

HB0396S01 compared with HB0396

~~{deleted text}~~ shows text that was in HB0396 but was deleted in HB0396S01.

Inserted text shows text that was not in HB0396 but was inserted into HB0396S01.

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Representative Stewart E. Barlow proposes the following substitute bill:

MEDICAL SCHOOL GRADUATES ~~{ASSISTANT}~~ASSOCIATE

PHYSICIAN

LICENSURE

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stewart E. Barlow

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the restricted ~~{assistant}~~associate physician license;
- ▶ describes licensure requirements;
- ▶ describes the scope of practice of a restricted ~~{assistant}~~associate physician license;

HB0396S01 compared with HB0396

- ▶ permits a qualified physician to enter into a cooperative practice arrangement with a licensed ~~assistant~~associate physician;
- ▶ describes a cooperative practice arrangement;
- ▶ requires the Division of Occupational and Professional Licensing to make rules regarding:
 - the approval of cooperative practice arrangements; and
 - educational methods and programs for ~~assistant~~associate physicians; ~~---~~ and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

58-67-102, as last amended by Laws of Utah 2013, Chapter 262

58-67-303, as last amended by Laws of Utah 2011, Chapter 206

58-67-304, as last amended by Laws of Utah 2011, Chapters 161 and 214

58-67-502, as last amended by Laws of Utah 2015, Chapters 110 and 206

58-67-601, as last amended by Laws of Utah 2013, Chapter 364

58-68-102, as last amended by Laws of Utah 2013, Chapter 262

58-68-303, as last amended by Laws of Utah 2005, Chapter 94

58-68-304, as last amended by Laws of Utah 2011, Chapters 161 and 214

58-68-502, as last amended by Laws of Utah 2015, Chapters 110 and 206

58-68-601, as last amended by Laws of Utah 2013, Chapter 364

ENACTS:

58-67-302.8, Utah Code Annotated 1953

58-67-807, Utah Code Annotated 1953

58-68-302.5, Utah Code Annotated 1953

58-68-807, Utah Code Annotated 1953

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

HB0396S01 compared with HB0396

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

58-67-102. Definitions.

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

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

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

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

(4) "~~{Assistant}~~ Associate physician" means an individual licensed under Section 58-67-302.8.

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

(6) "Collaborating physician" means an individual licensed under Section 58-67-302 who enters into a collaborative practice arrangement with an ~~{assistant}~~ associate physician.

(7) "Collaborative practice arrangement" means the arrangement described in Section 58-67-807.

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

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

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

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

HB0396S01 compared with HB0396

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

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

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

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

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

(d) to make an examination or determination as described in Subsection ~~[(7)]~~ (10)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

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

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

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

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

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

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

(b) "Nonablative procedure" does not include:

HB0396S01 compared with HB0396

- (i) a superficial procedure as defined in Section 58-1-102;
- (ii) the application of permanent make-up; or
- (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are performed by an individual licensed under this title who is acting within the individual's scope of practice.

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

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

(i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the state upon or for any human within the state;

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

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

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

(b) The practice of medicine does not include:

(i) except for an ablative medical procedure as provided in Subsection ~~[(12)]~~

HB0396S01 compared with HB0396

(17)(b)(ii), the conduct described in Subsection ~~[(12)]~~ (17)(a)(i) that is performed in accordance with a license issued under another chapter of this title;

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

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

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

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

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

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

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

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

58-67-302.8. Restricted licensing of an ~~assistant~~ associate physician.

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

(a) meets the requirements described in Subsections 58-67-302(1)(a) through (c), (1)(d)(i), and (1)(g) through (j);

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

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

(ii) ~~[(A)]~~ within two years before applying for a restricted license as an ~~assistant~~ physician; or

HB0396S01 compared with HB0396

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

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

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

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

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

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

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

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

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

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

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

(a) continuing education renewal requirements; and

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

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

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

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

58-67-304. License renewal requirements.

HB0396S01 compared with HB0396

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

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

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

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

(d) if the licensee is an ~~assistant~~ associate physician licensed under Section 58-67-302.8, successfully complete the educational methods and programs described in Subsection 58-67-807(4).

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

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

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

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

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

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

HB0396S01 compared with HB0396

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

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

58-67-502. Unprofessional conduct.

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

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

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

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

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

(a) obtaining an investigational drug or investigational device;

(b) administering the investigational drug to an eligible patient; or

(c) treating an eligible patient with the investigational drug or investigational device.

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

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

(1) As used in this section:

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

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

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

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

HB0396S01 compared with HB0396

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

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

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

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

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

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

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

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

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

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

(5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right

HB0396S01 compared with HB0396

to a hearing to appeal the suspension within 10 days after the license is suspended.

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

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

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

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

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

58-67-807. Collaborative practice arrangement.

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

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

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

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

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

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

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

(vi) require at every office where the ~~assistant~~ associate physician is authorized to prescribe in collaboration with a physician a prominently displayed disclosure statement

HB0396S01 compared with HB0396

informing patients that patients may be seen by an {assistant}associate physician and have the right to see the collaborating physician;

(vii) specify all specialty or board certifications of the collaborating physician and all certifications of the {assistant}associate physician;

(viii) specify the manner of collaboration between the collaborating physician and the {assistant}associate physician, including how the collaborating physician and the {assistant}associate physician shall:

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

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

(C) provide oversight of the {assistant}associate physician during the absence, incapacity, infirmity, or emergency of the collaborating physician;

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

(A) a list of the controlled substances the collaborating physician authorizes the {assistant}associate physician to prescribe; and

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

(x) list all other written practice arrangements of the collaborating physician and the {assistant}associate physician;

(xi) specify the duration of the written practice arrangement between the collaborating physician and the {assistant}associate physician; and

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

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

(B) a minimum of 20% of the charts in which the {assistant}associate physician prescribes a controlled substance, which may be counted in the number of charts to be

HB0396S01 compared with HB0396

reviewed under Subsection (1)(b)(xii)(A).

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

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

(ii) the division approves the changes.

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

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

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

(2) An ~~assistant~~associate physician:

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

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

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

(3) (a) A physician or surgeon licensed and in good standing under Section 58-67-302 may enter into a collaborative practice arrangement with an ~~assistant~~associate physician licensed under Section 58-67-302.8.

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

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

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

HB0396S01 compared with HB0396

(B) deny a collaborating physician the right to refuse to act as a collaborating physician, without penalty, for a particular ~~{assistant}~~associate physician; or

(C) limit the collaborating physician's ultimate authority over any protocols or standing orders or in the delegation of the physician's authority to any ~~{assistant}~~associate physician.

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

(d) A collaborating physician is responsible at all times for the oversight of the activities of, and accepts responsibility for, the primary care services rendered by the ~~{assistant}~~associate physician.

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

(a) an ~~{assistant}~~associate physician shall complete throughout the duration of the collaborative practice arrangement;

(b) shall facilitate the advancement of the ~~{assistant}~~associate physician's medical knowledge and capabilities; and

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

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

58-68-102. Definitions.

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

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

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

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

HB0396S01 compared with HB0396

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

(5) "~~{Assistant}~~Associate physician" means an individual licensed under Section 58-68-302.5.

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

(7) "Collaborating physician" means an individual licensed under Section 58-68-302 who enters into a collaborative practice arrangement with an ~~{assistant}~~associate physician.

(8) "Collaborative practice arrangement" means the arrangement described in Section 58-68-807.

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

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

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

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

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

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

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

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

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

(d) to make an examination or determination as described in Subsection ~~[(8)]~~ (11)(a)

HB0396S01 compared with HB0396

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

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

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

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

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

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

(b) "Nonablative procedure" does not include:

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

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

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

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

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

(i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part is based upon emphasis of the importance of the musculoskeletal system and manipulative

HB0396S01 compared with HB0396

therapy in the maintenance and restoration of health, by an individual in Utah or outside of the state upon or for any human within the state;

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

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

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

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

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

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

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

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

HB0396S01 compared with HB0396

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

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

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

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

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

58-68-302.5. Restricted licensing of an ~~assistant~~ associate physician.

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

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

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

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

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

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

~~associate physician; and~~

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

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

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

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

HB0396S01 compared with HB0396

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

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

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

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

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

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

(a) continuing education renewal requirements; and

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

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

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

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

58-68-304. License renewal requirements.

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

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

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

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

HB0396S01 compared with HB0396

(d) if the licensee is an ~~assistant~~ associate physician licensed under Section 58-68-302.5, successfully complete the educational methods and programs described in Subsection 58-68-807(4).

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

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

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

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

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

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

(b) that the physician responded positively to the question described in Subsection

(3)(a).

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

58-68-502. Unprofessional conduct.

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

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

(b) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical

HB0396S01 compared with HB0396

Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable~~[-]; or~~

(c) making a material misrepresentation regarding the qualifications for licensure under Section 58-68-302.5.

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

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

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

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

(1) As used in this section:

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

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

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

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

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

HB0396S01 compared with HB0396

engage in the practice of medicine.

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

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

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

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

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

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

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

(c) (i) Failure of [~~an osteopathic physician and surgeon~~] a licensee to submit to the examination ordered under this section is a ground for the division's immediate suspension of the [~~osteopathic physician and surgeon's~~] licensee's license by written order of the director.

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

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

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the [~~osteopathic~~

HB0396S01 compared with HB0396

~~physician and surgeon's~~ licensee's patients or the general public.

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

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

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

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

58-68-807. Collaborative practice arrangement.

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

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

(i) limit the ~~{assistant}~~associate physician to providing primary care services to medically underserved populations or in medically underserved areas within the state;

(ii) be consistent with the skill, training, and competence of the ~~{assistant}~~associate physician;

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

(iv) provide complete names, home and business addresses, zip codes, and telephone numbers of the collaborating physician and the ~~{assistant}~~associate physician;

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

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

(vii) specify all specialty or board certifications of the collaborating physician and all

HB0396S01 compared with HB0396

certifications of the ~~assistant~~ associate physician:

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

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

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

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

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

(A) a list of the controlled substances the collaborating physician authorizes the ~~assistant~~ associate physician to prescribe; and

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

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

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

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

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

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

(c) An ~~assistant~~ associate physician and the collaborating physician may modify a collaborative practice arrangement, but the changes to the collaborative practice arrangement

HB0396S01 compared with HB0396

are not binding unless:

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

(ii) the division approves the changes.

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

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

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

(2) An ~~assistant~~associate physician:

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

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

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

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

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

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

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

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

(C) limit the collaborating physician's ultimate authority over any protocols or standing

HB0396S01 compared with HB0396

orders or in the delegation of the physician's authority to any ~~assistant~~ associate physician.

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

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

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

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

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

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

Section 15. **Effective date.**

This bill takes effect on July 1, 2018.

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Legislative Review Note

Office of Legislative Research and General Counsel