

SEX CHARACTERISTIC SURGICAL PROCEDURES

2023 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill enacts provisions regarding sex characteristic surgical procedures.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits performing sex characteristic surgical procedures on a minor for the purpose of effectuating a sex change; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-67-102, as last amended by Laws of Utah 2022, Chapter 233

58-67-502, as last amended by Laws of Utah 2021, Chapter 337

58-68-102, as last amended by Laws of Utah 2022, Chapter 233

58-68-502, as last amended by Laws of Utah 2021, Chapter 337

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

Section 1. Section **58-67-102** is amended to read:

58-67-102. Definitions.

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

(1) (a) "Ablative procedure" means a procedure that is expected to excise, vaporize, disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium: YAG lasers.

(b) "Ablative procedure" does not include hair removal.

33 (2) "ACGME" means the Accreditation Council for Graduate Medical Education of the
34 American Medical Association.

35 (3) "Administrative penalty" means a monetary fine or citation imposed by the division
36 for acts or omissions determined to constitute unprofessional or unlawful conduct, in
37 accordance with a fine schedule established by the division in collaboration with the board, as a
38 result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4,
39 Administrative Procedures Act.

40 (4) "Associate physician" means an individual licensed under Section 58-67-302.8.

41 (5) "Attempted sex change" means an attempt or effort to change an individual's body
42 to present that individual as being of a sex or gender that is different from the individual's
43 biological sex at birth.

44 (6) "Biological sex at birth" means an individual's sex, as being male or female,
45 according to distinct reproductive roles as manifested by:

46 (a) sex and reproductive organ anatomy;

47 (b) chromosomal makeup; and

48 (c) endogenous hormone profiles.

49 [(5)] (7) "Board" means the Physicians Licensing Board created in Section 58-67-201.

50 [(6)] (8) "Collaborating physician" means an individual licensed under Section
51 58-67-302 who enters into a collaborative practice arrangement with an associate physician.

52 [(7)] (9) "Collaborative practice arrangement" means the arrangement described in
53 Section 58-67-807.

54 [(8)] (10) (a) "Cosmetic medical device" means tissue altering energy based devices
55 that have the potential for altering living tissue and that are used to perform ablative or
56 nonablative procedures, such as American National Standards Institute (ANSI) designated
57 Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic
58 devices, and excludes ANSI designated Class IIIa and lower powered devices.

59 (b) Notwithstanding Subsection [(8)(a)] (10)(a), if an ANSI designated Class IIIa and
60 lower powered device is being used to perform an ablative procedure, the device is included in
61 the definition of cosmetic medical device under Subsection [(8)(a)] (10)(a).

62 [(9)] (11) "Cosmetic medical procedure":

63 (a) includes the use of cosmetic medical devices to perform ablative or nonablative

64 procedures; and

65 (b) does not include a treatment of the ocular globe such as refractive surgery.

66 ~~[(10)]~~ (12) "Diagnose" means:

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

71 (b) to attempt to conduct an examination or determination described under Subsection
72 ~~[(10)(a);]~~ (12)(a);

73 (c) to hold oneself out as making or to represent that one is making an examination or
74 determination as described in Subsection ~~[(10)(a);]~~ (12)(a); or

75 (d) to make an examination or determination as described in Subsection ~~[(10)(a)]~~
76 (12)(a) upon or from information supplied directly or indirectly by another person, whether or
77 not in the presence of the person making or attempting the diagnosis or examination.

78 ~~[(11)]~~ (13) "LCME" means the Liaison Committee on Medical Education of the
79 American Medical Association.

80 ~~[(12)]~~ (14) "Medical assistant" means an unlicensed individual who may perform tasks
81 as described in Subsection 58-67-305(6).

82 ~~[(13)]~~ (15) "Medically underserved area" means a geographic area in which there is a
83 shortage of primary care health services for residents, as determined by the Department of
84 Health and Human Services.

85 ~~[(14)]~~ (16) "Medically underserved population" means a specified group of people
86 living in a defined geographic area with a shortage of primary care health services, as
87 determined by the Department of Health and Human Services.

88 ~~[(15)]~~ (17) (a) (i) "Nonablative procedure" means a procedure that is expected or
89 intended to alter living tissue, but is not intended or expected to excise, vaporize, disintegrate,
90 or remove living tissue.

91 (ii) Notwithstanding Subsection ~~[(15)(a)(i);]~~ (17)(a)(i) nonablative procedure includes
92 hair removal.

93 (b) "Nonablative procedure" does not include:

94 (i) a superficial procedure as defined in Section 58-1-102;

95 (ii) the application of permanent make-up; or
 96 (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are
 97 performed by an individual licensed under this title who is acting within the individual's scope
 98 of practice.

99 ~~[(16)]~~ (18) "Physician" means both physicians and surgeons licensed under Section
 100 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
 101 Section 58-68-301, Utah Osteopathic Medical Practice Act.

102 ~~[(17)]~~ (19) (a) "Practice of medicine" means:

103 (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
 104 disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real
 105 or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any
 106 means or instrumentality, and by an individual in Utah or outside the state upon or for any
 107 human within the state;

108 (ii) when a person not licensed as a physician directs a licensee under this chapter to
 109 withhold or alter the health care services that the licensee has ordered;

110 (iii) to maintain an office or place of business for the purpose of doing any of the acts
 111 described in Subsection ~~[(17)(a)]~~ (19)(a)(i) or (ii) whether or not for compensation; or

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

123 (b) The practice of medicine does not include:

124 (i) except for an ablative medical procedure as provided in Subsection ~~[(17)(b)(ii)]~~

125 (19)(b)(ii) the conduct described in Subsection ~~[(17)(a)(i)]~~ (19)(a)(i) that is performed in

126 accordance with a license issued under another chapter of this title;

127 (ii) an ablative cosmetic medical procedure if the scope of practice for the person
128 performing the ablative cosmetic medical procedure includes the authority to operate or
129 perform a surgical procedure; or

130 (iii) conduct under Subsection 58-67-501(2).

131 ~~[(18)]~~ (20) "Prescription device" means an instrument, apparatus, implement, machine,
132 contrivance, implant, in vitro reagent, or other similar or related article, and any component
133 part or accessory, which is required under federal or state law to be prescribed by a practitioner
134 and dispensed by or through a person or entity licensed under this chapter or exempt from
135 licensure under this chapter.

136 ~~[(19)]~~ (21) "Prescription drug" means a drug that is required by federal or state law or
137 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

138 (22) (a) "Primary sex characteristic surgical procedure" means any of the following if
139 done for the purpose of effectuating or facilitating an individual's attempted sex change:

140 (i) for an individual whose biological sex at birth is male, castration, orchiectomy,
141 penectomy, vaginoplasty, or vulvoplasty;

142 (ii) for an individual whose biological sex at birth is female, hysterectomy,
143 oophorectomy, metoidioplasty, or phalloplasty; or

144 (iii) any surgical procedure that is related to or necessary for a procedure described in
145 Subsection (22)(a)(i) or (ii), that would result in the sterilization of an individual who is not
146 sterile.

147 (b) "Primary sex characteristic surgical procedure" does not include:

148 (i) surgery or other procedures or treatments performed on an individual who:

149 (A) is born with external biological sex characteristics that are irresolvably ambiguous;

150 (B) is born with 46, XX chromosomes with virilization;

151 (C) is born with 46, XY chromosomes with undervirilization;

152 (D) has both ovarian and testicular tissue; or

153 (E) has been diagnosed by a physician, based on genetic or biochemical testing, with a
154 sex development disorder characterized by abnormal sex chromosome structure, sex steroid

155 hormone production, or sex steroid hormone action for a male or female; or

156 (ii) removing a body part:

157 (A) because the body part is cancerous or diseased; or
 158 (B) for a reason that is medically necessary, other than to effectuate or facilitate an
 159 individual's attempted sex change.

160 (23) (a) "Secondary sex characteristic surgical procedure" means any of the following
 161 if done for the purpose of effectuating or facilitating an individual's attempted sex change:

162 (i) for an individual whose biological sex at birth is male, breast augmentation surgery,
 163 chest feminization surgery, or facial feminization surgery; or

164 (ii) for an individual whose biological sex at birth is female, mastectomy, breast
 165 reduction surgery, chest masculinization surgery, or facial masculinization surgery.

166 (b) "Secondary sex characteristic surgical procedure" does not include:

167 (i) surgery or other procedures or treatments performed on an individual who:

168 (A) is born with external biological sex characteristics that are irresolvably ambiguous;

169 (B) is born with 46, XX chromosomes with virilization;

170 (C) is born with 46, XY chromosomes with undervirilization;

171 (D) has both ovarian and testicular tissue; or

172 (E) has been diagnosed by a physician, based on genetic or biochemical testing, with a
 173 sex development disorder characterized by abnormal sex chromosome structure, sex steroid
 174 hormone production, or sex steroid hormone action for a male or female; or

175 (ii) removing a body part:

176 (A) because the body part is cancerous or diseased; or

177 (B) for a reason that is medically necessary, other than to effectuate or facilitate an
 178 individual's attempted sex change.

179 ~~[(20)]~~ (24) "SPEX" means the Special Purpose Examination of the Federation of State
 180 Medical Boards.

181 ~~[(21)]~~ (25) "Unlawful conduct" means the same as that term is defined in Sections
 182 58-1-501 and 58-67-501.

183 ~~[(22)]~~ (26) "Unprofessional conduct" means the same as that term is defined in
 184 Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

185 Section 2. Section **58-67-502** is amended to read:

186 **58-67-502. Unprofessional conduct.**

187 (1) "Unprofessional conduct" includes, in addition to the definition in Section

188 58-1-501:

189 (a) using or employing the services of any individual to assist a licensee in any manner
190 not in accordance with the generally recognized practices, standards, or ethics of the
191 profession, state law, or division rule;

192 (b) making a material misrepresentation regarding the qualifications for licensure under
193 Section 58-67-302.7 or [Section] 58-67-302.8;

194 (c) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical
195 Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

196 (d) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act;
197 [or]

198 (e) falsely making an entry in, or altering, a medical record with the intent to conceal:

199 (i) a wrongful or negligent act or omission of an individual licensed under this chapter
200 or an individual under the direction or control of an individual licensed under this chapter; or

201 (ii) conduct described in Subsections (1)(a) through (d) or Subsection 58-1-501(1)[-];

202 or

203 (f) performing, or causing to be performed, upon an individual who is less than 18
204 years old:

205 (i) a primary sex characteristic surgical procedure; or

206 (ii) a secondary sex characteristic surgical procedure.

207 (2) "Unprofessional conduct" does not include:

208 (a) in compliance with Section 58-85-103:

209 (i) obtaining an investigational drug or investigational device;

210 (ii) administering the investigational drug to an eligible patient; or

211 (iii) treating an eligible patient with the investigational drug or investigational device;

212 or

213 (b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:

214 (i) when registered as a qualified medical provider or acting as a limited medical
215 provider, as those terms are defined in Section 26-61a-102, recommending the use of medical
216 cannabis;

217 (ii) when registered as a pharmacy medical provider, as that term is defined in Section
218 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

219 (iii) when registered as a state central patient portal medical provider, as that term is
220 defined in Section 26-61a-102, providing state central patient portal medical provider services.

221 (3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and
222 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define
223 unprofessional conduct for a physician described in Subsection (2)(b).

224 Section 3. Section **58-68-102** is amended to read:

225 **58-68-102. Definitions.**

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

227 (1) (a) "Ablative procedure" means a procedure that is expected to excise, vaporize,
228 disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium:
229 YAG lasers.

230 (b) "Ablative procedure" does not include hair removal.

231 (2) "ACGME" means the Accreditation Council for Graduate Medical Education of the
232 American Medical Association.

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

237 (4) "AOA" means the American Osteopathic Association.

238 (5) "Associate physician" means an individual licensed under Section 58-68-302.5.

239 (6) "Attempted sex change" means an attempt or effort to change an individual's body
240 to present that individual as being of a sex or gender that is different from the individual's
241 biological sex at birth.

242 (7) "Biological sex at birth" means an individual's sex, as being male or female,
243 according to distinct reproductive roles as manifested by:

244 (a) sex and reproductive organ anatomy;

245 (b) chromosomal makeup; and

246 (c) endogenous hormone profiles.

247 [(6)] (8) "Board" means the Osteopathic Physician and Surgeon's Licensing Board
248 created in Section 58-68-201.

249 [(7)] (9) "Collaborating physician" means an individual licensed under Section

250 58-68-302 who enters into a collaborative practice arrangement with an associate physician.

251 ~~[(8)]~~ (10) "Collaborative practice arrangement" means the arrangement described in
252 Section 58-68-807.

253 ~~[(9)]~~ (11) (a) "Cosmetic medical device" means tissue altering energy based devices
254 that have the potential for altering living tissue and that are used to perform ablative or
255 nonablative procedures, such as American National Standards Institute (ANSI) designated
256 Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic
257 devices and excludes ANSI designated Class IIIa and lower powered devices.

258 (b) Notwithstanding Subsection ~~[(9)(a)]~~ (11)(a), if an ANSI designated Class IIIa and
259 lower powered device is being used to perform an ablative procedure, the device is included in
260 the definition of cosmetic medical device under Subsection ~~[(9)(a)]~~ (11)(a).

261 ~~[(10)]~~ (12) "Cosmetic medical procedure":

262 (a) includes the use of cosmetic medical devices to perform ablative or nonablative
263 procedures; and

264 (b) does not include a treatment of the ocular globe such as refractive surgery.

265 ~~[(11)]~~ (13) "Diagnose" means:

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

270 (b) to attempt to conduct an examination or determination described under Subsection
271 ~~[(11)(a)]~~ (13)(a);

272 (c) to hold oneself out as making or to represent that one is making an examination or
273 determination as described in Subsection ~~[(11)(a)]~~ (13)(a); or

274 (d) to make an examination or determination as described in Subsection ~~[(11)(a)]~~
275 (13)(a) upon or from information supplied directly or indirectly by another person, whether or
276 not in the presence of the person making or attempting the diagnosis or examination.

277 ~~[(12)]~~ (14) "Medical assistant" means an unlicensed individual who may perform tasks
278 as described in Subsection 58-68-305(6).

279 ~~[(13)]~~ (15) "Medically underserved area" means a geographic area in which there is a
280 shortage of primary care health services for residents, as determined by the Department of

281 Health and Human Services.

282 ~~[(14)]~~ (16) "Medically underserved population" means a specified group of people
283 living in a defined geographic area with a shortage of primary care health services, as
284 determined by the Department of Health and Human Services.

285 ~~[(15)]~~ (17) (a) (i) "Nonablative procedure" means a procedure that is expected or
286 intended to alter living tissue, but is not expected or intended to excise, vaporize, disintegrate,
287 or remove living tissue.

288 (ii) Notwithstanding Subsection ~~[(15)(a)(i)]~~ (17)(a)(i), nonablative procedure includes
289 hair removal.

290 (b) "Nonablative procedure" does not include:

291 (i) a superficial procedure as defined in Section 58-1-102;

292 (ii) the application of permanent make-up; or

293 (iii) the use of photo therapy lasers for neuromusculoskeletal treatments that are
294 ~~[performed]~~ performed by an individual licensed under this title who is acting within the
295 individual's scope of practice.

296 ~~[(16)]~~ (18) "Physician" means both physicians and surgeons licensed under Section
297 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
298 Section 58-68-301, Utah Osteopathic Medical Practice Act.

299 ~~[(17)]~~ (19) (a) "Practice of osteopathic medicine" means:

300 (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
301 disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real
302 or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part
303 is based upon emphasis of the importance of the musculoskeletal system and manipulative
304 therapy in the maintenance and restoration of health, by an individual in Utah or outside of the
305 state upon or for any human within the state;

306 (ii) when a person not licensed as a physician directs a licensee under this chapter to
307 withhold or alter the health care services that the licensee has ordered;

308 (iii) to maintain an office or place of business for the purpose of doing any of the acts
309 described in Subsection ~~[(17)(a)]~~ (19)(a)(i) or (i) whether or not for compensation; or

310 (iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
311 treatment of human diseases or conditions, in any printed material, stationery, letterhead,

312 envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine,"
313 "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.,"
314 "D.O.," or any combination of these designations in any manner which might cause a
315 reasonable person to believe the individual using the designation is a licensed osteopathic
316 physician, and if the party using the designation is not a licensed osteopathic physician, the
317 designation must additionally contain the description of the branch of the healing arts for which
318 the person has a license, provided that an individual who has received an earned degree of
319 doctor of osteopathic medicine but is not a licensed osteopathic physician and surgeon in Utah
320 may use the designation "D.O." if it is followed by "Not Licensed" or "Not Licensed in Utah"
321 in the same size and style of lettering.

322 (b) The practice of osteopathic medicine does not include:

323 (i) except for an ablative medical procedure as provided in Subsection ~~[(17)(b)(ii)]~~
324 (19)(b)(ii), the conduct described in Subsection ~~[(17)(a)(i)]~~ (19)(a)(i) that is performed in
325 accordance with a license issued under another chapter of this title;

326 (ii) an ablative cosmetic medical procedure if the scope of practice for the person
327 performing the ablative cosmetic medical procedure includes the authority to operate or
328 perform a surgical procedure; or

329 (iii) conduct under Subsection 58-68-501(2).

330 ~~[(18)]~~ (20) "Prescription device" means an instrument, apparatus, implement, machine,
331 contrivance, implant, in vitro reagent, or other similar or related article, and any component
332 part or accessory, which is required under federal or state law to be prescribed by a practitioner
333 and dispensed by or through a person or entity licensed under this chapter or exempt from
334 licensure under this chapter.

335 ~~[(19)]~~ (21) "Prescription drug" means a drug that is required by federal or state law or
336 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

337 (22) (a) "Primary sex characteristic surgical procedure" means any of the following if
338 done for the purpose of effectuating or facilitating an individual's attempted sex change:

339 (i) for an individual whose biological sex at birth is male, castration, orchiectomy,
340 penectomy, vaginoplasty, or vulvoplasty;

341 (ii) for an individual whose biological sex at birth is female, hysterectomy,
342 oophorectomy, metoidioplasty, or phalloplasty; or

343 (iii) any surgical procedure that is related to or necessary for a procedure described in
344 Subsection (22)(a)(i) or (ii), that would result in the sterilization of an individual who is not
345 sterile.

346 (b) "Primary sex characteristic surgical procedure" does not include:

347 (i) surgery or other procedures or treatments performed on an individual who:

348 (A) is born with external biological sex characteristics that are irresolvably ambiguous;

349 (B) is born with 46, XX chromosomes with virilization;

350 (C) is born with 46, XY chromosomes with undervirilization;

351 (D) has both ovarian and testicular tissue; or

352 (E) has been diagnosed by a physician, based on genetic or biochemical testing, with a

353 sex development disorder characterized by abnormal sex chromosome structure, sex steroid

354 hormone production, or sex steroid hormone action for a male or female; or

355 (ii) removing a body part:

356 (A) because the body part is cancerous or diseased; or

357 (B) for a reason that is medically necessary, other than to effectuate or facilitate an

358 individual's attempted sex change.

359 (23) (a) "Secondary sex characteristic surgical procedure" means any of the following

360 if done for the purpose of effectuating or facilitating an individual's attempted sex change:

361 (i) for an individual whose biological sex at birth is male, breast augmentation surgery,

362 chest feminization surgery, or facial feminization surgery; or

363 (ii) for an individual whose biological sex at birth is female, mastectomy, breast

364 reduction surgery, chest masculinization surgery, or facial masculinization surgery.

365 (b) "Secondary sex characteristic surgical procedure" does not include:

366 (i) surgery or other procedures or treatments performed on an individual who:

367 (A) is born with external biological sex characteristics that are irresolvably ambiguous;

368 (B) is born with 46, XX chromosomes with virilization;

369 (C) is born with 46, XY chromosomes with undervirilization;

370 (D) has both ovarian and testicular tissue; or

371 (E) has been diagnosed by a physician, based on genetic or biochemical testing, with a

372 sex development disorder characterized by abnormal sex chromosome structure, sex steroid

373 hormone production, or sex steroid hormone action for a male or female; or

374 (ii) removing a body part:

375 (A) because the body part is cancerous or diseased; or

376 (B) for a reason that is medically necessary, other than to effectuate or facilitate an
 377 individual's attempted sex change.

378 ~~[(20)]~~ (24) "SPEX" means the Special Purpose Examination of the Federation of State
 379 Medical Boards.

380 ~~[(21)]~~ (25) "Unlawful conduct" means the same as that term is defined in Sections
 381 58-1-501 and 58-68-501.

382 ~~[(22)]~~ (26) "Unprofessional conduct" means the same as that term is defined in
 383 Sections 58-1-501 and 58-68-502 and as may be further defined by division rule.

384 Section 4. Section **58-68-502** is amended to read:

385 **58-68-502. Unprofessional conduct.**

386 (1) "Unprofessional conduct" includes, in addition to the definition in Section
 387 58-1-501:

388 (a) using or employing the services of any individual to assist a licensee in any manner
 389 not in accordance with the generally recognized practices, standards, or ethics of the
 390 profession, state law, or division rule;

391 (b) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical
 392 Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

393 (c) making a material misrepresentation regarding the qualifications for licensure under
 394 Section 58-68-302.5;

395 (d) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act;

396 [or]

397 (e) falsely making an entry in, or altering, a medical record with the intent to conceal:

398 (i) a wrongful or negligent act or omission of an individual licensed under this chapter
 399 or an individual under the direction or control of an individual licensed under this chapter; or

400 (ii) conduct described in Subsections (1)(a) through (d) or Subsection 58-1-501(1)[-];

401 or

402 (f) performing, or causing to be performed, upon an individual who is less than 18
 403 years old:

404 (i) a primary sex characteristic surgical procedure; or

- 405 (ii) a secondary sex characteristic surgical procedure.
- 406 (2) "Unprofessional conduct" does not include:
- 407 (a) in compliance with Section 58-85-103:
- 408 (i) obtaining an investigational drug or investigational device;
- 409 (ii) administering the investigational drug to an eligible patient; or
- 410 (iii) treating an eligible patient with the investigational drug or investigational device;
- 411 or
- 412 (b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:
- 413 (i) when registered as a qualified medical provider or acting as a limited medical
- 414 provider, as those terms are defined in Section 26-61a-102, recommending the use of medical
- 415 cannabis;
- 416 (ii) when registered as a pharmacy medical provider, as that term is defined in Section
- 417 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or
- 418 (iii) when registered as a state central patient portal medical provider, as that term is
- 419 defined in Section 26-61a-102, providing state central patient portal medical provider services.
- 420 (3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and
- 421 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define
- 422 unprofessional conduct for a physician described in Subsection (2)(b).