the practice of psychology;

(p) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work;

(q) a physical therapist holding a license under Title 58, Chapter 24a, Physical Therapist Practice Act, and any subsequent laws regulating the practice of physical therapy; or

(r) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act.

(4) "Regulating board" means the board that is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render. The definitions of Title 16, Chapter 10a, Utah Revised Business Corporation Act, apply to this chapter unless the context clearly indicates that a different meaning is intended.

Section 2. Section **26-18-2.3** is amended to read:

26-18-2.3. Division responsibilities -- Emphasis -- Periodic assessment.

(1) In accordance with the requirements of Title XIX of the Social Security Act and applicable federal regulations, the division is responsible for the effective and impartial administration of this chapter in an efficient, economical manner. The division shall:

(a) establish, on a statewide basis, a program to safeguard against unnecessary or inappropriate use of Medicaid services, excessive payments, and unnecessary or inappropriate hospital admissions or lengths of stay;

(b) deny any provider claim for services that fail to meet criteria established by the division concerning medical necessity or appropriateness; and

(c) place its emphasis on high quality care to recipients in the most economical and cost-effective manner possible, with regard to both publicly and privately provided services.

(2) The division shall implement and utilize cost-containment methods, where possible, which may include, but are not limited to:

(a) prepayment and postpayment review systems to determine if utilization is reasonable and necessary;

(b) preadmission certification of nonemergency admissions;

(c) mandatory outpatient, rather than inpatient, surgery in appropriate cases;

(d) second surgical opinions;

(e) procedures for encouraging the use of outpatient services;

(f) consistent with Sections 28-18-2.4 and [~~58-17a-605.1~~] 58-17b-606, a Medicaid drug program;

(g) coordination of benefits; and

(h) review and exclusion of providers who are not cost effective or who have abused the Medicaid program, in accordance with the procedures and provisions of federal law and regulation.

(3) The director of the division shall periodically assess the cost effectiveness and health implications of the existing Medicaid program, and consider alternative approaches to the provision of covered health and medical services through the Medicaid program, in order to reduce unnecessary or unreasonable utilization.

Section 3. Section **26-18-101** is amended to read:

26-18-101. Definitions.

As used in this part:

(1) "Appropriate and medically necessary" means, regarding drug prescribing, dispensing, and patient usage, that it is in conformity with the criteria and standards developed in accordance with this part.

(2) "Board" means the Drug Utilization Review Board created in Section 26-18-102.

(3) "Compendia" means resources widely accepted by the medical profession in the efficacious use of drugs, including "American Hospital Formulary Services Drug Information," "U.S. Pharmacopeia - Drug Information," "A.M.A. Drug Evaluations," peer-reviewed medical literature, and information provided by manufacturers of drug products.

(4) "Counseling" means the activities conducted by a pharmacist to inform Medicaid recipients about the proper use of drugs, as required by the board under this part.

(5) "Criteria" means those predetermined and explicitly accepted elements used to measure drug use on an ongoing basis in order to determine if the use is appropriate, medically necessary, and not likely to result in adverse medical outcomes.

(6) "Drug-disease contraindications" means that the therapeutic effect of a drug is

adversely altered by the presence of another disease condition.

(7) "Drug-interactions" means that two or more drugs taken by a recipient lead to clinically significant toxicity that is characteristic of one or any of the drugs present, or that leads to interference with the effectiveness of one or any of the drugs.

(8) "Drug Utilization Review" or "DUR" means the program designed to measure and assess, on a retrospective and prospective basis, the proper use of outpatient drugs in the Medicaid program.

(9) "Intervention" means a form of communication utilized by the board with a prescriber or pharmacist to inform about or influence prescribing or dispensing practices.

(10) "Overutilization" or "underutilization" means the use of a drug in such quantities that the desired therapeutic goal is not achieved.

(11) "Pharmacist" means a person licensed in this state to engage in the practice of pharmacy under Title 58, Chapter [~~17a~~] 17b, Pharmacy Practice Act.

(12) "Physician" means a person licensed in this state to practice medicine and surgery under Section 58-67-301[~~, Utah Medical Practice Act,~~] or osteopathic medicine under Section 58-68-301[~~, Utah Osteopathic Medical Practice Act~~].

(13) "Prospective DUR" means that part of the drug utilization review program that occurs before a drug is dispensed, and that is designed to screen for potential drug therapy problems based on explicit and predetermined criteria and standards.

(14) "Retrospective DUR" means that part of the drug utilization review program that assesses or measures drug use based on an historical review of drug use data against predetermined and explicit criteria and standards, on an ongoing basis with professional input.

(15) "Standards" means the acceptable range of deviation from the criteria that reflects local medical practice and that is tested on the Medicaid recipient database.

(16) "SURS" means the Surveillance Utilization Review System of the Medicaid program.

(17) "Therapeutic appropriateness" means drug prescribing and dispensing based on rational drug therapy that is consistent with criteria and standards.

(18) "Therapeutic duplication" means prescribing and dispensing the same drug or two or more drugs from the same therapeutic class where periods of drug administration overlap and where that practice is not medically indicated.

Section 4. Section **26-47-101** is amended to read:

26-47-101. Prescription Drug Assistance Program.

(1) No later than October 1, 2003, the department shall implement a Prescription Drug Assistance Program. The program shall assist persons seeking information about how to obtain prescription drugs at a reduced price or no cost. The program shall:

(a) collect eligibility and enrollment information about programs that make prescription drugs available to consumers at a reduced price or no cost;

(b) provide information collected under Subsection (1)(a) to consumers upon request via a toll-free phone line, the Internet, and mail;

(c) inform pharmacists and other health care providers of the Prescription Drug Assistance Program; and

(d) assist consumers in completing applications to participate in programs identified under Subsection (1)(a).

(2) Any pharmaceutical manufacturer, distributor, or wholesaler operating in the state shall:

(a) notify the department of any program operated by it to provide prescription drugs to consumers at a reduced price or no cost; and

(b) provide the department with information about eligibility, enrollment, and benefits.

(3) Pharmacies, as defined in Title 58, Chapter [~~17~~] 17b, Pharmacy Practice Act, shall notify their patients of the Prescription Drug Assistance Program. This notification shall include displaying the program's toll-free number, and may include distributing a brochure or oral communication.

(4) The department may accept grants, gifts, and donations of money or property for use by the Prescription Drug Assistance Program.

(5) The department shall report to the Health and Human Services Interim Committee and the Joint Health and Human Services Appropriations Subcommittee on the performance of the Prescription Drug Assistance Program prior to the 2004 and 2005 Annual General Sessions of the Legislature.

Section 5. Section **48-2c-1502** is amended to read:

48-2c-1502. Definitions.

As used in this part:

(1) "Professional services company" means a limited liability company organized under this part to render professional services.

(2) "Professional services" means the personal services rendered by:

(a) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;

(b) an attorney granted the authority to practice law by the:

(i) Supreme Court of Utah; or

(ii) the Supreme Court, other court, agency, instrumentality, or regulating board that licenses or regulates the authority to practice law in any state or territory of the United States other than Utah;

(c) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, and any subsequent laws regulating the practice of chiropractic;

(d) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentists and Dental Hygienists Practice Act, and any subsequent laws, regulating the practice of dentistry;

(e) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(f) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, and any subsequent laws regulating the practice of naturopathy;

(g) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;

(h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, and any subsequent laws regulating the practice of optometry;

(i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;

(j) a pharmacist holding a license under Title 58, Chapter [~~17a~~] 17b, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;

(k) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of medicine;

(l) a physical therapist holding a license under Title 58, Chapter 24a, Physical

Therapist Practice Act, and any subsequent laws regulating the practice of physical therapy;

(m) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

(n) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, and any subsequent laws regulating the practice of psychology;

(o) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

(p) a real estate broker or real estate agent holding a license under Title 61, Chapter 2, Division of Real Estate, and any subsequent laws regulating the sale, exchange, purchase, rental, or leasing of real estate;

(q) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work;

(r) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, and any subsequent laws regulating the practice of mental health therapy; and

(s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine.

(3) "Regulating board" means the board or agency organized pursuant to state law that is charged with the licensing and regulation of the practice of the profession that a company is organized to render.

Section 6. Section **58-1-307** is amended to read:

58-1-307. Exemptions from licensure.

(1) Except as otherwise provided by statute or rule, the following persons may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:

(a) a person serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the person holds a valid license to practice a regulated occupation or

profession issued by any other state or jurisdiction recognized by the division;

(b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;

(c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified persons;

(d) an individual residing in another state and licensed to practice a regulated occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;

(e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;

(f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;

(g) an individual licensed in a health care profession in another state who performs that profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state;

(h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator;

(i) an individual licensed and in good standing in another state, who is in this state:

(i) temporarily, under the invitation and control of a sponsoring entity;

(ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division; and

(iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods. The requirements of Section 63A-10-105 do not apply to exemptions authorized by the division pursuant to this Subsection (1)(i);

(j) an individual who:

(i) is certified as an athletic trainer by the National Athletic Trainers Association Board of Certification or another entity approved by the division;

(ii) is employed or officially associated with an educational institution, a professional sports organization, or a bona fide amateur sports organization; and

(iii) only provides athletic training services:

(A) to athletes of the educational institution or sports organization to which the individual is employed or officially associated;

(B) at an official athletic training, practice, or competition site; and

(C) that are within the scope of the individual's certification; and

(k) a law enforcement officer, as defined under Section 53-13-103, who:

(i) is operating a voice stress analyzer in the course of the officer's full-time employment with a federal, state, or local law enforcement agency;

(ii) has completed the manufacturer's training course and is certified by the manufacturer to operate that voice stress analyzer; and

(iii) is operating the voice stress analyzer in accordance with Section 58-64-601, regarding deception detection instruments.

(2) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice. Violation of any limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.

(3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.

(4) Upon the declaration of a national, state, or local emergency, a public health

emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities, the division in collaboration with the board may:

(a) suspend the requirements for permanent or temporary licensure of persons who are licensed in another state. Persons exempt under this Subsection (4)(a) shall be exempt from licensure for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state;

(b) modify, under the circumstances described in [~~Subsections~~] this Subsection (4) and Subsection (5), the scope of practice restrictions under this title for persons who are licensed under this title as:

(i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;

(ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31c, Nurse Licensure Compact;

(iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;

(iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter [~~17a~~] 17b, Pharmacy Practice Act;

(v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act; and

(vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist Practice Act;

(c) suspend the requirements for licensure under this title and modify the scope of practice in the circumstances described in [~~Subsections~~] this Subsection (4) and Subsection (5) for medical services personnel or paramedics required to be certified under Section 26-8a-302; and

(d) suspend requirements in Subsections [~~58-17a-620~~] 58-17b-620(3) through (6) which require certain prescriptive procedures.

(5) Persons exempt under Subsection (4)(c) and persons operating under modified scope of practice provisions under Subsection (4)(b):

(a) shall be exempt from licensure or subject to modified scope of practice for the duration of the emergency;

(b) must be engaged in the distribution of medicines or medical devises in response to

the emergency or declaration; and

(c) must be employed by or volunteering for a local or state department of health.

Section 7. Section **58-16a-102** is amended to read:

58-16a-102. Definitions.

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

(1) "Board" means the Optometrist Licensing Board created in Section 58-16a-201.

(2) "Contact lens" means any lens that:

(a) has a spherical, cylindrical, or prismatic power or curvature;

(b) is made pursuant to a current prescription; or

(c) is intended to be worn on the surface of the eye.

(3) (a) "Contact lens prescription" means a written or verbal order for contact lenses that includes:

(i) the commencement date of the prescription;

(ii) the base curve, power, diameter, material or brand name, and expiration date;

(iii) for a written order, the signature of the prescribing optometrist or physician; and

(iv) for a verbal order, a record maintained by the recipient of:

(A) the name of the prescribing optometrist or physician; and

(B) the date when the prescription was issued or ordered.

(b) A prescription may include:

(i) a limit on the quantity of lenses that may be ordered under the prescription if required for medical reasons documented in the patient's files; and

(ii) the expiration date of the prescription, which shall be two years from the commencement date, unless documented medical reasons require otherwise.

(c) When a provider prescribes a private label contact lens for a patient the prescription shall include:

(i) the name of the manufacturer;

(ii) the trade name of the private label brand; and

(iii) if applicable, the trade name of the equivalent national brand.

(4) "Contact lens prescription verification" means a written request from a person who sells contact lenses that:

(a) is sent to the prescribing optometrist or physician; and

(b) seeks the confirmation of the accuracy of a patient's prescription.

(5) "Eye and its adnexa" means the human eye and all structures situated within the orbit, including the conjunctiva, lids, lashes, and lacrimal system.

(6) "Fitting of a contact lens" means:

(a) the using of a keratometer to measure the human eye;

(b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and

(c) trial fitting of contact lenses, which includes a period of time for evaluation for fit and performance, to determine a tentative contact lens prescription for a patient if the patient:

(i) has not worn contact lenses before; or

(ii) has changed to a different type or base curve.

(7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized by means of laser or ionizing radiation.

(8) "Ophthalmic lens" means any lens used to treat the eye and that:

(a) has a spherical, cylindrical, or prismatic power;

(b) is made pursuant to an unexpired prescription; and

(c) is intended to be used in eyeglasses or spectacles.

(9) "Optometric assistant" means an unlicensed individual:

(a) working under the direct and immediate supervision of a licensed optometrist; and

(b) engaged in specific tasks assigned by the licensed optometrist in accordance with the standards and ethics of the profession.

(10) "Optometrist" or "optometric physician" means an individual licensed under this chapter.

(11) "Optometry" and "practice of optometry" mean any one or any combination of the following practices:

(a) examination of the human eye and its adnexa to detect and diagnose defects or abnormal conditions;

(b) determination or modification of the accommodative or refractive state of the human eye or its range or power of vision by administration and prescription of pharmaceutical agents or the use of diagnostic instruments;

(c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to

diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its adnexa;

(d) display of any advertisement, circular, sign, or device offering to:

(i) examine the eyes;

(ii) fit glasses or contact lenses; or

(iii) adjust frames;

(e) removal of a foreign body from the eye or its adnexa, that is not deeper than the anterior 1/2 of the cornea;

(f) consultation regarding the eye and its adnexa with other appropriate health care providers, including referral to other appropriate health care providers; and

(g) a person, not licensed as an optometrist, directing a licensee under this chapter to withhold or alter the eye care services the licensee has ordered.

(12) "Pharmaceutical agent" means any diagnostic or therapeutic drug or combination of drugs that has the property of assisting in the diagnosis, prevention, treatment, or mitigation of abnormal conditions or symptoms of the eye and its adnexa.

(13) "Physician" has the same meaning as defined in Subsection 58-67-102(7).

(14) "Prescription drug" has the same definition as in Section [~~58-17a-102~~] 58-17b-102.

(15) "Unexpired" means a prescription that was issued:

(a) not more than two years prior to presentation of the prescription for an ophthalmic lens; or

(b) in accordance with Subsection (3) for a contact lens.

Section 8. Section **58-17b-101** is enacted to read:

CHAPTER 17b. PHARMACY PRACTICE ACT

Part 1. General Provisions

58-17b-101. Title.

This chapter is known as the "Pharmacy Practice Act."

Section 9. Section **58-17b-102** is enacted to read:

58-17b-102. Definitions.

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

(1) "Administering" means:

(a) the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person; or

(b) the placement by a veterinarian with the owner or caretaker of an animal or group of animals of a prescription drug for the purpose of injection, inhalation, ingestion, or any other means directed to the body of the animal by the owner or caretaker in accordance with written or verbal directions of the veterinarian.

(2) "Adulterated drug or device" means a drug or device considered adulterated under 21 U.S.C.S. Sec. 351 (2003).

(3) (a) "Analytical laboratory" means a facility in possession of prescription drugs for the purpose of analysis.

(b) "Analytical laboratory" does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are prediluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in vitro diagnostic use.

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

(5) "Automated pharmacy systems" includes mechanical systems which perform operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing, or distribution of medications, and which collect, control, and maintain all transaction information.

(6) "Beyond-use-date" means a date determined by a pharmacist and should be placed on a prescription label at the time of dispensing that is intended to indicate to the patient or caregiver a time beyond which the contents of the prescription are not recommended to be used.

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

(8) "Board of pharmacy" or "board" means the Utah State Board of Pharmacy as created in Section 58-17b-201.

(9) "Centralized prescription processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, drug utilization review, claims adjudication, refill authorizations, and therapeutic interventions.

(10) "Class A pharmacy" means a pharmacy that is authorized as a retail pharmacy to compound or dispense a drug or dispense a device to the public under a prescription order.

(11) "Class B pharmacy" means a pharmacy that is authorized to provide pharmaceutical care for patients in an institutional setting and whose primary purpose is to provide a physical environment for patients to obtain health care services and includes closed door, hospital, clinics, nuclear, branch, pharmaceutical research facilities, pharmaceutical administration facilities, and sterile product preparation facilities.

(12) "Class C pharmacy" means a pharmacy that is authorized to engage in the manufacture, production, wholesale, or distribution of drugs or devices.

(13) "Class D pharmacy" means a nonresident pharmacy to include any pharmacy outside of Utah that is authorized to deliver drugs or devices to residents of Utah.

(14) "Class E pharmacy" means all other pharmacy facilities.

(15) "Closed door" pharmacy means a pharmacy that provides pharmaceutical care to a defined and exclusive group of patients who have access to the services of the pharmacy because they are treated by or have an affiliation with a specific entity including health maintenance organizations and infusion companies, and does not include hospital pharmacies, retail sales to the general public, or the offices of practitioners.

(16) "Collaborative pharmacy practice" means a practice of pharmacy whereby one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more practitioners under protocol whereby the pharmacist may perform certain pharmaceutical care functions authorized by the practitioner or practitioners under certain specified conditions or limitations.

(17) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more practitioners that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients and

prevention of disease of human subjects.

(18) (a) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a limited quantity drug, sterile product, or device:

(i) as the result of a practitioner's prescription order or initiative based on the practitioner, patient, or pharmacist relationship in the course of professional practice;

(ii) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing; or

(iii) in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

(b) "Compounding" does not include:

(i) the preparation of prescription drugs by a pharmacist or pharmacy intern for sale to another pharmacist or pharmaceutical administration facility;

(ii) the preparation by a pharmacist or pharmacy intern of any prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner; or

(iii) the preparation of a prescription drug, sterile product, or device which has been withdrawn from the market for safety reasons.

(19) "Confidential information" has the same meaning as "protected health information" under the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

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

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

(22) "Dietary supplement" has the same meaning as Public Law Title 103, Chapter 417, Sec. 3a(ff) which is incorporated by reference.

(23) "Dispense" means the interpretation, evaluation, and implementation of a prescription drug order or device or nonprescription drug or device under a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient, research subject, or an animal.

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

(25) "Drug" means:

(a) a substance recognized as a drug in any official compendium, or supplement thereto, designated from time to time by the division in collaboration with the board for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals, excluding nonprescription drugs or dietary supplements;

(b) a drug or device that is required by any applicable federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only;

(c) substances other than food intended to affect the structure or any function of the body of humans or other animals, excluding nonprescription dietary supplements; and

(d) substances intended for use as a component of any substance specified in Subsection (25)(a), (b), or (c).

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

(27) "Drug regimen review" includes the following activities:

(a) evaluation of the prescription drug order and patient record for:

(i) known allergies;

(ii) rational therapy-contraindications;

(iii) reasonable dose and route of administration; and

(iv) reasonable directions for use;

(b) evaluation of the prescription drug order and patient record for duplication of therapy;

(c) evaluation of the prescription drug order and patient record for interactions:

(i) drug-drug;

(ii) drug-food;

(iii) drug-disease; and

(iv) adverse drug reactions; and

(d) evaluation of the prescription drug order and patient record for proper utilization,

including over- or under-utilization, and optimum therapeutic outcomes.

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

(29) "Electronic signature" means a trusted, verifiable, and secure electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(30) "Electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

(31) "Extern" means a college of pharmacy student enrolled in a college coordinated practical experience program in a health care setting under the supervision of a preceptor, as defined in this act, and approved by a college of pharmacy.

(32) "Hospital pharmacy" means a pharmacy providing pharmaceutical care to inpatients of a general acute hospital or specialty hospital licensed by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(33) "Licensed pharmacy technician" means an individual licensed with the division, that may, under the supervision of a pharmacist, perform the activities involved in the technician practice of pharmacy.

(34) "Manufacturer" means a person or business physically located in Utah licensed to be engaged in the manufacturing of drugs or devices.

(35) (a) "Manufacturing" means:

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

(ii) the promotion and marketing of such drugs or devices.

(b) "Manufacturing" includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

(c) "Manufacturing" does not include the preparation or compounding of a drug by a pharmacist, pharmacy intern, or practitioner for that individual's own use or the preparation, compounding, packaging, labeling of a drug, or incident to research, teaching, or chemical analysis.

(36) "Medical order" means a lawful order of a practitioner which may include a prescription drug order.

(37) "Medication profile" or "profile" means a record system maintained as to drugs or devices prescribed for a pharmacy patient to enable a pharmacist or pharmacy intern to analyze the profile to provide pharmaceutical care.

(38) "Misbranded drug or device" means a drug or device considered misbranded under 21 U.S.C.S. Sec. 352 (2003).

(39) "Nonprescription drug" means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with federal law and includes homeopathic remedies.

(40) "Nonresident pharmacy" means any pharmacy that sells to anyone in Utah, but is not physically located in Utah.

(41) "Nuclear pharmacy" means a pharmacy providing radio-pharmaceutical service.

(42) "Out-of-state mail service pharmacy" means a pharmaceutical facility located outside the state that:

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

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

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

(43) "Patient counseling" means the written and oral communication by the pharmacist, pharmacy preceptor, or pharmacy intern of information, to the patient or caregiver, in order to ensure proper use of drugs, devices, and dietary supplements.

(44) "Pharmaceutical administration facility" means a health care facility or agency, in which:

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

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

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

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

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

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

(iii) arresting or slowing a disease process.

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

(46) "Pharmaceutical facility" means a business engaged in the dispensing, delivering, distributing, manufacturing, or wholesaling of prescription drugs or devices within or into this state.

(47) (a) "Pharmaceutical research facility" means a facility engaged in conducting scientific research regarding drugs and their use in accordance with standard research protocols and techniques, who maintains competent documentation with respect to the research, and who uses prescription drugs in the conduct of the research.

(b) "Pharmaceutical research facility" does not include any licensed facility or clinic whose primary researchers are licensed practitioners.

(48) (a) "Pharmaceutical wholesaler or distributor" means a pharmaceutical facility engaged in the business of wholesale vending or selling of any prescription drug or device to other than the consumer or user of the prescription drug or device, which the pharmaceutical facility has not produced, manufactured, compounded, or dispensed.

(b) "Pharmaceutical wholesaler or distributor" does not include a pharmaceutical

facility carrying out the following business activities:

(i) intracompany sales;

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

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

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

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

(50) "Pharmacist-in-charge" means a pharmacist currently licensed in good standing who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, and who is personally in full and actual charge of the pharmacy and all personnel.

(51) "Pharmacist preceptor" means a licensed pharmacist in good standing with two or more years of licensed experience whose name appears on a division list of approved preceptors. The preceptor serves as a teacher, example of professional conduct, and supervisor of interns in the professional practice of pharmacy.

(52) "Pharmacy" means any place within Utah where drugs are dispensed and pharmaceutical care is provided and any place outside of Utah where drugs are dispensed and pharmaceutical care is provided to residents of Utah.

(53) "Pharmacy benefits manager or coordinator" means a person that administers the prescription drug or device portion of health insurance plans on behalf of plan sponsors, such as self-insured employers, insurance companies, and health maintenance organizations, and may be further defined by rule.

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

(55) "Pharmacy technician training program" means an approved technician training program providing education for pharmacy technicians.

(56) (a) "Practice as a licensed pharmacy technician" means engaging in practice as a pharmacy technician under the general supervision of a licensed pharmacist and in accordance with a scope of practice as defined by division rule made in collaboration with the board.

(b) "Practice as a licensed pharmacy technician" does not include:

(i) performing a drug utilization review, prescription drug order clarification from a prescriber, final review of the prescription and prescribed drug prepared for dispensing, dispensing of the drug, or counseling a patient with respect to a prescription drug;

(ii) counseling regarding nonprescription drugs and dietary supplements unless delegated by the supervising pharmacist; or

(iii) receiving new prescription drug orders when communicating telephonically or electronically unless the original information is recorded so the pharmacist may review the prescription drug order as transmitted.

(57) "Practice of pharmacy" includes the following:

(a) providing pharmaceutical care;

(b) collaborative pharmacy practice in accordance with a collaborative pharmacy practice agreement;

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

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

(ii) in accordance with written guidelines or protocols:

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

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

(d) participating in drug utilization review;

(e) ensuring proper and safe storage of drugs and devices;

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

(g) providing information on drugs or devices, which may include advice relating to

therapeutic values, potential hazards, and uses;

(h) providing drug product equivalents;

(i) supervising pharmacist's supportive personnel, pharmacy interns, and pharmacy technicians;

(j) providing patient counseling, including adverse and therapeutic effects of drugs;

(k) providing emergency refills as defined by rule;

(l) telepharmacy; and

(m) formulary management intervention.

(58) "Practice of telepharmacy" means the practice of pharmacy through the use of telecommunications and information technologies.

(59) "Practice of telepharmacy across state lines" means the practice of pharmacy through the use of telecommunications and information technologies that occurs when the patient is physically located within one jurisdiction and the pharmacist is located in another jurisdiction.

(60) "Practitioner" means an individual currently licensed, registered, or otherwise authorized by the appropriate jurisdiction to prescribe and administer drugs in the course of professional practice.

(61) "Prescription" means an order:

(a) issued by a licensed practitioner:

(i) orally, in writing, by telephone, facsimile transmission, computer, or other electronic means of communication as defined by division rule;

(ii) in the course of the practitioner's professional practice; or

(iii) by collaborative pharmacy practice agreement; and

(b) for a controlled substance, other prescription drug, or device with the intent that the controlled substance, prescription drug, or device will be used by a patient or an animal.

(62) "Prescription drug or device" means:

(a) a legend drug or device; or

(b) a drug or device that is required by an applicable federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only.

(63) "Retail pharmacy" means a pharmaceutical facility dispensing prescription drugs and devices to the general public.

(64) "Self-audit" means an internal evaluation of a pharmacy to determine compliance with this chapter.

(65) "Supervising pharmacist" means a pharmacist who is overseeing the operation of the pharmacy during a given day or shift.

(66) "Supportive personnel" means unlicensed individuals who:

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

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

(67) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-17b-501.

(68) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-17b-502 and may be further defined by rule.

(69) "Veterinary pharmaceutical facility" means a pharmaceutical facility that dispenses drugs intended for use by animals or for sale to veterinarians for the administration for animals.

Section 10. Section **58-17b-103** is enacted to read:

58-17b-103. Administrative inspections.

(1) The division may for the purpose of ascertaining compliance with the provisions of this chapter, require a self-audit or enter and inspect the business premises of a person:

(a) licensed under Part 3, Licensing; or

(b) who is engaged in activities that require a license under Part 3, Licensing.

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

(a) give proper identification;

(b) request to see the applicable license or licenses;

(c) describe the nature and purpose of the inspection; and

(d) provide upon request, the authority of the division to conduct the inspection and the penalty for refusing to permit the inspection as provided in Section 58-17b-504.

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

(a) examine any record, prescription, order, drug, device, equipment, machine, electronic device or media, or area related to activities for which a license has been issued or is required by Part 3, Licensing, for the purpose of ascertaining compliance with the applicable provisions of this chapter;

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

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

(d) box and seal drugs suspected to be adulterated, outdated, misbranded, or otherwise in violation of this chapter; and

(e) dispose of or return any drug or device obtained under this Subsection (3) in accordance with procedures established by division rule.

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

(5) If upon inspection, the division concludes that a person has violated the provisions of this chapter or Chapter 37, Utah Control Substances Act, or any rule or order issued with respect to those chapters, and that disciplinary action is appropriate, the director or the director's designee shall promptly issue a fine or citation to the licensee in accordance with Section 58-17b-504.

Section 11. Section **58-17b-201** is enacted to read:

Part 2. Board

58-17b-201. Board -- Membership -- Qualifications -- Terms.

(1) There is created the Utah State Board of Pharmacy consisting of five pharmacists, one pharmacy technician, and one member of the general public.

(a) The public member of the board shall be a Utah resident who:

(i) is 21 years of age or older;

(ii) has never been licensed to engage in the practice of pharmacy;

(iii) has never been the spouse of a person licensed to engage in the practice of pharmacy;

(iv) has never held any material financial interest in pharmacy practice; and

(v) has never engaged in any activity directly related to the practice of pharmacy.

(b) The licensed pharmacist and licensed pharmacy technician members of the board shall:

(i) have been Utah residents continuously for at least three years;

(ii) have at least five years experience in the practice of pharmacy in good standing with the division in Utah after licensure; and

(iii) maintain licensure in good standing to engage in the practice of pharmacy or practice as a pharmacy technician in Utah for the duration of the appointment.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate an appropriate member on a permanent or rotating basis to:

(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(b) advise the division in its investigation of these complaints.

(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

(5) A board member may be removed in accordance with Subsection 58-1-201(2)(e) or upon one of the following grounds:

(a) refusal or inability for any reason of a board member to perform his duties as a member of the Board in an efficient, responsible, and professional manner;

(b) misuse of appointment to obtain personal, pecuniary, or material gain or advantage for himself or another through such appointment; or

(c) violation of the laws governing the practice of pharmacy or Chapter 37, Utah Controlled Substances Act.

Section 12. Section **58-17b-301** is enacted to read:

Part 3. Licensing

58-17b-301. License required -- License classifications for individuals.

(1) A license is required to engage in the practice of pharmacy, telepharmacy, or the

practice of a pharmacy technician, except as specifically provided in Section 58-1-307 or 58-17b-309.

(2) The division shall issue to an individual who qualifies under this chapter a license in the classification of:

(a) pharmacist;

(b) pharmacy intern; or

(c) pharmacy technician.

Section 13. Section **58-17b-302** is enacted to read:

58-17b-302. License classifications of pharmacy facilities.

(1) A license is required to act as a pharmacy, except as specifically exempted from licensure under Section 58-1-307.

(2) The division shall issue a pharmacy license to a facility that qualifies under this chapter in the classification of a:

(a) class A pharmacy;

(b) class B pharmacy;

(c) class C pharmacy;

(d) class D pharmacy; or

(e) class E pharmacy.

(3) Each place of business shall require a separate license. If multiple pharmacies exist at the same address, a separate license shall be required for each pharmacy.

(4) The division may further define or supplement the classifications of pharmacies. The division may impose restrictions upon classifications to protect the public health, safety, and welfare.

(5) Each pharmacy shall have a pharmacist-in-charge, except as otherwise provided by rule.

(6) Whenever an applicable statute or rule requires or prohibits action by a pharmacy, the pharmacist-in-charge and the owner or owners of the pharmacy shall be responsible for all activities of the pharmacy, regardless of the form of the business organization.

(7) Any facility holding a pharmacy license prior to July 1, 2004, shall be converted from the classification of license currently held to the appropriate classification established under this chapter upon their next renewal or reinstatement of licensure, in accordance with a

conversion schedule established by rule.

Section 14. Section **58-17b-303** is enacted to read:

58-17b-303. Qualifications for licensure as a pharmacist.

(1) Each applicant for licensure as a pharmacist shall:

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

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

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

(d) complete a criminal background check and be free from criminal convictions as required by Section 58-17b-307, or as described in Section 58-1-501;

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

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

(g) have completed an internship meeting standards established by division rule made in collaboration with the board; and

(h) have successfully passed examinations required by division rule made in collaboration with the board.

(2) Each applicant for licensure as a pharmacist whose pharmacy education was completed at a foreign pharmacy school shall, in addition to the requirements under Subsections (1)(a) through (e), (g), and (h), obtain a certification of equivalency from a credentialing agency required by division rule made in collaboration with the board.

(3) Each applicant for a license by endorsement as a pharmacist under this section shall:

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

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

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

(d) complete a criminal background check and be free from criminal convictions as required by Section 58-17b-307, or as otherwise described in Section 58-1-501;

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

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

(g) produce satisfactory evidence of completing the professional education required under Subsection (1);

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

(i) produce satisfactory evidence that the examination requirements are or were at the time the license was issued, equal to those of this state; and

(j) pass the jurisprudence examination prescribed by division rule made in collaboration with the board.

Section 15. Section **58-17b-304** is enacted to read:

58-17b-304. Qualifications for licensure of pharmacy intern.

Each applicant for licensure as a pharmacy intern shall:

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

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

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

(4) complete a criminal background check and be free from criminal convictions as required by Section 58-17b-307, or as otherwise described in Section 58-1-501;

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

(6) meet the preliminary educational qualifications required by division rule made in collaboration with the board; and

(7) meet one of the following educational criteria:

(a) be a current pharmacy student, a resident, or fellow in a program approved by division rule in collaboration with the board;

(b) have graduated and received a pharmacy degree from a school or college of

pharmacy which is accredited by the American Council on Pharmaceutical Education; or

(c) have graduated from a foreign pharmacy school and received certification of equivalency from a credentialing agency approved by the division rule in collaboration with the board.

Section 16. Section **58-17b-305** is enacted to read:

58-17b-305. Qualifications for licensure of pharmacy technician.

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

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

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

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

(d) complete a criminal background check and be free from criminal convictions as required by Section 58-17b-307, or as otherwise permitted by Section 58-1-501;

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

(f) have completed a board approved program and curriculum of education and training, meeting standards established by division rule made in collaboration with the board; and

(g) successfully complete the examinations requirement within the time periods established by division rule made in collaboration with the board.

(2) A pharmacist whose license has been denied, revoked, suspended, or restricted for disciplinary purposes shall not be eligible to be a licensed pharmacy technician while on probation with the division.

Section 17. Section **58-17b-306** is enacted to read:

58-17b-306. Qualifications for licensure as a pharmacy.

(1) Each applicant for licensure under this section, except for those applying for a class D license, shall:

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

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

(c) satisfy the division that the applicant, and each owner, officer, or manager of the

applicant have not engaged in any act, practice, or omission, which when considered with the duties and responsibilities of a licensee under this section indicates there is cause to believe that issuing a license to the applicant is inconsistent with the interest of the public's health, safety, or welfare;

(d) demonstrate the licensee's operations will be in accordance with all federal, state, and local laws relating to the type of activity engaged in by the licensee, including regulations of the Federal Drug Enforcement Administration and Food and Drug Administration;

(e) maintain operating standards established by division rule made in collaboration with the board; and

(f) acknowledge the division's authority to inspect the licensee's business premises pursuant to Section 58-17b-103.

(2) Each applicant applying for a class D license shall:

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

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

(c) present to the division verification of licensure in the state where physically located and verification that such license is in good standing;

(d) provide a statement of the scope of pharmacy services that will be provided and a detailed description of the protocol as described by rule by which pharmacy care will be provided, including any collaborative practice arrangements with other health care practitioners;

(e) sign an affidavit attesting that any healthcare practitioners employed by the applicant and physically located in Utah have the appropriate license issued by the division and in good standing; and

(f) sign an affidavit attesting that the applicant will abide by the pharmacy laws and regulations of the jurisdiction in which the patient is located.

(3) Each license issued under this section shall be issued for a single, specific address, and is not transferable or assignable.

Section 18. Section **58-17b-307** is enacted to read:

58-17b-307. Qualification for licensure -- Criminal background checks.

(1) An applicant for licensure under this chapter shall submit fingerprint cards in a form acceptable to the division at the time the license application is filed and shall consent to a

fingerprint background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.

(2) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant through the national criminal history system (NCIC) or any successor system.

(3) If convicted of one or more felonies, an applicant must receive an absolute discharge from the sentences for all felony convictions five or more years prior to the date of filing an application for licensure under this chapter.

(4) For purposes of conducting the criminal background check required in Subsection (1), the division shall have direct access to criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

(5) Any new pharmacist, pharmacy intern, or pharmacy technician license issued under this section shall be conditional, pending completion of the criminal background check. Notwithstanding Title 63, Chapter 46b, Administrative Procedures Act, if the criminal background check discloses the applicant has failed to accurately disclose a criminal history, the license shall be immediately and automatically revoked upon notice to the licensee.

(6) Any person whose conditional license has been revoked under Subsection (5) shall be entitled to a postrevocation hearing to challenge the revocation. The hearing shall be conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

Section 19. Section **58-17b-308** is enacted to read:

58-17b-308. Term of license -- Expiration -- Renewal.

(1) Except as provided in Subsection (2), each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle. Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

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

(a) one year for a license issued under Subsection 58-17b-304(7)(b) or (c); or

(b) four years for a license issued under Subsection 58-17b-304(7)(a).

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

Section 20. Section **58-17b-309** is enacted to read:

58-17b-309. Exemptions from licensure.

(1) In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the acts or practices described in this Subsection (1) without being licensed under this chapter:

(a) a person selling contact lenses in accordance with Section 58-16a-801; and

(b) an individual engaging in the practice of pharmacy technician under the direct personal supervision of a pharmacist while making satisfactory progress in an approved program as defined in division rule.

(2) In accordance with Subsection 58-1-303(1)(a), an individual exempt under Subsection (1)(b) must take all examinations as required by division rule following completion of an approved curriculum of education, within the required time frame. This exemption expires immediately upon notification of a failing score of an examination, and the individual may not continue working as a pharmacy technician even under direct supervision.

Section 21. Section **58-17b-310** is enacted to read:

58-17b-310. Continuing education.

The division in collaboration with the board may establish by rule continuing education requirements for each classification of licensure under this chapter.

Section 22. Section **58-17b-401** is enacted to read:

Part 4. License Denial and Discipline

58-17b-401. Grounds for denial of licensure -- Disciplinary proceedings.

Grounds for the following action regarding a license issued under this chapter shall be in accordance with Section 58-1-401:

(1) refusal to issue a license to an applicant;

(2) refusal to renew the license of a licensee;

(3) to revoke, suspend, restrict, or place on probation the license of a licensee;

(4) to issue a public or private reprimand to a licensee;

(5) to issue cease and desist orders; and

(6) to issue an administrative fine or citation.

Section 23. Section **58-17b-501** is enacted to read:

Part 5. Unlawful and Unprofessional Conduct

58-17b-501. Unlawful conduct.

"Unlawful conduct" includes:

(1) knowingly preventing or refusing to permit any authorized agent of the division to conduct an inspection pursuant to Section 58-17b-103;

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

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

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

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

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

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

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

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

(c) by concealment of a material fact;

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

(e) by theft;

(7) filling, refilling, or advertising the filling or refilling of prescriptions for any consumer or patient residing in this state if the person is not licensed:

(a) under this chapter; or

(b) in the state from which he is dispensing;

(8) requiring any employed pharmacist, pharmacy intern, pharmacy technician, or authorized supportive personnel to engage in any conduct in violation of this chapter;

(9) being in possession of a prescription drug for any unlawful purpose;

(10) dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who he knows or should know is attempting to obtain drugs by fraud or misrepresentation;

(11) selling, dispensing, or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure; and

(12) using a prescription drug or controlled substance for himself that was not lawfully prescribed for him by a practitioner.

Section 24. Section **58-17b-502** is enacted to read:

58-17b-502. Unprofessional conduct.

"Unprofessional conduct" includes:

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

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

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

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

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

(5) accepting back and redistributing of any unused drug, or a part of it, after it has left

the premises of any pharmacy, unless the drug is in the original sealed unit dose package or manufacturer's sealed container as defined in rule, except as provided in Section 58-17b-503;

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

(7) violating Federal Title II, P.L. 91, Controlled Substances Act, or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act;

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

(9) administering without appropriate training as defined by rule:

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

(b) a lawful order, when one is required by law;

(10) disclosing confidential patient information in violation of the provisions of the Health Insurance Portability and Accountability Act of 1996 or other applicable law;

(11) engaging in the practice of pharmacy without a licensed pharmacist designated as the pharmacist-in-charge;

(12) failing to report to the division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency, or court for conduct that would constitute grounds for action as defined in this section;

(13) preparing as a pharmacist or pharmacy intern, a prescription drug for sale to another pharmacist or pharmaceutical facility; and

(14) preparing as a pharmacist or pharmacy intern, a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner.

Section 25. Section **58-17b-503** is enacted to read:

58-17b-503. Exception to unprofessional conduct.

(1) For purposes of this section:

(a) "ICFMR" means an intermediate care facility for the mentally retarded licensed as a nursing care facility or a small health care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(b) "Nursing care facility" has the same definition as in Section 26-21-2.

(c) "Unit pack" means a single dose-single drug package which identification indicates the lot number and expiration date for the drug.

(2) Notwithstanding the provisions of Subsection 58-17b-502(5), a pharmacist may accept back and redistribute any unused drug, or a part of it, after it has left the premises of the pharmacy if:

(a) the drug was prescribed to a patient in a nursing care facility, a ICFMR, or state prison facility, county jail, or state hospital;

(b) the drug was stored under the supervision of a licensed health care provider according to manufacturer recommendations;

(c) the drug is in a unit pack or in the manufacturer's sealed container;

(d) the drug was returned to the original dispensing pharmacy;

(e) the drug was initially dispensed by a licensed pharmacist or licensed pharmacy intern; and

(f) accepting back and redistribution of the drug complies with Federal Food and Drug Administration and Drug Enforcement Administration regulations.

Section 26. Section **58-17b-504** is enacted to read:

58-17b-504. Penalty for unlawful or unprofessional conduct -- Fines -- Citations.

(1) Any person who violates the unlawful conduct provision defined in Subsection 58-1-501(1)(a)(i) and Subsections 58-17b-501(7) and (11) is guilty of a third degree felony.

(2) Any person who violates the unlawful conduct provisions defined in Subsection 58-1-501(1)(a)(ii), Subsections 58-1-501(1)(b) through (e) and Section 58-17b-501, except Subsections 58-17b-501(7) and (11), is guilty of a class A misdemeanor.

(3) (a) Subject to Subsection (5), the division may assess administrative penalties in accordance with the provisions of Section 58-17b-401 for acts of unprofessional or unlawful conduct or any other appropriate administrative action in accordance with the provisions of Section 58-17b-401.

(b) An administrative penalty imposed pursuant to this section shall be deposited in the

General Fund as a dedicated credit to be used by the division for pharmacy licensee education and enforcement as provided in Section 58-12b-505.

(4) If a licensee has been convicted of violating Section 58-17b-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative fine under this chapter for the same offense for which the conviction was obtained.

(5) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Section 58-17b-501, 58-17b-502, or Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(b) Any person who is in violation of the provisions of Section 58-17b-501, 58-17b-502, or Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (5) of up to $10,000 per single violation or up to $2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule, and may, in addition to or in lieu of, be ordered to cease and desist from violating the provisions of Section 58-17b-501, 58-17b-502, or Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions.

(c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-17b-401 may not be assessed through a citation.

(d) Each citation shall be in writing and specifically describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated. The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest

the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(e) Each citation issued under this section, or a copy of each citation, may be served upon any person whom a summons may be served:

(i) in accordance with the Utah Rules of Civil Procedure;

(ii) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or

(iii) by mail.

(f) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.

(g) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with the citation after it becomes final.

(h) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground of denial of license.

(i) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

Section 27. Section **58-17b-505** is enacted to read:

58-17b-505. Educational and enforcement fund.

(1) The director may use the money collected pursuant to Section 58-17b-504 for the following purposes:

(a) education and training of licensees under this chapter;

(b) enforcement of this chapter by:

(i) investigating unprofessional or unlawful conduct;

(ii) providing legal representation to the division when legal action is taken against a person engaging in unprofessional or unlawful conduct;

(iii) monitoring compliance of renewal requirement; and

(iv) education and training of division staff and board members.

(2) All funding for the purposes listed in Subsection (1) is nonlapsing.

(3) Any penalty which is not paid may be collected by the director by either referring

the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(4) Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.

Section 28. Section **58-17b-506** is enacted to read:

58-17b-506. Petitioning for reinstatement of licensure.

Any person whose license to practice pharmacy in this state has been revoked, suspended, or surrendered voluntarily or by action of the division, shall have the right at reasonable intervals, to petition the division for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the division. Upon investigation and hearing, the division may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances that have changed sufficiently to warrant such modifications. The division, also at its discretion, may require such person to pass an examination or examinations for reentry into the practice of pharmacy.

Section 29. Section **58-17b-601** is enacted to read:

Part 6. Regulation of the Practice of Pharmacy Operating Standards

58-17b-601. General operating standards.

(1) (a) The division shall make rules relating to the operations and conduct of facilities, individuals, and entities which are regulated under this chapter, to protect the public health, safety, and welfare.

(b) The rules shall be consistent with the regulations of the Federal Food and Drug Administration and Drug Enforcement Administration, this chapter, and all other laws relating to activities and persons regulated under this chapter.

(2) (a) This chapter does not prevent, restrict, or in any other manner interfere with the sale of nonprescription drugs.

(b) The division may not make any rules under this chapter that require nonprescription drugs to be sold by a licensed pharmacist or only in a pharmaceutical facility.

(c) The sale or distribution of nonprescription drugs does not constitute the practice of pharmacy.

Section 30. Section **58-17b-602** is enacted to read:

58-17b-602. Prescription orders -- Information required -- Alteration -- Labels -- Signatures.

(1) The minimum information that shall be included in a prescription order and may be defined by rule is:

(a) the prescriber's name, address, and telephone number, and, if the order is for a controlled substance, the patient's age and the prescriber's DEA number;

(b) the patient's name and address or, in the case of an animal, name of the owner and species of the animal;

(c) the date of issuance;

(d) the name of the medication or device prescribed and dispensing instructions, if necessary;

(e) the directions for the use of the prescription, if appropriate, for the patient or animal, any refill, special labeling, and other instructions;

(f) the prescriber's signature if the prescription order is written;

(g) if an electronically transmitted prescription order, prescribing practitioner's electronic signature; and

(h) if a hard copy prescription order generated from electronic media, prescribing practitioner's electronic or manual signature.

(2) The requirement of Subsection (1)(a) does not apply to prescription orders dispensed for inpatients by hospital pharmacies if the prescriber is a current member of the hospital staff and the prescription order is on file in the patient's medical record.

(3) The prescription order, except for controlled substance II, may be dispensed by pharmacists or pharmacy interns upon an oral prescription of a practitioner, if the oral prescription is promptly reduced to writing.

(4) (a) A pharmacist or pharmacy intern may not dispense or compound any prescription of a practitioner if it shows evidence of alteration, erasure, or addition by any person other than the person writing the prescription, except under Subsection (4)(b).

(b) A pharmacist or pharmacy intern dispensing or compounding the prescription may

alter or make additions after receiving permission of the prescriber, or may make entries or additions on the prescription required by law or necessitated in the compounding and dispensing procedures.

(5) Each drug dispensed shall have a label securely affixed to the container indicating the following minimum information:

(a) the name, address, and telephone number of the pharmacy;

(b) the serial number of the prescription as assigned by the dispensing pharmacy;

(c) the filling date of the prescription or its last dispensing date;

(d) the name of the patient, or in the case of an animal, name of the owner and species of the animal;

(e) the name of the prescriber;

(f) the directions for use and cautionary statements, if any, which are contained in the prescription order or are needed;

(g) the trade, generic, or chemical name, amount dispensed and strength of dosage form, but if multiple ingredient products with established proprietary or nonproprietary names are prescribed, those products' names may be used; and

(h) the beyond use date.

(6) If the prescriber specifically indicates the name of the prescription product should not appear on the label, then the trade, generic, or chemical name and strength of dosage form may not be included.

Section 31. Section **58-17b-603** is enacted to read:

58-17b-603. Identification of pharmacy personnel.

(1) All individuals employed in a pharmacy facility having any contact with the public or patients receiving services from that pharmacy facility shall wear on their person a clearly visible and readable identification showing the individual's name and position.

(2) When communicating by any means, written, verbal, or electronic, pharmacy personnel must identify themselves as to licensure classification.

Section 32. Section **58-17b-604** is enacted to read:

58-17b-604. Medication profiles.

(1) Each pharmacy shall establish a medication profile system for pharmacy patients according to the standards established by division rules made in collaboration with the board.

The rules shall indicate the method for recording all prescription information.

(2) The pharmacy shall maintain the medication profile for any pharmacy patient who expresses a desire for that professional service.

(3) The pharmacy may charge an appropriate professional fee for this service and for copying or providing information in the medication profile to another authorized person.

(4) A pharmacist, pharmacy intern, or pharmacy technician may not release or discuss the information contained in a prescription or patient's medication profile to anyone except:

(a) the pharmacy patient in person or the pharmacy patient's legal guardian or designee;

(b) a lawfully authorized federal, state, or local drug enforcement officer;

(c) a third party payment program administered under terms authorized by the pharmacy patient;

(d) a pharmacist, pharmacy intern, or pharmacy technician providing pharmacy services to the patient or a prescribing practitioner providing professional services to the patient;

(e) another pharmacist, pharmacy intern, pharmacy technician, or prescribing practitioner to whom the patient has requested a prescription transfer; or

(f) the pharmacy patient's attorney, after the presentation of a written authorization signed by the:

(i) patient, before a notary public;

(ii) parent or lawful guardian, if the patient is a minor;

(iii) lawful guardian, if the patient is incompetent; or

(iv) personal representative, if the patient is deceased.

Section 33. Section **58-17b-605** is enacted to read:

58-17b-605. Drug product equivalents.

(1) A pharmacist or pharmacy intern dispensing a prescription order for a specific drug by brand or proprietary name may substitute another drug product equivalent if:

(a) the purchaser specifically requests or consents to the substitution of a drug product equivalent;

(b) the substituted drug product equivalent is of the same generic type and is designated the therapeutic equivalent in the approved drug products with therapeutic equivalence evaluations prepared by the Center for Drug Evaluation and Research of the

Federal Food and Drug Administration;

(c) the substituted drug product is permitted to move in interstate commerce;

(d) the pharmacist or pharmacy intern counsels the patient on the use and the expected response to the prescribed drug, whether a substitute or not, and the substitution is not otherwise prohibited by this chapter;

(e) the prescribing practitioner has not indicated that an equivalent drug product is not to be substituted as provided in Subsection (5); and

(f) the substitution is not otherwise prohibited by law.

(2) (a) Each out-of-state mail service pharmacy dispensing a substituted drug product into this state shall notify the patient of substitution either by telephone or in writing.

(b) Each out-of-state mail service pharmacy shall comply with the requirements of this chapter with respect to drugs which may be substituted, including labeling and record keeping, when dispensing substituted drug products.

(3) Pharmacists or pharmacy interns may not substitute without the prescriber's authorization on trade name drug product prescriptions unless the product is currently categorized in the approved drug products with therapeutic equivalence evaluations prepared by the Center for Drug Evaluation and Research of the Federal Food and Drug Administration as a drug product considered to be therapeutically equivalent to another drug product.

(4) A pharmacist or pharmacy intern who dispenses a prescription with a drug product equivalent under this section assumes no greater liability than would be incurred had the pharmacist or pharmacy intern dispensed the prescription with the drug product prescribed.

(5) (a) If, in the opinion of the practitioner, it is in the best interest of the patient that an equivalent drug product not be substituted, the practitioner may indicate a prohibition on substitution either by writing "dispense as written" or may sign in the appropriate space where two lines have been preprinted on a prescription order and captioned "dispense as written" or "substitution permitted".

(b) If the prescription is communicated orally by the practitioner to the pharmacist or pharmacy intern, the practitioner shall indicate the prohibition on substitution and that indication shall be noted in writing by the pharmacist or pharmacy intern with the name of the practitioner and the words "orally by" and the initials of the pharmacy practitioner written after it.

(6) The substitution, if any, shall be communicated to the purchaser. The container shall be labeled with the name of the drug dispensed and the pharmacist, pharmacy intern, or pharmacy technician shall indicate on the file copy of the prescription both the name of the prescribed drug and the name of the drug dispensed in its place.

(7) Failure of a licensed medical practitioner to specify that no substitution is authorized does not constitute evidence of negligence.

Section 34. Section **58-17b-606** is enacted to read:

58-17b-606. Restrictive drug formulary prohibited.

(1) As used in this section:

(a) "Generic form" means a prescription drug that is available in generic form and has an A rating in the United States Pharmacopeia and Drug Index.

(b) "Legend drug" means any drug that requires a prescription under state or federal law.

(c) "Restrictive drug formulary" means a list of legend drugs, other than drugs for cosmetic purposes, that are prohibited by the Department of Health from dispensation, but are approved by the Federal Food and Drug Administration.

(2) A practitioner may prescribe legend drugs in accordance with this chapter that, in his professional judgment and within the lawful scope of his practice, he considers appropriate for the diagnosis and treatment of his patient.

(3) Except as provided in Subsection (4), the Department of Health may not maintain a restrictive drug formulary that restricts a physician's ability to treat a patient with a legend drug that has been approved and designated as safe and effective by the Federal Food and Drug Administration, except for drugs for cosmetic purposes.

(4) When a multisource legend drug is available in the generic form, the Department of Health may only reimburse for the generic form of the drug unless the treating physician demonstrates to the Department of Health a medical necessity for dispensing the nongeneric, brand-name legend drug.

(5) This section does not affect the state's ability to exercise the exclusion options available under the Federal Omnibus Budget Reconciliation Act of 1990.

Section 35. Section **58-17b-607** is enacted to read:

58-17b-607. Drug substitution is not the practice of medicine -- Other causes of

action not denied.

(1) The substitution of any drug by a licensed pharmacist or pharmacy intern under this chapter does not constitute the practice of medicine.

(2) This chapter may not be construed to deny any individual a cause of action against a pharmacist, pharmacy intern, or his employer for violations of this chapter, including failure to observe accepted standards of care of the pharmaceutical profession.

Section 36. Section **58-17b-608** is enacted to read:

58-17b-608. Emergency refills.

(1) In the interest of the patient's health, a pharmacist or pharmacy intern may, in an emergency, refill a prescription for a patient, but only if the prescribing practitioner is not available promptly to authorize the refill and only if in the professional judgment of the pharmacist or pharmacy intern the prescription should be refilled.

(2) Only sufficient medication as necessary in the emergency may be furnished by the pharmacist or pharmacy intern, not to exceed a three-day supply.

(3) The practitioner shall be contacted as soon as possible for further instructions concerning the emergency.

Section 37. Section **58-17b-609** is enacted to read:

58-17b-609. Limitation on prescriptions and refills -- Controlled Substances Act not affected -- Legend drugs.

(1) A prescription for any prescription drug may not be dispensed after one year from the date it was initiated except as otherwise provided in Chapter 37, Utah Controlled Substances Act.

(2) A prescription authorized to be refilled may not be refilled after one year from the original issue date.

(3) A practitioner may not be prohibited from issuing a new prescription for the same drug orally, in writing, or by electronic transmission.

(4) Nothing in this chapter affects Chapter 37, Utah Controlled Substances Act.

(5) Prescriptions for a legend drug written by a licensed prescribing practitioner in another state may be filled or refilled by a pharmacist or pharmacy intern in this state, and the pharmacist or pharmacy intern knows the prescribing practitioner holds a current license.

Section 38. Section **58-17b-610** is enacted to read:

58-17b-610. Patients' immediate needs.

This chapter may not be construed to prevent the personal administration of drugs or medicines by practitioners licensed to prescribe in order to supply the immediate needs of their patients. Immediate need for a patient includes giving out drug samples for up to a three-day supply or the amount necessary to determine the best pharmaceutical agent for that specific patient.

Section 39. Section **58-17b-611** is enacted to read:

58-17b-611. Pharmacy records.

(1) Each pharmacy shall maintain its prescription files and other records in accordance with this chapter, division rules made in collaboration with the board, and federal regulations.

(2) Each out-of-state mail service pharmacy shall maintain its prescription files in accordance with applicable rules or regulations of the state in which its facilities are located and federal regulations.

Section 40. Section **58-17b-612** is enacted to read:

58-17b-612. Supervision -- Pharmacist-in-charge.

(1) (a) Any pharmacy, except a wholesaler, distributor, or out-of-state mail service pharmacy, shall be under the general supervision of at least one pharmacist licensed to practice in Utah. One pharmacist licensed in Utah shall be designated as the pharmacist-in-charge, whose responsibility it is to oversee the operation of the pharmacy.

(b) Notwithstanding the provisions of Subsection 58-17b-102(63), a supervising pharmacist does not have to be in the pharmacy or care facility but shall be available via a telepharmacy system for immediate contact with the supervised pharmacy technician or pharmacy intern if:

(i) the pharmacy is located in:

(A) a remote rural hospital, as defined in Section 26-21-13.6; or

(B) a clinic located in a remote rural county with less than 20 people per square mile;

(ii) the supervising pharmacist described in Subsection (1)(a), is not available; and

(iii) the telepharmacy system maintains records and files quarterly reports as required by division rule to assure that patient safety is not compromised.

(2) Each out-of-state mail service pharmacy shall designate and identify to the division a pharmacist holding a current license in good standing issued by the state in which the

pharmacy is located and who serves as the pharmacist-in-charge for all purposes under this chapter.

Section 41. Section **58-17b-613** is enacted to read:

58-17b-613. Patient counseling.

(1) Every pharmacy facility shall orally offer to counsel a patient or a patient's agent in a personal face-to-face discussion with respect to each prescription drug dispensed, if the patient or patient's agent:

(a) delivers the prescription in person to the pharmacist or pharmacy intern; or

(b) receives the drug in person at the time it is dispensed at the pharmacy facility.

(2) A pharmacist or pharmacy intern shall provide counseling to each patient, and shall provide the patient with a toll-free telephone number by which the patient may contact a pharmacist at the dispensing pharmacy during normal business hours and receive oral counseling, with respect to each prescription drug dispensed if the patient provides or the prescription is otherwise provided to the pharmacy facility by a means other than personal delivery, and the dispensed prescription drug is mailed or otherwise delivered to the patient outside of the pharmacy facility.

Section 42. Section **58-17b-614** is enacted to read:

58-17b-614. Notification.

(1) A pharmacy shall report in writing to the division not later than ten business days after the date of:

(a) a permanent closure of the pharmacy facility;

(b) a change of name or ownership;

(c) a change of location of the pharmacy facility;

(d) a sale or transfer of any controlled substance as a result of the permanent closing or change of ownership of the pharmacy facility;

(e) any matter or occurrence that the board requires by rule to be reported;

(f) a final order against the pharmacy license holder by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is a class D pharmacy; or

(g) a final order against a pharmacist who is designated as the pharmacist-in-charge of the pharmacy by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is a class D pharmacy.

(2) A pharmacy shall report in writing to the division a disaster, accident, or emergency that may effect purity, or labeling of a drug, medication, device, or other material used in the diagnosis or treatment of injury, illness, or disease immediately on the occurrence of the disaster, accident, or emergency as defined by rule. The reporting pharmacy shall maintain a copy of any notification required by this section for two years and make a copy available for inspection.

Section 43. Section **58-17b-615** is enacted to read:

58-17b-615. Sale of prescription drugs not in normal course of business.

(1) As used in this section, "seller" means a person selling prescription drugs or devices owned or lawfully controlled by him, or a party arranging for the sale of prescription drugs or devices owned by or lawfully controlled by another person, including salvage companies that acquire prescription drugs and devices from, or act as an agent or representative for freight haulers and forwarders.

(2) Any sale of prescription drugs in bankruptcy, at public auction, at freight liquidation sales, or any other sale of prescription drugs other than in the normal course of business or practice shall comply with the following:

(a) a seller of prescription drugs shall be licensed by the division as a prescription drug distributor or wholesaler with a regular license, or a temporary license for that sale only, before engaging in the sale of any prescription drugs; and

(b) a person licensed as a pharmacy under this chapter may not acquire by purchase or other means prescription drugs or devices outside the normal course of business within the meaning of this section unless:

(i) the prescription drugs or devices are accompanied by a certificate signed by a licensed pharmacist employed or retained by the seller, as required in Subsection (3), attesting that the prescription drugs or devices have not been adversely affected by circumstances relating to their transportation, storage, or distribution; and

(ii) the licensee acquiring the prescription drugs or devices employs a qualified pharmacist who is responsible for determining that all prescription drugs being acquired do not pose any threat to the public welfare if introduced into commerce than would be presented by the acquisition of those prescription drugs and devices in the normal course of business through established channels of prescription drug distribution.

(3) A seller of prescription drugs outside the normal course of business shall retain the services of a qualified pharmacist licensed to practice in the state to serve as either an employee or independent consultant to determine if the:

(a) prescription drugs and devices to be offered for sale have been transported, stored, and distributed in accordance with applicable federal, state, and local laws; and

(b) condition of the prescription drugs and devices to be offered for sale has been adversely affected by the circumstances of transportation, storage, or distribution.

(4) The written notice provided to the division prior to the sale of any prescription drugs or devices under this section shall contain written verification of the pharmacist retained by the seller, stating the drugs or devices offered for sale have not been adversely affected by the circumstances of transportation, storage, or distribution.

(5) A pharmacist employed by a seller under Subsection (3) or a pharmacy, distributor, or wholesaler for whom that pharmacist may be employed or in which he may have an interest, may not purchase any prescription drugs or devices from the seller for which that pharmacist has provided verification regarding the drugs or devices.

Section 44. Section **58-17b-616** is enacted to read:

58-17b-616. Drug stock sales -- Labeling.

(1) A manufacturer, wholesaler, or distributor of prescription drugs may not sell or give any prescription drug to any person unless the prescription drug stock container bears a label containing information as defined by rule the name and place of business of the manufacturer of the finished dosage form of the drug, and if different from the manufacturer, the name and place of business of the packer or distributor.

(2) Each tablet or capsule shall be marked with an identification code or monogram, unless waived by the division.

(3) Each stock package shall bear an expiration date and lot number.

Section 45. Section **58-17b-617** is enacted to read:

58-17b-617. Limitations on distribution of prescription drugs by pharmaceutical manufacturers or wholesalers.

(1) A pharmaceutical manufacturer or pharmaceutical wholesaler may not provide a prescription drug to any person, except as defined by rule.

(2) (a) Prescription drugs that are not controlled substances may be:

(i) distributed or provided as drug samples to a person licensed within the state to sell, prescribe, administer, or conduct research with legend drugs; and

(ii) supplied in connection with a manufacturer's patient assistance program to be distributed to qualifying patients enrolled in the program.

(b) Controlled substance prescription drugs may be sold or provided only:

(i) upon the issuance of an order or request by a person appropriately licensed under state and federal law to sell, prescribe, administer, or conduct research with prescription drugs; and

(ii) upon the establishment of documents in the possession of the manufacturer or distributor recording the purchaser, type of drug, quantity of drug, date of shipment, and date of delivery.

(3) Purchasers or those in receipt of drugs under this section shall maintain records in accordance with federal and state laws regarding controlled substances.

Section 46. Section **58-17b-618** is enacted to read:

58-17b-618. Compliance with federal laws.

The entities licensed under Sections 58-17b-301 and 58-17b-302 shall comply with all state and federal laws and regulations relating to the practice of pharmacy.

Section 47. Section **58-17b-619** is enacted to read:

58-17b-619. Third party payors -- Health maintenance organizations.

(1) Any third party payor for pharmaceutical services within the state may not require any pharmacy patient to obtain prescription drugs from a specific out-of-state or a Utah pharmacy as a condition of obtaining third party payment as defined in rule.

(2) This section does not prohibit any third party payor of pharmaceutical services, who provides for reimbursement to the pharmacy patient or payment on his behalf, from exercising the right to limit the amount reimbursed for the cost of prescription drugs based upon the cost of identical prescription drugs available through a designated out-of-state pharmacy.

(3) Each third party payor of pharmaceutical services shall identify as a part of the third party agreement or contract the designated out-of-state pharmacy which shall be used as the base line comparison.

(4) (a) A violation of this section is a class A misdemeanor.

(b) Each violation of this section is a separate offense.

Section 48. Section **58-17b-620** is enacted to read:

58-17b-620. Prescriptions issued within the public health system.

(1) As used in this section:

(a) "Department of Health" means the state Department of Health created in Section 26-1-4.

(b) "Health department" means either the Department of Health or a local health department.

(c) "Local health departments" mean the local health departments created in Title 26A, Chapter 1, Local Health Departments.

(2) A health department may implement the prescription procedure under Subsection (3) for prescription drugs, other than controlled substances, for use in clinics providing:

(a) sexually transmitted disease treatment;

(b) fluoride treatment; or

(c) travel immunization.

(3) The following prescription procedure shall be carried out in accordance with the requirements of Subsection (4) and may be used only in the clinics listed under Subsection (2):

(a) a physician writes and signs a prescription for prescription drugs, other than controlled substances, without the name and address of the patient and without the date the prescription is provided to the patient; and

(b) the physician authorizes a registered nurse employed by the health department to complete the prescription written under this Subsection (3) by inserting the patient's name and address, and the date the prescription is provided to the patient, in accordance with the physician's standing written orders and a written health department protocol approved by the physician and the medical director of the state Department of Health.

(4) When allowing prescriptions to be written under Subsection (3), the health department shall employ a physician who:

(a) assumes specific responsibility for all prescriptions issued in his name under the procedure in Subsection (3) by the health department; and

(b) enters into a written, signed agreement with the health department, which agreement is approved by the division and state:

(i) the terms and conditions under which the physician will prepare and sign

prescriptions that do not include the name and address of the patient and the date the prescription is provided to the patient;

(ii) the methods which will be used to ensure the signed prescriptions are secure and not available for unauthorized use;

(iii) the minimum qualifications and training of a registered nurse authorized by the physician and department to complete and provide prescriptions to a patient;

(iv) under what conditions prescriptions completed by an authorized registered nurse will be provided to a patient in accordance with standing orders and written protocols, and the specific prescription drugs for which prescriptions may be written;

(v) the manner in which the physician will audit and review the records of patients receiving prescriptions; and

(vi) the manner in which records of prescriptions issued will be maintained for audit by the physician and division.

(5) The health department shall file and maintain with the division a current copy of all agreements signed by physicians under Subsection (4).

(6) (a) All prescription forms to be used by a physician and health department in accordance with this section shall be serially numbered according to a numbering system assigned to that health department.

(b) All prescriptions issued shall contain all information required under this chapter and rules adopted under this chapter.

Section 49. Section **58-17b-621** is enacted to read:

58-17b-621. Automated pharmacy systems.

Automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Utah State Board of Pharmacy, and licensed health care facilities where legally permissible, as approved by the division in collaboration with the board, and described in rule.

Section 50. Section **58-17b-701** is enacted to read:

Part 7. Incapacity

58-17b-701. Mentally incompetent or incapacitated pharmacist -- Division action and procedures.

(1) As used in this section:

(a) "Incapacitated person" has the same definition as in Section 75-1-201.

(b) "Mentally ill" has the same definition as in Section 62A-15-602.

(2) If a court of competent jurisdiction determines a pharmacist is an incapacitated person, or that he is mentally ill and unable to safely engage in the practice of pharmacy, the director shall immediately suspend the license of the pharmacist upon the entry of the judgment of the court, without further proceedings under Title 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the pharmacist, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a pharmacist, who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing pharmacy with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the pharmacist with a notice of hearing on the sole issue of the capacity of the pharmacist to competently and safely engage in the practice of pharmacy.

(b) The hearing shall be conducted under Section 58-1-109 and Title 63, Chapter 46b, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every pharmacist who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at his own expense to an immediate mental or physical examination when directed in writing by the division, with the consent of a majority of the board, to do so; and

(ii) the admissibility of the reports of the examining practitioner's testimony or examination in any proceeding regarding the license of the pharmacist, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the pharmacist is mentally ill or incapacitated or otherwise unable to practice pharmacy with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the pharmacist's patients or the general public.

(c) (i) Failure of a pharmacist to submit to the examination ordered under this section is a ground for the division's immediate suspension of the pharmacist's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the pharmacist and was not related directly to the illness or incapacity of the pharmacist.

(5) (a) A pharmacist whose license is suspended under Subsection (2) or (4) has the right to a hearing to appeal the suspension within ten days after the license is suspended.

(b) The hearing held under this Subsection (5) shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the pharmacist's patients or the general public.

(6) A pharmacist whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the pharmacist, under procedures established by division rule, regarding any change in the pharmacist's condition, to determine whether:

(a) he is or is not able to safely and competently engage in the practice of pharmacy; and

(b) he is qualified to have his licensure to practice under this chapter restored completely or in part.

Section 51. Section **58-24a-105** is amended to read:

58-24a-105. Administration of agents -- Limitation.

(1) Physical therapists may administer the following agents under the provisions of Subsection (2):

(a) topically applied medicinal agents, including steroids and analgesics for wound care and for musculoskeletal treatment using iontophoresis or phonorphoresis; and

(b) pharmaceutical aerosols for pulmonary hygiene in an institutional setting in which the services of a licensed respiratory therapist are not available in the institution or within a ten-mile radius of the institution.

(2) The topical application or aerosol administration by a physical therapist of a prescription drug as defined in Section [~~58-17a-102~~] 58-17b-102 may be only upon the written prescription of a practitioner licensed to prescribe that drug.

(3) This section does not authorize a physical therapist to possess for dispensing or dispense a prescription drug.

Section 52. Section **58-37-6** is amended to read:

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

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

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

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

(2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled substance in Schedules II through V within this state, or who proposes to engage in manufacturing, producing, distributing, prescribing, dispensing, administering, conducting research with, or performing laboratory analysis upon controlled substances included in Schedules II through V within this state shall obtain a license issued by the department.

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

(b) Persons licensed to manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon controlled substances in Schedules II through V within this state may possess, manufacture, produce, distribute,

prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license and in conformity with this chapter.

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

(i) an agent or employee, except a sales representative, of any registered manufacturer, distributor, or dispenser of any controlled substance, if the agent or employee is acting in the usual course of his business or employment; however, nothing in this Subsection (2) shall be interpreted to permit an agent, employee, sales representative, or detail man to maintain an inventory of controlled substances separate from the location of his employer's registered and licensed place of business;

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

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

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

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

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

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

(i) maintained effective controls against diversion of controlled substances and any

Schedule I or II substance compounded from any controlled substance into other than legitimate medical, scientific, or industrial channels;

(ii) complied with applicable state and local law;

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

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

(v) established effective controls against diversion; and

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

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

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

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

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

(iv) Licensing for purposes of bona fide research with controlled substances by a practitioner considered qualified may be denied only on a ground specified in Subsection (4), or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately his supply of substances against diversion from medical or scientific use.

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

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

chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of

Occupational and Professional Licensing Act, and conducted in conjunction with the appropriate representative committee designated by the director of the department.

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

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

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

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

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

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

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

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

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

(ii) A person using small quantities or solutions or other preparations of those drugs for local application has complied with this Subsection (5)(b) if he keeps a record of the quantity,

character, and potency of those solutions or preparations purchased or prepared by him, and of the dates when purchased or prepared.

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

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

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

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

(b) A person other than a pharmacist licensed under the laws of this state, or his licensed intern, as required by [~~Section 58-17a-302~~] Sections 58-17b-303 and 58-17b-304, may not dispense a controlled substance.

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

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

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

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

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

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

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

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

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

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

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

(i) (A) A prescription for a Schedule II substance may not be refilled.

(B) A Schedule II controlled substance may not be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions.

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

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

(iv) Any prescription for a Schedule II substance may not be dispensed if it is not presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days after the date the prescription was issued, or 30 days after the dispensing date, if that date is specified separately from the date of issue.

(v) A practitioner may issue more than one prescription at the same time for the same Schedule II controlled substance, but only under the following conditions:

(A) no more than three prescriptions for the same Schedule II controlled substance may be issued at the same time;

(B) no one prescription may exceed a 30-day supply;

(C) a second or third prescription shall include the date of issuance and the date for dispensing; and

(D) unless the practitioner determines there is a valid medical reason to the contrary, the date for dispensing a second or third prescription may not be fewer than 30 days from the dispensing date of the previous prescription.

(vi) Each prescription for a controlled substance may contain only one controlled

substance per prescription form and may not contain any other legend drug or prescription item.

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

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

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

(iii) entered upon the record of the patient, the record is signed by the prescriber affirming his authorization of the order within 48 hours after filling or administering the order, and the patient's record reflects the quantity actually administered; and

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

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

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

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

(k) A person who is licensed under this chapter to manufacture, distribute, or dispense

a controlled substance may not manufacture, distribute, or dispense a controlled substance to another licensee or any other authorized person not authorized by this license.

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

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

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

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

(8) (a) (i) Any person licensed under this chapter who is found by the department to have violated any of the provisions of Subsections (7)(k) through (7)(o) is subject to a penalty not to exceed $5,000. The department shall determine the procedure for adjudication of any violations in accordance with Sections 58-1-106 and 58-1-108.

(ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the General Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

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

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

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

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

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

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

Section 53. Section **58-37-7.5** is amended to read:

58-37-7.5. Controlled substance database -- Advisory committee -- Pharmacy

reporting requirements -- Access -- Penalties.

(1) As used in this section:

(a) "Committee" means the Controlled Substance Database Advisory Committee created in this section.

(b) "Database" means the controlled substance database created in this section.

(c) "Database manager" means the person responsible for operating the database, or his designee.

(d) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

[~~(e) "Drug outlet" has the same definition as in Section 58-17a-102.~~]

[~~(f)~~] (e) "Health care facility" has the same definition as in Section 26-21-2.

(f) "Pharmacy or pharmaceutical facility" has the same definition as in Section 58-17b-102.

(2) (a) There is created within the division a controlled substance database.

(b) The division shall administer and direct the functioning of the database in accordance with this section. The division may under state procurement laws contract with another state agency or private entity to establish, operate, or maintain the database. The division in collaboration with the board shall determine whether to operate the database within the division or contract with another entity to operate the database, based on an analysis of costs and benefits.

(c) The purpose of the database is to contain data as described in this section regarding every prescription for a controlled substance dispensed in the state to any person other than an inpatient in a licensed health care facility.

(d) Data required by this section shall be submitted in compliance with this section to the manager of the database by the pharmacist in charge of the drug outlet where the controlled substance is dispensed.

(3) (a) There is created the Controlled Substance Database Advisory Committee. The committee members are:

(i) two members representing the Utah Medical Association;

(ii) one member representing the Utah Dental Association;

(iii) two members representing the Utah Pharmaceutical Association;

(iv) one member representing the Department of Public Safety;

(v) one member representing the Utah Association of Chiefs of Police;

(vi) one member representing the Utah Sheriffs Association;

(vii) one member representing the state Office of the Attorney General;

(viii) one member representing the Statewide Association of Public Attorneys; and

(ix) three members representing the general public, and who are not health care providers.

(b) The committee shall be appointed and serve in accordance with Section 58-1-201.

(c) The committee shall advise the division regarding:

(i) establishing, maintaining, and operating the database;

(ii) access to the database and how access is obtained; and

(iii) control of information contained in the database.

(4) The pharmacist in charge shall, regarding each controlled substance dispensed by a pharmacist under his supervision other than those dispensed for an inpatient at a health care facility, submit to the manager of the database the following information, by a procedure and in a format established by the division:

(a) name of the prescribing practitioner;

(b) date of the prescription;

(c) date the prescription was filled;

(d) name of the person for whom the prescription was written;

(e) positive identification of the person receiving the prescription, including the type of identification and any identifying numbers on the identification;

(f) name of the controlled substance;

(g) quantity of controlled substance prescribed;

(h) strength of controlled substance;

(i) quantity of controlled substance dispensed;

(j) dosage quantity and frequency as prescribed;

(k) name of drug outlet dispensing the controlled substance;

(l) name of pharmacist dispensing the controlled substance; and

(m) other relevant information as required by division rule.

(5) The division shall maintain the database in an electronic file or by other means

established by the division to facilitate use of the database for identification of:

(a) prescribing practices and patterns of prescribing and dispensing controlled substances;

(b) practitioners prescribing controlled substances in an unprofessional or unlawful manner;

(c) individuals receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance; and

(d) individuals presenting forged or otherwise false or altered prescriptions for controlled substances to a [~~drug outlet~~] pharmacy.

(6) (a) The division shall by rule establish the electronic format in which the information required under this section shall be submitted to the administrator of the database.

(b) The division shall ensure the database system records and maintains for reference:

(i) identification of each person who requests or receives information from the database;

(ii) the information provided to each person; and

(iii) the date and time the information is requested or provided.

(7) The division shall make rules in collaboration with the committee to:

(a) effectively enforce the limitations on access to the database as described in Subsection (8); and

(b) establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information without request from the database.

(8) The manager of the database shall make information in the database available only to the following persons, and in accordance with the limitations stated and division rules:

(a) personnel of the division specifically assigned to conduct investigations related to controlled substances laws under the jurisdiction of the division;

(b) authorized division personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment;

(c) a licensed practitioner having authority to prescribe controlled substances, to the

extent the information relates specifically to a current patient of the practitioner, to whom the practitioner is prescribing or considering prescribing any controlled substance;

(d) a licensed pharmacist having authority to dispense controlled substances to the extent the information relates specifically to a current patient to whom that pharmacist is dispensing or considering dispensing any controlled substance;

(e) federal, state, and local law enforcement authorities engaged as a specified duty of their employment in enforcing laws regulating controlled substances; and

(f) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the database manager that the individual requesting the information is in fact the person about whom the data entry was made.

(9) Any person who knowingly and intentionally releases any information in the database in violation of the limitations under Subsection (8) is guilty of a third degree felony.

(10) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a third degree felony.

(11) (a) A person may not knowingly and intentionally use, release, publish, or otherwise make available to any other person or entity any information obtained from the database for any purpose other than those specified in Subsection (8). Each separate violation of this Subsection (11) is a third degree felony and is also subject to a civil penalty not to exceed $5,000.

(b) The procedure for determining a civil violation of this Subsection (11) shall be in accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

(c) Civil penalties assessed under this Subsection (11) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

(12) (a) The failure of a pharmacist in charge to submit information to the database as required under this section after the division has submitted a specific written request for the information or when the division determines the individual has a demonstrable pattern of failing to submit the information as required is grounds for the division to take the following actions in accordance with Section 58-1-401:

(i) refuse to issue a license to the individual;

(ii) refuse to renew the individual's license;

(iii) revoke, suspend, restrict, or place on probation the license;

(iv) issue a public or private reprimand to the individual;

(v) issue a cease and desist order; and

(vi) impose a civil penalty of not more than $1,000 for each dispensed prescription regarding which the required information is not submitted.

(b) Civil penalties assessed under Subsection (12)(a)(vi) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

(c) The procedure for determining a civil violation of this Subsection (12) shall be in accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

(13) An individual who has submitted information to the database in accordance with this section may not be held civilly liable for having submitted the information.

(14) All department and the division costs necessary to establish and operate the database shall be funded by appropriations from:

(a) the Commerce Service Fund; and

(b) the General Fund.

(15) All costs associated with recording and submitting data as required in this section shall be assumed by the submitting [~~drug outlet~~] pharmacy.

Section 54. Section **58-37c-19.5** is amended to read:

58-37c-19.5. Iodine solution greater than 1.5% -- Prescription or permit required -- Penalties.

(1) As used in this section, "iodine matrix" means iodine at concentrations greater than 1.5% by weight in a matrix or solution.

(2) A person may offer to sell, sell, or distribute an iodine matrix only:

(a) as a prescription drug, pursuant to a prescription issued by a veterinarian or physician licensed within the state; or

(b) to a person who is actively engaged in the legal practice of animal husbandry of livestock, as defined in Section 4-1-8.

(3) Prescriptions issued under this section:

(a) shall provide for a specified number of refills;

(b) may be issued by electronic means, in accordance with Title 58, Chapter [~~17a~~] 17b, Pharmacy Practice Act; and

(c) may be filled by a person other than the veterinarian or physician issuing the

prescription.

(4) A retailer offering iodine matrix for sale:

(a) shall store the iodine matrix so that the public does not have access to the iodine matrix without the direct assistance or intervention of a retail employee;

(b) shall keep a record, which may consist of sales receipts, of each person purchasing iodine matrix; and

(c) may, if necessary to ascertain the identity of the purchaser, ask for proof of identification from the purchaser.

(5) A person engaging in a regulated transaction under Subsection (2) is guilty of a class B misdemeanor if the person, under circumstances not amounting to a violation of Subsection 58-37d-4(1)(c), offers to sell, sells, or distributes an iodine matrix to a person who:

(a) does not present a prescription or is not engaged in animal husbandry, as required under Subsection (2); or

(b) is not excepted under Subsection (7).

(6) A person is guilty of a class A misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37c-3(12)(k) or 58-37d-4(1)(a):

(a) possesses an iodine matrix without proof of obtaining the solution in compliance with Subsection (2); or

(b) offers to sell, sells, or distributes an iodine matrix in violation of Subsection (2).

(7) Subsection (6)(a) does not apply to:

(a) a chemistry or chemistry-related laboratory maintained by:

(i) a public or private regularly established secondary school; or

(ii) a public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

(b) a veterinarian licensed to practice under Title 58, Chapter 28, Veterinary Practice Act;

(c) a general acute hospital; or

(d) a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons who possesses an iodine matrix in the regular course of lawful business activities.

Section 55. Section **58-71-102** is amended to read:

58-71-102. Definitions.

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

(1) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(2) "Acupuncture" has the same definition as in Section 58-72-102.

(3) "Board" means the Naturopathic Physicians Licensing Board created in Section 58-71-201.

(4) "Diagnose" means:

(a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;

(b) to attempt to conduct an examination or determination described under Subsection (4)(a); [~~or~~]

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (4)(a); or

(d) to make an examination or determination as described in Subsection (4)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

(5) "Local anesthesia" means an agent, whether a natural medicine or prescription drug, which:

(a) is applied topically or by injection in superficial tissues associated with the performance of minor office procedures;

(b) has the ability to produce loss of sensation at the site of minor office procedures; and

(c) does not cause loss of consciousness or produce general sedation.

(6) "Medical naturopathic assistant" means an unlicensed individual working under the direct and immediate supervision of a licensed naturopathic physician and engaged in specific tasks assigned by the licensed naturopathic physician in accordance with the standards and

ethics of the profession.

(7) (a) "Minor office procedures" means:

(i) the use of operative, electrical, or other methods for repair and care of superficial lacerations, abrasions, and benign lesions;

(ii) removal of foreign bodies located in the superficial tissues, excluding the eye or ear; and

(iii) the use of antiseptics and local anesthetics in connection with minor office surgical procedures; and

(b) "Minor office procedures" does not include:

(i) general or spinal anesthesia;

(ii) office procedures more complicated or extensive than those set forth in Subsection (7)(a);

(iii) procedures involving the eye; or

(iv) any office procedure involving tendons, nerves, veins, or arteries.

(8) "Natural medicine" means:

(a) food, food extracts, dietary supplements as defined by the federal Food, Drug, and Cosmetics Act, all homeopathic remedies, and plant substances that are not designated as prescription drugs or controlled substances;

(b) over-the-counter medications;

(c) other nonprescription substances, the prescription or administration of which is not otherwise prohibited or restricted under federal or state law; and

(d) prescription drugs:

(i) that are not controlled substances as defined in Section 58-37-2;

(ii) the prescription of which is consistent with the competent practice of naturopathic medicine; and

(iii) the prescription of which is approved by the division in collaboration with the naturopathic formulary advisory peer committee.

(9) (a) "Naturopathic childbirth" means uncomplicated natural childbirth assisted by a naturopathic physician, and includes the use of:

(i) natural medicines; and

(ii) uncomplicated episiotomy.

(b) "Naturopathic childbirth" does not include the use of:

(i) forceps delivery;

(ii) general or spinal anesthesia;

(iii) caesarean section delivery; or

(iv) induced labor or abortion.

(10) "Naturopathic mobilization therapy":

(a) means manually administering mechanical treatment of body structures or tissues for the purpose of restoring normal physiological function to the body by normalizing and balancing the musculoskeletal system of the body;

(b) does not mean manipulation or adjustment of the joints of the human body beyond the elastic barrier; and

(c) does not include manipulation as defined in Title 58, Chapter 73, Chiropractic Physician Practice Act.

(11) "Naturopathic physical medicine" means the use of the physical agents of air, water, heat, cold, sound, light, and electromagnetic nonionizing radiation, and the physical modalities of electrotherapy, biofeedback, acupuncture, diathermy, ultraviolet light, ultrasound, hydrotherapy, naturopathic mobilization therapy, and exercise. Naturopathic medicine does not include the practice of physical therapy or physical rehabilitation.

(12) "Practice of naturopathic medicine" means:

(a) a system of primary health care for the prevention, diagnosis, and treatment of human health conditions, injuries, and diseases that uses education, natural medicines, and natural therapies, to support and stimulate the patient's intrinsic self-healing processes:

(i) using naturopathic childbirth, but only if:

(A) the licensee meets standards of the American College of Naturopathic Obstetricians (ACNO) or its successor as determined by the division in collaboration with the board; and

(B) the licensee follows a written plan for naturopathic physicians practicing naturopathic childbirth approved by the division in collaboration with the board, which includes entering into an agreement with a consulting physician and surgeon or osteopathic physician, in cases where the scope of practice of naturopathic childbirth may be exceeded and specialty care and delivery is indicated, detailing the guidelines by which the naturopathic

physician will:

(I) refer patients to the consulting physician; and

(II) consult with the consulting physician;

(ii) using naturopathic mobilization therapy;

(iii) using naturopathic physical medicine;

(iv) using minor office procedures;

(v) prescribing or administering natural medicine;

(vi) prescribing medical equipment and devices, diagnosing by the use of medical equipment and devices, and administering therapy or treatment by the use of medical devices necessary and consistent with the competent practice of naturopathic medicine;

(vii) prescribing barrier devices for contraception;

(viii) using dietary therapy;

(ix) taking and using diagnostic x-rays, electrocardiograms, ultrasound, and physiological function tests;

(x) taking of body fluids for clinical laboratory tests and using the results of the tests in diagnosis;

(xi) taking of a history from and conducting of a physical examination upon a human patient; and

(xii) prescribing and administering natural medicines and medical devices, except a naturopathic physician may only administer:

(A) a prescription drug, as defined in Section [~~58-17a-102~~] 58-17b-102, in accordance with Subsection (8)(d); and

(B) local anesthesia that is not a controlled substance, and only in the performance of minor office procedures;

(b) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (12)(a), whether or not for compensation; or

(c) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions, in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "naturopathic physician," "naturopathic doctor," "naturopath," "doctor of naturopathic medicine," "doctor of naturopathy," "naturopathic medical doctor," "naturopathic medicine," "naturopathic health care,"

"naturopathy," "N.D.," "N.M.D.," or any combination of these designations in any manner that might cause a reasonable person to believe the individual using the designation is a licensed naturopathic physician.

(13) "Prescription drug or device" means:

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

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

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

(b) a drug or device that is required by any applicable federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only.

(14) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-71-501.

(15) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-71-502, and as may be further defined by division rule.

Section 56. Section **58-71-801** is amended to read:

58-71-801. Disclosure of financial interest by licensee.

(1) Except as provided in Subsection (2), licensees under this chapter may not own, directly or indirectly:

(a) any [~~drug outlet~~] pharmacy or pharmaceutical facility as defined in Section [~~58-17a-102~~] 58-17b-102; or

(b) a retail store, wholesaler, distributor, manufacturer, or facility of any other kind located in this state that is engaged in the sale, dispensing, delivery, distribution, or manufacture of homeopathic remedies, dietary supplements, or natural medicines.

(2) A licensee may own or control less than 5% of the outstanding stock of a corporation whose ownership is prohibited under Subsection (1), if the stock of the corporation is publicly traded.

(3) Licensees under this chapter may not refer patients, clients, or customers to any clinical laboratory, ambulatory or surgical care facilities, or other treatment or rehabilitation services such as physical therapy, cardiac rehabilitation, or radiology services in which the licensee or a member of the licensee's immediate family has any financial relationship as that term is described in 42 U.S.C. 1395nn, unless the licensee at the time of making the referral

discloses that relationship, in writing, to the patient, client, or customer.

(4) The written disclosure under Subsection [~~(1)~~] (3) shall also state the patient may choose any facility or service center for purpose of having the laboratory work or treatment service performed.

(5) Licensees under this chapter may not sell from their offices homeopathic remedies or dietary supplements, as defined in the Federal Food Drug and Cosmetic Act, except for those products that are not readily available from other local sources.

Section 57. Section **58-73-601** is amended to read:

58-73-601. Scope of practice for a chiropractic physician.

(1) A chiropractic physician licensed under this chapter may engage in the practice of chiropractic as defined in Section 58-73-102 in accordance with the following standards.

(2) A chiropractic physician may:

(a) examine, diagnose, and treat only within the scope of chiropractic as described in this Subsection (2);

(b) use x-ray for diagnostic purposes only;

(c) administer:

(i) physical agents, including light, heat, cold, water, air, sound, compression, electricity, and electromagnetic radiation except gamma radiation; and

(ii) physical activities and devices, including:

(A) exercise with and without devices;

(B) joint mobilization;

(C) mechanical stimulation;

(D) postural drainage;

(E) traction;

(F) positioning;

(G) wound debridement, cleansing, and dressing changes;

(H) splinting;

(I) training in locomotion and other functional activities with and without assistance devices; and

(J) correction of posture, body mechanics, and gait;

(d) administer the following topically applied medicinal agents, including steroids,

anesthetics, coolants, and analgesics for wound care and for musculoskeletal treatment, including their use by iontophoresis or phonophoresis;

(e) treat pain incident to major or minor surgery, cancer, obstetrics, or x-ray therapy;

(f) utilize immobilizing appliances, casts, and supports for support purposes, but may not set displaced bone fractures;

(g) inform the patient of possible side effects of medication and recommend referral to the prescribing practitioner;

(h) provide instruction in the use of physical measures, activities, and devices for preventive and therapeutic purposes;

(i) provide consulting, educational, and other advisory services for the purposes of reducing the incidence and severity of physical disability, movement dysfunctions, bodily malfunction, and pain;

(j) treat a human being to assess, prevent, correct, alleviate, and limit physical disability, movement dysfunction, bodily malfunction, and pain resulting from disorders, congenital and aging conditions, injury, and disease; and

(k) administer, interpret, and evaluate tests.

(3) A chiropractic physician may not:

(a) perform incisive surgery;

(b) administer drugs or medicines for which an authorized prescription is required by law except as provided in Subsection (2)(d);

(c) treat cancer;

(d) practice obstetrics;

(e) prescribe or administer x-ray therapy; or

(f) set displaced fractures.

(4) A chiropractic physician shall assume responsibility for his examinations, diagnoses, and treatment.

(5) Nothing in this section authorizes a chiropractic physician to prescribe, possess for dispensing, dispense, purchase without a prescription written by a licensed and authorized practitioner, or administer, except under Subsection (2)(d), a drug requiring a prescription to dispense, under Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter [~~17a~~] 17b, Pharmacy Practice Act.

(6) Only primary health care providers licensed under this title as osteopathic physicians, physicians and surgeons, naturopaths, and chiropractic physicians, may diagnose, adjust, manipulate, or therapeutically position the articulation of the spinal column to the extent permitted by their scopes of practice.

Section 58. Section **63-55-258** is amended to read:

63-55-258. Repeal dates, Title 58.

(1) Title 58, Chapter 3a, Architects Licensing Act, is repealed July 1, 2013.

(2) Title 58, Chapter 5a, Podiatric Physician Licensing Act, is repealed July 1, 2007.

(3) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2008.

(4) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2006.

(5) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2005.

(6) Title 58, Chapter 16a, Utah Optometry Practice Act, is repealed July 1, 2009.

(7) Title 58, Chapter [~~17a~~] 17b, Pharmacy Practice Act, is repealed July 1, [~~2006~~] 2014.

(8) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2013.

(9) Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, is repealed July 1, 2005.

(10) Title 58, Chapter 24a, Physical Therapist Practice Act, is repealed July 1, 2013.

(11) Title 58, Chapter 26a, Certified Public Accountant Licensing Act, is repealed July 1, 2007.

(12) Title 58, Chapter 28, Veterinary Practice Act, is repealed July 1, 2004.

(13) Title 58, Chapter 31b, Nurse Practice Act, is repealed July 1, 2005.

(14) Title 58, Chapter 37, Utah Controlled Substances Act, is repealed July 1, 2007.

(15) Title 58, Chapter 37a, Utah Drug Paraphernalia Act, is repealed July 1, 2007.

(16) Title 58, Chapter 37b, Imitation Controlled Substances Act, is repealed July 1, 2007.

(17) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2005.

(18) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is repealed July 1, 2009.

(19) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1,

2005.

(20) Title 58, Chapter 44a, Nurse Midwife Practice Act, is repealed July 1, 2010.

(21) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1, 2013.

(22) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2004.

(23) Title 58, Chapter 49, Dietitian Certification Act, is repealed July 1, 2005.

(24) Title 58, Chapter 53, Landscape Architects Licensing Act, is repealed July 1, 2008.

(25) Title 58, Chapter 59, Professional Employer Organization Licensing Act, is repealed July 1, 2007.

(26) Title 58, Chapter 67, Utah Medical Practice Act, is repealed July 1, 2006.

(27) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, is repealed July 1, 2006.

(28) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, is repealed July 1, 2006.

(29) Title 58, Chapter 71, Naturopathic Physician Practice Act, is repealed July 1, 2006.

(30) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2007.

(31) Title 58, Chapter 73, Chiropractic Physician Practice Act, is repealed July 1, 2006.

Section 59. Section **76-5-113** is amended to read:

76-5-113. Surreptitious administration of certain substances -- Definitions -- Penalties -- Defenses.

(1) As used in this section:

(a) "Administer" means the introduction of a substance into the body by injection, inhalation, ingestion, or by any other means.

(b) "Alcoholic beverage" has the same meaning as "alcoholic beverages" in Section 32A-1-105.

(c) "Bodily injury" has the same definition as in Section 76-1-601.

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

(e) "Deleterious substance" means a substance which, if administered, would likely cause bodily injury.

(f) "Poisonous" means a substance which, if administered, would likely cause serious bodily injury or death.

(g) "Prescription drug" has the same definition as in Section [~~58-17a-102~~] 58-17b-102.

(h) "Serious bodily injury" has the same definition as in Section 19-2-115.

(i) "Substance" means a controlled substance, poisonous substance, or deleterious substance as defined in this Subsection (1).

(2) In addition to any other offense the actor's conduct may constitute, it is a criminal offense for a person, surreptitiously or by means of fraud, deception, or misrepresentation, to cause another person to unknowingly consume or receive the administration of:

(a) any poisonous, deleterious, or controlled substance; or

(b) any alcoholic beverage.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the substance is a poisonous substance, regardless of whether the substance is a controlled substance or a prescription drug;

(b) a third degree felony if the substance is not within the scope of Subsection (3)(a), and is a controlled substance or a prescription drug; and

(c) a class A misdemeanor if the substance is a deleterious substance or an alcoholic beverage.

(4) (a) It is an affirmative defense to a prosecution under Subsection (2) that the actor:

(i) provided the appropriate administration of a prescription drug; and

(ii) acted on the reasonable belief that his conduct was in the best interest of the well-being of the person to whom the prescription drug was administered.

(b) (i) The defendant shall file and serve on the prosecuting attorney a notice in writing of his intention to claim a defense under Subsection (4)(a) not fewer than 20 days before the trial.

(ii) The notice shall specifically identify the factual basis for the defense and the names and addresses of the witnesses the defendant proposes to examine to establish the defense.

(c) The prosecuting attorney shall file and serve the defendant with a notice containing the names and addresses of the witnesses the prosecutor proposes to examine in order to contradict or rebut the defendant's claim of an affirmative defense under Subsection (4)(a). This notice shall be filed or served not more than ten days after receipt of the defendant's notice

under Subsection (4)(b), or at another time as the court may direct.

(d) (i) Failure of a party to comply with the requirements of Subsection (4)(b) or (4)(c) entitles the opposing party to a continuance to allow for preparation.

(ii) If the court finds that a party's failure to comply is the result of bad faith, it may impose appropriate sanctions.

(5) This section does not diminish the scope of authorized health care by a health care provider as defined in Section 26-23a-1.

Section 60. Section **76-8-311.3** is amended to read:

76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.

(1) As used in this section:

(a) "Contraband" means any item not specifically prohibited for possession by offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

(b) "Controlled substance" means any substance defined as a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

(c) "Correctional facility" means:

(i) any facility operated by or contracting with the Department of Corrections to house offenders in either a secure or nonsecure setting;

(ii) any facility operated by a municipality or a county to house or detain criminal offenders;

(iii) any juvenile detention facility; and

(iv) any building or grounds appurtenant to the facility or lands granted to the state, municipality, or county for use as a correctional facility.

(d) "Medicine" means any prescription drug as defined in Title 58, Chapter [~~17a~~] 17b, Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37, Utah Controlled Substances Act.

(e) "Mental health facility" has the same meaning as defined in Section 62A-15-602.

(f) "Offender" means a person in custody at a correctional facility.

(g) "Secure area" has the same meaning as provided in Section 76-8-311.1.

(2) Notwithstanding Section 76-10-500, a correctional or mental health facility may provide by rule that no firearm, ammunition, dangerous weapon, implement of escape,

explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any quantity may be:

(a) transported to or upon a correctional or mental health facility;

(b) sold or given away at any correctional or mental health facility;

(c) given to or used by any offender at a correctional or mental health facility; or

(d) knowingly or intentionally possessed at a correctional or mental health facility.

(3) It is a defense to any prosecution under this section if the accused in committing the act made criminal by this section:

(a) with respect to a correctional facility operated by the Department of Corrections, acted in conformity with departmental rule or policy;

(b) with respect to a correctional facility operated by a municipality, acted in conformity with the policy of the municipality;

(c) with respect to a correctional facility operated by a county, acted in conformity with the policy of the county; or

(d) with respect to a mental health facility, acted in conformity with the policy of the mental health facility.

(4) (a) Any person who transports to or upon a correctional facility, or into a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

(b) Any person who provides or sells to any offender at a correctional facility, or any detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.

(c) Any offender who possesses at a correctional facility, or any detainee who possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.

(d) Any person who, without the permission of the authority operating the correctional facility or the secure area of a mental health facility, knowingly possesses at a correctional facility or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a third degree felony.

(e) Any person violates Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

(5) (a) A person is guilty of a third degree felony who, without the permission of the authority operating the correctional facility or secure area of a mental health facility, knowingly transports to or upon a correctional facility or into a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, whether or not lawfully prescribed for the offender; or

(iii) poison in any quantity.

(b) A person is guilty of a third degree felony who knowingly violates correctional or mental health facility policy or rule by providing or selling to any offender at a correctional facility or detainee within a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, whether or not lawfully prescribed for the offender; or

(iii) poison in any quantity.

(c) An inmate is guilty of a third degree felony who, in violation of correctional or mental health facility policy or rule, possesses at a correctional facility or in a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, other than medicine provided by the facility's health care providers in compliance with facility policy; or

(iii) poison in any quantity.

(d) A person is guilty of a class A misdemeanor who, without the permission of the authority operating the correctional or mental health facility, fails to declare or knowingly possesses at a correctional facility or in a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine; or

(iii) poison in any quantity.

(e) A person is guilty of a class B misdemeanor who, without the permission of the authority operating the facility, knowingly engages in any activity that would facilitate the possession of any contraband by an offender in a correctional facility.

(f) Exemptions may be granted for worship for Native American inmates pursuant to Section 64-13-40.

(6) The possession, distribution, or use of a controlled substance at a correctional

facility or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58, Chapter 37, Utah Controlled Substances Act.

Section 61. Section **78-11-22.2** is amended to read:

78-11-22.2. Donation of nonschedule drugs or devices -- Liability limitation.

(1) As used in this section:

(a) "Administer" is as defined in Section [~~58-17a-102~~] 58-17b-102.

(b) "Dispense" is as defined in Section [~~58-17a-102~~] 58-17b-102.

(c) "Distribute" is as defined in Section [~~58-17a-102~~] 58-17b-102.

(d) "Drug outlet" means:

(i) [~~a drug outlet~~] a pharmacy or pharmaceutical facility as defined in Section [~~58-17a-102~~] 58-17b-102; or

(ii) a person with the authority to engage in the dispensing, delivering, manufacturing, or wholesaling of prescription drugs or devices outside of the state under the law of the jurisdiction in which the person operates.

(e) "Health care provider" means:

(i) a person who is a health care provider, as defined in Section 78-14-3, with the authority under Title 58, Occupations and Professions, to prescribe, dispense, or administer prescription drugs or devices; or

(ii) a person outside of the state with the authority to prescribe, dispense, or administer prescription drugs or devices under the law of the jurisdiction in which the person practices.

(f) "Nonschedule drug or device" means:

(i) a prescription drug or device, as defined in Section [~~58-17a-102~~] 58-17b-102, except that it does not include controlled substances, as defined in Section 58-37-2; or

(ii) a nonprescription drug, as defined in Section [~~58-17a-102~~] 58-17b-102.

(g) "Prescription drug or device" is as defined in Section [~~58-17a-102~~] 58-17b-102.

(2) A drug outlet is not subject to civil liability for an injury or death resulting from the defective condition of a nonschedule drug or device that the drug outlet distributes at no charge, in good faith, and for a charitable purpose to a drug outlet or health care provider for ultimate use by a needy person, provided that:

(a) the drug outlet complies with applicable state and federal laws regarding the storage, handling, and distribution of the nonschedule drug or device; and

(b) the injury or death is not the result of any act or omission of the drug outlet that constitutes gross negligence, recklessness, or intentional misconduct.

(3) A health care provider is not subject to civil liability for an injury or death resulting from the defective condition of a nonschedule drug or device that the health care provider distributes to a drug outlet or health care provider for ultimate use by a needy person or directly administers, dispenses, or distributes to a needy person, provided that:

(a) the health care provider complies with applicable state and federal laws regarding the storage, handling, distribution, dispensing, and administration of the nonschedule drug or device;

(b) the injury or death is not the result of any act or omission of the health care provider that constitutes gross negligence, recklessness, or intentional misconduct; and

(c) in the event that the health care provider directly administers, distributes, or dispenses the nonschedule drug or device to the needy person, the health care provider has retained a consent form signed by the needy person that explains the provisions of this section which extend liability protection for charitable donations of nonschedule drugs and devices.

(4) Nothing in this section may be construed as:

(a) permitting a person who is not authorized under Title 58, Occupations and Professions, to operate as a drug outlet or practice as a health care provider within the state; or

(b) extending liability protection to any person who acts outside of the scope of authority granted to that person under the laws of this state or the jurisdiction in which the person operates or practices.

Section 62. Section **78-14-3** is amended to read:

78-14-3. Definitions.

As used in this chapter:

(1) "Audiologist" means a person licensed to practice audiology under Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act.

(2) "Certified social worker" means a person licensed to practice as a certified social worker under Section [~~58-60-305~~] 58-60-205.

(3) "Chiropractic physician" means a person licensed to practice chiropractic under Title 58, Chapter 73, Chiropractic Physician Practice Act.

(4) "Clinical social worker" means a person licensed to practice as a clinical social

worker under Section [~~58-60-305~~] 58-60-205.

(5) "Commissioner" means the commissioner of insurance as provided in Section 31A-2-102.

(6) "Dental hygienist" means a person licensed to practice dental hygiene as defined in Section 58-69-102.

(7) "Dentist" means a person licensed to practice dentistry as defined in Section 58-69-102.

(8) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(9) "Future damages" includes damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering of the judgment creditor.

(10) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(11) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, health care facilities owned or operated by health maintenance organizations, and end stage renal disease facilities.

(12) "Health care provider" includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, registered nurse, licensed practical nurse, nurse-midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of their employment.

(13) "Hospital" means a public or private institution licensed under Title 26, Chapter

21, Health Care Facility Licensing and Inspection Act.

(14) "Licensed practical nurse" means a person licensed to practice as a licensed practical nurse as provided in Section 58-31b-301.

(15) "Malpractice action against a health care provider" means any action against a health care provider, whether in contract, tort, breach of warranty, wrongful death, or otherwise, based upon alleged personal injuries relating to or arising out of health care rendered or which should have been rendered by the health care provider.

(16) "Marriage and family therapist" means a person licensed to practice as a marriage therapist or family therapist under [~~Section 58-60-405 and Section~~] Sections 58-60-305 and 58-60-405.

(17) "Naturopathic physician" means a person licensed to practice naturopathy as defined in Section 58-71-102.

(18) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife under Section 58-44a-301.

(19) "Optometrist" means a person licensed to practice optometry under Title 58, Chapter 16a, Utah Optometry Practice Act.

(20) "Osteopathic physician" means a person licensed to practice osteopathy under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(21) "Patient" means a person who is under the care of a health care provider, under a contract, express or implied.

(22) "Pharmacist" means a person licensed to practice pharmacy as provided in Section [~~58-17a-301~~] 58-17b-301.

(23) "Physical therapist" means a person licensed to practice physical therapy under Title 58, Chapter 24a, Physical Therapist Practice Act.

(24) "Physician" means a person licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act.

(25) "Podiatric physician" means a person licensed to practice podiatry under Title 58, Chapter 5a, Podiatric Physician Licensing Act.

(26) "Practitioner of obstetrics" means a person licensed to practice as a physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(27) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to practice psychology as defined in Section 58-61-102.

(28) "Registered nurse" means a person licensed to practice professional nursing as provided in Section 58-31b-301.

(29) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact, or other legal agent of the patient.

(30) "Social service worker" means a person licensed to practice as a social service worker under Section 58-60-205.

(31) "Speech-language pathologist" means a person licensed to practice speech-language pathology under Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act.

(32) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another.

Section 63. **Repealer.**

This bill repeals:

Section **58-17a-101, Title.**

Section **58-17a-102, Definitions.**

Section **58-17a-103, Administrative inspections.**

Section **58-17a-201, Board -- Membership -- Qualifications -- Terms.**

Section **58-17a-301, License required -- Licensure classifications for individuals.**

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

Section **58-17a-304, Term of license -- Expiration -- Renewal.**

Section **58-17a-305, Exemptions from licensure.**

Section **58-17a-401, Grounds for denial of license -- Disciplinary proceedings.**

Section **58-17a-402, Authority to fine drug outlets.**

Section **58-17a-501, Unlawful conduct.**

Section **58-17a-502, Unprofessional conduct.**

Section **58-17a-502.5, Exception to unprofessional conduct.**

Section **58-17a-503, Penalty for unlawful conduct.**

Section **58-17a-601, General operating standards.**

Section **58-17a-602, Prescription orders --Information required -- Alteration -- Labels -- Signatures.**

Section **58-17a-603, Identification of drug outlet personnel.**

Section **58-17a-604, Medication profiles.**

Section **58-17a-605, Drug product equivalents.**

Section **58-17a-606, Drug substitution is not the practice of medicine -- Other causes of action not denied.**

Section **58-17a-607, Emergency refills.**

Section **58-17a-608, Limitation on prescriptions and refills -- Controlled Substances Act not affected -- Legend drugs.**

Section **58-17a-609, Patients' immediate needs.**

Section **58-17a-610, Drug outlet records.**

Section **58-17a-611, Supervision -- Pharmacist-in-charge.**

Section **58-17a-612, Patient counseling.**

Section **58-17a-613, Change of ownership or location.**

Section **58-17a-614, Branch pharmacies.**

Section **58-17a-615, Sale of prescription drugs not in normal course of business.**

Section **58-17a-616, Drug stock sales -- Labeling.**

Section **58-17a-617, Limitations on distribution of prescription drugs by pharmaceutical manufacturers or wholesalers.**

Section **58-17a-618, Compliance with federal laws.**

Section **58-17a-619, Third party payors -- Health maintenance organizations -- Criminal penalty.**

Section **58-17a-620, Prescriptions issued within the public health system.**

Section **58-17a-701, Penalties.**

Section **58-17a-801, Mentally incompetent or incapacitated pharmacist -- Division action and procedures.**

Section 64. **Effective date.**

This bill takes effect on July 1, 2004.

Legislative Review Note
as of 1-5-04 10:33 AM

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

Office of Legislative Research and General Counsel

State Impact

Additional background and FBI checks will require an additional one-half time employee at a cost of $27,200 from the Commerce Service Fund in FY 2005, including one-time capital outlay of $6,800. Spending from the Commerce Service Fund could affect the revenue available to the General Fund. Revenue from fines authorized in the bill will amount to about $5,000 annually. These funds are to be used for educating people in the profession about the law.

	FY 2005 Approp.	FY 2006 Approp.	FY 2005 Revenue	FY 2006 Revenue
Dedicated Credits Revenue	$5,000	$5,000	$5,000	$5,000
Commerce Service Fund	$27,200	$20,400	$0	$0
TOTAL	**$32,200**	**$25,400**	**$5,000**	**$5,000**

Individual and Business Impact

Individuals will pay an additional $39 for criminal background check and FBI check.

Office of the Legislative Fiscal Analyst