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58-17b-309 Exemptions from licensure.

(1) For purposes of this section:

(a) "Cosmetic drug":

(i) means a prescription drug that is:

(A) for the purpose of promoting attractiveness or altering the appearance of an individual;
and

(B) listed as a cosmetic drug subject to the exemption under this section by the division by administrative rule or has been expressly approved for online dispensing, whether or not it is dispensed online or through a physician's office; and

(ii) does not include a prescription drug that is:

(A) a controlled substance;

(B) compounded by the physician; or

(C) prescribed or used for the patient for the purpose of diagnosing, curing, or preventing a disease.

(b) "Injectable weight loss drug":

(i) means an injectable prescription drug:

(A) prescribed to promote weight loss; and

(B) listed as an injectable prescription drug subject to exemption under this section by the division by administrative rule; and

(ii) does not include a prescription drug that is a controlled substance.

(c) "Prescribing practitioner" means an individual licensed under:

(i) Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse with prescriptive practice;

(ii) Chapter 67, Utah Medical Practice Act;

(iii) Chapter 68, Utah Osteopathic Medical Practice Act; or

(iv) Chapter 70a, Physician Assistant Act.

(2) In addition to the exemptions from licensure in Sections 58-1-307 and 58-17b-309.5, the following individuals may engage in the acts or practices described in this section without being licensed under this chapter:

(a) if the individual is described in Subsections (2)(b), (d), or (e), the individual notifies the division in writing of the individual's intent to dispense a drug under this subsection;

(b) a person selling or providing contact lenses in accordance with Section 58-16a-801;

(c) an individual engaging in the practice of pharmacy technician under the direct personal supervision of a pharmacist while making satisfactory progress in an approved program as defined in division rule;

(d) a prescribing practitioner who prescribes and dispenses a cosmetic drug or an injectable weight loss drug to the prescribing practitioner's patient in accordance with Subsection (5);

(e) an optometrist, as defined in Section 58-16a-102, acting within the optometrist's scope of practice as defined in Section 58-16a-601, who prescribes and dispenses a cosmetic drug to the optometrist's patient in accordance with Subsection (5); and

(f) an animal shelter that:

(i) under the indirect supervision of a veterinarian, stores, handles, or administers a drug used for euthanising an animal; and

(ii) under the indirect supervision of a veterinarian who is under contract with the animal shelter, stores, handles, or administers a rabies vaccine.

- (3) In addition to the exemptions from licensure in Section 58-1-307, a person selling or providing contact lenses in accordance with Section 58-16a-801 is exempt from the licensing provisions of this chapter.
- (4) In accordance with Subsection 58-1-303(1)(a), an individual exempt under Subsection (2)(c) must take all examinations as required by division rule following completion of an approved curriculum of education, within the required time frame. This exemption expires immediately upon notification of a failing score of an examination, and the individual may not continue working as a pharmacy technician even under direct supervision.
- (5) A prescribing practitioner or optometrist is exempt from licensing under the provisions of this part if the prescribing practitioner or optometrist:
 - (a)
 - (i) writes a prescription for a drug the prescribing practitioner or optometrist has the authority to dispense under Subsection (5)(b); and
 - (ii) informs the patient:
 - (A) that the prescription may be filled at a pharmacy or dispensed in the prescribing practitioner's or optometrist's office;
 - (B) of the directions for appropriate use of the drug;
 - (C) of potential side-effects to the use of the drug; and
 - (D) how to contact the prescribing practitioner or optometrist if the patient has questions or concerns regarding the drug;
 - (b) dispenses a cosmetic drug or injectable weight loss drug only to the prescribing practitioner's patients or for an optometrist, dispenses a cosmetic drug only to the optometrist's patients;
 - (c) follows labeling, record keeping, patient counseling, storage, purchasing and distribution, operating, treatment, and quality of care requirements established by administrative rule adopted by the division in consultation with the boards listed in Subsection (6)(a); and
 - (d) follows USP-NF 797 standards for sterile compounding if the drug dispensed to patients is reconstituted or compounded.
- (6)
 - (a) The division, in consultation with the board under this chapter and the relevant professional board, including the Physician Licensing Board, the Osteopathic Physician Licensing Board, the Physician Assistant Licensing Board, the Board of Nursing, the Optometrist Licensing Board, or the Online Prescribing, Dispensing, and Facilitation Board, shall adopt administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act to designate:
 - (i) the prescription drugs that may be dispensed as a cosmetic drug or weight loss drug under this section; and
 - (ii) the requirements under Subsection (5)(c).
 - (b) When making a determination under Subsection (1)(a), the division and boards listed in Subsection (6)(a) may consider any federal Food and Drug Administration indications or approval associated with a drug when adopting a rule to designate a prescription drug that may be dispensed under this section.
 - (c) The division may inspect the office of a prescribing practitioner or optometrist who is dispensing under the provisions of this section, in order to determine whether the prescribing practitioner or optometrist is in compliance with the provisions of this section. If a prescribing practitioner or optometrist chooses to dispense under the provisions of this section, the prescribing practitioner or optometrist consents to the jurisdiction of the division to inspect the prescribing practitioner's or optometrist's office and determine if the provisions of this section are being met by the prescribing practitioner or optometrist.

- (d) If a prescribing practitioner or optometrist violates a provision of this section, the prescribing practitioner or optometrist may be subject to discipline under:
 - (i) this chapter; and
 - (ii)
 - (A)Chapter 16a, Utah Optometry Practice Act;
 - (B)Chapter 31b, Nurse Practice Act;
 - (C)Chapter 67, Utah Medical Practice Act;
 - (D)Chapter 68, Utah Osteopathic Medical Practice Act;
 - (E)Chapter 70a, Physician Assistant Act; or
 - (F)Chapter 83, Online Prescribing, Dispensing, and Facilitation Licensing Act.
- (7) Except as provided in Subsection (2)(e), this section does not restrict or limit the scope of practice of an optometrist or optometric physician licensed under Chapter 16a, Utah Optometry Practice Act.