

1 **REGULATORY AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Evan J. Vickers

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Pharmacy Practice Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ amends provisions related to exemptions from licensure;
- 14 ▶ exempts advanced practice registered nurses and physician assistants from licensure

15 under the Pharmacy Practice Act to dispense a cosmetic drug or injectable weight

16 loss drug to a patient; and

- 17 ▶ exempts optometrists from licensure under the Pharmacy Practice Act to dispense a
- 18 cosmetic drug to a patient.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **58-17b-309**, as last amended by Laws of Utah 2010, Chapter 213

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

28 Section 1. Section **58-17b-309** is amended to read:

29 **58-17b-309. Exemptions from licensure.**

- 30 (1) For purposes of this section:
- 31 (a) "Cosmetic drug":
- 32 (i) means a prescription drug that is:
- 33 (A) for the purpose of promoting attractiveness or altering the appearance of an
- 34 individual; and
- 35 (B) listed as a cosmetic drug subject to the exemption under this section by the division
- 36 by administrative rule; and
- 37 (ii) does not include a prescription drug that is:
- 38 (A) a controlled substance;
- 39 (B) compounded by the physician; or
- 40 (C) prescribed or used for the patient for the purpose of diagnosing, curing, mitigating,
- 41 treating, or preventing a disease.
- 42 (b) "Injectable weight loss drug":
- 43 (i) means an injectable prescription drug:
- 44 (A) prescribed to promote weight loss; and
- 45 (B) listed as an injectable prescription drug subject to exemption under this section by
- 46 the division by administrative rule; and
- 47 (ii) does not include a prescription drug that is a controlled substance.
- 48 (c) [~~"Physician"~~] "Prescribing practitioner" means an individual licensed under [~~either~~];
- 49 (i) Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse with
- 50 prescriptive practice;
- 51 (ii) Chapter 67, Utah Medical Practice Act[~~or~~];
- 52 (iii) Chapter 68, Utah Osteopathic Medical Practice Act[~~;~~]; or
- 53 (iv) Chapter 70a, Physician Assistant Act.
- 54 (2) In addition to the exemptions from licensure in Section 58-1-307, the following
- 55 individuals may engage in the acts or practices described in this [~~Subsection (2)~~] section
- 56 without being licensed under this chapter:
- 57 (a) a person selling or providing contact lenses in accordance with Section 58-16a-801;

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

61 (c) a ~~[physician]~~ prescribing practitioner who prescribes and dispenses a cosmetic drug
62 or an injectable weight loss drug to the ~~[physician's]~~ prescribing practitioner's patient in
63 accordance with Subsection (4)~~[-]~~; and

64 (d) an optometrist, as defined in Section 58-16a-102, acting within the optometrist's
65 scope of practice as defined in Section 58-16a-601, who prescribes and dispenses a cosmetic
66 drug to the optometrist's patient in accordance with Subsection (4).

67 (3) In accordance with Subsection 58-1-303(1)(a), an individual exempt under
68 Subsection (2)(b) must take all examinations as required by division rule following completion
69 of an approved curriculum of education, within the required time frame. This exemption
70 expires immediately upon notification of a failing score of an examination, and the individual
71 may not continue working as a pharmacy technician even under direct supervision.

72 (4) A ~~[physician]~~ prescribing practitioner or optometrist is exempt from licensing
73 under the provisions of ~~[Subsection (2)(c)]~~ this part if the ~~[physician]~~ prescribing practitioner
74 or optometrist:

75 (a) (i) writes a prescription for a ~~[cosmetic drug or injectable weight loss]~~ drug the
76 prescribing practitioner or optometrist has the authority to dispense under Subsection (4)(b);
77 and

78 (ii) informs the patient:

79 (A) that the prescription may be filled at a pharmacy or dispensed in the ~~[physician's]~~
80 prescribing practitioner's or optometrist's office;

81 (B) of the directions for appropriate use of the drug;

82 (C) of potential side-effects to the use of the drug; and

83 (D) how to contact the ~~[physician]~~ prescribing practitioner or optometrist if the patient
84 has questions or concerns regarding the drug;

85 (b) dispenses a cosmetic drug or injectable weight loss drug only to the ~~[physician's]~~

86 prescribing practitioner's patients or for an optometrist, dispenses a cosmetic drug only to the
87 optometrist's patients; and

88 (c) follows labeling, record keeping, patient counseling, and storage requirements
89 established by administrative rule adopted by the division in consultation with the boards listed
90 in Subsection (5)(a).

91 (5) (a) The division, in consultation with the board under this chapter, the Physician
92 Licensing Board, ~~and~~ the Osteopathic Physician Licensing Board, the Physician Assistant
93 Licensing Board, the Board of Nursing, and the Optometrist Licensing Board shall adopt
94 administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act to
95 designate:

96 (i) the prescription drugs that may be dispensed as a cosmetic drug or weight loss drug
97 under this section; and

98 (ii) the requirements under Subsection (4)(c).

99 (b) When making a determination under Subsection (1)(a), the division and boards
100 listed in Subsection (5)(a), may consider any federal Food and Drug Administration indications
101 or approval associated with a drug when adopting a rule to designate a prescription drug that
102 may be dispensed under this section.

103 (c) The division may inspect the office of a ~~physician~~ prescribing practitioner or
104 optometrist who is dispensing under the provisions of this section, in order to determine
105 whether the ~~physician~~ prescribing practitioner or optometrist is in compliance with the
106 provisions of this section. If a ~~physician~~ prescribing practitioner or optometrist chooses to
107 dispense under the provisions of this section, the ~~physician~~ prescribing practitioner or
108 optometrist consents to the jurisdiction of the division to inspect the ~~physician's~~ prescribing
109 practitioner's or optometrist's office and determine if the provisions of this section are being
110 met by the ~~physician~~ prescribing practitioner and optometrist.

111 (d) If a ~~physician~~ prescribing practitioner or optometrist violates a provision of this
112 section, the ~~physician~~ prescribing practitioner or optometrist may be subject to discipline
113 under:

114 (i) this chapter; and
115 (ii) (A) Chapter 16a, Utah Optometry Practice Act;
116 (B) Chapter 31b, Nurse Practice Act;
117 ~~[(ii) (A)] (C) Chapter 67, Utah Medical Practice Act; [or]~~
118 ~~[(B)] (D) Chapter 68, Utah Osteopathic Medical Practice Act[-];~~ or
119 (E) Chapter 70a, Physician Assistant Act.
120 (6) ~~[This]~~ Except as provided in Subsection (2)(d), this section does not restrict or limit
121 the scope of practice of an optometrist or optometric physician licensed under Chapter 16a,
122 Utah Optometry Practice Act.