

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

57 created in Section 58-1-103.

58 ~~[(4)]~~ (6) "Executive director" means the executive director of the Department of
59 Commerce.

60 ~~[(5)]~~ (7) "Licensee" includes any holder of a license, certificate, registration, permit,
61 student card, or apprentice card authorized under this title.

62 (8) (a) "Nonablative procedure" means a procedure that is expected or intended to alter
63 living tissue, but not to excise, vaporize or remove living tissue.

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

65 (i) a superficial procedure;

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

67 (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are
68 performed by an individual licensed under this title who is acting within their scope of practice.

69 (9) "Superficial procedure" means a procedure that is expected or intended to
70 temporarily alter living skin tissue and may excise or remove stratum corneum but have no
71 appreciable risk of damage to any tissue below the stratum corneum.

72 ~~[(6)]~~ (10) "Unlawful conduct" has the meaning given in Subsection 58-1-501(1).

73 ~~[(7)]~~ (11) "Unprofessional conduct" has the meaning given in Subsection 58-1-501(2).
74 Section 2. Section **58-1-505** is enacted to read:

75 **58-1-505. Cosmetic medical procedure supervisor.**

76 (1) For purposes of this section:

77 (a) "Cosmetic medical facility" means a physician's office or a facility that has a
78 supervisor who performs the supervision required in Section 58-1-506.

79 (b) "Supervisor" means:

80 (i) a physician with an unrestricted license under Chapter 67, Utah Medical Practice
81 Act, or Chapter 68, Utah Osteopathic Medical Practice Act, who is acting within the scope of
82 the practice of medicine, as defined in Section 58-67-102; and

83 (ii) an advanced practice registered nurse with an unrestricted license under Chapter
84 31b, Nurse Practice Act, who is acting within the scope of practice of advanced practice
85 registered nursing, as defined in Section 58-31b-102.

86 (2) (a) An individual authorized by this title to perform a cosmetic medical procedure
87 shall be supervised by a supervisor when performing a medical procedure.

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.

236 (5) "Barber" means a person who is licensed under this chapter to engage in the
237 practice of barbering.

238 (6) "Barber instructor" means a barber who is licensed under this chapter to teach
239 barbering at a licensed barber school or in an apprenticeship program as defined in Section
240 58-11a-306.

241 (7) "Board" means the Barber, Cosmetology/Barbering, Esthetics, Electrology, and
242 Nail Technology Licensing Board created in Section 58-11a-201.

243 (8) "Cosmetic laser procedure" means only a nonablative procedure as defined in
244 Section 58-67-102.

245 (9) "Cosmetic supervisor" means a supervisor as defined in Section 58-1-505.

246 ~~(8)~~ (10) "Cosmetologist/barber" means a person who is licensed under this chapter to
247 engage in the practice of cosmetology/barbering.

248 ~~(9)~~ (11) "Cosmetologist/barber instructor" means a cosmetologist/barber who is
249 licensed under this chapter to teach cosmetology/barbering at a licensed cosmetology/barber
250 school, licensed barber school, licensed nail technology school, or in an apprenticeship
251 program as defined in Subsection 58-11a-306(2).

252 ~~(10)~~ (12) "Direct supervision" means that the supervisor of an apprentice or the
253 instructor of a student is immediately available for consultation, advice, instruction, and
254 evaluation.

255 ~~(11)~~ (13) "Electrologist" means a person who is licensed under this chapter to engage
256 in the practice of electrology.

257 ~~(12)~~ (14) "Electrologist instructor" means an electrologist who is licensed under this
258 chapter to teach electrology at a licensed electrology school.

259 ~~(13)~~ (15) "Esthetician" means a person who is licensed under this chapter to engage
260 in the practice of esthetics.

261 ~~(14)~~ (16) "Esthetician instructor" means a master esthetician who is licensed under
262 this chapter to teach the practice of esthetics and the practice of master-level esthetics at a
263 licensed esthetics school, a licensed cosmetology/barber school, or in an apprenticeship
264 program as defined in Subsection 58-11a-306(3).

265 ~~(15)~~ (17) "Fund" means the Barber, Cosmetologist/Barber, Esthetician, Electrologist,
266 and Nail Technician Education and Enforcement Fund created in Section 58-11a-103.

267 ~~(16)~~ (18) "Licensed barber or cosmetology/barber school" means a barber or
268 cosmetology/barber school licensed under this chapter.

269 ~~(17)~~ (19) "Licensed electrology school" means an electrology school licensed under
270 this chapter.

271 ~~(18)~~ (20) "Licensed esthetics school" means an esthetics school licensed under this
272 chapter.

273 ~~(19)~~ (21) "Licensed nail technology school" means a nail technology school licensed

274 under this chapter.

275 ~~[(20)]~~ (22) "Master esthetician" means an individual who is licensed under this chapter
276 to engage in the practice of master-level esthetics.

277 ~~[(21)]~~ (23) "Nail technician" means an individual who is licensed under this chapter to
278 engage in the practice of nail technology.

279 ~~[(22)]~~ (24) "Nail technician instructor" means a nail technician licensed under this
280 chapter to teach the practice of nail technology in a licensed nail technology school, a licensed
281 cosmetology/barber school, or in an apprenticeship program as defined in Subsection
282 58-11a-306(5).

283 ~~[(23)]~~ (25) "Practice of barbering" means:

284 (a) cutting, clipping, or trimming the hair of the head of any person by the use of
285 scissors, shears, clippers, or other appliances;

286 (b) draping, shampooing, scalp treatments, basic wet styling, and blow drying; and

287 (c) removing hair from the face or neck of a person by the use of shaving equipment.

288 ~~[(24)]~~ (26) "Practice of barbering instruction" means instructing barbering in a licensed
289 barber school, licensed cosmetology/barber school, or in an apprenticeship program as defined
290 in Subsection 58-11a-306(1).

291 ~~[(25)]~~ (27) "Practice of basic esthetics" means any one of the following skin care
292 procedures done on the head, face, neck, arms, hands, legs, feet, eyebrows, or eyelashes for
293 cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

294 (a) cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or
295 masks, manual extraction, including a comedone extractor, depilatories, waxes, tweezing, the
296 application of eyelash extensions, natural nail manicures or pedicures, or callous removal by
297 buffing or filing;

298 (b) limited chemical exfoliation as defined by rule;

299 (c) removing superfluous hair by means other than electrolysis, except that an
300 individual is not required to be licensed as an esthetician to engage in the practice of threading;

301 (d) other esthetic preparations or procedures with the use of the hands, a
302 high-frequency or galvanic electrical apparatus, or a heat lamp for cosmetic purposes and not
303 for the treatment of medical, physical, or mental ailments; or

304 (e) cosmetic laser procedures under ~~[direct]~~ the supervision of a ~~[licensed health care~~

305 ~~practitioner as defined by rule,]~~ cosmetic supervisor limited to the following:

- 306 (i) superfluous hair removal;
- 307 (ii) anti-aging resurfacing enhancements;
- 308 (iii) photo rejuvenation; or
- 309 (iv) tattoo removal.

310 [~~26~~] (28) (a) "Practice of cosmetology/barbering" means:

311 (i) styling, arranging, dressing, curling, waving, permanent waving, cleansing,
312 singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a
313 person;

314 (ii) cutting, clipping, or trimming the hair by the use of scissors, shears, clippers, or
315 other appliances;

316 (iii) arching eyebrows, or tinting eyebrows or eyelashes, applying eyelash extensions,
317 or any combination of these procedures;

318 (iv) removing hair from the face, neck, shoulders, arms, back, torso, feet, bikini line,
319 or legs of a person by the use of depilatories, waxing, or shaving equipment;

320 (v) cutting, curling, styling, fitting, measuring, or forming caps for wigs or hairpieces
321 or both on the human head; or

322 (vi) practicing hair weaving or hair fusing or servicing previously medically implanted
323 hair.

324 (b) The term "practice of cosmetology/barbering" includes:

- 325 (i) the practice of basic esthetics; and
- 326 (ii) the practice of nail technology.

327 (c) An individual is not required to be licensed as a cosmetologist/barber to engage in
328 the practice of threading.

329 [~~27~~] (29) "Practice of cosmetology/barbering instruction" means instructing
330 cosmetology/barbering as defined in Subsection [~~26~~] (28) in a licensed cosmetology/barber
331 school or in an apprenticeship program as defined in Subsection 58-11a-306(2).

332 [~~28~~] (30) "Practice of electrology" means:

333 (a) the removal of superfluous hair from the body of a person by the use of electricity,
334 waxing, shaving, or tweezing; or

335 (b) cosmetic laser procedures under the [~~general~~] supervision of a [~~licensed health care~~]

336 ~~practitioner as defined by rule;~~ cosmetic supervisor limited to superfluous hair removal.

337 [~~29~~] (31) "Practice of electrology instruction" means instructing electrology in a
338 licensed electrology school.

339 [~~30~~] (32) "Practice of esthetics instruction" means instructing esthetics in a licensed
340 esthetics school, a licensed cosmetology/barber school, or instructing master-level esthetics in a
341 licensed esthetics school or in an apprenticeship program as defined in Subsections
342 58-11a-306(2), (3), and (4).

343 [~~31~~] (33) (a) "Practice of master-level esthetics" means:

344 (i) any of the following when done for cosmetic purposes on the head, face, neck,
345 torso, abdomen, back, arms, hands, legs, feet, eyebrows, or eyelashes and not for the treatment
346 of medical, physical, or mental ailments:

347 (A) body wraps as defined by rule;

348 (B) hydrotherapy as defined by rule;

349 (C) chemical exfoliation as defined by rule;

350 (D) advanced pedicures as defined by rule;

351 (E) sanding, including microdermabrasion;

352 (F) advanced extraction;

353 (G) other esthetic preparations or procedures with the use of:

354 (I) the hands; or

355 (II) a mechanical or electrical apparatus which is approved for use by division rule for
356 beautifying or similar work performed on the body for cosmetic purposes and not for the
357 treatment of a medical, physical, or mental ailment; or

358 (H) cosmetic laser procedures under the [~~general~~] supervision of a [~~licensed health care~~
359 ~~practitioner as defined by rule;~~ cosmetic supervisor with a physician's evaluation before the
360 procedure, as needed, unless specifically required under Section 58-1-506, and limited to the
361 following:

362 (I) superfluous hair removal;

363 (II) anti-aging resurfacing enhancements;

364 (III) photo rejuvenation; or

365 (IV) tattoo removal with a physician's evaluation before the tattoo removal procedure;

366 and

367 (ii) lymphatic massage by manual or other means as defined by rule.

368 (b) Notwithstanding the provisions of Subsection ~~[(31)]~~ (33)(a), a master-level
369 esthetician may perform procedures listed in Subsection ~~[(31)]~~ (33)(a)(i)(H) ~~[for noncosmetic~~
370 ~~purposes]~~ if done under the supervision of a ~~[licensed health care practitioner]~~ cosmetic
371 supervisor acting within the scope of the ~~[licensed health care practitioner's]~~ cosmetic
372 supervisor license ~~[as defined by rule]~~.

373 (c) The term "practice of master-level esthetics" includes the practice of esthetics, but
374 an individual is not required to be licensed as an esthetician or master-level esthetician to
375 engage in the practice of threading.

376 ~~[(32)]~~ (34) "Practice of nail technology" means to trim, cut, clean, manicure, shape,
377 massage, or enhance the appearance of the hands, feet, and nails of an individual by the use of
378 hands, mechanical, or electrical preparation, antiseptic, lotions, or creams, including the
379 application and removal of sculptured or artificial nails.

380 ~~[(33)]~~ (35) "Practice of nail technology instruction" means instructing nail technology
381 in a licensed nail technician school, licensed cosmetology/barber school, or in an
382 apprenticeship program as defined in Subsection 58-11a-306(5).

383 ~~[(34)]~~ (36) "Recognized barber school" means a barber school located in a state other
384 than Utah, whose students, upon graduation, are recognized as having completed the
385 educational requirements for licensure in that state.

386 ~~[(35)]~~ (37) "Recognized cosmetology/barber school" means a cosmetology/barber
387 school located in a state other than Utah, whose students, upon graduation, are recognized as
388 having completed the educational requirements for licensure in that state.

389 ~~[(36)]~~ (38) "Recognized electrology school" means an electrology school located in a
390 state other than Utah, whose students, upon graduation, are recognized as having completed the
391 educational requirements for licensure in that state.

392 ~~[(37)]~~ (39) "Recognized esthetics school" means an esthetics school located in a state
393 other than Utah, whose students, upon graduation, are recognized as having completed the
394 educational requirements for licensure in that state.

395 ~~[(38)]~~ (40) "Recognized nail technology school" means a nail technology school
396 located in a state other than Utah, whose students, upon graduation, are recognized as having
397 completed the educational requirements for licensure in that state.

398 [~~(39)~~] (41) "Salon" means a place, shop, or establishment in which
399 cosmetology/barbering, esthetics, electrology, or nail technology is practiced.

400 [~~(40)~~] (42) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-11a-502.

401 [~~(41)~~] (43) "Unprofessional conduct" is as defined in Sections 58-1-501 and
402 58-11a-501 and as may be further defined by rule by the division in collaboration with the
403 board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

404 Section 5. Section **58-11a-502** is amended to read:

405 **58-11a-502. Unlawful conduct.**

406 Unlawful conduct includes:

407 (1) practicing or engaging in, or attempting to practice or engage in activity for which a
408 license is required under this chapter unless:

409 (a) the person holds the appropriate license under this chapter; or

410 (b) an exemption in Section 58-1-307 or 58-11a-304 applies;

411 (2) knowingly employing any other person to engage in or practice or attempt to
412 engage in or practice any occupation or profession licensed under this chapter if the employee
413 is not licensed to do so under this chapter or exempt from licensure;

414 (3) touching, or applying an instrument or device to the following areas of a client's
415 body:

416 (a) the genitals or the anus, except in cases where the patron states to a licensee that the
417 patron requests a hair removal procedure and signs a written consent form, which must also
418 include the witnessed signature of a legal guardian if the patron is a minor, authorizing the
419 licensee to perform a hair removal procedure; or

420 (b) the breast of a female patron, except in cases in which the female patron states to a
421 licensee that the patron requests breast skin procedures and signs a written consent form, which
422 must also include the witnessed signature of a parent or legal guardian if the patron is a minor,
423 authorizing the licensee to perform breast skin procedures; [~~and~~]

424 (4) using or possessing as a nail technician a solution composed of at least 10% methyl
425 methacrylate on a client[-]; or

426 (5) performing an ablative procedure as defined in Section 58-67-102.

427 Section 6. Section **58-16a-102** is amended to read:

428 **58-16a-102. Definitions.**

- 429 In addition to the definitions in Section 58-1-102, as used in this chapter:
- 430 (1) "Board" means the Optometrist Licensing Board created in Section 58-16a-201.
- 431 (2) "Contact lens" means any lens that:
- 432 (a) has a spherical, cylindrical, or prismatic power or curvature;
- 433 (b) is made pursuant to a current prescription; or
- 434 (c) is intended to be worn on the surface of the eye.
- 435 (3) (a) "Contact lens prescription" means a written or verbal order for contact lenses
- 436 that includes:
- 437 (i) the commencement date of the prescription;
- 438 (ii) the base curve, power, diameter, material or brand name, and expiration date;
- 439 (iii) for a written order, the signature of the prescribing optometrist or physician; and
- 440 (iv) for a verbal order, a record maintained by the recipient of:
- 441 (A) the name of the prescribing optometrist or physician; and
- 442 (B) the date when the prescription was issued or ordered.
- 443 (b) A prescription may include:
- 444 (i) a limit on the quantity of lenses that may be ordered under the prescription if
- 445 required for medical reasons documented in the patient's files; and
- 446 (ii) the expiration date of the prescription, which shall be two years from the
- 447 commencement date, unless documented medical reasons require otherwise.
- 448 (c) When a provider prescribes a private label contact lens for a patient the prescription
- 449 shall include:
- 450 (i) the name of the manufacturer;
- 451 (ii) the trade name of the private label brand; and
- 452 (iii) if applicable, the trade name of the equivalent national brand.
- 453 (4) "Contact lens prescription verification" means a written request from a person who
- 454 sells or provides contact lenses that:
- 455 (a) is sent to the prescribing optometrist or physician; and
- 456 (b) seeks the confirmation of the accuracy of a patient's prescription.
- 457 (5) "Eye and its adnexa" means the human eye and all structures situated within the
- 458 orbit, including the conjunctiva, lids, lashes, and lacrimal system.
- 459 (6) "Fitting of a contact lens" means:

- 460 (a) the using of a keratometer to measure the human eye;
- 461 (b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and
- 462 (c) trial fitting of contact lenses, which includes a period of time for evaluation for fit
- 463 and performance, to determine a tentative contact lens prescription for a patient if the patient:
- 464 (i) has not worn contact lenses before; or
- 465 (ii) has changed to a different type or base curve.
- 466 (7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized
- 467 by means of laser or ionizing radiation.
- 468 (8) "Ophthalmic lens" means any lens used to treat the eye and that:
- 469 (a) has a spherical, cylindrical, or prismatic power;
- 470 (b) is made pursuant to an unexpired prescription; and
- 471 (c) is intended to be used in eyeglasses or spectacles.
- 472 (9) "Optometric assistant" means an unlicensed individual:
- 473 (a) working under the direct and immediate supervision of a licensed optometrist; and
- 474 (b) engaged in specific tasks assigned by the licensed optometrist in accordance with
- 475 the standards and ethics of the profession.
- 476 (10) "Optometrist" or "optometric physician" means an individual licensed under this
- 477 chapter.
- 478 (11) "Optometry" and "practice of optometry" mean any one or any combination of the
- 479 following practices:
- 480 (a) examination of the human eye and its adnexa to detect and diagnose defects or
- 481 abnormal conditions;
- 482 (b) determination or modification of the accommodative or refractive state of the
- 483 human eye or its range or power of vision by administration and prescription of pharmaceutical
- 484 agents or the use of diagnostic instruments;
- 485 (c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact
- 486 lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to
- 487 diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its
- 488 adnexa;
- 489 (d) display of any advertisement, circular, sign, or device offering to:
- 490 (i) examine the eyes;

491 (ii) fit glasses or contact lenses; or
492 (iii) adjust frames;
493 (e) removal of a foreign body from the eye or its adnexa, that is not deeper than the
494 anterior 1/2 of the cornea;

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

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

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

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

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

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

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

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

509 Section 7. Section **58-67-102** is amended to read:

510 **58-67-102. Definitions.**

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

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

514 [~~(1)~~] (2) "ACGME" means the Accreditation Council for Graduate Medical Education
515 of the American Medical Association.

516 [~~(2)~~] (3) "Administrative penalty" means a monetary fine or citation imposed by the
517 division for acts or omissions determined to constitute unprofessional or unlawful conduct, in
518 accordance with a fine schedule established by the division in collaboration with the board, as a
519 result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4,
520 Administrative Procedures Act.

521 [~~(3)~~] (4) "Board" means the Physicians Licensing Board created in Section 58-67-201.

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 ~~S~~→ (ANSI) ←~~S~~ designated Class IIIb
 524a and Class IV
 525 lasers, intense pulsed light, radio frequency devices, and lipolytic devices ~~S~~→ and excludes ANSI
 525a designated Class IIIa and lower powered devices ←~~S~~ .

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

553 (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are
554 performed by an individual licensed under this title who is acting within their scope of practice.

555 ~~[(7)]~~ (11) "Physician" means both physicians and surgeons licensed under Section
556 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
557 Section 58-68-301, Utah Osteopathic Medical Practice Act.

558 ~~[(8)]~~ (12) (a) "Practice of medicine" means:

559 ~~[(a)]~~ (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
560 disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real
561 or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any
562 means or instrumentality, and by an individual in Utah or outside the state upon or for any
563 human within the state~~[-, except that conduct described in this Subsection (8)(a) that is~~
564 ~~performed by a person legally and in accordance with a license issued under another chapter of~~
565 ~~this title does not constitute the practice of medicine];~~

566 ~~[(b)]~~ (ii) when a person not licensed as a physician directs a licensee under this chapter
567 to withhold or alter the health care services that the licensee has ordered~~[-, but practice of~~
568 ~~medicine does not include any conduct under Subsection 58-67-501(2)];~~

569 ~~[(c)]~~ (iii) to maintain an office or place of business for the purpose of doing any of the
570 acts described in Subsection ~~[(8)]~~ (12)(a) whether or not for compensation; or

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

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

583 (i) except for an ablative medical procedure as provided in Subsection (12)(b)(ii), the

584 conduct described in Subsection (12)(a)(i) that is performed in accordance with a license issued
 585 under another chapter of this title;

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

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

590 ~~[(9)]~~ (13) "Prescription device" means an instrument, apparatus, implement, machine,
 591 contrivance, implant, in vitro reagent, or other similar or related article, and any component
 592 part or accessory, which is required under federal or state law to be prescribed by a practitioner
 593 and dispensed by or through a person or entity licensed under this chapter or exempt from
 594 licensure under this chapter.

595 ~~[(10)]~~ (14) "Prescription drug" means a drug that is required by federal or state law or
 596 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

597 ~~[(11)]~~ (15) "SPEX" means the Special Purpose Examination of the Federation of State
 598 Medical Boards.

599 ~~[(12)]~~ (16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

600 ~~[(13)]~~ (17) "Unprofessional conduct" is as defined in Sections 58-1-501 and
 601 58-67-502, and as may be further defined by division rule.

602 Section 8. Section **58-67-805** is enacted to read:

603 **58-67-805. Supervision of cosmetic medical procedures.**

604 A physician may not delegate the performance of an ablative cosmetic medical
 605 procedure to an individual who is not licensed under this chapter or Chapter 68, Utah
 606 Osteopathic Medical Practice Act.

607 Section 9. Section **58-68-102** is amended to read:

608 **58-68-102. Definitions.**

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

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

612 ~~[(1)]~~ (2) "ACGME" means the Accreditation Council for Graduate Medical Education
 613 of the American Medical Association.

614 ~~[(2)]~~ (3) "Administrative penalty" means a monetary fine imposed by the division for

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

646 alter living tissue, but not excise, vaporize or remove living tissue.

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

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

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

650 (iii) the use of photo therapy lasers for neuromusculoskeletal treatments that are

651 performed by an individual licensed under this title who is acting within their scope of practice.

652 ~~[(7)]~~ (11) "Physician" means both physicians and surgeons licensed under Section

653 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under

654 Section 58-68-301, Utah Osteopathic Medical Practice Act.

655 ~~[(8)]~~ (12) (a) "Practice of osteopathic medicine" means:

656 ~~[(a)]~~ (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human

657 disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real

658 or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part

659 is based upon emphasis of the importance of the musculoskeletal system and manipulative

660 therapy in the maintenance and restoration of health, by an individual in Utah or outside of the

661 state upon or for any human within the state~~[-except that conduct described in this Subsection~~

662 ~~(8)(a) that is performed by a person legally and in accordance with a license issued under~~

663 ~~another chapter of this title does not constitute the practice of medicine];~~

664 ~~[(b)]~~ (ii) when a person not licensed as a physician directs a licensee under this chapter

665 to withhold or alter the health care services that the licensee has ordered~~[-but practice of~~

666 ~~medicine does not include any conduct under Subsection 58-68-501(2)];~~

667 ~~[(c)]~~ (iii) to maintain an office or place of business for the purpose of doing any of the

668 acts described in Subsection ~~[(8)]~~ (12)(a) whether or not for compensation; or

669 ~~[(d)]~~ (iv) to use, in the conduct of any occupation or profession pertaining to the

670 diagnosis or treatment of human diseases or conditions, in any printed material, stationery,

671 letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic

672 medicine," "osteopathic physician," "osteopathic surgeon," "osteopathic physician and

673 surgeon," "Dr.," "D.O.," or any combination of these designations in any manner which might

674 cause a reasonable person to believe the individual using the designation is a licensed

675 osteopathic physician, and if the party using the designation is not a licensed osteopathic

676 physician, the designation must additionally contain the description of the branch of the healing

677 arts for which the person has a license, provided that an individual who has received an earned
678 degree of doctor of osteopathic medicine but is not a licensed osteopathic physician and
679 surgeon in Utah may use the designation "D.O." if it is followed by "Not Licensed" or "Not
680 Licensed in Utah" in the same size and style of lettering.

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

682 (i) except for an ablative medical procedure as provided in Subsection (12)(b)(ii), the
683 conduct described in Subsection (12)(a)(i) that is performed in accordance with a license issued
684 under another chapter of this title;

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

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

689 [~~9~~] (13) "Prescription device" means an instrument, apparatus, implement, machine,
690 contrivance, implant, in vitro reagent, or other similar or related article, and any component
691 part or accessory, which is required under federal or state law to be prescribed by a practitioner
692 and dispensed by or through a person or entity licensed under this chapter or exempt from
693 licensure under this chapter.

694 [~~10~~] (14) "Prescription drug" means a drug that is required by federal or state law or
695 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

696 [~~11~~] (15) "SPEX" means the Special Purpose Examination of the Federation of State
697 Medical Boards.

698 [~~12~~] (16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

699 [~~13~~] (17) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502
700 and as may be further defined by division rule.

701 Section 10. Section **58-68-805** is enacted to read:

702 **58-68-805. Supervision of cosmetic medical procedures.**

703 An osteopathic physician and surgeon may not delegate the performance of an ablative
704 cosmetic medical procedure to an individual who is not licensed under this chapter or Chapter
705 67, Utah Medical Practice Act.