

SB0040S01 compared with SB0040

~~{deleted text}~~ shows text that was in SB0040 but was deleted in SB0040S01.

inserted text shows text that was not in SB0040 but was inserted into SB0040S01.

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~~THE MEDICAL AND OSTEOPATHIC PRACTICE ACT~~

~~AMENDMENTS~~ 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: _____

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;
 - non-ablative procedure; and
 - supervisor;
- ▶ exempts certain licensees from the definition of cosmetic medical ~~laser~~

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~~procedure}~~procedures;

▶ ~~{includes}~~establishes standards for the supervision of cosmetic medical ~~{laser procedure in}~~procedures;

▶ amends the definition of the practice of medicine;~~{~~

→ ~~clarifies that the inclusion of an ablative procedure in the definition of cosmetic medical laser procedure does not limit other professionals}~~; and

▶ amends provisions of unprofessional conduct for physicians and other licensees whose scope of practice ~~{when "operate" or "surgery" is part of the professionals' practice act;~~

→ ~~permits the delegation of certain}~~includes cosmetic medical ~~{laser procedures by a physician;~~

→ ~~requires supervision by a physician if the cosmetic medical laser procedure is delegated;~~

→ ~~prohibits the delegation of supervision when supervision is required; and~~

→ ~~makes technical amendments}~~procedures.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

ENACTS:

58-1-505, Utah Code Annotated 1953

58-1-506, Utah Code Annotated 1953

58-67-805, Utah Code Annotated 1953

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58-68-805, Utah Code Annotated 1953

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

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

58-1-102. Definitions.

For purposes of this title:

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

(2) "Cosmetic medical procedure":

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

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

Osteopathic Medical Practice Act, does not apply to the scope of practice of an individual licensed under this title if the individual's scope of practice includes the authority to operate or perform surgical procedures.

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

~~(2)~~ (4) "Director" means the director of the Division of Occupational and Professional Licensing.

~~(3)~~ (5) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

~~(4)~~ (6) "Executive director" means the executive director of the Department of Commerce.

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

(8) (a) "Non-ablative procedure" means a procedure that is expected or intended to alter living tissue, but not to excise, burn, vaporize or remove the epidermal surface of the skin.

(b) "Non ablative procedure" does not include the use of infrared photo therapy and low level lasers for treatments that:

(i) are not cosmetic medical procedures; and

(ii) are performed by a chiropractor or physical therapist for treatment of a condition that is within their scope of practice.

~~(6)~~ (9) "Unlawful conduct" has the meaning given in Subsection 58-1-501(1).

~~(7)~~ (10) "Unprofessional conduct" has the meaning given in Subsection 58-1-501(2).

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Section 2. Section 58-1-505 is enacted to read:

58-1-505. Cosmetic medical procedure supervisor.

(1) For purposes of this section:

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

(b) "Supervisor" means:

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

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

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

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

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

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

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

(1) For purposes of this section:

(a) "Delegation group A" means the following who are licensed under this title, acting within their respective scope of practice, and qualified under Subsection (2)(f):

(i) a physician assistant, if supervised by a physician and the procedure is included in the delegation agreement;

(ii) a registered nurse;

(iii) a master esthetician; and

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

(b) "Delegation group B" means:

(i) the following who are licensed under this title, acting within their respective scope of practice, and are qualified under Subsection (2)(f):

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(A) a practical nurse;

(B) an esthetician; or

(C) a medical assistant; and

(ii) a medical assistant who meets the qualifications under Subsection (2)(f).

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

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

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

(iii) is located within 45 minutes or 45 miles of the cosmetic medical facility.

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

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

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

(iii) is present within the cosmetic medical facility in which the person being supervised is providing services; and

(iv) is available to:

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

and

(B) evaluate the patient, as necessary.

(e) "Hair removal review" means:

(i) conducting an in-person, face-to-face interview of a patient based on the responses provided by the patient to a detailed medical history assessment that was prepared by the supervisor;

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

and

(iii) if the patient history or patient presentation deviates in any way from the treatment plan, referring the patient to the supervisor and receiving clearance from the supervisor before starting the treatment.

(2) A supervisor supervising a non-ablative cosmetic medical procedure for hair removal shall:

(a) have an unrestricted license to practice medicine or advanced practice registered nursing in the state;

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

(c) conduct a hair removal review, or delegate the hair removal review to a member of delegation group A, of the patient prior to initiating treatment or a series of treatments;

(d) personally perform the non-ablative cosmetic medical procedure for hair removal, or authorize and delegate the procedure to a member of delegation group A or B;

(e) during the non-ablative cosmetic medical procedure for hair removal provide general cosmetic medical procedure supervision to individuals in delegation group A performing the procedure and indirect cosmetic medical procedure supervision to individuals in delegation group B performing the procedure; and

(f) verify that a person to whom the supervisor delegates an evaluation under Subsection (2)(c) or delegates a procedure under Subsection (2)(d):

(i) has received appropriate training regarding the medical procedures developed under Subsection (2)(b);

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

(iii) if a practical nurse or medical assistant, has maintained competence to perform the non-ablative cosmetic medical procedure for hair removal through documented training and experience of at least 60 hours, as further defined by rule, regarding:

(A) the appropriate standard of care for performing non-ablative cosmetic medical procedures for hair removal;

(B) physiology of the skin;

(C) skin typing and analysis;

(D) skin conditions, disorders, and diseases;

(E) pre and post procedure care;

(F) infection control;

(G) laser and light physics training;

(H) laser technologies and applications;

(I) safety and maintenance of lasers;

(J) cosmetic laser hair removal procedures;

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

(L) cardio-pulmonary resuscitation (CPR).

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(3) For a non-ablative cosmetic medical procedure other than hair removal under Subsection (2):

(a) a physician who has an unrestricted license to practice medicine shall:

(i) develop a treatment plan for the non-ablative cosmetic medical procedure; and

(ii) conduct an in-person face to face evaluation of the patient prior to the initiation of a treatment protocol or series of treatments;

(b) the supervisor supervising the procedure shall:

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

(ii) personally perform the non-ablative cosmetic medical procedure or authorize and provide indirect cosmetic medical procedure supervision for the non-ablative cosmetic medical procedure that is performed by:

(A) a physician assistant, if supervised by a physician and the procedure is included in the delegation agreement;

(B) a registered nurse;

(C) a master esthetician; or

(D) an esthetician; and

(iii) verify that a person to whom the supervisor delegates a procedure under

Subsection (3)(b):

(A) has received appropriate training regarding the medical procedures to be performed; and

(B) has an unrestricted license and is acting within their scope of practice under this title.

(4) A supervisor performing or supervising a cosmetic medical procedure under

Subsection (2) or (3) shall ensure that:

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

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

(c) the patient receives written information with the name and licensing information of the supervisor who is supervising the non-ablative cosmetic medical procedure and the person

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who is performing the non-ablative cosmetic medical procedure:

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

(e) the cosmetic medical facility's contract with a master esthetician who performs a non-ablative cosmetic medical procedure at the facility is kept on the premises of the facility;
and

(f) a supervisee and supervisor, who are required to have malpractice and liability insurance, have proof of insurance available for inspection at the request of a patient.

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

Section 4. Section 58-11a-102 is amended to read:

58-11a-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

(8) "Cosmetic laser procedure" means only a non-ablative procedure as defined in Section 58-67-102.

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

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

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

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

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

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

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

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

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

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

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

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

~~[(19)]~~[(21)] "Licensed nail technology school" means a nail technology school licensed under this chapter.

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

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

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

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

- (a) cutting, clipping, or trimming the hair of the head of any person by the use of scissors, shears, clippers, or other appliances;
- (b) draping, shampooing, scalp treatments, basic wet styling, and blow drying; and
- (c) removing hair from the face or neck of a person by the use of shaving equipment.

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

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

- (a) cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or masks, manual extraction, including a comedone extractor, depilatories, waxes, tweezing, the application of eyelash extensions, natural nail manicures or pedicures, or callous removal by buffing or filing;
- (b) limited chemical exfoliation as defined by rule;
- (c) removing superfluous hair by means other than electrolysis, except that an

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individual is not required to be licensed as an esthetician to engage in the practice of threading;

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

(e) cosmetic laser procedures under ~~direct~~ the supervision of a ~~licensed health care practitioner as defined by rule,~~ cosmetic supervisor limited to the following:

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

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

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

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

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

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

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

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

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

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

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

~~(27)~~ (29) "Practice of cosmetology/barbering instruction" means instructing cosmetology/barbering as defined in Subsection ~~(26)~~ (28) in a licensed cosmetology/barber

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school or in an apprenticeship program as defined in Subsection 58-11a-306(2).

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

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

(b) cosmetic laser procedures under the ~~[general]~~ supervision of a ~~[licensed health care practitioner as defined by rule,]~~ [cosmetic supervisor] limited to superfluous hair removal.

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

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

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

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

- (A) body wraps as defined by rule;
- (B) hydrotherapy as defined by rule;
- (C) chemical exfoliation as defined by rule;
- (D) advanced pedicures as defined by rule;
- (E) sanding, including microdermabrasion;
- (F) advanced extraction;
- (G) other esthetic preparations or procedures with the use of:
- (I) the hands; or

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

(H) cosmetic laser procedures under the ~~[general]~~ supervision of a ~~[licensed health care practitioner as defined by rule,]~~ [cosmetic supervisor] with a physician's evaluation before the procedure, as needed, and limited to the following:

- (I) superfluous hair removal;

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- (II) anti-aging resurfacing enhancements;
- (III) photo rejuvenation; or
- (IV) tattoo removal with a physician's evaluation before the tattoo removal procedure;

and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58-11a-502. Unlawful conduct.

Unlawful conduct includes:

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

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

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

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

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

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

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

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

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~~Section 1~~}; or

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

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

58-16a-102. Definitions.

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

(1) "Board" means the Optometrist Licensing Board created in Section 58-16a-201.

(2) "Contact lens" means any lens that:

(a) has a spherical, cylindrical, or prismatic power or curvature;

(b) is made pursuant to a current prescription; or

(c) is intended to be worn on the surface of the eye.

(3) (a) "Contact lens prescription" means a written or verbal order for contact lenses

that includes:

(i) the commencement date of the prescription;

(ii) the base curve, power, diameter, material or brand name, and expiration date;

(iii) for a written order, the signature of the prescribing optometrist or physician; and

(iv) for a verbal order, a record maintained by the recipient of:

(A) the name of the prescribing optometrist or physician; and

(B) the date when the prescription was issued or ordered.

(b) A prescription may include:

(i) a limit on the quantity of lenses that may be ordered under the prescription if

required for medical reasons documented in the patient's files; and

(ii) the expiration date of the prescription, which shall be two years from the commencement date, unless documented medical reasons require otherwise.

(c) When a provider prescribes a private label contact lens for a patient the prescription shall include:

(i) the name of the manufacturer;

(ii) the trade name of the private label brand; and

(iii) if applicable, the trade name of the equivalent national brand.

(4) "Contact lens prescription verification" means a written request from a person who sells or provides contact lenses that:

(a) is sent to the prescribing optometrist or physician; and

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- (b) seeks the confirmation of the accuracy of a patient's prescription.
- (5) "Eye and its adnexa" means the human eye and all structures situated within the orbit, including the conjunctiva, lids, lashes, and lacrimal system.
- (6) "Fitting of a contact lens" means:
 - (a) the using of a keratometer to measure the human eye;
 - (b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and
 - (c) trial fitting of contact lenses, which includes a period of time for evaluation for fit and performance, to determine a tentative contact lens prescription for a patient if the patient:
 - (i) has not worn contact lenses before; or
 - (ii) has changed to a different type or base curve.
- (7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized by means of laser or ionizing radiation.
- (8) "Ophthalmic lens" means any lens used to treat the eye and that:
 - (a) has a spherical, cylindrical, or prismatic power;
 - (b) is made pursuant to an unexpired prescription; and
 - (c) is intended to be used in eyeglasses or spectacles.
- (9) "Optometric assistant" means an unlicensed individual:
 - (a) working under the direct and immediate supervision of a licensed optometrist; and
 - (b) engaged in specific tasks assigned by the licensed optometrist in accordance with the standards and ethics of the profession.
- (10) "Optometrist" or "optometric physician" means an individual licensed under this chapter.
- (11) "Optometry" and "practice of optometry" mean any one or any combination of the following practices:
 - (a) examination of the human eye and its adnexa to detect and diagnose defects or abnormal conditions;
 - (b) determination or modification of the accommodative or refractive state of the human eye or its range or power of vision by administration and prescription of pharmaceutical agents or the use of diagnostic instruments;
 - (c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to

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diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its adnexa;

(d) display of any advertisement, circular, sign, or device offering to:

(i) examine the eyes;

(ii) fit glasses or contact lenses; or

(iii) adjust frames;

(e) removal of a foreign body from the eye or its adnexa, that is not deeper than the anterior 1/2 of the cornea;

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

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

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

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

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

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

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

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

Section ~~{2}~~7. 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) "Ablative procedure" means a procedure that is expected to excise, burn, vaporize or remove a portion or all of the epidermis, including the use of carbon dioxide lasers and erbium:YAG lasers.

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

~~(2)~~(3) "Administrative penalty" means a monetary fine or citation imposed by the

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division for acts or omissions determined to constitute unprofessional or unlawful conduct, in accordance with a fine schedule established by the division in collaboration with the board, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

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

~~[(4)]~~ (5) "Cosmetic medical ~~laser procedure~~ device" ~~includes:~~

~~(a) the use of~~ means tissue altering energy based devices that have the potential for ~~severe injury~~ altering living tissue, such as American National Standards Institute designated Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices~~;~~

~~(b) an ablative procedure that is expected to excise, burn, or vaporize the skin below the dermo-epidermal junction;~~

~~(c) a~~;

(6) "Cosmetic medical procedure":

(a) includes the use of cosmetic medical devices to perform ablative or non-ablative ~~procedure that is not expected or intended to excise, burn, or vaporize the epidermal surface of the skin, including:~~

~~(i) use of a laser for hair removal; and~~

~~(ii) use of a pulsed light device; and~~

~~(d) other procedures as may be defined by the division by administrative rule adopted in consultation with the board.~~

~~[(4)]~~ (5) procedures; and

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

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

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

(b) to attempt to conduct an examination or determination described under Subsection ~~[(4)]~~ (5) (7)(a);

(c) to hold oneself out as making or to represent that one is making an examination or

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determination as described in Subsection ~~[(4)]~~ ~~(5)(7)~~(a); or

(d) to make an examination or determination as described in Subsection ~~[(4)]~~ ~~(5)(7)~~(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

~~[(5)]~~ ~~(6)(8)~~ "LCME" means the Liaison Committee on Medical Education of the American Medical Association.

~~[(6)]~~ ~~(7)(9)~~ "Medical assistant" means an unlicensed individual working under the direct and immediate supervision of a licensed physician and surgeon and engaged in specific tasks assigned by the licensed physician and surgeon in accordance with the standards and ethics of the profession.

(10) "Non-ablative procedure" means a procedure that is expected or intended to alter living tissue, but not excise, burn, vaporize or remove the epidermal surface of the skin.

~~[(7)]~~ ~~(8)(11)~~ "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

~~[(8)]~~ ~~(9)(12)~~ (a) "Practice of medicine" means:

~~[(a)]~~ (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain, ~~cosmetic laser procedure,~~ or other condition, physical or mental, real or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the state upon or for any human within the state, ~~except that conduct described in this Subsection ~~[(8)]~~ ~~(9)~~(a) that is performed by a person legally and in accordance with a license issued under another chapter of this title ~~including a scope of practice that includes the authority to operate or a surgical procedure,~~ does not constitute the practice of medicine~~;

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

~~[(c)]~~ (iii) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection ~~[(8)]~~ ~~(9)(12)~~(a) whether or not for compensation; or

~~[(d)]~~ (iv) (A) except as permitted by Subsection (12)(a)(iv)(B) or (C), to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human

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diseases or conditions in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine," "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed physician and surgeon~~[-and];~~

(B) if [the party using the designation] a doctor or physician is not a licensed physician and surgeon, the individual may use the designation [must additionally contain] of "doctor," "Dr.," or "physician" if accompanied by the description of the branch of the healing arts for which the person has a license~~[-provided that]~~ in the same size and style of lettering; and

(C) if an individual [who] has received an earned degree of doctor of medicine [degree] but is not a licensed physician and surgeon in Utah, the person may use the designation ["M.D.:"] described in Subsection (12)(a)(iv)(A) if it is followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

(b) The practice of medicine does not include:

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

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

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

~~[(9)]~~ ~~(+10+)~~ 13 "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.

~~[(10)]~~ ~~(+11+)~~ 14 "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.

~~[(11)]~~ ~~(+12+)~~ 15 "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

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~~[(12)]~~ ~~(~~13~~; ~~16~~)~~ "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

~~[(13)]~~ ~~(~~14~~; ~~17~~)~~ "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

Section ~~{3}~~ 8. Section **58-67-805** is enacted to read:

58-67-805. Supervision of cosmetic medical ~~{laser}~~ procedures.

~~{(1) (a) Except as provided in Subsection (1)(b), a}~~ A physician may not delegate ~~{~~
~~(i) a}~~ the performance of an ablative cosmetic medical ~~{laser}~~ procedure to an individual who is not licensed under this chapter or Chapter 68, Utah Osteopathic Medical Practice Act ~~{~~; or

~~(ii) supervision of an individual required by this section.~~

~~(b) A physician may delegate a cosmetic medical laser procedure that is a non-ablative procedure under Subsection 58-67-102(7)(c) if the physician supervises the non-ablative cosmetic medical laser procedure in accordance with Subsection (2):~~

~~(2) A physician supervising a non-ablative cosmetic medical laser procedure shall:~~

~~(a) conduct an in-person evaluation of the patient prior to initiating a treatment protocol or series of treatments;~~

~~(b) be immediately available during the procedure for consultation, advice, instruction, and evaluation in person;~~

~~(c) prescribe medical protocols for the procedure;~~

~~(d) provide the training required by this subsection to the supervised individual; and~~

~~(e) verify that the individual who is being supervised:~~

~~(i) is a master esthetician as defined in Section 58-11a-102; or~~

~~(ii) in accordance with administrative rules adopted by the division in consultation with the board, has maintained competence to perform non-ablative cosmetic medical procedures through documented training of at least 50 hours, and experience regarding:~~

~~(A) the appropriate standard of care for performing non-ablative cosmetic medical procedures;~~

~~(B) physiology of the skin;~~

~~(C) skin typing and analysis;~~

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

~~(E) pre and post operative care;~~

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- ~~(F) infection control;~~
- ~~(G) laser and light physics training;~~
- ~~(H) laser technologies and applications;~~
- ~~(I) safety and maintenance of lasers;~~
- ~~(J) cosmetic laser hair removal procedures; and~~
- ~~(K) recognition and appropriate management of complications from a procedure.~~
- ~~(3) Failure to comply with the provisions of this section is unprofessional conduct.~~

Section ~~{4}~~9. Section **58-68-102** is amended to read:

58-68-102. Definitions.

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

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

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

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

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

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

~~[(5)]~~ (6) "Cosmetic medical ~~{laser procedure}~~device" ~~{includes:~~

~~(a) the use of;~~ means tissue altering energy based devices that have the potential for ~~{severe injury}~~ altering living tissue, such as American National Standards Institute designated Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices~~;~~

~~(b) an ablative procedure that is expected to excise, burn, or vaporize the skin below the dermo-epidermal junction;~~

~~(c) a~~.

(7) "Cosmetic medical procedure":

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(a) includes the use of cosmetic medical devices to perform ablative or non-ablative procedure that is not expected or intended to excise, burn, or vaporize the epidermal surface of the skin, including:

- ~~_____ (i) use of a laser for hair removal; and~~
- ~~_____ (ii) use of a pulsed light device; and~~
- ~~_____ (d) other procedures as may be defined by the division by administrative rule adopted in consultation with the board.~~
- ~~_____ [(5)] (6) procedures; and~~

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

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

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

(b) to attempt to conduct an examination or determination described under Subsection [(5)] (6) (8)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection [(5)] (6) (8)(a); or

(d) to make an examination or determination as described in Subsection [(5)] (6) (8)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

[(6)] (7) (9) "Medical assistant" means an unlicensed individual working under the direct and immediate supervision of a licensed osteopathic physician and surgeon and engaged in specific tasks assigned by the licensed osteopathic physician and surgeon in accordance with the standards and ethics of the profession.

(10) "Non-ablative procedure" means a procedure that is expected or intended to alter living tissue, but not excise, burn, vaporize or remove the epidermal surface of the skin.

[(7)] (8) (11) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

[(8)] (9) (12) (a) "Practice of osteopathic medicine" means:

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~~[(a)]~~ (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part is based upon emphasis of the importance of the musculoskeletal system and manipulative therapy in the maintenance and restoration of health, by an individual in Utah or outside of the state upon or for any human within the state ~~], except that conduct described in this Subsection~~ ~~{(8) (9)}~~ (a) that is performed by a person legally and in accordance with a license issued under another chapter of this title , including a scope of practice that includes the authority to operate or a surgical procedure, ~~}, does not constitute the practice of medicine~~];

~~[(b)]~~ (ii) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered ~~], but practice of medicine does not include any conduct under Subsection 58-68-501(2)~~];

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

~~[(d)]~~ (iv) (A) except as permitted in Subsection (12)(a)(iv)(B) or (C) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions, in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine," "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.," "D.O.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed osteopathic physician ~~], and~~];

(B) if [the party using the designation] a doctor or physician is not a licensed osteopathic physician, the individual may use the designation of "Dr." or "physician" if the designation [must additionally contain the] is accompanied by a description of the branch of the healing arts for which the person has a license ~~], provided that~~ in the same size and style of lettering; and

(C) if an individual ~~[who]~~ has received ~~[an earned]~~ a degree of doctor of osteopathic medicine but is not a licensed osteopathic physician and surgeon in Utah the individual may use the designation ["D.O." described in Subsection (12)(a)(iv)(A) if it is followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

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

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

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

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

[(9)] ~~(10;13)~~ "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.

[(10)] ~~(11;14)~~ "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.

[(11)] ~~(12;15)~~ "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

[(12)] ~~(13;16)~~ "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

[(13)] ~~(14;17)~~ "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502 and as may be further defined by division rule.

Section ~~(5)~~10. Section **58-68-805** is enacted to read:

58-68-805. Supervision of cosmetic medical ~~laser procedures:~~

~~**(1) (a) Except as provided in Subsection (1)(b), a physician} procedures.**~~

~~An osteopathic physician and surgeon may not delegate~~

~~(i) a} the performance of an ablative cosmetic ~~laser} medical~~ procedure to an individual who is not licensed under this chapter or Chapter ~~(68)~~67, Utah ~~(Osteopathic}~~ Medical Practice Act ~~(; or~~~~

~~(ii) supervision of an individual required by this section}.~~

~~(b) A physician may delegate a cosmetic medical laser procedure that is a non-ablative procedure under Subsection 58-67-102(7)(c) if the physician supervises the non-ablative cosmetic medical laser procedure in accordance with Subsection (2):~~

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- ~~(2) A physician supervising a non-ablative cosmetic medical laser procedure shall:~~
- ~~(a) conduct an in-person evaluation of the patient prior to initiating a treatment protocol or series of treatments;~~
- ~~(b) be immediately available during the procedure for consultation, advice, instruction, and evaluation in person;~~
- ~~(c) prescribe medical protocols for the procedure;~~
- ~~(d) provide the training required by this subsection to the supervised individual; and~~
- ~~(e) verify that the individual who is being supervised:~~
- ~~(i) is a master esthetician as defined in Section 58-11a-102; or~~
- ~~(ii) in accordance with administrative rules adopted by the division in consultation with the board, has maintained competence to perform non-ablative cosmetic medical procedures through documented training of at least 50 hours, and experience regarding:~~
- ~~(A) the appropriate standard of care for performing non-ablative cosmetic medical procedures;~~
- ~~(B) physiology of the skin;~~
- ~~(C) skin typing and analysis;~~
- ~~(D) skin conditions, disorders, and diseases;~~
- ~~(E) pre and post operative care;~~
- ~~(F) infection control;~~
- ~~(G) laser and light physics training;~~
- ~~(H) laser technologies and applications;~~
- ~~(I) safety and maintenance of lasers;~~
- ~~(J) cosmetic laser hair removal procedures; and~~
- ~~(K) recognition and appropriate management of complications from a procedure.~~
- ~~(3) Failure to comply with the provisions of this section is unprofessional conduct.~~

Legislative Review Note

~~as of 1-16-12 6:13 PM~~

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~~Office of Legislative Research and General Counsel~~