

Representative Stewart Barlow 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:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **58-1-102**, as renumbered and amended by Laws of Utah 1993, Chapter 297

32 **58-11a-102**, as last amended by Laws of Utah 2010, Chapter 145

33 **58-11a-502**, as last amended by Laws of Utah 2009, Chapter 130

34 **58-16a-102**, as last amended by Laws of Utah 2004, Chapters 48 and 280

35 **58-67-102**, as last amended by Laws of Utah 2011, Chapter 214

36 **58-68-102**, as last amended by Laws of Utah 2011, Chapter 214

37 ENACTS:

38 **58-1-505**, Utah Code Annotated 1953

39 **58-1-506**, Utah Code Annotated 1953

40 **58-1-507**, Utah Code Annotated 1953

41 **58-67-805**, Utah Code Annotated 1953

42 **58-68-805**, Utah Code Annotated 1953



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

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

46 **58-1-102. Definitions.**

47 For purposes of this title:

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

49 (2) "Cosmetic medical procedure":

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

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

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

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

54 perform surgical procedures.

55 [~~(1)~~] (3) "Department" means the Department of Commerce.

56 [~~(2)~~] (4) "Director" means the director of the Division of Occupational and

57 Professional Licensing.

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

60 ~~[(4)]~~ (6) "Executive director" means the executive director of the Department of
61 Commerce.

62 ~~[(5)]~~ (7) "Licensee" includes any holder of a license, certificate, registration, permit,
63 student card, or apprentice card authorized under this title.

64 (8) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to
65 alter living tissue, but not intended or expected to excise, vaporize, disintegrate, or remove
66 living tissue.

67 (ii) Notwithstanding Subsection (8)(a)(i), nonablative procedure includes hair removal.

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

69 (i) a superficial procedure;

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

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

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

76 ~~[(6)]~~ (10) "Unlawful conduct" has the meaning given in Subsection 58-1-501(1).

77 ~~[(7)]~~ (11) "Unprofessional conduct" has the meaning given in Subsection 58-1-501(2).
78 Section 2. Section **58-1-505** is enacted to read:

79 **58-1-505. Cosmetic medical procedure supervisor.**

80 (1) For purposes of this section and Section 58-1-506:

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

83 (b) "Supervisor" means:

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

87 (ii) an advanced practice registered nurse with an unrestricted license under Chapter

88 31b, Nurse Practice Act, who is acting within the scope of practice of advanced practice
89 registered nursing, as defined in Section 58-31b-102.

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

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

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

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

97 **58-1-506. Supervision of cosmetic medical procedures.**

98 (1) For purposes of this section:

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

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

103 (ii) a registered nurse;

104 (iii) a master esthetician; and

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

106 (b) "Delegation group B" means:

107 (i) a practical nurse or an esthetician who is licensed under this title, acting within their
108 respective scope of practice, and qualified under Subsections (2)(f)(i) and (iii); and

109 (ii) a medical assistant who is qualified under Subsections (2)(f)(i) and (iii).

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

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

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

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

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

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

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

119 (e) "Indirect cosmetic medical procedure supervision" means the supervisor:
120 (i) has authorized the procedure to be done on the patient by the supervisee;
121 (ii) has given written instructions to the person being supervised;
122 (iii) is present within the cosmetic medical facility in which the person being
123 supervised is providing services; and
124 (iv) is available to:
125 (A) provide immediate face-to-face communication with the person being supervised;
126 and
127 (B) evaluate the patient, as necessary.
128 (f) "Hair removal review" means:
129 (i) conducting an in-person, face-to-face interview of a patient based on the responses
130 provided by the patient to a detailed medical history assessment that was prepared by the
131 supervisor;
132 (ii) evaluating for contraindications and conditions that are part of the treatment plan;
133 and
134 (iii) if the patient history or patient presentation deviates in any way from the treatment
135 plan, referring the patient to the supervisor and receiving clearance from the supervisor before
136 starting the treatment.
137 (2) A supervisor supervising a nonablative cosmetic medical procedure for hair
138 removal shall:
139 (a) have an unrestricted license to practice medicine or advanced practice registered
140 nursing in the state;
141 (b) develop the medical treatment plan for the procedure;
142 (c) conduct a hair removal review, or delegate the hair removal review to a member of
143 delegation group A, of the patient prior to initiating treatment or a series of treatments;
144 (d) personally perform the nonablative cosmetic medical procedure for hair removal, or
145 authorize and delegate the procedure to a member of delegation group A or B;
146 (e) during the nonablative cosmetic medical procedure for hair removal provide general
147 cosmetic medical procedure supervision to individuals in delegation group A performing the
148 procedure, except physician assistants, who shall be supervised as provided in Chapter 70a,
149 Physician Assistant Act, and indirect cosmetic medical procedure supervision to individuals in

150 delegation group B performing the procedure; and

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

152 Subsection (2)(c) or delegates a procedure under Subsection (2)(d) or (3)(b)(ii):

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

154 Subsection (2)(b);

155 (ii) has an unrestricted license under this title or is performing under the license of the

156 supervising physician and surgeon; and

157 (iii) has maintained competence to perform the nonablative cosmetic medical

158 procedure through documented education and experience of at least 80 hours, as further

159 defined by rule, regarding:

160 (A) the appropriate standard of care for performing nonablative cosmetic medical

161 procedures;

162 (B) physiology of the skin;

163 (C) skin typing and analysis;

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

165 (E) pre and post procedure care;

166 (F) infection control;

167 (G) laser and light physics training;

168 (H) laser technologies and applications;

169 (I) safety and maintenance of lasers;

170 (J) cosmetic medical procedures an individual is permitted to perform under this title;

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

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

173 (3) For a nonablative cosmetic medical procedure other than hair removal under

174 Subsection (2):

175 (a) (i) except as provided in Subsection (3)(a)(ii) and (iii), a physician who has an

176 unrestricted license to practice medicine shall:

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

178 (B) conduct an in-person face-to-face evaluation of the patient prior to the initiation of

179 a treatment protocol or series of treatments;

180 (ii) a nurse practitioner who has an unrestricted license for advanced practice registered

181 nursing may perform the evaluation and develop the treatment plan under Subsection (3)(a)(i)
182 for nonablative medical procedures other than tattoo removal; or

183 (iii) a physician assistant acting under the supervision of a physician, with the
184 procedure included in the delegation of service agreement as defined in Section 58-70a-102,
185 may perform the evaluation under Subsection (3)(a)(i)(B) for nonablative medical procedures
186 other than tattoo removal; and

187 (b) the supervisor supervising the procedure shall:

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

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

191 (A) authorize and provide general cosmetic medical procedure supervision for the
192 nonablative cosmetic medical procedure that is performed by a registered nurse or a master
193 esthetician;

194 (B) authorize and provide supervision as provided in Chapter 70a, Physician Assistant
195 Act, for the nonablative cosmetic medical procedure that is performed by a physician assistant,
196 if the procedure is included in the delegation of services agreement; or

197 (C) authorize and provide direct cosmetic medical procedure supervision for the
198 nonablative cosmetic medical procedure that is performed by an esthetician; and

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

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

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

205 (C) is qualified under Subsection (2)(f)(iii).

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

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

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

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

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

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

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

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

224 Section 4. Section **58-1-507** is enacted to read:

225 **58-1-507. Cosmetic medical procedure -- Truth in advertising.**

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

230 (1) Chapter 31b, Nurse Practices Act, as an advanced practice registered nurse,
231 practicing as a nurse practitioner;

232 (2) Chapter 67, Utah Medical Practice Act; or

233 (3) Chapter 68, Utah Osteopathic Medical Practice Act.

234 Section 5. Section **58-11a-102** is amended to read:

235 **58-11a-102. Definitions.**

236 As used in this chapter:

237 (1) "Approved barber or cosmetologist/barber apprenticeship" means an apprenticeship
238 that meets the requirements of Subsection 58-11a-306(1) for barbers or Subsection
239 58-11a-306(2) for cosmetologist/barbers and the requirements established by rule by the
240 division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah
241 Administrative Rulemaking Act.

242 (2) "Approved esthetician apprenticeship" means an apprenticeship that meets the

243 requirements of Subsection 58-11a-306(3) and the requirements established by rule by the
244 division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah
245 Administrative Rulemaking Act.

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

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

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

256 (6) "Barber instructor" means a barber who is licensed under this chapter to teach
257 barbering at a licensed barber school or in an apprenticeship program as defined in Section
258 58-11a-306.

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

261 (8) "Cosmetic laser procedure" includes a nonablative procedure as defined in Section
262 58-67-102.

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

264 [~~(8)~~] (10) "Cosmetologist/barber" means a person who is licensed under this chapter to
265 engage in the practice of cosmetology/barbering.

266 [~~(9)~~] (11) "Cosmetologist/barber instructor" means a cosmetologist/barber who is
267 licensed under this chapter to teach cosmetology/barbering at a licensed cosmetology/barber
268 school, licensed barber school, licensed nail technology school, or in an apprenticeship
269 program as defined in Subsection 58-11a-306(2).

270 [~~(10)~~] (12) "Direct supervision" means that the supervisor of an apprentice or the
271 instructor of a student is immediately available for consultation, advice, instruction, and
272 evaluation.

273 [~~(11)~~] (13) "Electrologist" means a person who is licensed under this chapter to engage

274 in the practice of electrology.

275 [~~(12)~~] (14) "Electrologist instructor" means an electrologist who is licensed under this
276 chapter to teach electrology at a licensed electrology school.

277 [~~(13)~~] (15) "Esthetician" means a person who is licensed under this chapter to engage
278 in the practice of esthetics.

279 [~~(14)~~] (16) "Esthetician instructor" means a master esthetician who is licensed under
280 this chapter to teach the practice of esthetics and the practice of master-level esthetics at a
281 licensed esthetics school, a licensed cosmetology/barber school, or in an apprenticeship
282 program as defined in Subsection 58-11a-306(3).

283 [~~(15)~~] (17) "Fund" means the Barber, Cosmetologist/Barber, Esthetician, Electrologist,
284 and Nail Technician Education and Enforcement Fund created in Section 58-11a-103.

285 [~~(16)~~] (18) "Licensed barber or cosmetology/barber school" means a barber or
286 cosmetology/barber school licensed under this chapter.

287 [~~(17)~~] (19) "Licensed electrology school" means an electrology school licensed under
288 this chapter.

289 [~~(18)~~] (20) "Licensed esthetics school" means an esthetics school licensed under this
290 chapter.

291 [~~(19)~~] (21) "Licensed nail technology school" means a nail technology school licensed
292 under this chapter.

293 [~~(20)~~] (22) "Master esthetician" means an individual who is licensed under this chapter
294 to engage in the practice of master-level esthetics.

295 [~~(21)~~] (23) "Nail technician" means an individual who is licensed under this chapter to
296 engage in the practice of nail technology.

297 [~~(22)~~] (24) "Nail technician instructor" means a nail technician licensed under this
298 chapter to teach the practice of nail technology in a licensed nail technology school, a licensed
299 cosmetology/barber school, or in an apprenticeship program as defined in Subsection
300 58-11a-306(5).

301 [~~(23)~~] (25) "Practice of barbering" means:

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

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

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

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

309 ~~[(25)]~~ (27) "Practice of basic esthetics" means any one of the following skin care
310 procedures done on the head, face, neck, arms, hands, legs, feet, eyebrows, or eyelashes for
311 cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

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

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

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

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

322 (e) except as provided in Subsection (27)(e)(i), cosmetic laser procedures under
323 ~~[direct] the direct cosmetic medical procedure supervision of a [licensed health care~~
324 ~~practitioner as defined by rule,]~~ cosmetic supervisor limited to the following:

325 (i) superfluous hair removal which shall be under indirect supervision;

326 (ii) anti-aging resurfacing enhancements;

327 (iii) photo rejuvenation; or

328 (iv) tattoo removal.

329 ~~[(26)]~~ (28) (a) "Practice of cosmetology/barbering" means:

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

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

335 (iii) arching eyebrows, or tinting eyebrows or eyelashes, applying eyelash extensions,

336 or any combination of these procedures;

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

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

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

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

344 (i) the practice of basic esthetics; and

345 (ii) the practice of nail technology.

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

348 [(27)] (29) "Practice of cosmetology/barbering instruction" means instructing
349 cosmetology/barbering as defined in Subsection [(26)] (28) in a licensed cosmetology/barber
350 school or in an apprenticeship program as defined in Subsection 58-11a-306(2).

351 [(28)] (30) "Practice of electrology" means:

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

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

356 [(29)] (31) "Practice of electrology instruction" means instructing electrology in a
357 licensed electrology school.

358 [(30)] (32) "Practice of esthetics instruction" means instructing esthetics in a licensed
359 esthetics school, a licensed cosmetology/barber school, or instructing master-level esthetics in a
360 licensed esthetics school or in an apprenticeship program as defined in Subsections
361 58-11a-306(2), (3), and (4).

362 [(31)] (33) (a) "Practice of master-level esthetics" means:

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

366 (A) body wraps as defined by rule;

- 367 (B) hydrotherapy as defined by rule;
- 368 (C) chemical exfoliation as defined by rule;
- 369 (D) advanced pedicures as defined by rule;
- 370 (E) sanding, including microdermabrasion;
- 371 (F) advanced extraction;
- 372 (G) other esthetic preparations or procedures with the use of:
- 373 (I) the hands; or
- 374 (II) a mechanical or electrical apparatus which is approved for use by division rule for
- 375 beautifying or similar work performed on the body for cosmetic purposes and not for the
- 376 treatment of a medical, physical, or mental ailment; or
- 377 (H) cosmetic laser procedures under the ~~[general]~~ supervision of a ~~[licensed health care~~
- 378 ~~practitioner as defined by rule;]~~ cosmetic supervisor with a physician's evaluation before the
- 379 procedure, as needed, unless specifically required under Section 58-1-506, and limited to the
- 380 following:
- 381 (I) superfluous hair removal;
- 382 (II) anti-aging resurfacing enhancements;
- 383 (III) photo rejuvenation; or
- 384 (IV) tattoo removal with a physician's evaluation before the tattoo removal procedure;
- 385 and
- 386 (ii) lymphatic massage by manual or other means as defined by rule.
- 387 (b) Notwithstanding the provisions of Subsection ~~[(31)]~~ (33)(a), a master-level
- 388 esthetician may perform procedures listed in Subsection ~~[(31)]~~ (33)(a)(i)(H) ~~[for noncosmetic~~
- 389 ~~purposes]~~ if done under the supervision of a ~~[licensed health care practitioner]~~ cosmetic
- 390 supervisor acting within the scope of the ~~[licensed health care practitioner's]~~ cosmetic
- 391 supervisor license ~~[as defined by rule]~~.
- 392 (c) The term "practice of master-level esthetics" includes the practice of esthetics, but
- 393 an individual is not required to be licensed as an esthetician or master-level esthetician to
- 394 engage in the practice of threading.
- 395 ~~[(32)]~~ (34) "Practice of nail technology" means to trim, cut, clean, manicure, shape,
- 396 massage, or enhance the appearance of the hands, feet, and nails of an individual by the use of
- 397 hands, mechanical, or electrical preparation, antiseptic, lotions, or creams, including the

398 application and removal of sculptured or artificial nails.

399 ~~[(33)]~~ (35) "Practice of nail technology instruction" means instructing nail technology
400 in a licensed nail technician school, licensed cosmetology/barber school, or in an
401 apprenticeship program as defined in Subsection 58-11a-306(5).

402 ~~[(34)]~~ (36) "Recognized barber school" means a barber school located in a state other
403 than Utah, whose students, upon graduation, are recognized as having completed the
404 educational requirements for licensure in that state.

405 ~~[(35)]~~ (37) "Recognized cosmetology/barber school" means a cosmetology/barber
406 school located in a state other than Utah, whose students, upon graduation, are recognized as
407 having completed the educational requirements for licensure in that state.

408 ~~[(36)]~~ (38) "Recognized electrology school" means an electrology school located in a
409 state other than Utah, whose students, upon graduation, are recognized as having completed the
410 educational requirements for licensure in that state.

411 ~~[(37)]~~ (39) "Recognized esthetics school" means an esthetics school located in a state
412 other than Utah, whose students, upon graduation, are recognized as having completed the
413 educational requirements for licensure in that state.

414 ~~[(38)]~~ (40) "Recognized nail technology school" means a nail technology school
415 located in a state other than Utah, whose students, upon graduation, are recognized as having
416 completed the educational requirements for licensure in that state.

417 ~~[(39)]~~ (41) "Salon" means a place, shop, or establishment in which
418 cosmetology/barbering, esthetics, electrology, or nail technology is practiced.

419 ~~[(40)]~~ (42) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-11a-502.

420 ~~[(41)]~~ (43) "Unprofessional conduct" is as defined in Sections 58-1-501 and
421 58-11a-501 and as may be further defined by rule by the division in collaboration with the
422 board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

423 Section 6. Section **58-11a-502** is amended to read:

424 **58-11a-502. Unlawful conduct.**

425 Unlawful conduct includes:

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

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

429 (b) an exemption in Section 58-1-307 or 58-11a-304 applies;
430 (2) knowingly employing any other person to engage in or practice or attempt to
431 engage in or practice any occupation or profession licensed under this chapter if the employee
432 is not licensed to do so under this chapter or exempt from licensure;

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

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

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

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

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

446 Section 7. Section **58-16a-102** is amended to read:

447 **58-16a-102. Definitions.**

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

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

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

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

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

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

454 (3) (a) "Contact lens prescription" means a written or verbal order for contact lenses
455 that includes:

456 (i) the commencement date of the prescription;

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

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

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

- 460 (A) the name of the prescribing optometrist or physician; and
461 (B) the date when the prescription was issued or ordered.
462 (b) A prescription may include:
463 (i) a limit on the quantity of lenses that may be ordered under the prescription if
464 required for medical reasons documented in the patient's files; and
465 (ii) the expiration date of the prescription, which shall be two years from the
466 commencement date, unless documented medical reasons require otherwise.
467 (c) When a provider prescribes a private label contact lens for a patient the prescription
468 shall include:
469 (i) the name of the manufacturer;
470 (ii) the trade name of the private label brand; and
471 (iii) if applicable, the trade name of the equivalent national brand.
472 (4) "Contact lens prescription verification" means a written request from a person who
473 sells or provides contact lenses that:
474 (a) is sent to the prescribing optometrist or physician; and
475 (b) seeks the confirmation of the accuracy of a patient's prescription.
476 (5) "Eye and its adnexa" means the human eye and all structures situated within the
477 orbit, including the conjunctiva, lids, lashes, and lacrimal system.
478 (6) "Fitting of a contact lens" means:
479 (a) the using of a keratometer to measure the human eye;
480 (b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and
481 (c) trial fitting of contact lenses, which includes a period of time for evaluation for fit
482 and performance, to determine a tentative contact lens prescription for a patient if the patient:
483 (i) has not worn contact lenses before; or
484 (ii) has changed to a different type or base curve.
485 (7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized
486 by means of laser or ionizing radiation.
487 (8) "Ophthalmic lens" means any lens used to treat the eye and that:
488 (a) has a spherical, cylindrical, or prismatic power;
489 (b) is made pursuant to an unexpired prescription; and
490 (c) is intended to be used in eyeglasses or spectacles.

- 491 (9) "Optometric assistant" means an unlicensed individual:
492 (a) working under the direct and immediate supervision of a licensed optometrist; and
493 (b) engaged in specific tasks assigned by the licensed optometrist in accordance with
494 the standards and ethics of the profession.
- 495 (10) "Optometrist" or "optometric physician" means an individual licensed under this
496 chapter.
- 497 (11) "Optometry" and "practice of optometry" mean any one or any combination of the
498 following practices:
- 499 (a) examination of the human eye and its adnexa to detect and diagnose defects or
500 abnormal conditions;
- 501 (b) determination or modification of the accommodative or refractive state of the
502 human eye or its range or power of vision by administration and prescription of pharmaceutical
503 agents or the use of diagnostic instruments;
- 504 (c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact
505 lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to
506 diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its
507 adnexa;
- 508 (d) display of any advertisement, circular, sign, or device offering to:
- 509 (i) examine the eyes;
- 510 (ii) fit glasses or contact lenses; or
- 511 (iii) adjust frames;
- 512 (e) removal of a foreign body from the eye or its adnexa, that is not deeper than the
513 anterior 1/2 of the cornea;
- 514 (f) consultation regarding the eye and its adnexa with other appropriate health care
515 providers, including referral to other appropriate health care providers; and
- 516 (g) a person, not licensed as an optometrist, directing a licensee under this chapter to
517 withhold or alter the eye care services the licensee has ordered.
- 518 (12) "Pharmaceutical agent" means any diagnostic or therapeutic drug or combination
519 of drugs that has the property of assisting in the diagnosis, prevention, treatment, or mitigation
520 of abnormal conditions or symptoms of the eye and its adnexa.
- 521 (13) "Physician" has the same meaning as defined in [~~Subsection 58-67-102(7)~~]

522 Sections 58-67-102 and 58-68-102.

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

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

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

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

528 Section 8. Section **58-67-102** is amended to read:

529 **58-67-102. Definitions.**

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

531 (1) "Ablative procedure" means a procedure that is expected to excise, vaporize,
532 disintegrate, or remove living tissue, including the use of carbon dioxide lasers and
533 erbium:YAG lasers, and excluding hair removal.

534 [~~(1)~~] (2) "ACGME" means the Accreditation Council for Graduate Medical Education
535 of the American Medical Association.

536 [~~(2)~~] (3) "Administrative penalty" means a monetary fine or citation imposed by the
537 division for acts or omissions determined to constitute unprofessional or unlawful conduct, in
538 accordance with a fine schedule established by the division in collaboration with the board, as a
539 result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4,
540 Administrative Procedures Act.

541 [~~(3)~~] (4) "Board" means the Physicians Licensing Board created in Section 58-67-201.

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

547 (b) Notwithstanding Subsection (5)(a), if an ANSI designated Class IIIa and lower
548 powered device is being used to perform an ablative procedure, the device is included in the
549 definition of cosmetic medical device under Subsection (5)(a).

550 (6) "Cosmetic medical procedure":

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

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

554 [~~(4)~~] (7) "Diagnose" means:

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

559 (b) to attempt to conduct an examination or determination described under Subsection
560 [~~(4)~~] (7)(a);

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

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

566 [~~(5)~~] (8) "LCME" means the Liaison Committee on Medical Education of the
567 American Medical Association.

568 [~~(6)~~] (9) "Medical assistant" means an unlicensed individual working under the direct
569 and immediate supervision of a licensed physician and surgeon and engaged in specific tasks
570 assigned by the licensed physician and surgeon in accordance with the standards and ethics of
571 the profession.

572 (10) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to
573 alter living tissue, but is not intended or expected to excise, vaporize, disintegrate, or remove
574 living tissue.

575 (ii) Notwithstanding Subsection (10)(a)(i), nonablative procedure includes hair
576 removal.

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

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

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

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

582 [~~(7)~~] (11) "Physician" means both physicians and surgeons licensed under Section
583 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under

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

585 ~~[(8)]~~ (12) (a) "Practice of medicine" means:

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

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

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

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

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

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

613 (ii) an ablative cosmetic medical procedure if the scope of practice for the person
614 performing the ablative cosmetic medical procedure includes the authority to operate or

615 perform a surgical procedure; or

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

617 ~~[(9)]~~ (13) "Prescription device" means an instrument, apparatus, implement, machine,
618 contrivance, implant, in vitro reagent, or other similar or related article, and any component
619 part or accessory, which is required under federal or state law to be prescribed by a practitioner
620 and dispensed by or through a person or entity licensed under this chapter or exempt from
621 licensure under this chapter.

622 ~~[(10)]~~ (14) "Prescription drug" means a drug that is required by federal or state law or
623 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

624 ~~[(11)]~~ (15) "SPEX" means the Special Purpose Examination of the Federation of State
625 Medical Boards.

626 ~~[(12)]~~ (16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

627 ~~[(13)]~~ (17) "Unprofessional conduct" is as defined in Sections 58-1-501 and
628 58-67-502, and as may be further defined by division rule.

629 Section 9. Section **58-67-805** is enacted to read:

630 **58-67-805. Supervision of cosmetic medical procedures.**

631 (1) Except as provided in Subsection (2), a physician may not delegate the performance
632 of an ablative cosmetic medical procedure to an individual who is not licensed under this
633 chapter or Chapter 68, Utah Osteopathic Medical Practice Act.

634 (2) A physician may delegate to an advanced practice registered nurse with an
635 unrestricted license under Chapter 31b, Nurse Practice Act, the performance of an erbium full
636 ablation resurfacing procedure or a CO2 fractionated resurfacing procedure, if the physician:

637 (a) prescribes that specific procedure for the patient who is to receive the procedure;

638 (b) ensures that the advanced practice registered nurse performs the procedure under
639 the indirect supervision of the physician; and

640 (c) verifies that the advanced practice registered nurse is qualified to perform the
641 procedure by having received at least 50 hours of training specific to the procedure to be
642 performed and the laser to be used.

643 Section 10. Section **58-68-102** is amended to read:

644 **58-68-102. Definitions.**

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

646 (1) "Ablative procedure" means a procedure that is expected to excise, vaporize,
647 disintegrate, or remove living tissue, including the use of carbon dioxide lasers and
648 erbium:YAG lasers, and excluding hair removal.

649 [~~(1)~~] (2) "ACGME" means the Accreditation Council for Graduate Medical Education
650 of the American Medical Association.

651 [~~(2)~~] (3) "Administrative penalty" means a monetary fine imposed by the division for
652 acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an
653 adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
654 Procedures Act.

655 [~~(3)~~] (4) "AOA" means the American Osteopathic Association.

656 [~~(4)~~] (5) "Board" means the Osteopathic Physician and Surgeon's Licensing Board
657 created in Section 58-68-201.

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

663 (b) Notwithstanding Subsection (6)(a), if an ANSI designated Class IIIa and lower
664 powered device is being used to perform an ablative procedure, the device is included in the
665 definition of cosmetic medical device under Subsection (6)(a).

666 (7) "Cosmetic medical procedure":

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

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

670 [~~(5)~~] (8) "Diagnose" means:

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

675 (b) to attempt to conduct an examination or determination described under Subsection
676 [~~(5)~~] (8)(a);

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

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

682 ~~[(6)]~~ (9) "Medical assistant" means an unlicensed individual working under the direct
683 and immediate supervision of a licensed osteopathic physician and surgeon and engaged in
684 specific tasks assigned by the licensed osteopathic physician and surgeon in accordance with
685 the standards and ethics of the profession.

686 (10) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to
687 alter living tissue, but is not expected or intended to excise, vaporize, disintegrate, or remove
688 living tissue.

689 (ii) Notwithstanding Subsection (10)(a)(i), nonablative procedure includes hair
690 removal.

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

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

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

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

696 ~~[(7)]~~ (11) "Physician" means both physicians and surgeons licensed under Section
697 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
698 Section 58-68-301, Utah Osteopathic Medical Practice Act.

699 ~~[(8)]~~ (12) (a) "Practice of osteopathic medicine" means:

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

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

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

713 ~~[(d)]~~ (iv) to use, in the conduct of any occupation or profession pertaining to the
714 diagnosis or treatment of human diseases or conditions, in any printed material, stationery,
715 letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic
716 medicine," "osteopathic physician," "osteopathic surgeon," "osteopathic physician and
717 surgeon," "Dr.," "D.O.," or any combination of these designations in any manner which might
718 cause a reasonable person to believe the individual using the designation is a licensed
719 osteopathic physician, and if the party using the designation is not a licensed osteopathic
720 physician, the designation must additionally contain the description of the branch of the healing
721 arts for which the person has a license, provided that an individual who has received an earned
722 degree of doctor of osteopathic medicine but is not a licensed osteopathic physician and
723 surgeon in Utah may use the designation "D.O." if it is followed by "Not Licensed" or "Not
724 Licensed in Utah" in the same size and style of lettering.

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

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

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

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

733 ~~[(9)]~~ (13) "Prescription device" means an instrument, apparatus, implement, machine,
734 contrivance, implant, in vitro reagent, or other similar or related article, and any component
735 part or accessory, which is required under federal or state law to be prescribed by a practitioner
736 and dispensed by or through a person or entity licensed under this chapter or exempt from
737 licensure under this chapter.

738 ~~[(10)]~~ (14) "Prescription drug" means a drug that is required by federal or state law or

739 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

740 [~~(11)~~] (15) "SPEX" means the Special Purpose Examination of the Federation of State
741 Medical Boards.

742 [~~(12)~~] (16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

743 [~~(13)~~] (17) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502
744 and as may be further defined by division rule.

745 Section 11. Section **58-68-805** is enacted to read:

746 **58-68-805. Supervision of cosmetic medical procedures.**

747 An osteopathic physician and surgeon may not delegate the performance of an ablative
748 cosmetic medical procedure to an individual who is not licensed under this chapter or Chapter
749 67, Utah Medical Practice Act.