

28 **58-68-502**, as last amended by Laws of Utah 2014, Chapter 72



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

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

32 **58-17b-309. Exemptions from licensure.**

33 [~~(1) For purposes of this section:~~]

34 [~~(a) "Cosmetic drug":~~]

35 [~~(i) means a prescription drug that is:~~]

36 [~~(A) for the purpose of promoting attractiveness or altering the appearance of an~~
37 ~~individual; and]~~

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

41 [~~(ii) does not include a prescription drug that is:~~]

42 [~~(A) a controlled substance;~~]

43 [~~(B) compounded by the physician; or]~~

44 [~~(C) prescribed or used for the patient for the purpose of diagnosing, curing, or~~
45 ~~preventing a disease.]~~

46 [~~(b) "Injectable weight loss drug":~~]

47 [~~(i) means an injectable prescription drug:~~]

48 [~~(A) prescribed to promote weight loss; and]~~

49 [~~(B) listed as an injectable prescription drug subject to exemption under this section by~~
50 ~~the division by administrative rule; and]~~

51 [~~(ii) does not include a prescription drug that is a controlled substance.]~~

52 [~~(c) "Prescribing practitioner" means an individual licensed under:~~]

53 [~~(i) Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse with~~
54 ~~prescriptive practice;]~~

55 [~~(ii) Chapter 67, Utah Medical Practice Act;]~~

56 [~~(iii) Chapter 68, Utah Osteopathic Medical Practice Act; or]~~

57 [~~(iv) Chapter 70a, Physician Assistant Act.]~~

58 [~~(2)~~] In addition to the exemptions from licensure in [~~Sections~~] Section 58-1-307 [~~and~~

59 ~~58-17b-309.5~~, the following individuals may engage in the acts or practices described in this
60 section without being licensed under this chapter:

61 ~~[(a) if the individual is described in Subsections (2)(b), (d), or (e), the individual
62 notifies the division in writing of the individual's intent to dispense a drug under this
63 subsection;]~~

64 ~~[(b) (1) a person selling or providing contact lenses in accordance with Section
65 58-16a-801; and~~

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

69 ~~[(d) a prescribing practitioner who prescribes and dispenses a cosmetic drug or an
70 injectable weight loss drug to the prescribing practitioner's patient in accordance with
71 Subsection (5);]~~

72 ~~[(e) an optometrist, as defined in Section 58-16a-102, acting within the optometrist's
73 scope of practice as defined in Section 58-16a-601, who prescribes and dispenses a cosmetic
74 drug to the optometrist's patient in accordance with Subsection (5); and]~~

75 ~~[(f) (2) an animal shelter that:~~

76 ~~[(i) (a) under the indirect supervision of a veterinarian, stores, handles, or administers
77 a drug used for euthanising an animal; and~~

78 ~~[(ii) (b) under the indirect supervision of a veterinarian who is under contract with the
79 animal shelter, stores, handles, or administers a rabies vaccine.~~

80 ~~[(3) In addition to the exemptions from licensure in Section 58-1-307, a person selling
81 or providing contact lenses in accordance with Section 58-16a-801 is exempt from the
82 licensing provisions of this chapter.]~~

83 ~~[(4) In accordance with Subsection 58-1-303(1)(a), an individual exempt under
84 Subsection (2)(c) must take all examinations as required by division rule following completion
85 of an approved curriculum of education, within the required time frame. This exemption
86 expires immediately upon notification of a failing score of an examination, and the individual
87 may not continue working as a pharmacy technician even under direct supervision.]~~

88 ~~[(5) A prescribing practitioner or optometrist is exempt from licensing under the
89 provisions of this part if the prescribing practitioner or optometrist:]~~

90 ~~[(a) (i) writes a prescription for a drug the prescribing practitioner or optometrist has~~
91 ~~the authority to dispense under Subsection (5)(b); and]~~

92 ~~[(ii) informs the patient:]~~

93 ~~[(A) that the prescription may be filled at a pharmacy or dispensed in the prescribing~~
94 ~~practitioner's or optometrist's office;]~~

95 ~~[(B) of the directions for appropriate use of the drug;]~~

96 ~~[(C) of potential side-effects to the use of the drug; and]~~

97 ~~[(D) how to contact the prescribing practitioner or optometrist if the patient has~~
98 ~~questions or concerns regarding the drug;]~~

99 ~~[(b) dispenses a cosmetic drug or injectable weight loss drug only to the prescribing~~
100 ~~practitioner's patients or for an optometrist, dispenses a cosmetic drug only to the optometrist's~~
101 ~~patients;]~~

102 ~~[(c) follows labeling, record keeping, patient counseling, storage, purchasing and~~
103 ~~distribution, operating, treatment, and quality of care requirements established by~~
104 ~~administrative rule adopted by the division in consultation with the boards listed in Subsection~~
105 ~~(6)(a); and]~~

106 ~~[(d) follows USP-NF 797 standards for sterile compounding if the drug dispensed to~~
107 ~~patients is reconstituted or compounded.]~~

108 ~~[(6) (a) The division, in consultation with the board under this chapter and the relevant~~
109 ~~professional board, including the Physician Licensing Board, the Osteopathic Physician~~
110 ~~Licensing Board, the Physician Assistant Licensing Board, the Board of Nursing, the~~
111 ~~Optometrist Licensing Board, or the Online Prescribing, Dispensing, and Facilitation Board;~~
112 ~~shall adopt administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative~~
113 ~~Rulemaking Act to designate:]~~

114 ~~[(i) the prescription drugs that may be dispensed as a cosmetic drug or weight loss drug~~
115 ~~under this section; and]~~

116 ~~[(ii) the requirements under Subsection (5)(c).]~~

117 ~~[(b) When making a determination under Subsection (1)(a), the division and boards~~
118 ~~listed in Subsection (6)(a) may consider any federal Food and Drug Administration indications~~
119 ~~or approval associated with a drug when adopting a rule to designate a prescription drug that~~
120 ~~may be dispensed under this section.]~~

121 ~~[(c) The division may inspect the office of a prescribing practitioner or optometrist~~
 122 ~~who is dispensing under the provisions of this section, in order to determine whether the~~
 123 ~~prescribing practitioner or optometrist is in compliance with the provisions of this section. If a~~
 124 ~~prescribing practitioner or optometrist chooses to dispense under the provisions of this section,~~
 125 ~~the prescribing practitioner or optometrist consents to the jurisdiction of the division to inspect~~
 126 ~~the prescribing practitioner's or optometrist's office and determine if the provisions of this~~
 127 ~~section are being met by the prescribing practitioner or optometrist.]~~

128 ~~[(d) If a prescribing practitioner or optometrist violates a provision of this section, the~~
 129 ~~prescribing practitioner or optometrist may be subject to discipline under:]~~

130 ~~[(i) this chapter; and]~~

131 ~~[(ii) (A) Chapter 16a, Utah Optometry Practice Act;]~~

132 ~~[(B) Chapter 31b, Nurse Practice Act;]~~

133 ~~[(C) Chapter 67, Utah Medical Practice Act;]~~

134 ~~[(D) Chapter 68, Utah Osteopathic Medical Practice Act;]~~

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

136 ~~[(F) Chapter 83, Online Prescribing, Dispensing, and Facilitation Act.]~~

137 ~~[(7) Except as provided in Subsection (2)(c), this section does not restrict or limit the~~
 138 ~~scope of practice of an optometrist or optometric physician licensed under Chapter 16a, Utah~~
 139 ~~Optometry Practice Act.]~~

140 Section 2. Section **58-17b-803** is amended to read:

141 **58-17b-803. Qualifications for licensure as a dispensing medical practitioner --**
 142 **Scope of practice.**

143 (1) An applicant for a license as a dispensing medical practitioner shall:

144 (a) be licensed in good standing under at least one of the chapters listed in Subsection
 145 [58-17b-102\(23\)\(a\)](#); and

146 (b) submit an application for a license as a dispensing medical practitioner in a form
 147 prescribed by the division and pay a fee established by the division.

148 (2) The division shall accept the licensing in good standing under Subsection (1) in lieu
 149 of requiring an applicant for a license under this part to comply with Sections [58-17b-303](#) and
 150 [58-17b-307](#).

151 (3) A dispensing medical practitioner may dispense, in accordance with this part:

- 152 (a) a cosmetic drug and an injectable weight loss drug if:
 - 153 (i) the drug was prescribed by the dispensing medical practitioner to the dispensing
 - 154 medical practitioner's patient; and
 - 155 (ii) the dispensing medical practitioner complies with administrative rules adopted by
 - 156 the division under [~~Subsection~~] Section 58-17-802~~(+)~~;
- 157 (b) a cancer drug treatment regimen if the dispensing medical practitioner complies
- 158 with Section 58-17b-805; and
- 159 (c) a pre-packaged drug to an employee or a dependent of an employee at an employer
- 160 sponsored clinic if the dispensing medical practitioner:
 - 161 (i) treats an employee, or the dependent of an employee, of one of an exclusive group
 - 162 of employers at an employer sponsored clinic;
 - 163 (ii) prescribes a prepackaged drug to the employee or the employee's dependent;
 - 164 (iii) dispenses the prepackaged drug at the employer sponsored clinic; and
 - 165 (iv) complies with administrative rules adopted by the division in consultation with the
 - 166 Board of Pharmacy that establish labeling, record keeping, patient counseling, purchasing and
 - 167 distribution, operating, treatment, quality of care, and storage requirements.
- 168 (4) A dispensing medical practitioner:
 - 169 (a) shall inform the patient:
 - 170 (i) that the drug dispensed by the practitioner may be obtained from a pharmacy
 - 171 unaffiliated with the practitioner;
 - 172 (ii) of the directions for appropriate use of the dispensed drug;
 - 173 (iii) of potential side effects to the use of the dispensed drug; and
 - 174 (iv) how to contact the dispensing medical practitioner if the patient has questions or
 - 175 concerns regarding the drug;
 - 176 (b) shall report to the controlled substance database in the same manner as required in
 - 177 Section 58-37f-203; and
 - 178 (c) may delegate the dispensing of the drug if the individual to whom the dispensing
 - 179 was delegated is:
 - 180 (i) employed by the dispensing medical practitioner or the outpatient clinic setting in
 - 181 which the dispensing medical practitioner works; and
 - 182 (ii) acting under the direction of a dispensing medical practitioner who is immediately

183 available on site for any necessary consultation.

184 (5) If the chapter that governs the license of a dispensing medical practitioner, as listed
185 in Subsection 58-17b-102(23), requires physician supervision in its scope of practice
186 requirements, the dispensing medical practitioner shall only dispense a drug under the
187 supervision of an individual licensed under Chapter 67, Utah Medical Practice Act, or Chapter
188 68, Utah Osteopathic Medical Practice Act.

189 Section 3. Section 58-67-502 is amended to read:

190 **58-67-502. Unprofessional conduct.**

191 "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:

192 (1) using or employing the services of any individual to assist a licensee in any manner
193 not in accordance with the generally recognized practices, standards, or ethics of the
194 profession, state law, or division rule;

195 (2) making a material misrepresentation regarding the qualifications for licensure under
196 Section 58-67-302.7; or

197 (3) violating the dispensing requirements of [~~Section 58-17b-309 or~~] Chapter 17b, Part
198 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if
199 applicable.

200 Section 4. Section 58-68-502 is amended to read:

201 **58-68-502. Unprofessional conduct.**

202 "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:

203 (1) using or employing the services of any individual to assist a licensee in any manner
204 not in accordance with the generally recognized practices, standards, or ethics of the
205 profession, state law, or division rule; or

206 (2) violating the dispensing requirements of [~~Section 58-17b-309 or~~] Chapter 17b, Part
207 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if
208 applicable.

209 Section 5. **Effective date.**

210 This bill takes effect on July 1, 2015.

Legislative Review Note
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Office of Legislative Research and General Counsel