

S.B. 114

**AMENDMENTS TO PRESCRIBING, PREPARATION, AND DISPENSING OF
PRESCRIPTION DRUGS**

Senator **Peter C. Knudson** proposes the following amendments:

1. Page 1, Line 13: After line 13 insert:
"► amends the definition of unlawful and unprofessional conduct to include prescribing a drug or device without a diagnosis or a bona fide patient-practitioner relationship;"

2. Page 2, Line 44: After line 44 insert:
"**58-1-501**, as last amended by Chapter 148, Laws of Utah 2001"

3. Page 16, Line 464: After line 464 insert:
"Section 7. Section **58-1-501** is amended to read:
58-1-501. Unlawful and unprofessional conduct.
(1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful under this title and includes:
(a) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title if the person is:
(i) not licensed to do so or not exempted from licensure under this title; or
(ii) restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license;
(b) impersonating another licensee or practicing an occupation or profession under a false or assumed name, except as permitted by law;
(c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this title if the employee is not licensed to do so under this title;
(d) knowingly permitting the person's authority to practice or engage in any occupation or profession licensed under this title to be used by another, except as permitted by law; [or]

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

(f) unless Subsection (2)(m) or (3) applies, issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state:

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

(ii) with prescriptive authority conferred by an exception issued under this title or a multistate practice privilege recognized under this title, if the prescription was issued:

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

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

(iii) in violation of Subsection (2)(m), when the licensed person who issued, or aided and abetted another in the issuance of the prescription has violated Subsection (2)(m) on more than 100 prescriptions within a thirty day period of time; and

(g) Subsection (2)(f) does not apply to treatment rendered in an emergency, on-call or cross coverage situation, provided that the person who issues the prescription has prescriptive authority conferred by a license under this title, or is exempt from licensure under this title.

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

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

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

(c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in

abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession;

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

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

(f) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so;

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

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

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

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

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

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

or

(m) unless Subsection (3) applies, issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device:

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

(ii) based on a questionnaire completed by the patient on the internet, or toll free telephone number when there exists no other bonafide patient-practitioner relationship or bona fide referral by a practitioner involved in an existing patient-practitioner relationship.

(c) Subsections (2)(m)(i) and (ii) do not apply to treatment rendered in an emergency, on-call, or cross coverage situation.

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

4. Page 26, Line 795:

After "person" insert "or entity"

5. Page 36, Line 1106:

Delete "patient" and insert "pharmacy"

6. Page 53, Line 1635:

After "final" and insert "administrative, disciplinary"

7. Page 56, Line 1724:

After "(2)" insert "(a)"

8. Page 56, Line 1727:

After line 1727 insert:

(b) Notwithstanding Subsection (2)(a), any third party payor of pharmaceutical services may restrict the type of outlet where a patient may obtain certain prescriptive drugs and devices, such as injectable medications, that are not readily available in all pharmacies. The payor may also restrict access to no more than one mail-order pharmacy.

Reorder remaining sections accordingly.