

1 **MEDICAL SCHOOL GRADUATES ASSISTANT PHYSICIAN**

2 **LICENSURE**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Stewart E. Barlow**

6 Senate Sponsor: _____

7

LONG TITLE

8 **General Description:**

9 This bill creates a restricted license enabling a medical school graduate to practice
10 medicine under certain conditions.
11

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ creates the restricted assistant physician license;
- 16 ▶ describes licensure requirements;
- 17 ▶ describes the scope of practice of a restricted assistant physician license;
- 18 ▶ permits a qualified physician to enter into a cooperative practice arrangement with a

19 licensed assistant physician;

- 20 ▶ describes a cooperative practice arrangement;
- 21 ▶ requires the Division of Occupational and Professional Licensing to make rules

22 regarding:

- 23 • the approval of cooperative practice arrangements; and
- 24 • educational methods and programs for assistant physicians; and

- 25 ▶ makes technical changes.

26 **Money Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 This bill provides a special effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

- 32 **58-67-102**, as last amended by Laws of Utah 2013, Chapter 262
- 33 **58-67-303**, as last amended by Laws of Utah 2011, Chapter 206
- 34 **58-67-304**, as last amended by Laws of Utah 2011, Chapters 161 and 214
- 35 **58-67-502**, as last amended by Laws of Utah 2015, Chapters 110 and 206
- 36 **58-67-601**, as last amended by Laws of Utah 2013, Chapter 364
- 37 **58-68-102**, as last amended by Laws of Utah 2013, Chapter 262
- 38 **58-68-303**, as last amended by Laws of Utah 2005, Chapter 94
- 39 **58-68-304**, as last amended by Laws of Utah 2011, Chapters 161 and 214
- 40 **58-68-502**, as last amended by Laws of Utah 2015, Chapters 110 and 206
- 41 **58-68-601**, as last amended by Laws of Utah 2013, Chapter 364

42 ENACTS:

- 43 **58-67-302.8**, Utah Code Annotated 1953
- 44 **58-67-807**, Utah Code Annotated 1953
- 45 **58-68-302.5**, Utah Code Annotated 1953
- 46 **58-68-807**, Utah Code Annotated 1953



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

49 Section 1. Section **58-67-102** is amended to read:

50 **58-67-102. Definitions.**

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

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

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

57 (3) "Administrative penalty" means a monetary fine or citation imposed by the division
58 for acts or omissions determined to constitute unprofessional or unlawful conduct, in

59 accordance with a fine schedule established by the division in collaboration with the board, as a
60 result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4,
61 Administrative Procedures Act.

62 (4) "Assistant physician" means an individual licensed under Section 58-67-302.8.

63 [~~(4)~~] (5) "Board" means the Physicians Licensing Board created in Section 58-67-201.

64 (6) "Collaborating physician" means an individual licensed under Section 58-67-302

65 who enters into a collaborative practice arrangement with an assistant physician.

66 (7) "Collaborative practice arrangement" means the arrangement described in Section

67 58-67-807.

68 [~~(5)~~] (8) (a) "Cosmetic medical device" means tissue altering energy based devices that
69 have the potential for altering living tissue and that are used to perform ablative or nonablative
70 procedures, such as American National Standards Institute (ANSI) designated Class IIIb and
71 Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices, and
72 excludes ANSI designated Class IIIa and lower powered devices.

73 (b) Notwithstanding Subsection [~~(5)~~] (8)(a), if an ANSI designated Class IIIa and lower
74 powered device is being used to perform an ablative procedure, the device is included in the
75 definition of cosmetic medical device under Subsection [~~(5)~~] (8)(a).

76 [~~(6)~~] (9) "Cosmetic medical procedure":

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

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

80 [~~(7)~~] (10) "Diagnose" means:

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

85 (b) to attempt to conduct an examination or determination described under Subsection
86 [~~(7)~~] (10)(a);

87 (c) to hold oneself out as making or to represent that one is making an examination or
88 determination as described in Subsection [~~(7)~~] (10)(a); or

89 (d) to make an examination or determination as described in Subsection [~~(7)~~] (10)(a)

90 upon or from information supplied directly or indirectly by another person, whether or not in
91 the presence of the person making or attempting the diagnosis or examination.

92 ~~[(8)]~~ (11) "LCME" means the Liaison Committee on Medical Education of the
93 American Medical Association.

94 ~~[(9)]~~ (12) "Medical assistant" means an unlicensed individual working under the
95 indirect supervision of a licensed physician and surgeon and engaged in specific tasks assigned
96 by the licensed physician and surgeon in accordance with the standards and ethics of the
97 profession.

98 (13) "Medically underserved area" means a geographic area in which there is a
99 shortage of primary care health services for residents, as determined by the Department of
100 Health.

101 (14) "Medically underserved population" means a specified group of people living in a
102 defined geographic area with a shortage of primary care health services, as determined by the
103 Department of Health.

104 ~~[(10)]~~ (15) (a) (i) "Nonablative procedure" means a procedure that is expected or
105 intended to alter living tissue, but is not intended or expected to excise, vaporize, disintegrate,
106 or remove living tissue.

107 (ii) Notwithstanding Subsection ~~[(10)]~~ (15)(a)(i), nonablative procedure includes hair
108 removal.

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

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

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

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

115 ~~[(11)]~~ (16) "Physician" means both physicians and surgeons licensed under Section
116 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
117 Section 58-68-301, Utah Osteopathic Medical Practice Act.

118 ~~[(12)]~~ (17) (a) "Practice of medicine" means:

119 (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
120 disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real

121 or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any
122 means or instrumentality, and by an individual in Utah or outside the state upon or for any
123 human within the state;

124 (ii) when a person not licensed as a physician directs a licensee under this chapter to
125 withhold or alter the health care services that the licensee has ordered;

126 (iii) to maintain an office or place of business for the purpose of doing any of the acts
127 described in Subsection [~~(12)~~] (17)(a) whether or not for compensation; or

128 (iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
129 treatment of human diseases or conditions in any printed material, stationery, letterhead,
130 envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine,"
131 "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these
132 designations in any manner which might cause a reasonable person to believe the individual
133 using the designation is a licensed physician and surgeon, and if the party using the designation
134 is not a licensed physician and surgeon, the designation must additionally contain the
135 description of the branch of the healing arts for which the person has a license, provided that an
136 individual who has received an earned degree of doctor of medicine degree but is not a licensed
137 physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not
138 Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

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

140 (i) except for an ablative medical procedure as provided in Subsection [~~(12)~~]
141 (17)(b)(ii), the conduct described in Subsection [~~(12)~~] (17)(a)(i) that is performed in
142 accordance with a license issued under another chapter of this title;

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

146 (iii) conduct under Subsection [58-67-501\(2\)](#).

147 [~~(13)~~] (18) "Prescription device" means an instrument, apparatus, implement, machine,
148 contrivance, implant, in vitro reagent, or other similar or related article, and any component
149 part or accessory, which is required under federal or state law to be prescribed by a practitioner
150 and dispensed by or through a person or entity licensed under this chapter or exempt from
151 licensure under this chapter.

152 ~~[(14)]~~ (19) "Prescription drug" means a drug that is required by federal or state law or
153 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

154 ~~[(15)]~~ (20) "SPEX" means the Special Purpose Examination of the Federation of State
155 Medical Boards.

156 ~~[(16)]~~ (21) "Unlawful conduct" ~~[is as]~~ means the same as that term is defined in
157 Sections [58-1-501](#) and [58-67-501](#).

158 ~~[(17)]~~ (22) "Unprofessional conduct" ~~[is as]~~ means the same as that term is defined in
159 Sections [58-1-501](#) and [58-67-502](#), and as may be further defined by division rule.

160 Section 2. Section **58-67-302.8** is enacted to read:

161 **58-67-302.8. Restricted licensing of an assistant physician.**

162 (1) An individual may apply for a restricted license as an assistant physician if the
163 individual:

164 (a) meets the requirements described in Subsections [58-67-302\(1\)\(a\)](#) through (c),
165 (1)(d)(i), and (1)(g) through (j);

166 (b) successfully completes Step 1 and Step 2 of the United States Medical Licensing
167 Examination or the equivalent steps of another board-approved medical licensing examination:

168 (i) within three years after the day on which the applicant graduates from a program
169 described in Subsection [58-67-302\(1\)\(d\)\(i\)](#); and

170 (ii) (A) within two years before applying for a restricted license as an assistant
171 physician; or

172 (B) after the two-year period described in Subsection (1)(b)(ii)(A), if the applicant is in
173 a residency program when the two-year period ends and applies for a restricted license as an
174 assistant physician within 30 days after the last day in which the applicant was enrolled in a
175 residency program; and

176 (c) is not currently enrolled in and has not completed a residency program.

177 (2) Before a licensed assistant physician may engage in the practice of medicine as
178 described in Subsection (3), the licensed assistant physician shall:

179 (a) enter into a collaborative practice arrangement described in Section [58-67-807](#)
180 within six months after the assistant physician's initial licensure; and

181 (b) receive division approval of the collaborative practice arrangement.

182 (3) An assistant physician's scope of practice is limited to primary care services to

183 medically underserved populations or in medically underserved areas within the state.

184 Section 3. Section **58-67-303** is amended to read:

185 **58-67-303. Term of license -- Expiration -- Renewal.**

186 (1) (a) Except as provided in Section [58-67-302.7](#), the division shall issue each license
187 under this chapter in accordance with a two-year renewal cycle established by division rule.

188 (b) The division may by rule extend or shorten a renewal period by as much as one year
189 to stagger the renewal cycles it administers.

190 (2) At the time of renewal, the licensee shall show compliance with:

191 (a) continuing education renewal requirements; and

192 (b) the requirement for designation of a contact person and alternate contact person for
193 access to medical records and notice to patients as required by Subsections [58-67-304\(1\)\(b\)](#)
194 and (c).

195 (3) Each license issued under this chapter expires on the expiration date shown on the
196 license unless renewed in accordance with Section [58-1-308](#).

197 (4) An individual may not be licensed as an assistant physician for more than a total of
198 four years.

199 Section 4. Section **58-67-304** is amended to read:

200 **58-67-304. License renewal requirements.**

201 (1) As a condition precedent for license renewal, each licensee shall, during each
202 two-year licensure cycle or other cycle defined by division rule:

203 (a) complete qualified continuing professional education requirements in accordance
204 with the number of hours and standards defined by division rule made in collaboration with the
205 board;

206 (b) appoint a contact person for access to medical records and an alternate contact
207 person for access to medical records in accordance with Subsection [58-67-302\(1\)\(i\)](#); ~~and~~

208 (c) if the licensee practices medicine in a location with no other persons licensed under
209 this chapter, provide some method of notice to the licensee's patients of the identity and
210 location of the contact person and alternate contact person for the licensee[-]; and

211 (d) if the licensee is an assistant physician licensed under Section [58-67-302.8](#),
212 successfully complete the educational methods and programs described in Subsection
213 [58-67-807\(4\)](#).

214 (2) If a renewal period is extended or shortened under Section 58-67-303, the
215 continuing education hours required for license renewal under this section are increased or
216 decreased proportionally.

217 (3) An application to renew a license under this chapter shall:

218 (a) require a physician to answer the following question: "Do you perform elective
219 abortions in Utah in a location other than a hospital?"; and

220 (b) immediately following the question, contain the following statement: "For purposes
221 of the immediately preceding question, elective abortion means an abortion other than one of
222 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
223 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
224 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
225 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
226 the woman is pregnant as a result of rape or incest."

227 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
228 to the licensing of an abortion clinic, if a physician responds positively to the question
229 described in Subsection (3)(a), the division shall, within 30 days after the day on which it
230 renews the physician's license under this chapter, inform the Department of Health in writing:

231 (a) of the name and business address of the physician; and

232 (b) that the physician responded positively to the question described in Subsection
233 (3)(a).

234 Section 5. Section 58-67-502 is amended to read:

235 **58-67-502. Unprofessional conduct.**

236 (1) "Unprofessional conduct" includes, in addition to the definition in Section
237 58-1-501:

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

241 (b) making a material misrepresentation regarding the qualifications for licensure under
242 Section 58-67-302.7 or Section 58-67-302.8; or

243 (c) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical
244 Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable.

- 245 (2) "Unprofessional conduct" does not include, in compliance with Section 58-85-103:
246 (a) obtaining an investigational drug or investigational device;
247 (b) administering the investigational drug to an eligible patient; or
248 (c) treating an eligible patient with the investigational drug or investigational device.

249 Section 6. Section 58-67-601 is amended to read:

250 **58-67-601. Mentally incompetent or incapacitated physician.**

251 (1) As used in this section:

252 (a) "Incapacitated person" means a person who is incapacitated, as defined in Section
253 75-1-201.

254 (b) "Mental illness" [~~is as~~] means the same as that term is defined in Section
255 62A-15-602.

256 (c) "Physician" means an individual licensed under this chapter.

257 (2) If a court of competent jurisdiction determines a physician is an incapacitated
258 person or that the physician has a mental illness and is unable to safely engage in the practice
259 of medicine, the director shall immediately suspend the license of the physician upon the entry
260 of the judgment of the court, without further proceedings under Title 63G, Chapter 4,
261 Administrative Procedures Act, regardless of whether an appeal from the court's ruling is
262 pending. The director shall promptly notify the physician, in writing, of the suspension.

263 (3) (a) If the division and a majority of the board find reasonable cause to believe a
264 physician, who is not determined judicially to be an incapacitated person or to have a mental
265 illness, is incapable of practicing medicine with reasonable skill regarding the safety of
266 patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or
267 physical condition, the board shall recommend that the director file a petition with the division,
268 and cause the petition to be served upon the physician with a notice of hearing on the sole issue
269 of the capacity of the physician to competently and safely engage in the practice of medicine.

270 (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4,
271 Administrative Procedures Act, except as provided in Subsection (4).

272 (4) (a) Every physician who accepts the privilege of being licensed under this chapter
273 gives consent to:

274 (i) submitting at the physician's own expense to an immediate mental or physical
275 examination when directed in writing by the division and a majority of the board to do so; and

276 (ii) the admissibility of the reports of the examining physician's testimony or
277 examination, and waives all objections on the ground the reports constitute a privileged
278 communication.

279 (b) The examination may be ordered by the division, with the consent of a majority of
280 the board, only upon a finding of reasonable cause to believe:

281 (i) the physician has a mental illness, is incapacitated, or otherwise unable to practice
282 medicine with reasonable skill and safety; and

283 (ii) immediate action by the division and the board is necessary to prevent harm to the
284 physician's patients or the general public.

285 (c) (i) Failure of a physician to submit to the examination ordered under this section is
286 a ground for the division's immediate suspension of the physician's license by written order of
287 the director.

288 (ii) The division may enter the order of suspension without further compliance with
289 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
290 submit to the examination ordered under this section was due to circumstances beyond the
291 control of the physician and was not related directly to the illness or incapacity of the
292 physician.

293 (5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right
294 to a hearing to appeal the suspension within 10 days after the license is suspended.

295 (b) The hearing held under this subsection shall be conducted in accordance with
296 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
297 for the continuance of the order of suspension in order to prevent harm to the physician's
298 patients or the general public.

299 (6) A physician whose license is revoked, suspended, or in any way restricted under
300 this section may request the division and the board to consider, at reasonable intervals,
301 evidence presented by the physician, under procedures established by division rule, regarding
302 any change in the physician's condition, to determine whether:

303 (a) the physician is or is not able to safely and competently engage in the practice of
304 medicine; and

305 (b) the physician is qualified to have the physician's license to practice under this
306 chapter restored completely or in part.

307 Section 7. Section **58-67-807** is enacted to read:

308 **58-67-807. Collaborative practice arrangement.**

309 (1) (a) The division, in consultation with the board, shall make rules in accordance
310 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the approval of a
311 collaborative practice arrangement.

312 (b) The division shall require a collaborative practice arrangement to:

313 (i) limit the assistant physician to providing primary care services to medically
314 underserved populations or in medically underserved areas within the state;

315 (ii) be consistent with the skill, training, and competence of the assistant physician;

316 (iii) specify jointly agreed-upon protocols, or standing orders for the delivery of health
317 care services by the assistant physician;

318 (iv) provide complete names, home and business addresses, zip codes, and telephone
319 numbers of the collaborating physician and the assistant physician;

320 (v) list all other offices or locations besides those listed in Subsection (1)(b)(iv) where
321 the collaborating physician authorizes the assistant physician to prescribe;

322 (vi) require at every office where the assistant physician is authorized to prescribe in
323 collaboration with a physician a prominently displayed disclosure statement informing patients
324 that patients may be seen by an assistant physician and have the right to see the collaborating
325 physician;

326 (vii) specify all specialty or board certifications of the collaborating physician and all
327 certifications of the assistant physician;

328 (viii) specify the manner of collaboration between the collaborating physician and the
329 assistant physician, including how the collaborating physician and the assistant physician shall:

330 (A) engage in collaborative practice consistent with each professional's skill, training,
331 education, and competence;

332 (B) maintain geographic proximity, except as provided in Subsection (1)(d); and

333 (C) provide oversight of the assistant physician during the absence, incapacity,
334 infirmity, or emergency of the collaborating physician;

335 (ix) describe the assistant physician's controlled substance prescriptive authority in
336 collaboration with the collaborating physician, including:

337 (A) a list of the controlled substances the collaborating physician authorizes the

338 assistant physician to prescribe; and

339 (B) documentation that the authorization to prescribe the controlled substances is
340 consistent with the education, knowledge, skill, and competence of the assistant physician and
341 the collaborating physician;

342 (x) list all other written practice arrangements of the collaborating physician and the
343 assistant physician;

344 (xi) specify the duration of the written practice arrangement between the collaborating
345 physician and the assistant physician; and

346 (xii) describe the time and manner of the collaborating physician's review of the
347 assistant physician's delivery of health care services, including provisions that the collaborating
348 physician, or another physician designated in the collaborative practice arrangement, shall
349 review every 14 days:

350 (A) a minimum of 10% of the charts documenting the assistant physician's delivery of
351 health care services; and

352 (B) a minimum of 20% of the charts in which the assistant physician prescribes a
353 controlled substance, which may be counted in the number of charts to be reviewed under
354 Subsection (1)(b)(xii)(A).

355 (c) An assistant physician and the collaborating physician may modify a collaborative
356 practice arrangement, but the changes to the collaborative practice arrangement are not binding
357 unless:

358 (i) the assistant physician notifies the division within 10 days after the day on which
359 the changes are made; and

360 (ii) the division approves the changes.

361 (d) If the collaborative practice arrangement provides for an assistant physician to
362 practice in a medically underserved area:

363 (i) the collaborating physician shall document the completion of at least a two-month
364 period of time during which the assistant physician shall practice with the collaborating
365 physician continuously present before practicing in a setting where the collaborating physician
366 is not continuously present; and

367 (ii) the collaborating physician shall document the completion of at least 120 hours in a
368 four-month period by the assistant physician during which the assistant physician shall practice

369 with the collaborating physician on-site before prescribing a controlled substance when the
370 collaborating physician is not on-site.

371 (2) An assistant physician:

372 (a) shall clearly identify himself or herself as an assistant physician;

373 (b) is permitted to use the title "doctor" or "Dr."; and

374 (c) if authorized under a collaborative practice arrangement to prescribe Schedule III
375 through V controlled substances, shall register with the United States Drug Enforcement
376 Administration as part of the drug enforcement administration's mid-level practitioner registry.

377 (3) (a) A physician or surgeon licensed and in good standing under Section [58-67-302](#)
378 may enter into a collaborative practice arrangement with an assistant physician licensed under
379 Section [58-67-302.8](#).

380 (b) A physician or surgeon may not enter into a collaborative practice arrangement
381 with more than three full-time equivalent assistant physicians.

382 (c) (i) No contract or other agreement shall:

383 (A) require a physician to act as a collaborating physician for an assistant physician
384 against the physician's will;

385 (B) deny a collaborating physician the right to refuse to act as a collaborating
386 physician, without penalty, for a particular assistant physician; or

387 (C) limit the collaborating physician's ultimate authority over any protocols or standing
388 orders or in the delegation of the physician's authority to any assistant physician.

389 (ii) Subsection (3)(c)(i)(C) does not authorize a physician, in implementing protocols,
390 standing orders, or delegation, to violate a hospital's established applicable standards for safe
391 medical practice.

392 (d) A collaborating physician is responsible at all times for the oversight of the
393 activities of, and accepts responsibility for, the primary care services rendered by the assistant
394 physician.

395 (4) The division shall make rules, in consultation with the board, the deans of medical
396 schools in the state, and primary care residency program directors in the state, and in
397 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing
398 educational methods and programs that:

399 (a) an assistant physician shall complete throughout the duration of the collaborative

400 practice arrangement;

401 (b) shall facilitate the advancement of the assistant physician's medical knowledge and
402 capabilities; and

403 (c) may lead to credit toward a future residency program.

404 Section 8. Section **58-68-102** is amended to read:

405 **58-68-102. Definitions.**

406 In addition to the definitions in Section [58-1-102](#), as used in this chapter:

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

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

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

416 (4) "AOA" means the American Osteopathic Association.

417 (5) "Assistant physician" means an individual licensed under Section [58-68-302.5](#).

418 ~~[(5)]~~ (6) "Board" means the Osteopathic Physician and Surgeon's Licensing Board
419 created in Section [58-68-201](#).

420 (7) "Collaborating physician" means an individual licensed under Section [58-68-302](#)
421 who enters into a collaborative practice arrangement with an assistant physician.

422 (8) "Collaborative practice arrangement" means the arrangement described in Section
423 [58-68-807](#).

424 ~~[(6)]~~ (9) (a) "Cosmetic medical device" means tissue altering energy based devices that
425 have the potential for altering living tissue and that are used to perform ablative or nonablative
426 procedures, such as American National Standards Institute (ANSI) designated Class IIIb and
427 Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices and
428 excludes ANSI designated Class IIIa and lower powered devices.

429 (b) Notwithstanding Subsection ~~[(6)]~~ (9)(a), if an ANSI designated Class IIIa and lower
430 powered device is being used to perform an ablative procedure, the device is included in the

431 definition of cosmetic medical device under Subsection [~~(6)~~] (9)(a).

432 [~~(7)~~] (10) "Cosmetic medical procedure":

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

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

436 [~~(8)~~] (11) "Diagnose" means:

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

441 (b) to attempt to conduct an examination or determination described under Subsection
442 (8)(a);

443 (c) to hold oneself out as making or to represent that one is making an examination or
444 determination as described in Subsection [~~(8)~~] (11)(a); or

445 (d) to make an examination or determination as described in Subsection [~~(8)~~] (11)(a)
446 upon or from information supplied directly or indirectly by another person, whether or not in
447 the presence of the person making or attempting the diagnosis or examination.

448 [~~(9)~~] (12) "Medical assistant" means an unlicensed individual working under the
449 indirect supervision of a licensed osteopathic physician and surgeon and engaged in specific
450 tasks assigned by the licensed osteopathic physician and surgeon in accordance with the
451 standards and ethics of the profession.

452 (13) "Medically underserved area" means a geographic area in which there is a
453 shortage of primary care health services for residents, as determined by the Department of
454 Health.

455 (14) "Medically underserved population" means a specified group of people living in a
456 defined geographic area with a shortage of primary care health services, as determined by the
457 Department of Health.

458 [~~(10)~~] (15) (a) (i) "Nonablative procedure" means a procedure that is expected or
459 intended to alter living tissue, but is not expected or intended to excise, vaporize, disintegrate,
460 or remove living tissue.

461 (ii) Notwithstanding Subsection [~~(10)~~] (15)(a)(i), nonablative procedure includes hair

462 removal.

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

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

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

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

469 ~~[(H)]~~ (16) "Physician" means both physicians and surgeons licensed under Section
470 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
471 Section 58-68-301, Utah Osteopathic Medical Practice Act.

472 ~~[(I2)]~~ (17) (a) "Practice of osteopathic medicine" means:

473 (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
474 disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real
475 or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part
476 is based upon emphasis of the importance of the musculoskeletal system and manipulative
477 therapy in the maintenance and restoration of health, by an individual in Utah or outside of the
478 state upon or for any human within the state;

479 (ii) when a person not licensed as a physician directs a licensee under this chapter to
480 withhold or alter the health care services that the licensee has ordered;

481 (iii) to maintain an office or place of business for the purpose of doing any of the acts
482 described in Subsection ~~[(I2)]~~ (17)(a) whether or not for compensation; or

483 (iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
484 treatment of human diseases or conditions, in any printed material, stationery, letterhead,
485 envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine,"
486 "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.,"
487 "D.O.," or any combination of these designations in any manner which might cause a
488 reasonable person to believe the individual using the designation is a licensed osteopathic
489 physician, and if the party using the designation is not a licensed osteopathic physician, the
490 designation must additionally contain the description of the branch of the healing arts for which
491 the person has a license, provided that an individual who has received an earned degree of
492 doctor of osteopathic medicine but is not a licensed osteopathic physician and surgeon in Utah

493 may use the designation "D.O." if it is followed by "Not Licensed" or "Not Licensed in Utah"
 494 in the same size and style of lettering.

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

496 (i) except for an ablative medical procedure as provided in Subsection ~~[(12)]~~
 497 (17)(b)(ii), the conduct described in Subsection ~~[(12)]~~ (17)(a)(i) that is performed in
 498 accordance with a license issued under another chapter of this title;

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

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

503 ~~[(13)]~~ (18) "Prescription device" means an instrument, apparatus, implement, machine,
 504 contrivance, implant, in vitro reagent, or other similar or related article, and any component
 505 part or accessory, which is required under federal or state law to be prescribed by a practitioner
 506 and dispensed by or through a person or entity licensed under this chapter or exempt from
 507 licensure under this chapter.

508 ~~[(14)]~~ (19) "Prescription drug" means a drug that is required by federal or state law or
 509 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

510 ~~[(15)]~~ (20) "SPEX" means the Special Purpose Examination of the Federation of State
 511 Medical Boards.

512 ~~[(16)]~~ (21) "Unlawful conduct" ~~[is as]~~ means the same as that term is defined in
 513 Sections 58-1-501 and 58-68-501.

514 ~~[(17)]~~ (22) "Unprofessional conduct" ~~[is as]~~ means the same as that term is defined in
 515 Sections 58-1-501 and 58-68-502 and as may be further defined by division rule.

516 Section 9. Section 58-68-302.5 is enacted to read:

517 **58-68-302.5. Restricted licensing of an assistant physician.**

518 (1) An individual may apply for a restricted license as an assistant physician if the
 519 individual:

520 (a) meets the requirements described in Subsections 58-68-302(1)(a) through (c),
 521 (1)(d)(i), and (1)(g) through (j);

522 (b) successfully completes Step 1 and Step 2 of the United States Medical Licensing
 523 Examination or the equivalent steps of another board-approved medical licensing examination;

524 (i) within three years after the day on which the applicant graduates from a program
525 described in Subsection 58-68-302(1)(d)(i); and

526 (ii) (A) within two years before applying for a restricted license as an assistant
527 physician; or

528 (B) after the two-year period described in Subsection (1)(b)(ii)(A), if the applicant is in
529 a residency program when the two-year period ends and applies for a restricted license as an
530 assistant physician within 30 days after the last day in which the applicant was enrolled in a
531 residency program; and

532 (c) is not currently enrolled in and has not completed a residency program.

533 (2) Before a licensed assistant physician may engage in the practice of medicine as
534 described in Subsection (3), the licensed assistant physician shall:

535 (a) enter into a collaborative practice arrangement described in Section 58-68-807
536 within six months after the assistant physician's initial licensure; and

537 (b) receive division approval of the collaborative practice arrangement.

538 (3) An assistant physician's scope of practice is limited to primary care services to
539 medically underserved populations or in medically underserved areas within the state.

540 Section 10. Section **58-68-303** is amended to read:

541 **58-68-303. Term of license -- Expiration -- Renewal.**

542 (1) (a) The division shall issue each license under this chapter in accordance with a
543 two-year renewal cycle established by division rule.

544 (b) The division may by rule extend or shorten a renewal period by as much as one year
545 to stagger the renewal cycles it administers.

546 (2) At the time of renewal, the licensee shall show compliance with:

547 (a) continuing education renewal requirements; and

548 (b) the requirement for designation of a contact person and alternate contact person for
549 access to medical records and notice to patients as required by Subsections 58-68-304(1)(b)
550 and (c).

551 (3) Each license issued under this chapter expires on the expiration date shown on the
552 license unless renewed in accordance with Section 58-1-308.

553 (4) An individual may not be licensed as an assistant physician for more than a total of
554 four years.

555 Section 11. Section **58-68-304** is amended to read:

556 **58-68-304. License renewal requirements.**

557 (1) As a condition precedent for license renewal, each licensee shall, during each
558 two-year licensure cycle or other cycle defined by division rule:

559 (a) complete qualified continuing professional education requirements in accordance
560 with the number of hours and standards defined by division rule in collaboration with the
561 board;

562 (b) appoint a contact person for access to medical records and an alternate contact
563 person for access to medical records in accordance with Subsection [58-68-302\(1\)\(i\)](#); ~~and~~

564 (c) if the licensee practices osteopathic medicine in a location with no other persons
565 licensed under this chapter, provide some method of notice to the licensee's patients of the
566 identity and location of the contact person and alternate contact person for access to medical
567 records for the licensee in accordance with Subsection [58-68-302\(1\)\(j\)](#)~~[-]~~; and

568 (d) if the licensee is an assistant physician licensed under Section [58-68-302.5](#),
569 successfully complete the educational methods and programs described in Subsection
570 [58-68-807\(4\)](#).

571 (2) If a renewal period is extended or shortened under Section [58-68-303](#), the
572 continuing education hours required for license renewal under this section are increased or
573 decreased proportionally.

574 (3) An application to renew a license under this chapter shall:

575 (a) require a physician to answer the following question: "Do you perform elective
576 abortions in Utah in a location other than a hospital?"; and

577 (b) immediately following the question, contain the following statement: "For purposes
578 of the immediately preceding question, elective abortion means an abortion other than one of
579 the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is
580 necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of
581 substantial and irreversible impairment of a major bodily function of a woman, an abortion of a
582 fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where
583 the woman is pregnant as a result of rape or incest."

584 (4) In order to assist the Department of Health in fulfilling its responsibilities relating
585 to the licensing of an abortion clinic, if a physician responds positively to the question

586 described in Subsection (3)(a), the division shall, within 30 days after the day on which it
587 renews the physician's license under this chapter, inform the Department of Health in writing:

- 588 (a) of the name and business address of the physician; and
589 (b) that the physician responded positively to the question described in Subsection
590 (3)(a).

591 Section 12. Section **58-68-502** is amended to read:

592 **58-68-502. Unprofessional conduct.**

593 (1) "Unprofessional conduct" includes, in addition to the definition in Section
594 [58-1-501](#):

595 (a) using or employing the services of any individual to assist a licensee in any manner
596 not in accordance with the generally recognized practices, standards, or ethics of the
597 profession, state law, or division rule; ~~[or]~~

598 (b) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical
599 Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable~~[-];~~ or

600 (c) making a material misrepresentation regarding the qualifications for licensure under
601 Section [58-68-302.5](#).

602 (2) "Unprofessional conduct" does not include, in compliance with Section [58-85-103](#):

- 603 (a) obtaining an investigational drug or investigational device;
604 (b) administering the investigational drug to an eligible patient; or
605 (c) treating an eligible patient with the investigational drug or investigational device.

606 Section 13. Section **58-68-601** is amended to read:

607 **58-68-601. Mentally incompetent or incapacitated osteopathic physician.**

608 (1) As used in this section:

609 (a) "Incapacitated person" means a person who is incapacitated, as defined in Section
610 [75-1-201](#).

611 (b) "Licensee" means an individual licensed under this chapter.

612 ~~[(b)]~~ (c) "Mental illness" ~~[is as]~~ means the same as that term is defined in Section
613 [62A-15-602](#).

614 (2) If a court of competent jurisdiction determines ~~[an osteopathic physician and~~
615 ~~surgeon]~~ a licensee is an incapacitated person or that the ~~[physician or surgeon]~~ licensee has a
616 mental illness and is unable to safely engage in the practice of medicine, the director shall

617 immediately suspend the license of the [~~osteopathic physician and surgeon~~] licensee upon the
618 entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4,
619 Administrative Procedures Act, regardless of whether an appeal from the court's ruling is
620 pending. The director shall promptly notify the [~~osteopathic physician and surgeon~~] licensee,
621 in writing, of the suspension.

622 (3) (a) If the division and a majority of the board find reasonable cause to believe [~~an~~
623 ~~osteopathic physician and surgeon~~] a licensee, who is not determined judicially to be an
624 incapacitated person or to have a mental illness, is incapable of practicing osteopathic medicine
625 with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs
626 or alcohol, or as a result of any mental or physical condition, the board shall recommend that
627 the director file a petition with the division, and cause the petition to be served upon the
628 [~~osteopathic physician and surgeon~~] licensee with a notice of hearing on the sole issue of the
629 capacity of the [~~osteopathic physician and surgeon~~] licensee to competently and [~~safety~~] safely
630 engage in the practice of medicine.

631 (b) The hearing shall be conducted under Section [58-1-109](#), and Title 63G, Chapter 4,
632 Administrative Procedures Act, except as provided in Subsection (4).

633 (4) (a) Every [~~osteopathic physician and surgeon~~] individual who accepts the privilege
634 of being licensed under this chapter gives consent to:

635 (i) submitting at the [~~physician's or surgeon's~~] licensee's own expense to an immediate
636 mental or physical examination when directed in writing by the division and a majority of the
637 board to do so; and

638 (ii) the admissibility of the reports of the examining physician's testimony or
639 examination, and waives all objections on the ground the reports constitute a privileged
640 communication.

641 (b) The examination may be ordered by the division, with the consent of a majority of
642 the board, only upon a finding of reasonable cause to believe:

643 (i) the [~~osteopathic physician and surgeon~~] licensee has a mental illness, is
644 incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

645 (ii) immediate action by the division and the board is necessary to prevent harm to the
646 [~~osteopathic physician and surgeon's~~] licensee's patients or the general public.

647 (c) (i) Failure of [~~an osteopathic physician and surgeon~~] a licensee to submit to the

648 examination ordered under this section is a ground for the division's immediate suspension of
649 the [~~osteopathic physician and surgeon's~~] licensee's license by written order of the director.

650 (ii) The division may enter the order of suspension without further compliance with
651 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
652 submit to the examination ordered under this section was due to circumstances beyond the
653 control of the [~~osteopathic physician and surgeon~~] licensee and was not related directly to the
654 illness or incapacity of the [~~osteopathic physician and surgeon~~] licensee.

655 (5) (a) [~~An osteopathic physician and surgeon~~] A licensee whose license is suspended
656 under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days
657 after the license is suspended.

658 (b) The hearing held under this subsection shall be conducted in accordance with
659 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
660 for the continuance of the order of suspension in order to prevent harm to the [~~osteopathic
661 physician and surgeon's~~] licensee's patients or the general public.

662 (6) [~~An osteopathic physician and surgeon~~] A licensee whose license is revoked,
663 suspended, or in any way restricted under this section may request the division and the board to
664 consider, at reasonable intervals, evidence presented by the [~~osteopathic physician and surgeon~~]
665 licensee, under procedures established by division rule, regarding any change in the
666 [~~osteopathic physician and surgeon's~~] licensee's condition, to determine whether:

667 (a) the [~~physician or surgeon~~] licensee is or is not able to safely and competently
668 engage in the practice of medicine; and

669 (b) the [~~physician or surgeon~~] licensee is qualified to have the [~~physician's or
670 surgeon's~~] licensee's license to practice under this chapter restored completely or in part.

671 Section 14. Section 58-68-807 is enacted to read:

672 **58-68-807. Collaborative practice arrangement.**

673 (1) (a) The division, in consultation with the board, shall make rules in accordance
674 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the approval of a
675 collaborative practice arrangement.

676 (b) The division shall require a collaborative practice arrangement to:

677 (i) limit the assistant physician to providing primary care services to medically
678 underserved populations or in medically underserved areas within the state;

- 679 (ii) be consistent with the skill, training, and competence of the assistant physician;
680 (iii) specify jointly agreed-upon protocols, or standing orders for the delivery of health
681 care services by the assistant physician;
682 (iv) provide complete names, home and business addresses, zip codes, and telephone
683 numbers of the collaborating physician and the assistant physician;
684 (v) list all other offices or locations besides those listed in Subsection (1)(b)(iv) where
685 the collaborating physician authorizes the assistant physician to prescribe;
686 (vi) require at every office where the assistant physician is authorized to prescribe in
687 collaboration with a physician a prominently displayed disclosure statement informing patients
688 that patients may be seen by an assistant physician and have the right to see the collaborating
689 physician;
690 (vii) specify all specialty or board certifications of the collaborating physician and all
691 certifications of the assistant physician;
692 (viii) specify the manner of collaboration between the collaborating physician and the
693 assistant physician, including how the collaborating physician and the assistant physician shall:
694 (A) engage in collaborative practice consistent with each professional's skill, training,
695 education, and competence;
696 (B) maintain geographic proximity, except as provided in Subsection (1)(d); and
697 (C) provide oversight of the assistant physician during the absence, incapacity,
698 infirmity, or emergency of the collaborating physician;
699 (ix) describe the assistant physician's controlled substance prescriptive authority in
700 collaboration with the collaborating physician, including:
701 (A) a list of the controlled substances the collaborating physician authorizes the
702 assistant physician to prescribe; and
703 (B) documentation that the authorization to prescribe the controlled substances is
704 consistent with the education, knowledge, skill, and competence of the assistant physician and
705 the collaborating physician;
706 (x) list all other written practice arrangements of the collaborating physician and the
707 assistant physician;
708 (xi) specify the duration of the written practice arrangement between the collaborating
709 physician and the assistant physician; and

710 (xii) describe the time and manner of the collaborating physician's review of the
711 assistant physician's delivery of health care services, including provisions that the collaborating
712 physician, or another physician designated in the collaborative practice arrangement, shall
713 review every 14 days:

714 (A) a minimum of 10% of the charts documenting the assistant physician's delivery of
715 health care services; and

716 (B) a minimum of 20% of the charts in which the assistant physician prescribes a
717 controlled substance, which may be counted in the number of charts to be reviewed under
718 Subsection (1)(b)(xii)(A).

719 (c) An assistant physician and the collaborating physician may modify a collaborative
720 practice arrangement, but the changes to the collaborative practice arrangement are not binding
721 unless:

722 (i) the assistant physician notifies the division within 10 days after the day on which
723 the changes are made; and

724 (ii) the division approves the changes.

725 (d) If the collaborative practice arrangement provides for an assistant physician to
726 practice in a medically underserved area:

727 (i) the collaborating physician shall document the completion of at least a two-month
728 period of time during which the assistant physician shall practice with the collaborating
729 physician continuously present before practicing in a setting where the collaborating physician
730 is not continuously present; and

731 (ii) the collaborating physician shall document the completion of at least 120 hours in a
732 four-month period by the assistant physician during which the assistant physician shall practice
733 with the collaborating physician on-site before prescribing a controlled substance when the
734 collaborating physician is not on-site.

735 (2) An assistant physician:

736 (a) shall clearly identify himself or herself as an assistant physician;

737 (b) is permitted to use the title "doctor" or "Dr."; and

738 (c) if authorized under a collaborative practice arrangement to prescribe Schedule III
739 through V controlled substances, shall register with the United States Drug Enforcement
740 Administration as part of the drug enforcement administration's mid-level practitioner registry.

741 (3) (a) A physician or surgeon licensed and in good standing under Section 58-68-302
742 may enter into a collaborative practice arrangement with an assistant physician licensed under
743 Section 58-68-302.5.

744 (b) A physician or surgeon may not enter into a collaborative practice arrangement
745 with more than three full-time equivalent assistant physicians.

746 (c) (i) No contract or other agreement shall:

747 (A) require a physician to act as a collaborating physician for an assistant physician
748 against the physician's will;

749 (B) deny a collaborating physician the right to refuse to act as a collaborating
750 physician, without penalty, for a particular assistant physician; or

751 (C) limit the collaborating physician's ultimate authority over any protocols or standing
752 orders or in the delegation of the physician's authority to any assistant physician.

753 (ii) Subsection (3)(c)(i)(C) does not authorize a physician, in implementing such
754 protocols, standing orders, or delegation, to violate a hospital's established applicable standards
755 for safe medical practice.

756 (d) A collaborating physician is responsible at all times for the oversight of the
757 activities of, and accepts responsibility for, the primary care services rendered by the assistant
758 physician.

759 (4) The division shall make rules, in consultation with the board, the deans of medical
760 schools in the state, and primary care residency program directors in the state, and in
761 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing
762 educational methods and programs that:

763 (a) an assistant physician shall complete throughout the duration of the collaborative
764 practice arrangement;

765 (b) shall facilitate the advancement of the assistant physician's medical knowledge and
766 capabilities; and

767 (c) may lead to credit toward a future residency program.

768 **Section 15. Effective date.**

769 This bill takes effect on July 1, 2018.

**Legislative Review Note
Office of Legislative Research and General Counsel**