

PHYSICIAN SUPERVISION OF COSMETIC MEDICAL PROCEDURES

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: _____

LONG TITLE

General Description:

This bill establishes a requirement for supervision by a physician during a cosmetic medical procedure.

Highlighted Provisions:

This bill:

- ▶ requires supervision by a physician for a cosmetic medical procedure;
- ▶ defines cosmetic medical procedure;
- ▶ includes cosmetic medical procedure in the definition of the practice of medicine in the physician and osteopathic physician licensing acts;
- ▶ defines the type of supervision required for a cosmetic medical procedure; and
- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-16a-102, as last amended by Laws of Utah 2004, Chapters 48 and 280

58-67-102, as last amended by Laws of Utah 2010, Chapter 101



28 **58-68-102**, as last amended by Laws of Utah 2010, Chapter 101

29 ENACTS:

30 **58-1-505**, Utah Code Annotated 1953

31 **58-67-805**, Utah Code Annotated 1953

32 **58-68-805**, Utah Code Annotated 1953



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

35 Section 1. Section **58-1-505** is enacted to read:

36 **58-1-505. Supervision of cosmetic medical procedures.**

37 (1) For purposes of this section:

38 (a) "Cosmetic medical procedure" is as defined in Section 58-67-102.

39 (b) "Supervised" is as defined in Section 58-67-805.

40 (2) (a) Notwithstanding Section 58-11a-102, a licensee under this title whose scope of
41 practice includes performing a cosmetic medical procedure shall be supervised by a physician
42 licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic
43 Medical Practice Act, when performing a cosmetic medical procedure.

44 (b) This section does not apply:

45 (i) when a physician licensed under Chapter 67, Utah Medical Practice Act, or Chapter
46 68, Utah Osteopathic Medical Practice Act, is performing the cosmetic medical procedure; or

47 (ii) to a dentist licensed under Chapter 69, Dentist and Dental Hygienist Practice Act,
48 engaging in the practice of dentistry.

49 (3) Failure to comply with the provisions of this section is unprofessional conduct.

50 Section 2. Section **58-16a-102** is amended to read:

51 **58-16a-102. Definitions.**

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

53 (1) "Board" means the Optometrist Licensing Board created in Section 58-16a-201.

54 (2) "Contact lens" means any lens that:

55 (a) has a spherical, cylindrical, or prismatic power or curvature;

56 (b) is made pursuant to a current prescription; or

57 (c) is intended to be worn on the surface of the eye.

58 (3) (a) "Contact lens prescription" means a written or verbal order for contact lenses

59 that includes:

- 60 (i) the commencement date of the prescription;
- 61 (ii) the base curve, power, diameter, material or brand name, and expiration date;
- 62 (iii) for a written order, the signature of the prescribing optometrist or physician; and
- 63 (iv) for a verbal order, a record maintained by the recipient of:
 - 64 (A) the name of the prescribing optometrist or physician; and
 - 65 (B) the date when the prescription was issued or ordered.

66 (b) A prescription may include:

- 67 (i) a limit on the quantity of lenses that may be ordered under the prescription if
- 68 required for medical reasons documented in the patient's files; and
- 69 (ii) the expiration date of the prescription, which shall be two years from the
- 70 commencement date, unless documented medical reasons require otherwise.

71 (c) When a provider prescribes a private label contact lens for a patient the prescription

72 shall include:

- 73 (i) the name of the manufacturer;
- 74 (ii) the trade name of the private label brand; and
- 75 (iii) if applicable, the trade name of the equivalent national brand.

76 (4) "Contact lens prescription verification" means a written request from a person who

77 sells or provides contact lenses that:

- 78 (a) is sent to the prescribing optometrist or physician; and
- 79 (b) seeks the confirmation of the accuracy of a patient's prescription.

80 (5) "Eye and its adnexa" means the human eye and all structures situated within the

81 orbit, including the conjunctiva, lids, lashes, and lacrimal system.

82 (6) "Fitting of a contact lens" means:

- 83 (a) the using of a keratometer to measure the human eye;
- 84 (b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and
- 85 (c) trial fitting of contact lenses, which includes a period of time for evaluation for fit
- 86 and performance, to determine a tentative contact lens prescription for a patient if the patient:

- 87 (i) has not worn contact lenses before; or
- 88 (ii) has changed to a different type or base curve.

89 (7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized

90 by means of laser or ionizing radiation.

91 (8) "Ophthalmic lens" means any lens used to treat the eye and that:

92 (a) has a spherical, cylindrical, or prismatic power;

93 (b) is made pursuant to an unexpired prescription; and

94 (c) is intended to be used in eyeglasses or spectacles.

95 (9) "Optometric assistant" means an unlicensed individual:

96 (a) working under the direct and immediate supervision of a licensed optometrist; and

97 (b) engaged in specific tasks assigned by the licensed optometrist in accordance with

98 the standards and ethics of the profession.

99 (10) "Optometrist" or "optometric physician" means an individual licensed under this
100 chapter.

101 (11) "Optometry" and "practice of optometry" mean any one or any combination of the
102 following practices:

103 (a) examination of the human eye and its adnexa to detect and diagnose defects or
104 abnormal conditions;

105 (b) determination or modification of the accommodative or refractive state of the
106 human eye or its range or power of vision by administration and prescription of pharmaceutical
107 agents or the use of diagnostic instruments;

108 (c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact
109 lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to
110 diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its
111 adnexa;

112 (d) display of any advertisement, circular, sign, or device offering to:

113 (i) examine the eyes;

114 (ii) fit glasses or contact lenses; or

115 (iii) adjust frames;

116 (e) removal of a foreign body from the eye or its adnexa, that is not deeper than the
117 anterior [~~1/2~~] one-half of the cornea;

118 (f) consultation regarding the eye and its adnexa with other appropriate health care
119 providers, including referral to other appropriate health care providers; and

120 (g) a person, not licensed as an optometrist, directing a licensee under this chapter to

121 withhold or alter the eye care services the licensee has ordered.

122 (12) "Pharmaceutical agent" means any diagnostic or therapeutic drug or combination
123 of drugs that has the property of assisting in the diagnosis, prevention, treatment, or mitigation
124 of abnormal conditions or symptoms of the eye and its adnexa.

125 (13) "Physician" has the same meaning as defined in [~~Subsection 58-67-102(7)~~]
126 Sections 58-67-102 and 58-68-102.

127 (14) "Prescription drug" has the same definition as in Section 58-17b-102.

128 (15) "Unexpired" means a prescription that was issued:

129 (a) not more than two years prior to presentation of the prescription for an ophthalmic
130 lens; or

131 (b) in accordance with Subsection (3) for a contact lens.

132 Section 3. Section **58-67-102** is amended to read:

133 **58-67-102. Definitions.**

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

135 (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the
136 American Medical Association.

137 (2) "Administrative penalty" means a monetary fine imposed by the division for acts or
138 omissions determined to constitute unprofessional or unlawful conduct, as a result of an
139 adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
140 Procedures Act.

141 (3) "Board" means the Physicians Licensing Board created in Section 58-67-201.

142 (4) "Cosmetic medical procedure" shall:

143 (a) be defined by the division by administrative rule; and

144 (b) include:

145 (i) the use of American National Standards Institute designated Class III b and Class IV
146 energy-based devices such as intense pulsed light, radio-frequency devices for procedures,
147 including skin rejuvenation, hair removal, skin removal, skin resurfacing, and removal of age
148 spots;

149 (ii) the injection of federal Food and Drug Administration approved dermal fillers and
150 botulinum toxins; and

151 (iii) chemical peels and micro-dermabrasions that penetrate beneath the stratum

152 corneum.

153 [~~4~~] (5) "Diagnose" means:

154 (a) to examine in any manner another person, parts of a person's body, substances,
155 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's
156 body, to determine the source, nature, kind, or extent of a disease or other physical or mental
157 condition;

158 (b) to attempt to conduct an examination or determination described under Subsection
159 [~~4~~] (5)(a);

160 (c) to hold oneself out as making or to represent that one is making an examination or
161 determination as described in Subsection [~~4~~] (5)(a); or

162 (d) to make an examination or determination as described in Subsection [~~4~~] (5)(a)
163 upon or from information supplied directly or indirectly by another person, whether or not in
164 the presence of the person making or attempting the diagnosis or examination.

165 [~~5~~] (6) "LCME" means the Liaison Committee on Medical Education of the
166 American Medical Association.

167 [~~6~~] (7) "Medical assistant" means an unlicensed individual working under the direct
168 and immediate supervision of a licensed physician and surgeon and engaged in specific tasks
169 assigned by the licensed physician and surgeon in accordance with the standards and ethics of
170 the profession.

171 [~~7~~] (8) "Physician" means both physicians and surgeons licensed under Section
172 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
173 Section 58-68-301, Utah Osteopathic Medical Practice Act.

174 [~~8~~] (9) "Practice of medicine" means:

175 (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
176 disease, ailment, injury, infirmity, deformity, pain, cosmetic medical procedure, or other
177 condition, physical or mental, real or imaginary, or to attempt to do so, by any means or
178 instrumentality, and by an individual in Utah or outside the state upon or for any human within
179 the state, except that conduct described in this Subsection [~~8~~] (9)(a) that is performed by a
180 person legally and in accordance with a license issued under another chapter of this title does
181 not constitute the practice of medicine;

182 (b) when a person not licensed as a physician directs a licensee under this chapter to

183 withhold or alter the health care services that the licensee has ordered, but practice of medicine
184 does not include any conduct under Subsection 58-67-501(2);

185 (c) to maintain an office or place of business for the purpose of doing any of the acts
186 described in Subsection ~~[(8)]~~ (9)(a) whether or not for compensation; or

187 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
188 treatment of human diseases or conditions in any printed material, stationery, letterhead,
189 envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine,"
190 "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these
191 designations in any manner which might cause a reasonable person to believe the individual
192 using the designation is a licensed physician and surgeon, and if the party using the designation
193 is not a licensed physician and surgeon, the designation must additionally contain the
194 description of the branch of the healing arts for which the person has a license.

195 ~~[(9)]~~ (10) "Prescription device" means an instrument, apparatus, implement, machine,
196 contrivance, implant, in vitro reagent, or other similar or related article, and any component
197 part or accessory, which is required under federal or state law to be prescribed by a practitioner
198 and dispensed by or through a person or entity licensed under this chapter or exempt from
199 licensure under this chapter.

200 ~~[(10)]~~ (11) "Prescription drug" means a drug that is required by federal or state law or
201 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

202 ~~[(11)]~~ (12) "SPEX" means the Special Purpose Examination of the Federation of State
203 Medical Boards.

204 ~~[(12)]~~ (13) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

205 ~~[(13)]~~ (14) "Unprofessional conduct" is as defined in Sections 58-1-501 and
206 58-67-502, and as may be further defined by division rule.

207 Section 4. Section **58-67-805** is enacted to read:

208 **58-67-805. Supervision of cosmetic medical procedures.**

209 When a physician is supervising the use of a cosmetic medical procedure under the
210 provisions of Section 58-1-505, the supervising physician shall:

211 (1) be immediately available during the procedure for consultation, advice, instruction,
212 and evaluation either in person, by phone, through the Internet, or some other means of
213 immediate communication;

- 214 (2) conduct an evaluation of the patient prior to the procedure;
- 215 (3) develop medical protocols for the procedure; and
- 216 (4) provide training on the medical protocols developed under Subsection (3) to the
- 217 licensee who is being supervised.

218 Section 5. Section **58-68-102** is amended to read:

219 **58-68-102. Definitions.**

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

221 (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the
222 American Medical Association.

223 (2) "Administrative penalty" means a monetary fine imposed by the division for acts or
224 omissions determined to constitute unprofessional or unlawful conduct, as a result of an
225 adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
226 Procedures Act.

227 (3) "AOA" means the American Osteopathic Association.

228 (4) "Board" means the Osteopathic Physicians Licensing Board created in Section
229 58-68-201.

230 (5) "Cosmetic medical procedure" shall:

231 (a) be defined by the division by administrative rule; and

232 (b) include:

233 (i) the use of American National Standards Institute designated Class III b and Class IV
234 energy-based devices such as intense pulsed light, radio-frequency devices for procedures,
235 including skin rejuvenation, hair removal, skin removal, skin resurfacing, and removal of age
236 spots;

237 (ii) the injection of federal Food and Drug Administration approved dermal fillers and
238 botulinum toxins; and

239 (iii) chemical peels and micro-dermabrasions that penetrate beneath the stratum
240 corneum.

241 [~~5~~] (6) "Diagnose" means:

242 (a) to examine in any manner another person, parts of a person's body, substances,
243 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's
244 body, to determine the source, nature, kind, or extent of a disease or other physical or mental

245 condition;

246 (b) to attempt to conduct an examination or determination described under Subsection
247 [~~5~~] (6)(a);

248 (c) to hold oneself out as making or to represent that one is making an examination or
249 determination as described in Subsection [~~5~~] (6)(a); or

250 (d) to make an examination or determination as described in Subsection [~~5~~] (6)(a)
251 upon or from information supplied directly or indirectly by another person, whether or not in
252 the presence of the person making or attempting the diagnosis or examination.

253 [~~6~~] (7) "Medical assistant" means an unlicensed individual working under the direct
254 and immediate supervision of a licensed osteopathic physician and surgeon and engaged in
255 specific tasks assigned by the licensed osteopathic physician and surgeon in accordance with
256 the standards and ethics of the profession.

257 [~~7~~] (8) "Physician" means both physicians and surgeons licensed under Section
258 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
259 Section 58-68-301, Utah Osteopathic Medical Practice Act.

260 [~~8~~] (9) "Practice of osteopathic medicine" means:

261 (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
262 disease, ailment, injury, infirmity, deformity, pain, cosmetic medical procedure, or other
263 condition, physical or mental, real or imaginary, or to attempt to do so, by any means or
264 instrumentality, which in whole or in part is based upon emphasis of the importance of the
265 musculoskeletal system and manipulative therapy in the maintenance and restoration of health,
266 by an individual in Utah or outside of the state upon or for any human within the state, except
267 that conduct described in this Subsection [~~8~~] (9)(a) that is performed by a person legally and
268 in accordance with a license issued under another chapter of this title does not constitute the
269 practice of medicine;

270 (b) when a person not licensed as a physician directs a licensee under this chapter to
271 withhold or alter the health care services that the licensee has ordered, but practice of medicine
272 does not include any conduct under Subsection 58-68-501(2);

273 (c) to maintain an office or place of business for the purpose of doing any of the acts
274 described in Subsection [~~8~~] (9)(a) whether or not for compensation; or

275 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or

276 treatment of human diseases or conditions, in any printed material, stationery, letterhead,
277 envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine,"
278 "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.,"
279 "D.O.," or any combination of these designations in any manner which might cause a
280 reasonable person to believe the individual using the designation is a licensed osteopathic
281 physician, and if the party using the designation is not a licensed osteopathic physician, the
282 designation must additionally contain the description of the branch of the healing arts for which
283 the person has a license.

284 ~~[(9)]~~ (10) "Prescription device" means an instrument, apparatus, implement, machine,
285 contrivance, implant, in vitro reagent, or other similar or related article, and any component
286 part or accessory, which is required under federal or state law to be prescribed by a practitioner
287 and dispensed by or through a person or entity licensed under this chapter or exempt from
288 licensure under this chapter.

289 ~~[(10)]~~ (11) "Prescription drug" means a drug that is required by federal or state law or
290 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

291 ~~[(11)]~~ (12) "SPEX" means the Special Purpose Examination of the Federation of State
292 Medical Boards.

293 ~~[(12)]~~ (13) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

294 ~~[(13)]~~ (14) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502
295 and as may be further defined by division rule.

296 Section 6. Section **58-68-805** is enacted to read:

297 **58-68-805. Supervision of cosmetic medical procedures.**

298 When a physician is supervising a cosmetic medical procedure under the provisions of
299 Section 58-1-505, the supervising physician shall:

300 (1) be immediately available during the procedure for consultation, advice, instruction,
301 and evaluation either in person, by phone, through the Internet, or some other means of
302 immediate communication;

303 (2) conduct an evaluation of the patient prior to the procedure;

304 (3) develop medical protocols for the procedure; and

305 (4) provide training on the medical protocols developed under Subsection (3) to the
306 licensee who is being supervised.

Legislative Review Note
as of 1-19-11 9:17 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 54

SHORT TITLE: **Physician Supervision of Cosmetic Medical Procedures**

SPONSOR: **Knudson, P.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

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

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.