

SB0040S05 compared with SB0040S04

~~{deleted text}~~ shows text that was in SB0040S04 but was deleted in SB0040S05.

inserted text shows text that was not in SB0040S04 but was inserted into SB0040S05.

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~~{Senator Peter C. Knudson}~~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;

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- ▶ prohibits the use of the term "medical" under certain circumstances;
- ▶ exempts certain licensees from the definition of cosmetic medical procedures;†
- ▶ establishes standards for the supervision of cosmetic medical procedures;
- ▶ amends the definition of the practice of medicine; and
- ▶ amends provisions of unprofessional conduct for physicians and other licensees whose scope of practice includes cosmetic medical procedures.

Money Appropriated in this Bill:

None

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

58-1-507, Utah Code Annotated 1953

58-67-805, Utah Code Annotated 1953

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":

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

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

(b) "Nonablative procedure" does not include:

(i) a superficial procedure;

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

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

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

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

~~[(7)]~~ (11) "Unprofessional conduct" has the meaning given in Subsection 58-1-501(2).

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

58-1-505. ~~f. Cosmetic~~ Cosmetic medical procedure supervisor.

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

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(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 Subsections (2)(f)(~~(iii)~~i) and (~~(2)~~(~~(i)~~iii):

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

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

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

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

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

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

(d) "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 60 minutes or 60 miles of the cosmetic medical facility.

(e) "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.

(f) "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 nonablative cosmetic medical procedure for hair removal shall:

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

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

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(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 nonablative cosmetic medical procedure for hair removal, or authorize and delegate the procedure to a member of delegation group A or B;

(e) during the nonablative cosmetic medical procedure for hair removal provide general cosmetic medical procedure supervision to individuals in delegation group A performing the procedure, except physician assistants, who shall be supervised as provided in Chapter 70a, Physician Assistant Act, 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) ~~or (3)(b)(ii)~~;

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

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

(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~~ medical procedures an individual is permitted to perform under this title;

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

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(L) cardio-pulmonary resuscitation (CPR).

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

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

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

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

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

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

(b) the supervisor supervising the procedure shall:

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

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

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

~~(I) a registered nurse or a master esthetician;~~

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

~~(II) a registered nurse;~~

~~(III) a master esthetician;~~ or

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

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

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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 ~~and~~; and

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

(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 nonablative cosmetic medical procedure and the person who is performing the nonablative cosmetic medical procedure;

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

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

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

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

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

~~}{58-1-507 is enacted to read:~~

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

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

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

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

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

Section 5. 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.

(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.

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(8) "Cosmetic laser procedure" ~~means only~~ includes a nonablative 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.

~~(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

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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 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) except as provided in Subsection (27)(e)(i), cosmetic laser procedures under

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[direct] the direct cosmetic medical procedure supervision of a [licensed health care practitioner as defined by rule,] cosmetic supervisor limited to the following:

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

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(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, unless specifically required under Section 58-1-506, and limited to the following:

(I) superfluous hair removal;

(II) anti-aging resurfacing enhancements;

(III) photo rejuvenation; or

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

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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)(H) ~~[for noncosmetic purposes]~~ if done under the supervision of a ~~[licensed health care practitioner]~~ cosmetic supervisor acting within the scope of the ~~[licensed health care practitioner's]~~ cosmetic supervisor 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.

~~[(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

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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 ~~55~~6. 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~~[-];~~or

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

Section ~~66~~7. Section **58-16a-102** is amended to read:

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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

(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.

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- (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 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:

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- (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 ~~{7}~~8. 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, vaporize, disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium:YAG lasers, and excluding hair removal.

[~~(+)~~] (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 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,

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Administrative Procedures Act.

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

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

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

(6) "Cosmetic medical procedure":

(a) includes the use of cosmetic medical devices to perform ablative or nonablative 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)]~~ (7)(a);

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

(d) to make an examination or determination as described in Subsection ~~[(4)]~~ (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)]~~ (8) "LCME" means the Liaison Committee on Medical Education of the American Medical Association.

~~[(6)]~~ (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

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the profession.

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

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

(b) "Nonablative procedure" does not include:

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

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

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

~~[(7)]~~ (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)]~~ (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 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)(a) that is performed by a person legally and in accordance with a license issued under another chapter of this title 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)]~~ (12)(a) whether or not for compensation; or

~~[(d)]~~ (iv) 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 medicine," "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these

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designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed physician and surgeon, and if the party using the designation is not a licensed physician and surgeon, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an individual who has received an earned degree of doctor of medicine degree but is not a licensed physician and surgeon in Utah may use the designation "M.D." 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)]~~ (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)]~~ (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)]~~ (15) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

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

~~[(13)]~~ (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 ~~{8}~~9. Section **58-67-805** is enacted to read:

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

~~{A}~~(1) Except as provided in Subsection (2), a physician may not delegate the performance of an ablative cosmetic medical procedure to an individual who is not licensed

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under this chapter or Chapter 68, Utah Osteopathic Medical Practice Act.

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

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

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

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

Section ~~(9)~~10. 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, vaporize, disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium:YAG lasers, and excluding hair removal.

~~(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.

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

(b) Notwithstanding Subsection (6)(a), if an ANSI designated Class IIIa and lower

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powered device is being used to perform an ablative procedure, the device is included in the definition of cosmetic medical device under Subsection (6)(a).

(7) "Cosmetic medical procedure":

(a) includes the use of cosmetic medical devices to perform ablative or nonablative 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)~~ (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)~~ (8)(a); or

(d) to make an examination or determination as described in Subsection ~~(5)~~ (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)~~ (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) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to alter living tissue, but is not expected or intended to excise, vaporize, disintegrate, or remove living tissue.

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

(b) "Nonablative procedure" does not include:

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

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

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

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

~~[(7)]~~ (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)]~~ (12) (a) "Practice of osteopathic medicine" means:

~~[(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)(a) that is performed by a person legally and in accordance with a license issued under another chapter of this title 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) 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 if the party using the designation is not a licensed osteopathic physician, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an individual who has received an earned degree of doctor of osteopathic medicine but is not a licensed osteopathic physician and surgeon in Utah may use the designation "D.O." 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)]~~ (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)]~~ (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)]~~ (15) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

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

~~[(13)]~~ (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 ~~†10~~ 11. Section **58-68-805** is enacted to read:

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

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