

Senator Peter C. Knudson proposes the following substitute bill:

COSMETIC MEDICAL PROCEDURES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: Stewart Barlow

LONG TITLE

General Description:

This bill amends the Utah Medical Practice Act and the Utah Osteopathic Practice Act.

Highlighted Provisions:

This bill:

▶ defines:

- ablative procedure;
- cosmetic medical facility;
- cosmetic medical procedure;
- nonablative procedure;
- superficial procedure; and
- supervisor;

§→ ▶ prohibits the use of the term "medical" under certain circumstances; ←§

- ▶ exempts certain licensees from the definition of cosmetic medical procedures;
- ▶ establishes standards for the supervision of cosmetic medical procedures;
- ▶ amends the definition of the practice of medicine; and
- ▶ amends provisions of unprofessional conduct for physicians and other licensees

whose scope of practice includes cosmetic medical procedures.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **58-1-102**, as renumbered and amended by Laws of Utah 1993, Chapter 297

31 **58-11a-102**, as last amended by Laws of Utah 2010, Chapter 145

32 **58-11a-502**, as last amended by Laws of Utah 2009, Chapter 130

33 **58-16a-102**, as last amended by Laws of Utah 2004, Chapters 48 and 280

34 **58-67-102**, as last amended by Laws of Utah 2011, Chapter 214

35 **58-68-102**, as last amended by Laws of Utah 2011, Chapter 214

36 ENACTS:

37 **58-1-505**, Utah Code Annotated 1953

38 **58-1-506**, Utah Code Annotated 1953

38a **§→ 58-1-507, Utah Code Annotated 1953 ←§**

39 **58-67-805**, Utah Code Annotated 1953

40 **58-68-805**, Utah Code Annotated 1953



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

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

44 **58-1-102. Definitions.**

45 For purposes of this title:

46 (1) "Ablative procedure" is as defined in Section 58-67-102.

47 (2) "Cosmetic medical procedure":

48 (a) is as defined in Section 58-67-102; and

49 (b) except for Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah

50 Osteopathic Medical Practice Act, does not apply to the scope of practice of an individual

51 licensed under this title if the individual's scope of practice includes the authority to operate or

52 perform surgical procedures.

53 ~~(1)~~ (3) "Department" means the Department of Commerce.

54 ~~(2)~~ (4) "Director" means the director of the Division of Occupational and

55 Professional Licensing.

56 ~~(3)~~ (5) "Division" means the Division of Occupational and Professional Licensing

88 (b) Cosmetic medical procedures may only be performed in a cosmetic medical
89 facility.

90 (c) A supervisor may delegate the supervisory role only to another individual who is
91 qualified as a supervisor.

92 Section 3. Section **58-1-506** is enacted to read:

93 **58-1-506. Supervision of cosmetic medical procedures.**

94 (1) For purposes of this section:

95 (a) "Delegation group A" means the following who are licensed under this title, acting
96 within their respective scope of practice, and qualified under Subsections (2)(f) ~~§→ [(iii) and (2)(i)]~~

96a ~~(i) and (iii)~~ ←~~§~~ :

97 (i) a physician assistant, if acting under the supervision of a physician and the
98 procedure is included in the delegation of services agreement as defined in Section 58-70a-102;

99 (ii) a registered nurse;

100 (iii) a master esthetician; and

101 (iv) an electrologist, if evaluating for or performing laser hair removal.

102 (b) "Delegation group B" means:

103 (i) a practical nurse or an esthetician who is licensed under this title, acting within their
104 respective scope of practice, and qualified under Subsections (2)(f) ~~§→ [(iii) and (2)(i)]~~ (i) and

104a ~~(iii)~~ ←~~§~~ ; and

105 (ii) a medical assistant who is qualified under Subsections (2)(f) ~~§→ [(iii) and (2)(i)]~~ (i) and

105a ~~(iii)~~ ←~~§~~ .

106 (c) "Direct cosmetic medical procedure supervision" means the supervisor:

107 (i) has authorized the procedure to be done on the patient by the supervisee; and

108 (ii) is present and available for a face-to-face communication with the supervisee when
109 and where a cosmetic medical procedure is performed.

110 (d) "General cosmetic medical procedure supervision" means the supervisor:

111 (i) has authorized the procedure to be done on the patient by the supervisee;

112 (ii) is available in a timely and appropriate manner in person to evaluate and initiate
113 care for a patient with a suspected adverse reaction or complication; and

114 (iii) is located within 60 minutes or 60 miles of the cosmetic medical facility.

115 (e) "Indirect cosmetic medical procedure supervision" means the supervisor:

116 (i) has authorized the procedure to be done on the patient by the supervisee;

117 (ii) has given written instructions to the person being supervised;

118 (iii) is present within the cosmetic medical facility in which the person being

119 supervised is providing services; and

120 (iv) is available to:

121 (A) provide immediate face-to-face communication with the person being supervised;

122 and

123 (B) evaluate the patient, as necessary.

124 (f) "Hair removal review" means:

125 (i) conducting an in-person, face-to-face interview of a patient based on the responses

126 provided by the patient to a detailed medical history assessment that was prepared by the

127 supervisor;

128 (ii) evaluating for contraindications and conditions that are part of the treatment plan;

129 and

130 (iii) if the patient history or patient presentation deviates in any way from the treatment

131 plan, referring the patient to the supervisor and receiving clearance from the supervisor before

132 starting the treatment.

133 (2) A supervisor supervising a nonablative cosmetic medical procedure for hair

134 removal shall:

135 (a) have an unrestricted license to practice medicine or advanced practice registered

136 nursing in the state;

137 (b) develop the medical treatment plan for the procedure;

138 (c) conduct a hair removal review, or delegate the hair removal review to a member of

139 delegation group A, of the patient prior to initiating treatment or a series of treatments;

140 (d) personally perform the nonablative cosmetic medical procedure for hair removal, or

141 authorize and delegate the procedure to a member of delegation group A or B;

142 (e) during the nonablative cosmetic medical procedure for hair removal provide general

143 cosmetic medical procedure supervision to individuals in delegation group A performing the

144 procedure, except physician assistants, who shall be supervised as provided in Chapter 70a,

145 Physician Assistant Act, and indirect cosmetic medical procedure supervision to individuals in

146 delegation group B performing the procedure; and

147 (f) verify that a person to whom the supervisor delegates an evaluation under

148 Subsection (2)(c) or delegates a procedure under Subsection (2)(d) ~~§~~→ or (3)(b)(ii) ←~~§~~ :

149 (i) has received appropriate training regarding the medical procedures developed under

150 Subsection (2)(b):

151 (ii) has an unrestricted license under this title or is performing under the license of the
 152 supervising physician and surgeon; and

153 (iii) has maintained competence to perform the nonablative cosmetic medical
 154 procedure through documented education and experience of at least 80 hours, as further
 155 defined by rule, regarding:

156 (A) the appropriate standard of care for performing nonablative cosmetic medical
 157 procedures;

158 (B) physiology of the skin;

159 (C) skin typing and analysis;

160 (D) skin conditions, disorders, and diseases;

161 (E) pre and post procedure care;

162 (F) infection control;

163 (G) laser and light physics training;

164 (H) laser technologies and applications;

165 (I) safety and maintenance of lasers;

166 (J) cosmetic ~~§~~ → [laser hair removal] medical ← § procedures ~~§~~ → **an individual is**
 166a **permitted to perform under this title ← § :**

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

168 (L) cardio-pulmonary resuscitation (CPR).

169 (3) For a nonablative cosmetic medical procedure other than hair removal under
 170 Subsection (2):

171 (a) (i) except as provided in Subsection (3)(a)(ii), a physician who has an unrestricted
 172 license to practice medicine shall:

173 (A) develop a treatment plan for the nonablative cosmetic medical procedure; and

174 (B) conduct an in-person face-to-face evaluation of the patient prior to the initiation of
 175 a treatment protocol or series of treatments; ~~§~~ → [or] ← §

176 (ii) a nurse practitioner who has an unrestricted license for advanced practice registered
 177 nursing may perform the evaluation and treatment plan under Subsection (3)(a)(i) for
 178 nonablative medical procedures other than tattoo removal; ~~§~~ → or

178a **(iii) a physician assistant acting under the supervision of a physician, with the**
 178b **procedure included in the delegation of service agreement as defined in Section 58-70a-102,**
 178c **may perform the evaluation under Subsection (3)(a)(i)(B) for nonablative medical procedures**
 178d **other than tattoo removal; ← §**

179 (b) the supervisor supervising the procedure shall:

180 (i) have an unrestricted license to practice medicine or advanced practice registered

181 nursing;

182 (ii) personally perform the nonablative cosmetic medical procedure or:

183 (A) authorize and provide general cosmetic medical procedure supervision for the
184 nonablative cosmetic medical procedure that is performed by:

185 (I) a physician assistant, if the procedure is included in the delegation of services
186 agreement and if the physician assistant is supervised as provided in Chapter 70a, Physician
187 Assistant Act;

188 (II) a registered nurse;

189 (III) a master esthetician; or

190 (B) authorize and provide direct cosmetic medical procedure supervision for the
191 nonablative cosmetic medical procedure that is performed by an esthetician; and

192 (iii) verify that a person to whom the supervisor delegates a procedure under
193 Subsection (3)(b):

194 (A) has received appropriate training regarding the medical procedures to be
195 performed; ~~§~~ → [and] ← ~~§~~

196 (B) has an unrestricted license and is acting within their scope of practice under this
197 title ~~§~~ → ; and

197a (C) is qualified under Subsection (2)(f)(iii) ← ~~§~~ .

198 (4) A supervisor performing or supervising a cosmetic medical procedure under
199 Subsection (2) or (3) shall ensure that:

200 (a) the supervisor's name is prominently posted at the cosmetic medical facility
201 identifying the supervisor;

202 (b) a copy of the supervisor's license is displayed on the wall of the cosmetic medical
203 facility;

204 (c) the patient receives written information with the name and licensing information of
205 the supervisor who is supervising the nonablative cosmetic medical procedure and the person
206 who is performing the nonablative cosmetic medical procedure;

207 (d) the patient is provided with a telephone number that is answered within 24 hours
208 for follow-up communication; and

209 (e) the cosmetic medical facility's contract with a master esthetician who performs a
210 nonablative cosmetic medical procedure at the facility is kept on the premises of the facility.

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

212 (6) A chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice
213 Act is not subject to the supervision requirements in this section for a nonablative cosmetic
214 medical procedure for hair removal if the chiropractic physician is acting within the scope of
215 practice of a chiropractic physician and with training specific to nonablative hair removal.

215a **§→ Section 4. Section 58-1-507 is enacted to read:**

215b **58-1-507. Cosmetic Medical Procedure -- Truth in advertising.**

215c **A facility that performs a cosmetic medical procedure as defined in Section 58-67-102**
215d **may not advertise or hold itself out to the public as a "medical spa", "medical facility" or**
215e **"medical clinic" unless the facility has an individual on the premises while a cosmetic medical**
215f **procedure is performed who is licensed under:**

215g **(1) Chapter 31b, Nurse Practices Act, as an advanced practice registered nurse,**
215h **practicing as a nurse practitioner;**

215i **(2) Chapter 67, Utah Medical Practice Act; or**

215j **(3) Chapter 68, Utah Osteopathic Medical Practice Act. ←§**

216 Section **§→ [4] 5 ←§** . Section 58-11a-102 is amended to read:

217 **58-11a-102. Definitions.**

218 As used in this chapter:

219 (1) "Approved barber or cosmetologist/barber apprenticeship" means an apprenticeship
220 that meets the requirements of Subsection 58-11a-306(1) for barbers or Subsection
221 58-11a-306(2) for cosmetologist/barbers and the requirements established by rule by the
222 division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah
223 Administrative Rulemaking Act.

224 (2) "Approved esthetician apprenticeship" means an apprenticeship that meets the
225 requirements of Subsection 58-11a-306(3) and the requirements established by rule by the
226 division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah
227 Administrative Rulemaking Act.

228 (3) "Approved master esthetician apprenticeship" means an apprenticeship that meets
229 the requirements of Subsection 58-11a-306(4) and the requirements established by rule by the
230 division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah
231 Administrative Rulemaking Act.

232 (4) "Approved nail technician apprenticeship" means an apprenticeship that meets the
233 requirements of Subsection 58-11a-306(5) and the requirements established by rule by the
234 division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah
235 Administrative Rulemaking Act.

522 (5) "Cosmetic medical device" means tissue altering energy based devices that have the
 523 potential for altering living tissue and that are used to perform ablative or nonablative
 524 procedures, such as American National Standards Institute ~~§~~→ (ANSI) ←~~§~~ designated Class IIIb
 524a and Class IV
 525 lasers, intense pulsed light, radio frequency devices, and lipolytic devices ~~§~~→ and excludes ANSI
 525a designated Class IIIa and lower powered devices ←~~§~~ .

526 (6) "Cosmetic medical procedure":

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

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

530 [~~(4)~~] (7) "Diagnose" means:

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

535 (b) to attempt to conduct an examination or determination described under Subsection
 536 [~~(4)~~] (7)(a);

537 (c) to hold oneself out as making or to represent that one is making an examination or
 538 determination as described in Subsection [~~(4)~~] (7)(a); or

539 (d) to make an examination or determination as described in Subsection [~~(4)~~] (7)(a)
 540 upon or from information supplied directly or indirectly by another person, whether or not in
 541 the presence of the person making or attempting the diagnosis or examination.

542 [~~(5)~~] (8) "LCME" means the Liaison Committee on Medical Education of the
 543 American Medical Association.

544 [~~(6)~~] (9) "Medical assistant" means an unlicensed individual working under the direct
 545 and immediate supervision of a licensed physician and surgeon and engaged in specific tasks
 546 assigned by the licensed physician and surgeon in accordance with the standards and ethics of
 547 the profession.

548 (10) (a) "Nonablative procedure" means a procedure that is expected or intended to
 549 alter living tissue, but not excise, vaporize, or remove living tissue.

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

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

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

615 acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an
 616 adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
 617 Procedures Act.

618 ~~[(3)]~~ (4) "AOA" means the American Osteopathic Association.

619 ~~[(4)]~~ (5) "Board" means the Osteopathic Physician and Surgeon's Licensing Board
 620 created in Section 58-68-201.

621 (6) "Cosmetic medical device" means tissue altering energy based devices that have the
 622 potential for altering living tissue and that are used to perform ablative or nonablative
 623 procedures, such as American National Standards Institute ~~S~~→ (ANSI) ←~~S~~ designated Class IIIb
 623a and Class IV
 624 lasers, intense pulsed light, radio frequency devices, and lipolytic devices ~~S~~→ and excludes ANSI
 624a designated Class IIIa and lower powered devices ←~~S~~ .

625 (7) "Cosmetic medical procedure":

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

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

629 ~~[(5)]~~ (8) "Diagnose" means:

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

634 (b) to attempt to conduct an examination or determination described under Subsection
 635 ~~[(5)]~~ (8)(a);

636 (c) to hold oneself out as making or to represent that one is making an examination or
 637 determination as described in Subsection ~~[(5)]~~ (8)(a); or

638 (d) to make an examination or determination as described in Subsection ~~[(5)]~~ (8)(a)
 639 upon or from information supplied directly or indirectly by another person, whether or not in
 640 the presence of the person making or attempting the diagnosis or examination.

641 ~~[(6)]~~ (9) "Medical assistant" means an unlicensed individual working under the direct
 642 and immediate supervision of a licensed osteopathic physician and surgeon and engaged in
 643 specific tasks assigned by the licensed osteopathic physician and surgeon in accordance with
 644 the standards and ethics of the profession.

645 (10) (a) "Nonablative procedure" means a procedure that is expected or intended to