

**HORMONE RESTORATION AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Douglas C. Aagard**

Senate Sponsor: Dennis E. Stowell

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**LONG TITLE**

**General Description:**

This bill amends the Utah Controlled Substances Act and the Naturopathic Physician Practice Act to permit a naturopathic physician to, pursuant to a license issued by the Division of Occupational and Professional Licensing, prescribe or administer testosterone in specified forms for the purpose of restoring a low testosterone level to a normal level.

**Highlighted Provisions:**

This bill:

- ▶ adds "naturopathic physician" to the definition of "practitioner" in the Utah Controlled Substances Act in order to allow a naturopathic physician to prescribe only testosterone, in the form and for the purposes described in this bill;
- ▶ requires a naturopathic physician to keep a record of testosterone:
  - received by the naturopathic physician; and
  - administered, dispensed, or professionally used by the naturopathic physician, other than by a prescription;
- ▶ permits a naturopathic physician to prescribe or administer testosterone, pursuant to the requirements of federal and state law, if the testosterone is:
  - bio-identical;
  - designed to be administered topically, for transdermal absorption or designed to be absorbed across the mucosal membranes of the mouth; and



28 • prescribed solely for the purpose of treating a patient with a low testosterone  
29 level in order to restore the patient to a normal testosterone level; and

30 ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **58-37-2**, as last amended by Laws of Utah 2008, Chapter 382

38 **58-37-6**, as last amended by Laws of Utah 2008, Chapters 3 and 382

39 **58-71-102**, as last amended by Laws of Utah 2008, Chapter 382



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

42 Section 1. Section **58-37-2** is amended to read:

43 **58-37-2. Definitions.**

44 (1) As used in this chapter:

45 (a) "Administer" means the direct application of a controlled substance, whether by  
46 injection, inhalation, ingestion, or any other means, to the body of a patient or research subject  
47 by:

48 (i) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent;

49 or

50 (ii) the patient or research subject at the direction and in the presence of the  
51 practitioner.

52 (b) "Agent" means an authorized person who acts on behalf of or at the direction of a  
53 manufacturer, distributor, or practitioner but does not include a motor carrier, public  
54 warehouseman, or employee of any of them.

55 (c) "Consumption" means ingesting or having any measurable amount of a controlled  
56 substance in a person's body, but this Subsection (1)(c) does not include the metabolite of a  
57 controlled substance.

58 (d) "Continuing criminal enterprise" means any individual, sole proprietorship,

59 partnership, corporation, business trust, association, or other legal entity, and any union or  
60 groups of individuals associated in fact although not a legal entity, and includes illicit as well  
61 as licit entities created or maintained for the purpose of engaging in conduct which constitutes  
62 the commission of episodes of activity made unlawful by Title 58, Chapters 37, 37a, 37b, 37c,  
63 or 37d, which episodes are not isolated, but have the same or similar purposes, results,  
64 participants, victims, methods of commission, or otherwise are interrelated by distinguishing  
65 characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct  
66 and be related either to each other or to the enterprise.

67 (e) "Control" means to add, remove, or change the placement of a drug, substance, or  
68 immediate precursor under Section 58-37-3.

69 (f) (i) "Controlled substance" means a drug or substance included in Schedules I, II, III,  
70 IV, or V of Section 58-37-4, and also includes a drug or substance included in Schedules I, II,  
71 III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any controlled  
72 substance analog.

73 (ii) "Controlled substance" does not include:

74 (A) distilled spirits, wine, or malt beverages, as those terms are defined or used in Title  
75 32A, Alcoholic Beverage Control Act, regarding tobacco or food;

76 (B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or  
77 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,  
78 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,  
79 transferred, or furnished as an over-the-counter medication without prescription; or

80 (C) dietary supplements, vitamins, minerals, herbs, or other similar substances  
81 including concentrates or extracts, which are not otherwise regulated by law, which may  
82 contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules  
83 adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

84 (g) (i) "Controlled substance analog" means a substance the chemical structure of  
85 which is substantially similar to the chemical structure of a controlled substance listed in  
86 Schedules I and II of Section 58-37-4, or in Schedules I and II of the federal Controlled  
87 Substances Act, Title II, P.L. 91-513:

88 (A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous  
89 system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central

90 nervous system of controlled substances in the schedules set forth in Subsection (1)(f); or  
91 (B) which, with respect to a particular individual, is represented or intended to have a  
92 stimulant, depressant, or hallucinogenic effect on the central nervous system substantially  
93 similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of  
94 controlled substances in the schedules set forth in this Subsection (1).

95 (ii) "Controlled substance analog" does not include:

96 (A) a controlled substance currently scheduled in Schedules I through V of Section  
97 58-37-4;

98 (B) a substance for which there is an approved new drug application;

99 (C) a substance with respect to which an exemption is in effect for investigational use  
100 by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355,  
101 to the extent the conduct with respect to the substance is permitted by the exemption;

102 (D) any substance to the extent not intended for human consumption before an  
103 exemption takes effect with respect to the substance;

104 (E) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or  
105 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,  
106 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,  
107 transferred, or furnished as an over-the-counter medication without prescription; or

108 (F) dietary supplements, vitamins, minerals, herbs, or other similar substances  
109 including concentrates or extracts, which are not otherwise regulated by law, which may  
110 contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules  
111 adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

112 (h) "Conviction" means a determination of guilt by verdict, whether jury or bench, or  
113 plea, whether guilty or no contest, for any offense proscribed by Title 58, Chapters 37, 37a,  
114 37b, 37c, or 37d, or for any offense under the laws of the United States and any other state  
115 which, if committed in this state, would be an offense under Title 58, Chapters 37, 37a, 37b,  
116 37c, or 37d.

117 (i) "Counterfeit substance" means:

118 (i) any substance or container or labeling of any substance that without authorization  
119 bears the trademark, trade name, or other identifying mark, imprint, number, device, or any  
120 likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons

121 who in fact manufactured, distributed, or dispensed the substance which falsely purports to be a  
122 controlled substance distributed by, any other manufacturer, distributor, or dispenser; or

123 (ii) any substance that is represented to be a controlled substance.

124 (j) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a  
125 controlled substance or a listed chemical, whether or not an agency relationship exists.

126 (k) "Department" means the Department of Commerce.

127 (l) "Depressant or stimulant substance" means:

128 (i) a drug which contains any quantity of barbituric acid or any of the salts of barbituric  
129 acid;

130 (ii) a drug which contains any quantity of:

131 (A) amphetamine or any of its optical isomers;

132 (B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or

133 (C) any substance which the Secretary of Health and Human Services or the Attorney  
134 General of the United States after investigation has found and by regulation designated  
135 habit-forming because of its stimulant effect on the central nervous system;

136 (iii) lysergic acid diethylamide; or

137 (iv) any drug which contains any quantity of a substance which the Secretary of Health  
138 and Human Services or the Attorney General of the United States after investigation has found  
139 to have, and by regulation designated as having, a potential for abuse because of its depressant  
140 or stimulant effect on the central nervous system or its hallucinogenic effect.

141 (m) "Dispense" means the delivery of a controlled substance by a pharmacist to an  
142 ultimate user pursuant to the lawful order or prescription of a practitioner, and includes  
143 distributing to, leaving with, giving away, or disposing of that substance as well as the  
144 packaging, labeling, or compounding necessary to prepare the substance for delivery.

145 (n) "Dispenser" means a pharmacist who dispenses a controlled substance.

146 (o) "Distribute" means to deliver other than by administering or dispensing a controlled  
147 substance or a listed chemical.

148 (p) "Distributor" means a person who distributes controlled substances.

149 (q) "Division" means the Division of Occupational and Professional Licensing created  
150 in Section 58-1-103.

151 (r) "Drug" means:

152 (i) articles recognized in the official United States Pharmacopoeia, Official  
153 Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any  
154 supplement to any of them;

155 (ii) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention  
156 of disease in man or other animals;

157 (iii) articles, other than food, intended to affect the structure or function of man or  
158 other animals; and

159 (iv) articles intended for use as a component of any articles specified in Subsection  
160 (1)(r)(i), (ii), or (iii); but does not include devices or their components, parts, or accessories.

161 (s) "Drug dependent person" means any individual who unlawfully and habitually uses  
162 any controlled substance to endanger the public morals, health, safety, or welfare, or who is so  
163 dependent upon the use of controlled substances as to have lost the power of self-control with  
164 reference to the individual's dependency.

165 (t) "Food" means:

166 (i) any nutrient or substance of plant, mineral, or animal origin other than a drug as  
167 specified in this chapter, and normally ingested by human beings; and

168 (ii) foods for special dietary uses as exist by reason of a physical, physiological,  
169 pathological, or other condition including but not limited to the conditions of disease,  
170 convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and  
171 overweight; uses for supplying a particular dietary need which exist by reason of age including  
172 but not limited to the ages of infancy and childbirth, and also uses for supplementing and for  
173 fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for  
174 use of a food. Any particular use of a food is a special dietary use regardless of the nutritional  
175 purposes.

176 (u) "Immediate precursor" means a substance which the Attorney General of the United  
177 States has found to be, and by regulation designated as being, the principal compound used or  
178 produced primarily for use in the manufacture of a controlled substance, or which is an  
179 immediate chemical intermediary used or likely to be used in the manufacture of a controlled  
180 substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the  
181 controlled substance.

182 (v) "Indian" means a member of an Indian tribe.

183 (w) "Indian religion" means any religion:

184 (i) the origin and interpretation of which is from within a traditional Indian culture or  
185 community; and

186 (ii) which is practiced by Indians.

187 (x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or  
188 community of Indians, including any Alaska Native village, which is legally recognized as  
189 eligible for and is consistent with the special programs, services, and entitlements provided by  
190 the United States to Indians because of their status as Indians.

191 (y) "Manufacture" means the production, preparation, propagation, compounding, or  
192 processing of a controlled substance, either directly or indirectly by extraction from substances  
193 of natural origin, or independently by means of chemical synthesis or by a combination of  
194 extraction and chemical synthesis.

195 (z) "Manufacturer" includes any person who packages, repackages, or labels any  
196 container of any controlled substance, except pharmacists who dispense or compound  
197 prescription orders for delivery to the ultimate consumer.

198 (aa) "Marijuana" means all species of the genus cannabis and all parts of the genus,  
199 whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every  
200 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or  
201 resin. The term does not include the mature stalks of the plant, fiber produced from the stalks,  
202 oil or cake made from the seeds of the plant, any other compound, manufacture, salt,  
203 derivative, mixture, or preparation of the mature stalks, except the resin extracted from them,  
204 fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any  
205 synthetic equivalents of the substances contained in the plant cannabis sativa or any other  
206 species of the genus cannabis which are chemically indistinguishable and pharmacologically  
207 active are also included.

208 (bb) "Money" means officially issued coin and currency of the United States or any  
209 foreign country.

210 (cc) "Narcotic drug" means any of the following, whether produced directly or  
211 indirectly by extraction from substances of vegetable origin, or independently by means of  
212 chemical synthesis, or by a combination of extraction and chemical synthesis:

213 (i) opium, coca leaves, and opiates;

214 (ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or  
215 opiates;

216 (iii) opium poppy and poppy straw; or

217 (iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the  
218 substance, which is chemically identical with any of the substances referred to in Subsection  
219 (1)(cc)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or  
220 extracts of coca leaves which do not contain cocaine or ecgonine.

221 (dd) "Negotiable instrument" means documents, containing an unconditional promise  
222 to pay a sum of money, which are legally transferable to another party by endorsement or  
223 delivery.

224 (ee) "Opiate" means any drug or other substance having an addiction-forming or  
225 addiction-sustaining liability similar to morphine or being capable of conversion into a drug  
226 having addiction-forming or addiction-sustaining liability.

227 (ff) "Opium poppy" means the plant of the species *papaver somniferum* L., except the  
228 seeds of the plant.

229 (gg) "Person" means any corporation, association, partnership, trust, other institution or  
230 entity or one or more individuals.

231 (hh) "Poppy straw" means all parts, except the seeds, of the opium poppy, after  
232 mowing.

233 (ii) "Possession" or "use" means the joint or individual ownership, control, occupancy,  
234 holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection,  
235 or consumption, as distinguished from distribution, of controlled substances and includes  
236 individual, joint, or group possession or use of controlled substances. For a person to be a  
237 possessor or user of a controlled substance, it is not required that the person be shown to have  
238 individually possessed, used, or controlled the substance, but it is sufficient if it is shown that  
239 the person jointly participated with one or more persons in the use, possession, or control of  
240 any substances with knowledge that the activity was occurring, or the controlled substance is  
241 found in a place or under circumstances indicating that the person had the ability and the intent  
242 to exercise dominion and control over it.

243 (jj) "Practitioner" means a physician, dentist, naturopathic physician, veterinarian,  
244 pharmacist, scientific investigator, pharmacy, hospital, or other person licensed, registered, or



245 otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use  
246 in teaching or chemical analysis a controlled substance in the course of professional practice or  
247 research in this state.

248 (kk) "Prescribe" means to issue a prescription orally or in writing.

249 (ll) "Prescription" means an order issued by a licensed practitioner, in the course of that  
250 practitioner's professional practice, for a controlled substance, other drug, or device which it  
251 dispenses or administers for use by a patient or an animal. The order may be issued by word of  
252 mouth, written document, telephone, facsimile transmission, computer, or other electronic  
253 means of communication as defined by rule.

254 (mm) "Production" means the manufacture, planting, cultivation, growing, or  
255 harvesting of a controlled substance.

256 (nn) "Securities" means any stocks, bonds, notes, or other evidences of debt or of  
257 property.

258 (oo) "State" means the state of Utah.

259 (pp) "Ultimate user" means any person who lawfully possesses a controlled substance  
260 for the person's own use, for the use of a member of the person's household, or for  
261 administration to an animal owned by the person or a member of the person's household.

262 (2) If a term used in this chapter is not defined, the definition and terms of Title 76,  
263 Utah Criminal Code, shall apply.

264 Section 2. Section **58-37-6** is amended to read:

265 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**  
266 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**  
267 **required -- Prescriptions.**

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

272 (b) The division may assess reasonable fees to defray the cost of issuing original and  
273 renewal licenses under this chapter pursuant to Section 63J-1-303.

274 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,  
275 administers, conducts research with, or performs laboratory analysis upon any controlled

276 substance in Schedules II through V within this state, or who proposes to engage in  
277 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting  
278 research with, or performing laboratory analysis upon controlled substances included in  
279 Schedules II through V within this state shall obtain a license issued by the division.

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

283 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,  
284 administer, conduct research with, or perform laboratory analysis upon controlled substances in  
285 Schedules II through V within this state may possess, manufacture, produce, distribute,  
286 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon  
287 those substances to the extent authorized by their license and in conformity with this chapter.

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

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

296 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or  
297 warehouseman, who possesses any controlled substance in the usual course of the person's  
298 business or employment; and

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

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

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

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

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

315 (i) maintained effective controls against diversion of controlled substances and any  
316 Schedule I or II substance compounded from any controlled substance into other than  
317 legitimate medical, scientific, or industrial channels;

318 (ii) complied with applicable state and local law;

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

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

322 (v) established effective controls against diversion; and

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

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

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

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

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

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

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

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

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

353 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed  
354 on probation, or revoked by the division upon finding that the applicant or licensee has:

355 (i) materially falsified any application filed or required pursuant to this chapter;

356 (ii) been convicted of an offense under this chapter or any law of the United States, or  
357 any state, relating to any substance defined as a controlled substance;

358 (iii) been convicted of a felony under any other law of the United States or any state  
359 within five years of the date of the issuance of the license;

360 (iv) had a federal license denied, suspended, or revoked by competent federal authority  
361 and is no longer authorized to engage in the manufacturing, distribution, or dispensing of  
362 controlled substances;

363 (v) had the licensee's license suspended or revoked by competent authority of another  
364 state for violation of laws or regulations comparable to those of this state relating to the  
365 manufacture, distribution, or dispensing of controlled substances;

366 (vi) violated any division rule that reflects adversely on the licensee's reliability and  
367 integrity with respect to controlled substances;

368 (vii) refused inspection of records required to be maintained under this chapter by a

369 person authorized to inspect them; or

370 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the  
371 purpose of manipulating human hormonal structure so as to:

372 (A) increase muscle mass, strength, or weight without medical necessity and without a  
373 written prescription by any practitioner in the course of the practitioner's professional practice;

374 or

375 (B) improve performance in any form of human exercise, sport, or game.

376 (b) The division may limit revocation or suspension of a license to a particular  
377 controlled substance with respect to which grounds for revocation or suspension exist.

378 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to  
379 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of  
380 Occupational and Professional Licensing Act, and conducted in conjunction with the  
381 appropriate representative committee designated by the director of the department.

382 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and  
383 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,  
384 except where the division is designated by law to perform those functions, or, when not  
385 designated by law, is designated by the executive director of the Department of Commerce to  
386 conduct the proceedings.

387 (d) (i) The division may suspend any license simultaneously with the institution of  
388 proceedings under this section if it finds there is an imminent danger to the public health or  
389 safety.

390 (ii) Suspension shall continue in effect until the conclusion of proceedings, including  
391 judicial review, unless withdrawn by the division or dissolved by a court of competent  
392 jurisdiction.

393 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled  
394 substances owned or possessed by the licensee may be placed under seal in the discretion of the  
395 division.

396 (ii) Disposition may not be made of substances under seal until the time for taking an  
397 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,  
398 orders the sale of perishable substances and the proceeds deposited with the court.

399 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

400 (f) The division shall notify promptly the Drug Enforcement Administration of all  
401 orders suspending or revoking a license and all forfeitures of controlled substances.

402 (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and  
403 inventories in conformance with the record keeping and inventory requirements of federal and  
404 state law and any additional rules issued by the division.

405 (b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or  
406 other person who is authorized to administer or professionally use a controlled substance shall  
407 keep a record of the drugs received by him and a record of all drugs administered, dispensed, or  
408 professionally used by him otherwise than by a prescription.

409 (ii) A person using small quantities or solutions or other preparations of those drugs for  
410 local application has complied with this Subsection (5)(b) if the person keeps a record of the  
411 quantity, character, and potency of those solutions or preparations purchased or prepared by  
412 him, and of the dates when purchased or prepared.

413 (6) Controlled substances in Schedules I through V may be distributed only by a  
414 licensee and pursuant to an order form prepared in compliance with division rules or a lawful  
415 order under the rules and regulations of the United States.

416 (7) (a) A person may not write or authorize a prescription for a controlled substance  
417 unless the person is:

418 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state  
419 or under the laws of another state having similar standards; and

420 (ii) licensed under this chapter or under the laws of another state having similar  
421 standards.

422 (b) A person other than a pharmacist licensed under the laws of this state, or the  
423 pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not  
424 dispense a controlled substance.

425 (c) (i) A controlled substance may not be dispensed without the written prescription of  
426 a practitioner, if the written prescription is required by the federal Controlled Substances Act.

427 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in  
428 conformity with Subsection (7)(d).

429 (iii) In emergency situations, as defined by division rule, controlled substances may be  
430 dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms

431 designated by the division and filed by the pharmacy.

432 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with  
433 Subsection (7)(d).

434 (d) Except for emergency situations designated by the division, a person may not issue,  
435 fill, compound, or dispense a prescription for a controlled substance unless the prescription is  
436 signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of  
437 the prescriber as authorized by division rule, and contains the following information:

438 (i) the name, address, and registry number of the prescriber;

439 (ii) the name, address, and age of the person to whom or for whom the prescription is  
440 issued;

441 (iii) the date of issuance of the prescription; and

442 (iv) the name, quantity, and specific directions for use by the ultimate user of the  
443 controlled substance.

444 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I  
445 controlled substance.

446 (f) Except when administered directly to an ultimate user by a licensed practitioner,  
447 controlled substances are subject to the following restrictions:

448 (i) (A) A prescription for a Schedule II substance may not be refilled.

449 (B) A Schedule II controlled substance may not be filled in a quantity to exceed a  
450 one-month's supply, as directed on the daily dosage rate of the prescriptions.

451 (ii) A Schedule III or IV controlled substance may be filled only within six months of  
452 issuance, and may not be refilled more than six months after the date of its original issuance or  
453 be refilled more than five times after the date of the prescription unless renewed by the  
454 practitioner.

455 (iii) All other controlled substances in Schedule V may be refilled as the prescriber's  
456 prescription directs, but they may not be refilled one year after the date the prescription was  
457 issued unless renewed by the practitioner.

458 (iv) Any prescription for a Schedule II substance may not be dispensed if it is not  
459 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days  
460 after the date the prescription was issued, or 30 days after the dispensing date, if that date is  
461 specified separately from the date of issue.

462 (v) A practitioner may issue more than one prescription at the same time for the same  
463 Schedule II controlled substance, but only under the following conditions:

464 (A) no more than three prescriptions for the same Schedule II controlled substance may  
465 be issued at the same time;

466 (B) no one prescription may exceed a 30-day supply;

467 (C) a second or third prescription shall include the date of issuance and the date for  
468 dispensing; and

469 (D) unless the practitioner determines there is a valid medical reason to the contrary,  
470 the date for dispensing a second or third prescription may not be fewer than 30 days from the  
471 dispensing date of the previous prescription.

472 (vi) Each prescription for a controlled substance may contain only one controlled  
473 substance per prescription form and may not contain any other legend drug or prescription  
474 item.

475 (g) An order for a controlled substance in Schedules II through V for use by an  
476 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this  
477 Subsection (7) if the order is:

478 (i) issued or made by a prescribing practitioner who holds an unrestricted registration  
479 with the federal Drug Enforcement Administration, and an active Utah controlled substance  
480 license in good standing issued by the division under this section, or a medical resident who is  
481 exempted from licensure under Subsection 58-1-307(1)(c);

482 (ii) authorized by the prescribing practitioner treating the patient and the prescribing  
483 practitioner designates the quantity ordered;

484 (iii) entered upon the record of the patient, the record is signed by the prescriber  
485 affirming the prescriber's authorization of the order within 48 hours after filling or  
486 administering the order, and the patient's record reflects the quantity actually administered; and

487 (iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within  
488 the physical structure of the hospital, or the order is taken from a supply lawfully maintained by  
489 the hospital and the amount taken from the supply is administered directly to the patient  
490 authorized to receive it.

491 (h) A practitioner licensed under this chapter may not prescribe, administer, or  
492 dispense a controlled substance to a child, without first obtaining the consent required in



493 Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except  
494 in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same  
495 meaning as defined in Section 78A-6-105, and "emergency" means any physical condition  
496 requiring the administration of a controlled substance for immediate relief of pain or suffering.

497 (i) A practitioner licensed under this chapter may not prescribe or administer dosages  
498 of a controlled substance in excess of medically recognized quantities necessary to treat the  
499 ailment, malady, or condition of the ultimate user.

500 (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense  
501 any controlled substance to another person knowing that the other person is using a false name,  
502 address, or other personal information for the purpose of securing the controlled substance.

503 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense  
504 a controlled substance may not manufacture, distribute, or dispense a controlled substance to  
505 another licensee or any other authorized person not authorized by this license.

506 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a  
507 symbol required by this chapter or by a rule issued under this chapter.

508 (m) A person licensed under this chapter may not refuse or fail to make, keep, or  
509 furnish any record notification, order form, statement, invoice, or information required under  
510 this chapter.

511 (n) A person licensed under this chapter may not refuse entry into any premises for  
512 inspection as authorized by this chapter.

513 (o) A person licensed under this chapter may not furnish false or fraudulent material  
514 information in any application, report, or other document required to be kept by this chapter or  
515 willfully make any false statement in any prescription, order, report, or record required by this  
516 chapter.

517 (8) (a) (i) Any person licensed under this chapter who is found by the division to have  
518 violated any of the provisions of Subsections (7)(k) through (7)(o) is subject to a penalty not to  
519 exceed \$5,000. The division shall determine the procedure for adjudication of any violations in  
520 accordance with Sections 58-1-106 and 58-1-108.

521 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the  
522 General Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

523 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through

524 (7)(j) is:

525 (i) upon first conviction, guilty of a class B misdemeanor;

526 (ii) upon second conviction, guilty of a class A misdemeanor; and

527 (iii) on third or subsequent conviction, guilty of a third degree felony.

528 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through

529 (7)(o) shall upon conviction be guilty of a third degree felony.

530 (9) Any information communicated to any licensed practitioner in an attempt to

531 unlawfully procure, or to procure the administration of, a controlled substance is not considered

532 to be a privileged communication.

533 Section 3. Section **58-71-102** is amended to read:

534 **58-71-102. Definitions.**

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

536 (1) "Administrative penalty" means a monetary fine imposed by the division for acts or

537 omissions determined to constitute unprofessional or unlawful conduct, as a result of an

538 adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative

539 Procedures Act.

540 (2) "Acupuncture" has the same definition as in Section 58-72-102.

541 (3) "Board" means the Naturopathic Physicians Licensing Board created in Section

542 58-71-201.

543 (4) "Diagnose" means:

544 (a) to examine in any manner another person, parts of a person's body, substances,

545 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's

546 body, to determine the source, nature, kind, or extent of a disease or other physical or mental

547 condition;

548 (b) to attempt to conduct an examination or determination described under Subsection

549 (4)(a);

550 (c) to hold oneself out as making or to represent that one is making an examination or

551 determination as described in Subsection (4)(a); or

552 (d) to make an examination or determination as described in Subsection (4)(a) upon or

553 from information supplied directly or indirectly by another person, whether or not in the

554 presence of the person making or attempting the diagnosis or examination.

555 (5) "Local anesthesia" means an agent, whether a natural medicine or prescription drug,  
556 which:

557 (a) is applied topically or by injection in superficial tissues associated with the  
558 performance of minor office procedures;

559 (b) has the ability to produce loss of sensation at the site of minor office procedures;  
560 and

561 (c) does not cause loss of consciousness or produce general sedation.

562 (6) "Medical naturopathic assistant" means an unlicensed individual working under the  
563 direct and immediate supervision of a licensed naturopathic physician and engaged in specific  
564 tasks assigned by the licensed naturopathic physician in accordance with the standards and  
565 ethics of the profession.

566 (7) (a) "Minor office procedures" means:

567 (i) the use of operative, electrical, or other methods for repair and care of superficial  
568 lacerations, abrasions, and benign lesions;

569 (ii) removal of foreign bodies located in the superficial tissues, excluding the eye or  
570 ear; and

571 (iii) the use of antiseptics and local anesthetics in connection with minor office surgical  
572 procedures[~~;~~and].

573 (b) "Minor office procedures" does not include:

574 (i) general or spinal anesthesia;

575 (ii) office procedures more complicated or extensive than those set forth in Subsection  
576 (7)(a);

577 (iii) procedures involving the eye; or

578 (iv) any office procedure involving tendons, nerves, veins, or arteries.

579 (8) "Natural medicine" means:

580 (a) food, food extracts, dietary supplements as defined by the federal Food, Drug, and  
581 Cosmetics Act, all homeopathic remedies, and plant substances that are not designated as  
582 prescription drugs or controlled substances;

583 (b) over-the-counter medications;

584 (c) other nonprescription substances, the prescription or administration of which is not  
585 otherwise prohibited or restricted under federal or state law; [and]

- 586 (d) prescription drugs:
- 587 (i) that, except as provided in Subsection (8)(e), are not controlled substances as
- 588 defined in Section 58-37-2;
- 589 (ii) the prescription of which is consistent with the competent practice of naturopathic
- 590 medicine; and
- 591 (iii) the prescription of which is approved by the division in collaboration with the
- 592 naturopathic formulary advisory peer committee[-]; and
- 593 (e) testosterone, if the testosterone is:
- 594 (i) bio-identical;
- 595 (ii) designed to be:
- 596 (A) administered topically, for transdermal absorption; or
- 597 (B) absorbed across the mucosal membranes of the mouth; and
- 598 (iii) prescribed or administered, in accordance with the requirements of federal and
- 599 state law, solely for the purpose of treating a patient with a low testosterone level in order to
- 600 restore the patient to a normal testosterone level.
- 601 (9) (a) "Naturopathic childbirth" means uncomplicated natural childbirth assisted by a
- 602 naturopathic physician, and includes the use of:
- 603 (i) natural medicines; and
- 604 (ii) uncomplicated episiotomy.
- 605 (b) "Naturopathic childbirth" does not include the use of:
- 606 (i) forceps delivery;
- 607 (ii) general or spinal anesthesia;
- 608 (iii) caesarean section delivery; or
- 609 (iv) induced labor or abortion.
- 610 (10) "Naturopathic mobilization therapy":
- 611 (a) means manually administering mechanical treatment of body structures or tissues
- 612 for the purpose of restoring normal physiological function to the body by normalizing and
- 613 balancing the musculoskeletal system of the body;
- 614 (b) does not mean manipulation or adjustment of the joints of the human body beyond
- 615 the elastic barrier; and
- 616 (c) does not include manipulation as defined in Title 58, Chapter 73, Chiropractic

617 Physician Practice Act.

618 (11) "Naturopathic physical medicine" means the use of the physical agents of air,  
619 water, heat, cold, sound, light, and electromagnetic nonionizing radiation, and the physical  
620 modalities of electrotherapy, biofeedback, acupuncture, diathermy, ultraviolet light, ultrasound,  
621 hydrotherapy, naturopathic mobilization therapy, and exercise. Naturopathic medicine does not  
622 include the practice of physical therapy or physical rehabilitation.

623 (12) "Practice of naturopathic medicine" means:

624 (a) a system of primary health care for the prevention, diagnosis, and treatment of  
625 human health conditions, injuries, and diseases that uses education, natural medicines, and  
626 natural therapies, to support and stimulate the patient's intrinsic self-healing processes:

627 (i) using naturopathic childbirth, but only if:

628 (A) the licensee meets standards of the American College of Naturopathic  
629 Obstetricians (ACNO) or its successor as determined by the division in collaboration with the  
630 board; and

631 (B) the licensee follows a written plan for naturopathic physicians practicing  
632 naturopathic childbirth approved by the division in collaboration with the board, which  
633 includes entering into an agreement with a consulting physician and surgeon or osteopathic  
634 physician, in cases where the scope of practice of naturopathic childbirth may be exceeded and  
635 specialty care and delivery is indicated, detailing the guidelines by which the naturopathic  
636 physician will:

637 (I) refer patients to the consulting physician; and

638 (II) consult with the consulting physician;

639 (ii) using naturopathic mobilization therapy;

640 (iii) using naturopathic physical medicine;

641 (iv) using minor office procedures;

642 (v) prescribing or administering natural medicine;

643 (vi) prescribing medical equipment and devices, diagnosing by the use of medical  
644 equipment and devices, and administering therapy or treatment by the use of medical devices  
645 necessary and consistent with the competent practice of naturopathic medicine;

646 (vii) prescribing barrier devices for contraception;

647 (viii) using dietary therapy;

648           (ix) taking and using diagnostic x-rays, electrocardiograms, ultrasound, and  
649 physiological function tests;

650           (x) taking of body fluids for clinical laboratory tests and using the results of the tests in  
651 diagnosis;

652           (xi) taking of a history from and conducting of a physical examination upon a human  
653 patient; and

654           (xii) prescribing and administering natural medicines and medical devices, except a  
655 naturopathic physician may only administer:

656           (A) a prescription drug, as defined in Section 58-17b-102, in accordance with  
657 Subsection (8)(d); and

658           (B) local anesthesia that is not a controlled substance, and only in the performance of  
659 minor office procedures;

660           (b) to maintain an office or place of business for the purpose of doing any of the acts  
661 described in Subsection (12)(a), whether or not for compensation; or

662           (c) to use, in the conduct of any occupation or profession pertaining to the diagnosis or  
663 treatment of human diseases or conditions, in any printed material, stationery, letterhead,  
664 envelopes, signs, or advertisements, the designation "naturopathic physician," "naturopathic  
665 doctor," "naturopath," "doctor of naturopathic medicine," "doctor of naturopathy,"  
666 "naturopathic medical doctor," "naturopathic medicine," "naturopathic health care,"  
667 "naturopathy," "N.D.," "N.M.D.," or any combination of these designations in any manner that  
668 might cause a reasonable person to believe the individual using the designation is a licensed  
669 naturopathic physician.

670           (13) "Prescription drug or device" means:

671           (a) a drug or device which, under federal law, is required to be labeled with either of  
672 the following statements or their equivalent:

673           (i) "CAUTION: Federal law prohibits dispensing without prescription"; or  
674           (ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed  
675 veterinarian"; or

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

678           (14) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-71-501.

679 (15) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-71-502, and  
680 as may be further defined by division rule.

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**Legislative Review Note**  
**as of 1-14-09 4:21 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 108 - Hormone Restoration Amendments**

**Fiscal Note**

2009 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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