

1                   **MEDICAL AND OSTEOPATHIC PRACTICE ACT**

2                                   **AMENDMENTS**

3   2012 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Peter C. Knudson**

6                                   House Sponsor: \_\_\_\_\_

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill amends the Utah Medical Practice Act and the Utah Osteopathic Practice Act.

11                   **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ defines cosmetic medical laser procedure;
- 14                   ▶ includes cosmetic medical laser procedure in the definition of the practice of  
15 medicine;
- 16                   ▶ clarifies that the inclusion of an ablative procedure in the definition of cosmetic  
17 medical laser procedure does not limit other professionals' scope of practice when  
18 "operate" or "surgery" is part of the professionals' practice act;
- 19                   ▶ permits the delegation of certain cosmetic medical laser procedures by a physician;
- 20                   ▶ requires supervision by a physician if the cosmetic medical laser procedure is  
21 delegated;
- 22                   ▶ prohibits the delegation of supervision when supervision is required; and  
23                   ▶ makes technical amendments.

24                   **Money Appropriated in this Bill:**

25                   None

26                   **Other Special Clauses:**

27                   None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **58-16a-102**, as last amended by Laws of Utah 2004, Chapters 48 and 280

31 **58-67-102**, as last amended by Laws of Utah 2011, Chapter 214

32 **58-68-102**, as last amended by Laws of Utah 2011, Chapter 214

33 ENACTS:

34 **58-67-805**, Utah Code Annotated 1953

35 **58-68-805**, Utah Code Annotated 1953



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

38 Section 1. Section **58-16a-102** is amended to read:

39 **58-16a-102. Definitions.**

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

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

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

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

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

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

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

47 that includes:

48 (i) the commencement date of the prescription;

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

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

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

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

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

54 (b) A prescription may include:

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

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

57 (ii) the expiration date of the prescription, which shall be two years from the

58 commencement date, unless documented medical reasons require otherwise.

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

- 61 (i) the name of the manufacturer;
- 62 (ii) the trade name of the private label brand; and
- 63 (iii) if applicable, the trade name of the equivalent national brand.

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

- 66 (a) is sent to the prescribing optometrist or physician; and
- 67 (b) seeks the confirmation of the accuracy of a patient's prescription.

68 (5) "Eye and its adnexa" means the human eye and all structures situated within the  
69 orbit, including the conjunctiva, lids, lashes, and lacrimal system.

70 (6) "Fitting of a contact lens" means:

- 71 (a) the using of a keratometer to measure the human eye;
- 72 (b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and
- 73 (c) trial fitting of contact lenses, which includes a period of time for evaluation for fit  
74 and performance, to determine a tentative contact lens prescription for a patient if the patient:

- 75 (i) has not worn contact lenses before; or
- 76 (ii) has changed to a different type or base curve.

77 (7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized  
78 by means of laser or ionizing radiation.

79 (8) "Ophthalmic lens" means any lens used to treat the eye and that:

- 80 (a) has a spherical, cylindrical, or prismatic power;
- 81 (b) is made pursuant to an unexpired prescription; and
- 82 (c) is intended to be used in eyeglasses or spectacles.

83 (9) "Optometric assistant" means an unlicensed individual:

- 84 (a) working under the direct and immediate supervision of a licensed optometrist; and
- 85 (b) engaged in specific tasks assigned by the licensed optometrist in accordance with  
86 the standards and ethics of the profession.

87 (10) "Optometrist" or "optometric physician" means an individual licensed under this  
88 chapter.

89 (11) "Optometry" and "practice of optometry" mean any one or any combination of the

90 following practices:

91 (a) examination of the human eye and its adnexa to detect and diagnose defects or  
92 abnormal conditions;

93 (b) determination or modification of the accommodative or refractive state of the  
94 human eye or its range or power of vision by administration and prescription of pharmaceutical  
95 agents or the use of diagnostic instruments;

96 (c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact  
97 lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to  
98 diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its  
99 adnexa;

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

101 (i) examine the eyes;

102 (ii) fit glasses or contact lenses; or

103 (iii) adjust frames;

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

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

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

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

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

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

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

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

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

120 Section 2. Section **58-67-102** is amended to read:

121 **58-67-102. Definitions.**

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

123 (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the  
124 American Medical Association.125 (2) "Administrative penalty" means a monetary fine or citation imposed by the division  
126 for acts or omissions determined to constitute unprofessional or unlawful conduct, in  
127 accordance with a fine schedule established by the division in collaboration with the board, as a  
128 result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4,  
129 Administrative Procedures Act.

130 (3) "Board" means the Physicians Licensing Board created in Section 58-67-201.

131 (4) "Cosmetic medical laser procedure" includes:132 (a) the use of tissue altering energy based devices that have the potential for severe  
133 injury such as American National Standards Institute designated Class IIIb and Class IV lasers,  
134 intense pulsed light, radio frequency devices, and lipolytic devices;135 (b) an ablative procedure that is expected to excise, burn, or vaporize the skin below  
136 the dermo-epidermal junction;137 (c) a non-ablative procedure that is not expected or intended to excise, burn, or  
138 vaporize the epidermal surface of the skin, including:139 (i) use of a laser for hair removal; and140 (ii) use of a pulsed light device; and141 (d) other procedures as may be defined by the division by administrative rule adopted  
142 in consultation with the board.143 [~~4~~] (5) "Diagnose" means:144 (a) to examine in any manner another person, parts of a person's body, substances,  
145 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's  
146 body, to determine the source, nature, kind, or extent of a disease or other physical or mental  
147 condition;148 (b) to attempt to conduct an examination or determination described under Subsection  
149 [~~4~~] (5)(a);150 (c) to hold oneself out as making or to represent that one is making an examination or  
151 determination as described in Subsection [~~4~~] (5)(a); or

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

155 [~~(5)~~] (6) "LCME" means the Liaison Committee on Medical Education of the  
156 American Medical Association.

157 [~~(6)~~] (7) "Medical assistant" means an unlicensed individual working under the direct  
158 and immediate supervision of a licensed physician and surgeon and engaged in specific tasks  
159 assigned by the licensed physician and surgeon in accordance with the standards and ethics of  
160 the profession.

161 [~~(7)~~] (8) "Physician" means both physicians and surgeons licensed under Section  
162 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under  
163 Section 58-68-301, Utah Osteopathic Medical Practice Act.

164 [~~(8)~~] (9) "Practice of medicine" means:

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

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

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

178 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or  
179 treatment of human diseases or conditions in any printed material, stationery, letterhead,  
180 envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine,"  
181 "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these  
182 designations in any manner which might cause a reasonable person to believe the individual

183 using the designation is a licensed physician and surgeon, and if the party using the designation  
 184 is not a licensed physician and surgeon, the designation must additionally contain the  
 185 description of the branch of the healing arts for which the person has a license, provided that an  
 186 individual who has received an earned degree of doctor of medicine degree but is not a licensed  
 187 physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not  
 188 Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

189 ~~[(9)]~~ (10) "Prescription device" means an instrument, apparatus, implement, machine,  
 190 contrivance, implant, in vitro reagent, or other similar or related article, and any component  
 191 part or accessory, which is required under federal or state law to be prescribed by a practitioner  
 192 and dispensed by or through a person or entity licensed under this chapter or exempt from  
 193 licensure under this chapter.

194 ~~[(10)]~~ (11) "Prescription drug" means a drug that is required by federal or state law or  
 195 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

196 ~~[(11)]~~ (12) "SPEX" means the Special Purpose Examination of the Federation of State  
 197 Medical Boards.

198 ~~[(12)]~~ (13) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

199 ~~[(13)]~~ (14) "Unprofessional conduct" is as defined in Sections 58-1-501 and  
 200 58-67-502, and as may be further defined by division rule.

201 Section 3. Section **58-67-805** is enacted to read:

202 **58-67-805. Supervision of cosmetic medical laser procedures.**

203 (1) (a) Except as provided in Subsection (1)(b), a physician may not delegate:

204 (i) a cosmetic medical laser procedure to an individual who is not licensed under this  
 205 chapter or Chapter 68, Utah Osteopathic Medical Practice Act; or

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

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

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

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

213 (b) be immediately available during the procedure for consultation, advice, instruction,

214 and evaluation in person;

215 (c) prescribe medical protocols for the procedure;

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

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

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

219 (ii) in accordance with administrative rules adopted by the division in consultation with

220 the board, has maintained competence to perform non-ablative cosmetic medical procedures

221 through documented training of at least 50 hours, and experience regarding:

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

224 (B) physiology of the skin;

225 (C) skin typing and analysis;

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

227 (E) pre and post operative care;

228 (F) infection control;

229 (G) laser and light physics training;

230 (H) laser technologies and applications;

231 (I) safety and maintenance of lasers;

232 (J) cosmetic laser hair removal procedures; and

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

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

235 Section 4. Section **58-68-102** is amended to read:

236 **58-68-102. Definitions.**

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

238 (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the  
239 American Medical Association.

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

244 (3) "AOA" means the American Osteopathic Association.



245 (4) "Board" means the Osteopathic Physician and Surgeon's Licensing Board created in  
246 Section 58-68-201.

247 (5) "Cosmetic medical laser procedure" includes:

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

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

253 (c) a non-ablative procedure that is not expected or intended to excise, burn, or  
254 vaporize the epidermal surface of the skin, including:

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

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

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

259 [~~5~~] (6) "Diagnose" means:

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

264 (b) to attempt to conduct an examination or determination described under Subsection  
265 [~~5~~] (6)(a);

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

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

271 [~~6~~] (7) "Medical assistant" means an unlicensed individual working under the direct  
272 and immediate supervision of a licensed osteopathic physician and surgeon and engaged in  
273 specific tasks assigned by the licensed osteopathic physician and surgeon in accordance with  
274 the standards and ethics of the profession.

275 [~~7~~] (8) "Physician" means both physicians and surgeons licensed under Section

276 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under  
277 Section 58-68-301, Utah Osteopathic Medical Practice Act.

278 [~~8~~] (9) "Practice of osteopathic medicine" means:

279 (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human  
280 disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real  
281 or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part  
282 is based upon emphasis of the importance of the musculoskeletal system and manipulative  
283 therapy in the maintenance and restoration of health, by an individual in Utah or outside of the  
284 state upon or for any human within the state, except that conduct described in this Subsection  
285 [~~8~~] (9)(a) that is performed by a person legally and in accordance with a license issued under  
286 another chapter of this title, including a scope of practice that includes the authority to operate  
287 or a surgical procedure, does not constitute the practice of medicine;

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

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

293 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or  
294 treatment of human diseases or conditions, in any printed material, stationery, letterhead,  
295 envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine,"  
296 "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.,"  
297 "D.O.," or any combination of these designations in any manner which might cause a  
298 reasonable person to believe the individual using the designation is a licensed osteopathic  
299 physician, and if the party using the designation is not a licensed osteopathic physician, the  
300 designation must additionally contain the description of the branch of the healing arts for which  
301 the person has a license, provided that an individual who has received an earned degree of  
302 doctor of osteopathic medicine but is not a licensed osteopathic physician and surgeon in Utah  
303 may use the designation "D.O." if it is followed by "Not Licensed" or "Not Licensed in Utah"  
304 in the same size and style of lettering.

305 [~~9~~] (10) "Prescription device" means an instrument, apparatus, implement, machine,  
306 contrivance, implant, in vitro reagent, or other similar or related article, and any component

307 part or accessory, which is required under federal or state law to be prescribed by a practitioner  
308 and dispensed by or through a person or entity licensed under this chapter or exempt from  
309 licensure under this chapter.

310 ~~[(10)]~~ (11) "Prescription drug" means a drug that is required by federal or state law or  
311 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

312 ~~[(11)]~~ (12) "SPEX" means the Special Purpose Examination of the Federation of State  
313 Medical Boards.

314 ~~[(12)]~~ (13) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

315 ~~[(13)]~~ (14) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502  
316 and as may be further defined by division rule.

317 Section 5. Section **58-68-805** is enacted to read:

318 **58-68-805. Supervision of cosmetic medical laser procedures.**

319 (1) (a) Except as provided in Subsection (1)(b), a physician may not delegate:

320 (i) a cosmetic laser procedure to an individual who is not licensed under this chapter or  
321 Chapter 68, Utah Osteopathic Medical Practice Act; or

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

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

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

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

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

331 (c) prescribe medical protocols for the procedure;

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

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

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

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

- 338           (A) the appropriate standard of care for performing non-ablative cosmetic medical  
339 procedures;
- 340           (B) physiology of the skin;  
341           (C) skin typing and analysis;  
342           (D) skin conditions, disorders, and diseases;  
343           (E) pre and post operative care;  
344           (F) infection control;  
345           (G) laser and light physics training;  
346           (H) laser technologies and applications;  
347           (I) safety and maintenance of lasers;  
348           (J) cosmetic laser hair removal procedures; and  
349           (K) recognition and appropriate management of complications from a procedure.  
350           (3) Failure to comply with the provisions of this section is unprofessional conduct.
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**Legislative Review Note**  
**as of 1-16-12 6:13 PM**

**Office of Legislative Research and General Counsel**