

## HB0092S02 compared with HB0092

~~text~~ shows text that was in HB0092 but was deleted in HB0092S02.

text shows text that was not in HB0092 but was inserted into HB0092S02.

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Representative Rex P. Shipp proposes the following substitute bill:

### MEDICAL PRACTICE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rex P. Shipp**

Senate Sponsor: Curtis S. Bramble

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#### LONG TITLE

##### General Description:

This bill prohibits a physician or surgeon from performing a transgender procedure on ~~a minor~~an individual who is 16 years old or younger.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ makes it unprofessional conduct to perform a medically unnecessary puberty inhibition procedure or a sex characteristic-altering procedure on ~~a minor~~an individual who is 16 years old or younger; and
- ▶ makes technical changes.

##### Money Appropriated in this Bill:

None

## HB0092S02 compared with HB0092

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**58-67-102**, as last amended by Laws of Utah 2017, Chapter 299

**58-67-502**, as last amended by Laws of Utah 2020, Chapter 25

**58-68-102**, as last amended by Laws of Utah 2017, Chapter 299

**58-68-502**, as last amended by Laws of Utah 2020, Chapter 25

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

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) "Associate physician" means an individual licensed under Section 58-67-302.8.

(5) "Attempted sex change" means an attempt or effort to change an individual's body to present that individual as being of a sex or gender that is different from the individual's biological sex at birth.

(6) "Biological sex at birth" means an individual's sex, as being male or female, according to distinct reproductive roles as manifested by sex and reproductive organ anatomy, chromosomal makeup, and endogenous hormone profiles.

~~(5)~~ (7) "Board" means the Physicians Licensing Board created in Section 58-67-201.

## HB0092S02 compared with HB0092

~~[(6)]~~ (8) "Collaborating physician" means an individual licensed under Section 58-67-302 who enters into a collaborative practice arrangement with an associate physician.

~~[(7)]~~ (9) "Collaborative practice arrangement" means the arrangement described in Section 58-67-807.

~~[(8)]~~ (10) (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 ~~[(8)]~~ (10)(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 ~~[(8)]~~ (10)(a).

~~[(9)]~~ (11) "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.

~~[(10)]~~ (12) "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 ~~[(10)]~~ (12)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection ~~[(10)]~~ (12)(a); or

(d) to make an examination or determination as described in Subsection ~~[(10)]~~ (12)(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.

~~[(11)]~~ (13) "LCME" means the Liaison Committee on Medical Education of the American Medical Association.

~~[(12)]~~ (14) "Medical assistant" means an unlicensed individual working under the

## HB0092S02 compared with HB0092

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)]~~ (15) "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)]~~ (16) "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.

(17) (a) "Medically unnecessary puberty inhibition procedure" means administering or supplying to an individual ~~{younger than 18}~~ who is 16 years old or younger, alone or in combination with aromatase inhibitors:

- (i) gonadotropin-releasing hormone agonists;
- (ii) progestins; or
- (iii) androgen receptor inhibitors.

(b) "Medically unnecessary puberty inhibition procedure" does not include administering or supplying a treatment described in Subsection (17)(a) to an individual ~~{younger than 18}~~ who is 16 years old or younger if the treatment is medically necessary as a treatment for:

- (i) precocious puberty;
- (ii) idiopathic short stature;
- (iii) endometriosis; or
- (iv) a sex hormone-stimulated cancer.

~~[(15)]~~ (18) (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 ~~[(15)]~~ (18)(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

## HB0092S02 compared with HB0092

(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.

~~[(16)]~~ (19) "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.

~~[(17)]~~ (20) (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 ~~[(17)]~~ (20)(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 ~~[(17)]~~ (20)(b)(ii), the conduct described in Subsection ~~[(17)]~~ (20)(a)(i) that is performed in accordance with a license issued under another chapter of this title;

## HB0092S02 compared with HB0092

(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).

~~[(18)]~~ (21) "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.

~~[(19)]~~ (22) "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.

(23) (a) "Sex characteristic-altering procedure" means, for the purpose of effectuating or facilitating an individual's attempted sex change:

(i) castration, orchiectomy, penectomy, vaginoplasty, vulvoplasty, breast augmentation surgery, or facial feminization surgery on an individual whose biological sex at birth is male;

(ii) mastectomy, hysterectomy, oophorectomy, metoidioplasty, phalloplasty, or chest or facial masculinization procedures on an individual whose biological sex at birth is female;

(iii) any surgical procedure that is related to or necessary for a procedure described in Subsection (23)(a)(i) or (ii), that would result in the sterilization of an individual who is non-sterile;

(iv) administering or supplying:

(A) doses of testosterone or other androgens to an individual whose biological sex at birth is female at levels above those normally found in an individual whose biological sex at birth is female; or

(B) doses of estrogens or synthetic compounds with estrogenic activity or effect to an individual whose biological sex at birth is male at levels above those normally found in an individual whose biological sex at birth is male; or

(v) removing any otherwise healthy or non-diseased body part or tissue.

(b) "Sex characteristic-altering procedure" does not include:

(i) surgery or other procedures or treatments performed on an individual who:

(A) is born with external biological sex characteristics that are irresolvably ambiguous;

## HB0092S02 compared with HB0092

(B) is born with 46, XX chromosomes with virilization;

(C) is born with 46, XY chromosomes with undervirilization;

(D) has both ovarian and testicular tissue; or

(E) has been diagnosed by a physician, based on genetic or biochemical testing, with a sex development disorder characterized by abnormal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female; or

(ii) removing a body part:

(A) because it is cancerous or diseased; or

(B) for a reason that is medically necessary, other than to effectuate or facilitate an individual's attempted sex change.

~~[(20)]~~ (24) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

~~[(21)]~~ (25) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-67-501.

~~[(22)]~~ (26) "Unprofessional conduct" 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 **58-67-502** 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;

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

(d) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act; or

(e) falsely making an entry in, or altering, a medical record with the intent to conceal:

(i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; ~~[or]~~

## HB0092S02 compared with HB0092

(ii) conduct described in Subsections (1)(a) through (d) or Subsection 58-1-501(1)[-];

or

(f) performing, or causing to be performed, a sex characteristic-altering procedure or medically unnecessary puberty inhibition procedure upon an individual who is ~~less than 18~~16 years old or younger.

(2) "Unprofessional conduct" does not include:

(a) in compliance with Section 58-85-103:

(i) obtaining an investigational drug or investigational device;

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

(iii) treating an eligible patient with the investigational drug or investigational device;

or

(b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:

(i) when registered as a qualified medical provider, as that term is defined in Section 26-61a-102, recommending the use of medical cannabis;

(ii) when registered as a pharmacy medical provider, as that term is defined in Section 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

(iii) when registered as a state central patient portal medical provider, as that term is defined in Section 26-61a-102, providing state central patient portal medical provider services.

(3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a physician described in Subsection (2)(b).

Section 3. 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

## HB0092S02 compared with HB0092

adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

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

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

(6) "Attempted sex change" means an attempt or effort to change an individual's body to present that individual as being of a sex or gender that is different from the individual's biological sex at birth.

(7) "Biological sex at birth" means an individual's sex, as being male or female, according to distinct reproductive roles as manifested by sex and reproductive organ anatomy, chromosomal makeup, and endogenous hormone profiles.

~~(6)~~ (8) "Board" means the Osteopathic Physician and Surgeon's Licensing Board created in Section 58-68-201.

~~(7)~~ (9) "Collaborating physician" means an individual licensed under Section 58-68-302 who enters into a collaborative practice arrangement with an associate physician.

~~(8)~~ (10) "Collaborative practice arrangement" means the arrangement described in Section 58-68-807.

~~(9)~~ (11) (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 ~~(9)~~ (11)(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 ~~(9)~~ (11)(a).

~~(10)~~ (12) "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.

~~(11)~~ (13) "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

## HB0092S02 compared with HB0092

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 ~~[(11)]~~ (13)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection ~~[(11)]~~ (13)(a); or

(d) to make an examination or determination as described in Subsection ~~[(11)]~~ (13)(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.

~~[(12)]~~ (14) "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)]~~ (15) "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)]~~ (16) "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.

(17) (a) "Medically unnecessary puberty inhibition procedure" means administering or supplying to an individual ~~{younger than 18}~~ who is 16 years old or younger, alone or in combination with aromatase inhibitors:

(i) gonadotropin-releasing hormone agonists;

(ii) progestins; or

(iii) androgen receptor inhibitors.

(b) "Medically unnecessary puberty inhibition procedure" does not include administering or supplying a treatment described in Subsection (17)(a) to an individual ~~{younger than 18}~~ who is 16 years old or younger if the treatment is medically necessary as a treatment for:

(i) precocious puberty;

(ii) idiopathic short stature;

## HB0092S02 compared with HB0092

(iii) endometriosis; or

(iv) a sex hormone-stimulated cancer.

~~(15)~~ (18) (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 ~~(15)~~ (18)(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 performed by an individual licensed under this title who is acting within the individual's scope of practice.

~~(16)~~ (19) "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.

~~(17)~~ (20) (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 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 ~~(17)~~ (20)(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.,"

## HB0092S02 compared with HB0092

"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 ~~[(17)]~~ (20)(b)(ii), the conduct described in Subsection ~~[(17)]~~ (20)(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).

~~[(18)]~~ (21) "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.

~~[(19)]~~ (22) "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.

(23) (a) "Sex characteristic-altering procedure" means, for the purpose of effectuating or facilitating an individual's attempted sex change:

(i) castration, orchiectomy, penectomy, vaginoplasty, vulvoplasty, breast augmentation surgery, or facial feminization surgery on an individual whose biological sex at birth is male;

(ii) mastectomy, hysterectomy, oophorectomy, metoidioplasty, phalloplasty, or chest or facial masculinization procedures on an individual whose biological sex at birth is female;

(iii) any surgical procedure that is related to or necessary for a procedure described in Subsection (23)(a)(i) or (ii), that would result in the sterilization of an individual who is

## HB0092S02 compared with HB0092

non-sterile;

(iv) administering or supplying:

(A) doses of testosterone or other androgens to an individual whose biological sex at birth is female at levels above those normally found in an individual whose biological sex at birth is female; or

(B) doses of estrogens or synthetic compounds with estrogenic activity or effect to an individual whose biological sex at birth is male at levels above those normally found in an individual whose biological sex at birth is male; or

(v) removing any otherwise healthy or non-diseased body part or tissue.

(b) "Sex characteristic-altering procedure" does not include:

(i) surgery or other procedures or treatments performed on an individual who:

(A) is born with external biological sex characteristics that are irresolvably ambiguous;

(B) is born with 46, XX chromosomes with virilization;

(C) is born with 46, XY chromosomes with undervirilization;

(D) has both ovarian and testicular tissue; or

(E) has been diagnosed by a physician, based on genetic or biochemical testing, with a sex development disorder characterized by abnormal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female; or

(ii) removing a body part:

(A) because it is cancerous or diseased; or

(B) for a reason that is medically necessary, other than to effectuate or facilitate an individual's attempted sex change.

~~[(20)]~~ (24) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

~~[(21)]~~ (25) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-68-501.

~~[(22)]~~ (26) "Unprofessional conduct" 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 4. Section **58-68-502** is amended to read:

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

(1) "Unprofessional conduct" includes, in addition to the definition in Section

## HB0092S02 compared with HB0092

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

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

(d) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act;

[or]

(e) falsely making an entry in, or altering, a medical record with the intent to conceal:

(i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(ii) conduct described in Subsections (1)(a) through (d) or Subsection 58-1-501(1)[-];

or

(f) performing, or causing to be performed, a sex characteristic-altering procedure or medically unnecessary puberty inhibition procedure upon an individual who is ~~younger than 18~~16 years old or younger.

(2) "Unprofessional conduct" does not include:

(a) in compliance with Section 58-85-103:

(i) obtaining an investigational drug or investigational device;

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

(iii) treating an eligible patient with the investigational drug or investigational device;

or

(b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:

(i) when registered as a qualified medical provider, as that term is defined in Section 26-61a-102, recommending the use of medical cannabis;

(ii) when registered as a pharmacy medical provider, as that term is defined in Section 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

(iii) when registered as a state central patient portal medical provider, as that term is defined in Section 26-61a-102, providing state central patient portal medical provider services.

## **HB0092S02 compared with HB0092**

(3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a physician described in Subsection (2)(b).