

1 **REGULATION OF DIRECT PATHOLOGY**

2 **BILLING**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Gregory S. Bell**

6 House Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the unlawful and unprofessional conduct provisions of the Division of
11 Occupational and Professional Licensing.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ defines terms, including:

- 15 • "health care provider";
- 16 • "direct supervision"; and
- 17 • "anatomic pathology services";

18 ▶ prohibits a health care provider from billing a patient directly for out-patient
19 anatomic pathology services unless the health care provider rendered the service
20 personally, or directly supervised the person rendering the anatomic pathology
21 services; and

22 ▶ establishes limited exceptions to the prohibition against direct billing for anatomic
23 pathology services.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **58-1-501**, as last amended by Chapter 280, Laws of Utah 2004

31 ENACTS:

32 **58-1-501.5**, Utah Code Annotated 1953



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

35 Section 1. Section **58-1-501** is amended to read:

36 **58-1-501. Unlawful and unprofessional conduct.**

37 (1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful
38 under this title and includes:

39 (a) practicing or engaging in, representing oneself to be practicing or engaging in, or
40 attempting to practice or engage in any occupation or profession requiring licensure under this
41 title if the person is:

42 (i) not licensed to do so or not exempted from licensure under this title; or

43 (ii) restricted from doing so by a suspended, revoked, restricted, temporary,
44 probationary, or inactive license;

45 (b) impersonating another licensee or practicing an occupation or profession under a
46 false or assumed name, except as permitted by law;

47 (c) knowingly employing any other person to practice or engage in or attempt to
48 practice or engage in any occupation or profession licensed under this title if the employee is
49 not licensed to do so under this title;

50 (d) knowingly permitting the person's authority to practice or engage in any occupation
51 or profession licensed under this title to be used by another, except as permitted by law;

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

55 (f) (i) unless Subsection (2)(m) or (4) applies, issuing, or aiding and abetting in the
56 issuance of, an order or prescription for a drug or device to a person located in this state:

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

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

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

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

66 (C) in violation of Subsection (2)(m), when the licensed person who issued, or aided
67 and abetted another in the issuance of the prescription has violated Subsection (2)(m) on more
68 than 100 prescriptions within a 30 day period of time; and

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

73 (g) violating the provisions of Section 58-1-501.5.

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

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

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

82 (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea
83 of guilty or nolo contendere which is held in abeyance pending the successful completion of
84 probation with respect to a crime of moral turpitude or any other crime that, when considered
85 with the functions and duties of the occupation or profession for which the license was issued
86 or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely
87 or competently practice the occupation or profession;

88 (d) engaging in conduct that results in disciplinary action, including reprimand,
89 censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory

90 authority having jurisdiction over the licensee or applicant in the same occupation or profession
91 if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary
92 proceedings under Section 58-1-401;

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

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

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

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

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

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

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

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

112 (m) unless Subsection (4) applies, issuing, or aiding and abetting in the issuance of, an
113 order or prescription for a drug or device:

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

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

120 (3) [~~Subsections~~] Subsection (2)(m)[~~(i) and (ii) do~~] does not apply to treatment

121 rendered in an emergency, on-call, or cross coverage situation.

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

126 Section 2. Section **58-1-501.5** is enacted to read:

127 **58-1-501.5. Anatomic pathology services -- Billing violations.**

128 (1) For purposes of this section:

129 (a) "Anatomic pathology services" includes:

130 (i) histopathology and surgical pathology;

131 (ii) cytopathology, including pap tests;

132 (iii) hematology;

133 (iv) subcellular and molecular pathology; and

134 (v) blood banking services performed by a health care provider or under a health care
135 provider's supervision.

136 (b) "Direct supervision" means the supervising health care provider is present and
137 available for face-to-face communication with the person being supervised when and where
138 professional services are being provided.

139 (c) "Health care provider" includes:

140 (i) an advance practice registered nurse licensed under Chapter 31b, Nurse Practice

141 Act;

142 (ii) a chiropractor licensed under Chapter 73, Chiropractic Physician Practice Act;

143 (iii) a dentist licensed under Chapter 69, Dentist and Dental Hygienist Practice Act;

144 (iv) a nurse midwife licensed under Chapter 44a, Nurse Midwife Practice Act;

145 (v) an optometrist licensed under Chapter 16a, Utah Optometry Practice Act;

146 (vi) an osteopathic physician licensed under Chapter 68, Utah Osteopathic Medical

147 Practice Act;

148 (vii) a podiatrist licensed under Chapter 5a, Podiatric Physician Licensing Act;

149 (viii) a physician licensed under Chapter 67, Utah Medical Practice Act; and

150 (ix) A physician's assistant licensed under Chapter 70a, Physician Assistant Act.

151 (2) Except as permitted by Subsection (3), a health care provider may not charge, bill,

152 or otherwise solicit payment for outpatient anatomic pathology services unless the services
153 were rendered personally by the health care provider or under the health care provider's direct
154 supervision.

155 (3) A health care provider who is qualified as a specialist in pathology, as determined
156 by the Physicians Licensing Board created in Section 58-67-201, or a professional legal entity
157 of which such person is a shareholder, partner, or owner, may submit a bill for outpatient
158 anatomic pathology services only to:

159 (a) the patient directly;

160 (b) the responsible insurer or third party payor for the patient; or

161 (c) the hospital or public health clinic which submitted the pathology sample to be
162 evaluated.

163 (4) (a) The division, in addition to all other authority granted in this title, may revoke,
164 suspend, or deny renewal of a license of any health care provider who violates the provisions of
165 this section.

166 (b) A patient, insurer, third party payor, hospital, or public health clinic is not required
167 to reimburse a health care provider for charges or claims billed in violation of this section.

168 (5) The provisions of this section do not prohibit billing between laboratories for
169 anatomic pathology services when a sample or samples must be sent to another specialist in
170 pathology.

Legislative Review Note
as of 12-12-05 12:36 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 SB0145

Regulation of Direct Pathology Billing

24-Jan-06

2:40 PM

State Impact

No fiscal impact.

Individual and Business Impact

Physicians will be confined to new stipulations but any fiscal impact this may cause cannot be estimated at this time.

Office of the Legislative Fiscal Analyst