

1 **PRESCRIPTIVE PRACTICE OF LEGEND**

2 **DRUGS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Peter C. Knudson**

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the definition of unprofessional conduct and unlawful conduct in the
10 Occupational and Professional Licensing Code regarding the issuance of a prescription
11 for a drug or device.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines the bona fide patient-practitioner relationship required for a prescribing
15 practitioner to issue a prescription;
16 ▶ repeals the provision that authorized the Division of Occupational and Professional
17 Licensing to grant exceptions to the bona fide patient-practitioner relationship by
18 administrative rule; and
19 ▶ makes technical amendments.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides an immediate effective date.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **58-1-501**, as last amended by Chapter 280, Laws of Utah 2004

27 **58-17b-601**, as enacted by Chapter 280, Laws of Utah 2004



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

Section 1. 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;

(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; **§ [and] OR §**

(f) [~~(i) unless Subsection (2)(m) or (4) 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:

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

[(B)] (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:

[(F) 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]

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

61 (A) without the existence of a bona fide patient-practitioner relationship, as defined in
62 Subsection (3), between the person with prescriptive authority and the patient;

63 (B) without first obtaining information in the course of a bona fide patient-practitioner
64 relationship, as defined in Subsection (3), between the person with prescriptive authority and
65 the patient that is sufficient to establish a diagnosis, to identify conditions, and to identify
66 contraindications to the proposed treatment; or

67 (C) based on information obtained from either:

68 (I) a questionnaire or other assessment tool, whether interactive or otherwise,
69 completed by a patient on the Internet when there exists no bona fide patient-practitioner
70 relationship, as defined in Subsection (3), between the person with prescriptive authority and
71 the patient; or

72 (II) a telephone interview, telephone questionnaire, or other telephonic assessment tool,
73 interactive or otherwise, when there exists no bona fide patient-practitioner relationship, as
74 defined in Subsection (3), between the person with prescriptive authority and the patient; or

75 ~~[(E)]~~ (iii) in violation of Subsection (2)(m), when the licensed person who issued, or
76 aided and abetted another in the issuance of the prescription has violated Subsection (2)(m) on
77 more than 100 prescriptions within a 30-day period of time[; and].

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

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

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

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

89 (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea

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

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

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

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

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

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

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

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

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

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

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

121 (i) without the existence of a bona fide patient-practitioner relationship, as defined in
122 Subsection (3), between the person with prescriptive authority and the patient;

123 ~~[(i)]~~ (ii) without first obtaining information in [the usual course of professional
124 practice;] the course of a bona fide patient-practitioner relationship, as defined in Subsection
125 (3), between a person with prescriptive authority and the patient that is sufficient to establish a
126 diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or

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

130 ~~[(3) Subsections (2)(m)(i) and (ii) do not apply to treatment rendered in an emergency,~~
131 ~~on-call, or cross coverage situation.]~~

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

136 (iii) based on information obtained from either:

137 (A) a questionnaire or other assessment tool, whether interactive or otherwise,
138 completed by a patient on the Internet when there exists no bona fide patient-practitioner
139 relationship, as defined in Subsection (3), between the person with prescriptive authority and
140 the patient; or

141 (B) a telephone interview, telephone questionnaire, or other telephonic assessment tool,
142 interactive or otherwise, when there exists no bona fide patient-practitioner relationship, as
143 defined in Subsection (3), between the person with prescriptive authority and the patient.

144 (3) (a) For purposes of this section, "bona fide patient-practitioner relationship" means
145 a relationship in which a person with prescriptive authority in this state, prior to issuing a
146 prescription:

147 (i) ensures that a medical or drug history is obtained;

148 (ii) provides information to the patient about the benefits and risks of the drug being
149 prescribed;

150 (iii) performs or has performed an appropriate examination of the patient either
151 physically, or by use of instrumentation and diagnostic equipment through which images and

152 medical records may be transmitted electronically, within a reasonable period of time prior to
 153 the issuance of a prescription ~~§→ [; and in no event more than one year prior to the issuance of a~~
 154 ~~prescription; and] ; ←§~~

155 (iv) initiates additional interventions and follow-up care, if necessary, especially if the
 156 drug may have serious side effects ~~§→ and~~

156a (v) ensures that appropriate physical, laboratory, or medical imaging examinations of
 156b the patient are done if needed for safe diagnosing or prescribing of that drug ←§ .

157 (b) Except for ~~§→ [medical emergencies]~~ urgent medical problems, ←§ or cross-coverage
 157a and on-call situations, the
 158 medical examination of the patient required in Subsection (3)(a)(iii) must be conducted in
 159 person by:

160 (i) the prescribing practitioner; ~~§→ or ←§~~

161 (ii) a practitioner within the group in which the prescribing practitioner practices ~~§→ [; or~~

162 ~~— (iii) a consulting practitioner]~~ ←§ .

163 Section 2. Section **58-17b-601** is amended to read:

164 **58-17b-601. General operating standards.**

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

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

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

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

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

177 (3) Administrative rules adopted by the division shall be uniformly applied to
 178 out-of-state Internet pharmacies and in-state Internet pharmacies.

179 Section 3. **Effective date.**

180 If approved by two-thirds of all the members elected to each house, this bill takes effect
 181 upon approval by the governor, or the day following the constitutional time limit of Utah
 182 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,

183 the date of veto override.

Legislative Review Note
as of 1-17-05 1:11 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0046

Prescription Practice of Legend Drugs

24-Jan-05

4:46 PM

State Impact

No fiscal impact.

Individual and Business Impact

Some internet sales may be affected having an impact on the seller and the consumer.

Office of the Legislative Fiscal Analyst