MEDICAL AND OSTEOPATHIC PRACTICE ACT
AMENDMENTS
2012 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: ____________

LONG TITLE

General Description:
This bill amends the Utah Medical Practice Act and the Utah Osteopathic Practice Act.

Highlighted Provisions:
This bill:
- defines cosmetic medical laser procedure;
- includes cosmetic medical laser procedure in the definition of the practice of medicine;
- clarifies that the inclusion of an ablative procedure in the definition of cosmetic medical laser procedure does not limit other professionals' scope of practice when "operate" or "surgery" is part of the professionals' practice act;
- permits the delegation of certain cosmetic medical laser procedures by a physician;
- requires supervision by a physician if the cosmetic medical laser procedure is delegated;
- prohibits the delegation of supervision when supervision is required; 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 2011, Chapter 214
58-68-102, as last amended by Laws of Utah 2011, Chapter 214

ENACTS:

58-67-805, Utah Code Annotated 1953
58-68-805, Utah Code Annotated 1953

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

Section 1. Section 58-16a-102 is amended to read:

58-16a-102. Definitions.

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

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

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

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

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

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

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

that includes:

(i) the commencement date of the prescription;

(ii) the base curve, power, diameter, material or brand name, and expiration date;

(iii) for a written order, the signature of the prescribing optometrist or physician; and

(iv) for a verbal order, a record maintained by the recipient of:

(A) the name of the prescribing optometrist or physician; and

(B) the date when the prescription was issued or ordered.

(b) A prescription may include:

(i) a limit on the quantity of lenses that may be ordered under the prescription if

required for medical reasons documented in the patient's files; and

(ii) the expiration date of the prescription, which shall be two years from the

commencement date, unless documented medical reasons require otherwise.
(c) When a provider prescribes a private label contact lens for a patient the prescription shall include:
(i) the name of the manufacturer;
(ii) the trade name of the private label brand; and
(iii) if applicable, the trade name of the equivalent national brand.
(4) "Contact lens prescription verification" means a written request from a person who sells or provides contact lenses that:
(a) is sent to the prescribing optometrist or physician; and
(b) seeks the confirmation of the accuracy of a patient's prescription.
(5) "Eye and its adnexa" means the human eye and all structures situated within the orbit, including the conjunctiva, lids, lashes, and lacrimal system.
(6) "Fitting of a contact lens" means:
(a) the using of a keratometer to measure the human eye;
(b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and
(c) trial fitting of contact lenses, which includes a period of time for evaluation for fit and performance, to determine a tentative contact lens prescription for a patient if the patient:
   (i) has not worn contact lenses before; or
   (ii) has changed to a different type or base curve.
(7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized by means of laser or ionizing radiation.
(8) "Ophthalmic lens" means any lens used to treat the eye and that:
(a) has a spherical, cylindrical, or prismatic power;
(b) is made pursuant to an unexpired prescription; and
(c) is intended to be used in eyeglasses or spectacles.
(9) "Optometric assistant" means an unlicensed individual:
(a) working under the direct and immediate supervision of a licensed optometrist; and
(b) engaged in specific tasks assigned by the licensed optometrist in accordance with the standards and ethics of the profession.
(10) "Optometrist" or "optometric physician" means an individual licensed under this chapter.
(11) "Optometry" and "practice of optometry" mean any one or any combination of the
following practices:

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

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

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

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

(i) examine the eyes;

(ii) fit glasses or contact lenses; or

(iii) adjust frames;

(e) removal of a foreign body from the eye or its adnexa, that is not deeper than the anterior 1/2 of the cornea;

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

(g) a person, not licensed as an optometrist, directing a licensee under this chapter to withhold or alter the eye care services the licensee has ordered.

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

(13) "Physician" has the same meaning as defined in [(Subsection 58-67-102(7))]


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

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

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

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

Section 2. Section 58-67-102 is amended to read:
In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.
(2) "Administrative penalty" means a monetary fine or citation imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, in accordance with a fine schedule established by the division in collaboration with the board, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
(3) "Board" means the Physicians Licensing Board created in Section 58-67-201.
(4) "Cosmetic medical laser procedure" includes:
   (a) the use of tissue altering energy based devices that have the potential for severe injury such as American National Standards Institute designated Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices;
   (b) an ablative procedure that is expected to excise, burn, or vaporize the skin below the dermo-epidermal junction;
   (c) a non-ablative procedure that is not expected or intended to excise, burn, or vaporize the epidermal surface of the skin, including:
      (i) use of a laser for hair removal; and
      (ii) use of a pulsed light device; and
   (d) other procedures as may be defined by the division by administrative rule adopted in consultation with the board.
(5) "Diagnose" means:
   (a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;
   (b) to attempt to conduct an examination or determination described under Subsection [(4)] (5)(a);
   (c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection [(4)] (5)(a); or
(d) to make an examination or determination as described in Subsection [(6) (5) (a)]
upon or from information supplied directly or indirectly by another person, whether or not in
the presence of the person making or attempting the diagnosis or examination.

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

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

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

[(8) (9)] "Practice of medicine" means:
(a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
disease, ailment, injury, infirmity, deformity, pain, cosmetic laser procedure, or other condition,
physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality,
and by an individual in Utah or outside the state upon or for any human within the state, except
that conduct described in this Subsection [(8) (9) (a)] that is performed by a person legally and
in accordance with a license issued under another chapter of this title, including a scope of
practice that includes the authority to operate or a surgical procedure, does not constitute the
practice of medicine;
(b) when a person not licensed as a physician directs a licensee under this chapter to
withhold or alter the health care services that the licensee has ordered, but practice of medicine
does not include any conduct under Subsection 58-67-501(2);
(c) to maintain an office or place of business for the purpose of doing any of the acts
described in Subsection [(8) (9) (a)] whether or not for compensation; or
(d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
treatment of human diseases or conditions in any printed material, stationery, letterhead,
envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine,"
"physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these
designations in any manner which might cause a reasonable person to believe the individual
using the designation is a licensed physician and surgeon, and if the party using the designation is not a licensed physician and surgeon, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an individual who has received an earned degree of doctor of medicine degree but is not a licensed physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

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

"Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.

"SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

"Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

"Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

Section 3. Section 58-67-805 is enacted to read:

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

(1) (a) Except as provided in Subsection (1)(b), a physician may not delegate:

(i) a cosmetic medical laser procedure to an individual who is not licensed under this chapter or Chapter 68, Utah Osteopathic Medical Practice Act; or

(ii) supervision of an individual required by this section.

(b) A physician may delegate a cosmetic medical laser procedure that is a non-ablative procedure under Subsection 58-67-102(7)(c) if the physician supervises the non-ablative cosmetic medical laser procedure in accordance with Subsection (2).

(2) A physician supervising a non-ablative cosmetic medical laser procedure shall:

(a) conduct an in-person evaluation of the patient prior to initiating a treatment protocol or series of treatments;

(b) be immediately available during the procedure for consultation, advice, instruction.
and evaluation in person;
(c) prescribe medical protocols for the procedure;
(d) provide the training required by this subsection to the supervised individual; and
(e) verify that the individual who is being supervised:
   (i) is a master esthetician as defined in Section 58-11a-102; or
   (ii) in accordance with administrative rules adopted by the division in consultation with
the board, has maintained competence to perform non-ablative cosmetic medical procedures
through documented training of at least 50 hours, and experience regarding:
   (A) the appropriate standard of care for performing non ablative cosmetic medical
procedures;
   (B) physiology of the skin;
   (C) skin typing and analysis;
   (D) skin conditions, disorders, and diseases;
   (E) pre and post operative care;
   (F) infection control;
   (G) laser and light physics training;
   (H) laser technologies and applications;
   (I) safety and maintenance of lasers;
   (J) cosmetic laser hair removal procedures; and
   (K) recognition and appropriate management of complications from a procedure.
(3) Failure to comply with the provisions of this section is unprofessional conduct.

Section 4. Section 58-68-102 is amended to read:

In addition to the definitions in Section 58-1-102, as used in this chapter:
(1) "ACGME" means the Accreditation Council for Graduate Medical Education of the
American Medical Association.
(2) "Administrative penalty" means a monetary fine imposed by the division for acts or
omissions determined to constitute unprofessional or unlawful conduct, as a result of an
adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
Procedures Act.
(3) "AOA" means the American Osteopathic Association.
"Board" means the Osteopathic Physician and Surgeon's Licensing Board created in Section 58-68-201.

"Cosmetic medical laser procedure" includes:

(a) the use of tissue altering energy based devices that have the potential for severe injury such as American National Standards Institute designated Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices;

(b) an ablative procedure that is expected to excise, burn, or vaporize the skin below the dermo-epidermal junction;

(c) a non-ablative procedure that is not expected or intended to excise, burn, or vaporize the epidermal surface of the skin, including:

(i) use of a laser for hair removal; and

(ii) use of a pulsed light device; and

(d) other procedures as may be defined by the division by administrative rule adopted in consultation with the board.

"Diagnose" means:

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

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

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

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

"Medical assistant" means an unlicensed individual working under the direct and immediate supervision of a licensed osteopathic physician and surgeon and engaged in specific tasks assigned by the licensed osteopathic physician and surgeon in accordance with the standards and ethics of the profession.

"Physician" means both physicians and surgeons licensed under Section
"Practice of osteopathic medicine" means:

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

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

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

(d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
treatment of human diseases or conditions, in any printed material, stationery, letterhead,
envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine,"
"osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.,”
"D.O.,” or any combination of these designations in any manner which might cause a
reasonable person to believe the individual using the designation is a licensed osteopathic
physician, and if the party using the designation is not a licensed osteopathic physician, the
designation must additionally contain the description of the branch of the healing arts for which
the person has a license, provided that an individual who has received an earned degree of
doctor of osteopathic medicine but is not a licensed osteopathic physician and surgeon in Utah
may use the designation "D.O." if it is followed by "Not Licensed" or "Not Licensed in Utah"
in the same size and style of lettering.

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

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

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

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

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

Section 5. Section 58-68-805 is enacted to read:


(1) (a) Except as provided in Subsection (1)(b), a physician may not delegate:

(i) a cosmetic laser procedure to an individual who is not licensed under this chapter or Chapter 68, Utah Osteopathic Medical Practice Act; or

(ii) supervision of an individual required by this section.

(b) A physician may delegate a cosmetic medical laser procedure that is a non-ablative procedure under Subsection 58-67-102(7)(c) if the physician supervises the non-ablative cosmetic medical laser procedure in accordance with Subsection (2).

(2) A physician supervising a non-ablative cosmetic medical laser procedure shall:

(a) conduct an in-person evaluation of the patient prior to initiating a treatment protocol or series of treatments;

(b) be immediately available during the procedure for consultation, advice, instruction, and evaluation in person;

(c) prescribe medical protocols for the procedure;

(d) provide the training required by this subsection to the supervised individual; and

(e) verify that the individual who is being supervised:

(i) is a master esthetician as defined in Section 58-11a-102; or

(ii) in accordance with administrative rules adopted by the division in consultation with the board, has maintained competence to perform non-ablative cosmetic medical procedures through documented training of at least 50 hours, and experience regarding:
(A) the appropriate standard of care for performing non-ablative cosmetic medical procedures;

(B) physiology of the skin;

(C) skin typing and analysis;

(D) skin conditions, disorders, and diseases;

(E) pre and post operative care;

(F) infection control;

(G) laser and light physics training;

(H) laser technologies and applications;

(I) safety and maintenance of lasers;

(J) cosmetic laser hair removal procedures; and

(K) recognition and appropriate management of complications from a procedure.

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

Legislative Review Note
as of 1-16-12 6:13 PM

Office of Legislative Research and General Counsel