

Senator Peter C. Knudson proposes the following substitute bill:

PRESCRIPTIVE PRACTICE OF LEGEND

DRUGS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ requires pharmacies that do business as class B or Class D pharmacies over the Internet to meet national standards for Verified Internet Pharmacy Practices; and
- ▶ makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

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

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;

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

(B) 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:

(I) 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

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

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

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

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

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

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

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

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

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

87 (f) practicing or attempting to practice an occupation or profession regulated under this

88 title despite being physically or mentally unfit to do so;

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

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

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

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

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

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

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

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

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

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

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

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

118 **58-17b-601. General operating standards.**

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

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

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

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

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

131 (3) (a) Administrative rules adopted by the division shall uniformly apply the Verified
132 Internet Pharmacy Practice Site certification standards to out-of-state Internet pharmacies and
133 in-state Internet pharmacies.

134 (b) For purposes of Subsection (3), "internet pharmacy" means a pharmacy licensed in
135 the state as a class B or class D pharmacy, and which:

136 (i) uses or attempts to use the internet, in whole or in part, to communicate with or
137 obtain information from another person; and

138 (ii) uses or attempts to use the communication over the internet, or information
139 obtained over the internet, to:

140 (A) fill or refill a prescription for a prescription drug for a person;

141 (B) delivers or causes to be delivered to the person;

142 (I) a prescription drug; or

143 (II) a controlled substance.

144 Section 3. **Effective date.**

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

S.B. 146 1st Sub. (Green) - Prescriptive Practice of Legend Drugs

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Some internet pharmacies and their customers may be impacted.
