

29 AMENDS:

30 **58-17b-309**, as last amended by Laws of Utah 2011, Chapter 76

31 **58-83-502**, as enacted by Laws of Utah 2010, Chapter 180

32

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

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

35 **58-17b-309. Exemptions from licensure.**

36 (1) For purposes of this section:

37 (a) "Cosmetic drug":

38 (i) means a prescription drug that is:

39 (A) for the purpose of promoting attractiveness or altering the appearance of an
40 individual; and

41 (B) listed as a cosmetic drug subject to the exemption under this section by the division
42 by administrative rule~~;~~ or has been expressly approved for online dispensing, whether or
43 not it is dispensed online or through a physician's office; and

44 (ii) does not include a prescription drug that is:

45 (A) a controlled substance;

46 (B) compounded by the physician; or

47 (C) prescribed or used for the patient for the purpose of diagnosing, curing, ~~[mitigating,~~
48 ~~treating,]~~ or preventing a disease.

49 (b) "Injectable weight loss drug":

50 (i) means an injectable prescription drug:

51 (A) prescribed to promote weight loss; and

52 (B) listed as an injectable prescription drug subject to exemption under this section by
53 the division by administrative rule; and

54 (ii) does not include a prescription drug that is a controlled substance.

55 (c) "Prescribing practitioner" means an individual licensed under:

56 (i) Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse with

57 prescriptive practice;

58 (ii) Chapter 67, Utah Medical Practice Act;

59 (iii) Chapter 68, Utah Osteopathic Medical Practice Act; or

60 (iv) Chapter 70a, Physician Assistant Act.

61 (2) In addition to the exemptions from licensure in Section 58-1-307, the following
62 individuals may engage in the acts or practices described in this section without being licensed
63 under this chapter:

64 (a) a person selling or providing contact lenses in accordance with Section 58-16a-801;

65 (b) an individual engaging in the practice of pharmacy technician under the direct
66 personal supervision of a pharmacist while making satisfactory progress in an approved
67 program as defined in division rule;

68 (c) a prescribing practitioner who prescribes and dispenses a cosmetic drug or an
69 injectable weight loss drug to the prescribing practitioner's patient in accordance with
70 Subsection (4); and

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

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

79 (4) A prescribing practitioner or optometrist is exempt from licensing under the
80 provisions of this part if the prescribing practitioner or optometrist:

81 (a) (i) writes a prescription for a drug the prescribing practitioner or optometrist has the
82 authority to dispense under Subsection (4)(b); and

83 (ii) informs the patient:

84 (A) that the prescription may be filled at a pharmacy or dispensed in the prescribing

85 practitioner's or optometrist's office;

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

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

88 (D) how to contact the prescribing practitioner or optometrist if the patient has

89 questions or concerns regarding the drug;

90 (b) dispenses a cosmetic drug or injectable weight loss drug only to the prescribing
91 practitioner's patients or for an optometrist, dispenses a cosmetic drug only to the optometrist's
92 patients; and

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

96 (5) (a) The division, in consultation with the board under this chapter[;] and the
97 relevant professional board, including the Physician Licensing Board, the Osteopathic
98 Physician Licensing Board, the Physician Assistant Licensing Board, the Board of Nursing,
99 [~~and~~] the Optometrist Licensing Board, or the Online Prescribing, Dispensing, and Facilitation
100 Board, shall adopt administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative
101 Rulemaking Act to designate:

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

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

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

109 (c) The division may inspect the office of a prescribing practitioner or optometrist who
110 is dispensing under the provisions of this section, in order to determine whether the prescribing
111 practitioner or optometrist is in compliance with the provisions of this section. If a prescribing
112 practitioner or optometrist chooses to dispense under the provisions of this section, the

113 prescribing practitioner or optometrist consents to the jurisdiction of the division to inspect the
114 prescribing practitioner's or optometrist's office and determine if the provisions of this section
115 are being met by the prescribing practitioner and optometrist.

116 (d) If a prescribing practitioner or optometrist violates a provision of this section, the
117 prescribing practitioner or optometrist may be subject to discipline under:

118 (i) this chapter; and

119 (ii) (A) Chapter 16a, Utah Optometry Practice Act;

120 (B) Chapter 31b, Nurse Practice Act;

121 (C) Chapter 67, Utah Medical Practice Act;

122 (D) Chapter 68, Utah Osteopathic Medical Practice Act; ~~or~~

123 (E) Chapter 70a, Physician Assistant Act~~[-];~~ or

124 (F) Chapter 83, Online Prescribing, Dispensing, and Facilitation Act.

125 (6) Except as provided in Subsection (2)(d), this section does not restrict or limit the
126 scope of practice of an optometrist or optometric physician licensed under Chapter 16a, Utah
127 Optometry Practice Act.

128 Section 2. Section **58-83-502** is amended to read:

129 **58-83-502. Unprofessional conduct.**

130 "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501 and
131 as may be further defined by administrative rule:

132 (1) online prescribing, dispensing, or facilitation with respect to a person under the age
133 of 18 years;

134 (2) using the name or official seal of the state, the Utah Department of Commerce, or
135 the Utah Division of Occupational and Professional Licensing, or their boards, in an
136 unauthorized manner;

137 (3) failing to respond promptly to a request by the division for information including:

138 (a) an audit of the website; or

139 (b) records of the online prescriber, the Internet facilitator, or the online contract
140 pharmacy;

141 (4) using an online prescriber, online contract pharmacy, or Internet facilitator without
142 approval of the division;

143 (5) failing to inform a patient of the patient's freedom of choice in selecting who will
144 dispense a prescription in accordance with Subsection 58-83-305(1)(n); [~~and~~]

145 (6) failing to keep the division informed of the name and contact information of the
146 Internet facilitator or online contract pharmacy[?]; and

147 (7) violating the dispensing and labeling requirements of Section 58-17b-309.