

Representative Rex P. Shipp proposes the following substitute bill:

MEDICAL PRACTICE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rex P. Shipp

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions regarding a transgender procedure or a cosmetic breast surgical procedure on a minor.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ makes it unprofessional conduct to perform a sex characteristic-altering surgical procedure or a cosmetic breast surgical procedure on a minor;
- ▶ enacts requirements for a physician who performs a hormonal transgender procedure;
- ▶ modifies provisions relating to a malpractice action against a health care provider for a transgender procedure upon a minor; and
- ▶ makes technical and corresponding changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **58-67-102**, as last amended by Laws of Utah 2017, Chapter 299

28 **58-67-502**, as last amended by Laws of Utah 2021, Chapter 337

29 **58-68-102**, as last amended by Laws of Utah 2017, Chapter 299

30 **58-68-502**, as last amended by Laws of Utah 2021, Chapter 337

31 ENACTS:

32 **58-67-809**, Utah Code Annotated 1953

33 **58-68-809**, Utah Code Annotated 1953

34 **78B-3-427**, Utah Code Annotated 1953



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

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

38 **58-67-102. Definitions.**

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

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

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

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

50 (4) "Associate physician" means an individual licensed under Section **58-67-302.8**.

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

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

57 ~~[(5)]~~ (7) "Board" means the Physicians Licensing Board created in Section 58-67-201.

58 ~~[(6)]~~ (8) "Collaborating physician" means an individual licensed under Section
59 58-67-302 who enters into a collaborative practice arrangement with an associate physician.

60 ~~[(7)]~~ (9) "Collaborative practice arrangement" means the arrangement described in
61 Section 58-67-807.

62 (10) "Cosmetic breast surgical procedure" means a breast reduction surgery for
63 non-medical reasons.

64 ~~[(8)]~~ (11) (a) "Cosmetic medical device" means tissue altering energy based devices
65 that have the potential for altering living tissue and that are used to perform ablative or
66 nonablative procedures, such as American National Standards Institute (ANSI) designated
67 Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic
68 devices, and excludes ANSI designated Class IIIa and lower powered devices.

69 (b) Notwithstanding Subsection ~~[(8)]~~ (11)(a), if an ANSI designated Class IIIa and
70 lower powered device is being used to perform an ablative procedure, the device is included in
71 the definition of cosmetic medical device under Subsection ~~[(8)]~~ (11)(a).

72 ~~[(9)]~~ (12) "Cosmetic medical procedure":

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

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

76 ~~[(10)]~~ (13) "Diagnose" means:

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

81 (b) to attempt to conduct an examination or determination described under Subsection
82 ~~[(10)]~~ (13)(a);

83 (c) to hold oneself out as making or to represent that one is making an examination or
84 determination as described in Subsection ~~[(10)]~~ (13)(a); or

85 (d) to make an examination or determination as described in Subsection ~~[(10)]~~ (13)(a)
86 upon or from information supplied directly or indirectly by another person, whether or not in
87 the presence of the person making or attempting the diagnosis or examination.

88 [~~(11)~~] (14) "LCME" means the Liaison Committee on Medical Education of the
89 American Medical Association.

90 [~~(12)~~] (15) "Medical assistant" means an unlicensed individual working under the
91 indirect supervision of a licensed physician and surgeon and engaged in specific tasks assigned
92 by the licensed physician and surgeon in accordance with the standards and ethics of the
93 profession.

94 [~~(13)~~] (16) "Medically underserved area" means a geographic area in which there is a
95 shortage of primary care health services for residents, as determined by the Department of
96 Health.

97 [~~(14)~~] (17) "Medically underserved population" means a specified group of people
98 living in a defined geographic area with a shortage of primary care health services, as
99 determined by the Department of Health.

100 [~~(15)~~] (18) (a) (i) "Nonablative procedure" means a procedure that is expected or
101 intended to alter living tissue, but is not intended or expected to excise, vaporize, disintegrate,
102 or remove living tissue.

103 (ii) Notwithstanding Subsection [~~(15)~~] (18)(a)(i), nonablative procedure includes hair
104 removal.

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

106 (i) a superficial procedure as defined in Section [58-1-102](#);

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

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

111 [~~(16)~~] (19) "Physician" means both physicians and surgeons licensed under Section
112 [58-67-301](#), Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
113 Section [58-68-301](#), Utah Osteopathic Medical Practice Act.

114 [~~(17)~~] (20) (a) "Practice of medicine" means:

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

119 human within the state;

120 (ii) performing a hormonal transgender procedure as defined in Section [58-67-809](#);

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

123 ~~[(iii)]~~ (iv) to maintain an office or place of business for the purpose of doing any of the
124 acts described in this Subsection ~~[(17)]~~ (20)(a) whether or not for compensation; or

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

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

137 (i) except for an ablative medical procedure as provided in Subsection ~~[(17)]~~
138 ~~(20)~~(b)(ii), the conduct described in Subsection ~~[(17)]~~ (20)(a)(i) that is performed in
139 accordance with a license issued under another chapter of this title;

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

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

144 ~~[(18)]~~ (21) "Prescription device" means an instrument, apparatus, implement, machine,
145 contrivance, implant, in vitro reagent, or other similar or related article, and any component
146 part or accessory, which is required under federal or state law to be prescribed by a practitioner
147 and dispensed by or through a person or entity licensed under this chapter or exempt from
148 licensure under this chapter.

149 ~~[(19)]~~ (22) "Prescription drug" means a drug that is required by federal or state law or

150 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

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

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

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

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

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

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

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

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

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

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

166 (D) has both ovarian and testicular tissue; or

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

170 (ii) removing a body part:

171 (A) because it is cancerous or diseased; or

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

174 ~~[(20)]~~ (24) "SPEX" means the Special Purpose Examination of the Federation of State
175 Medical Boards.

176 ~~[(21)]~~ (25) "Unlawful conduct" means the same as that term is defined in Sections
177 58-1-501 and 58-67-501.

178 ~~[(22)]~~ (26) "Unprofessional conduct" means the same as that term is defined in
179 Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

180 Section 2. Section **58-67-502** is amended to read:

181 **58-67-502. Unprofessional conduct.**

182 (1) "Unprofessional conduct" includes, in addition to the definition in Section
183 58-1-501:

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

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

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

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

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

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

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

197 or

198 (f) performing, or causing to be performed:

199 (i) a sex characteristic-altering surgical procedure upon an individual who is less than
200 18 years old; or

201 (ii) a cosmetic breast surgical procedure upon an individual who is less than 18 years
202 old.

203 (2) "Unprofessional conduct" does not include:

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

205 (i) obtaining an investigational drug or investigational device;

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

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

208 or

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

210 (i) when registered as a qualified medical provider or acting as a limited medical

211 provider, as those terms are defined in Section 26-61a-102, recommending the use of medical

212 cannabis;

213 (ii) when registered as a pharmacy medical provider, as that term is defined in Section
214 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

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

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

220 Section 3. Section **58-67-809** is enacted to read:

221 **58-67-809. Requirements for a hormonal transgender procedure upon a minor --**
222 **Reporting -- Maintenance of records.**

223 (1) As used in this section:

224 (a) "Administration of cross-sex hormones" means administering or supplying:

225 (i) a dose of testosterone or other androgens to an individual whose biological sex at
226 birth is female at levels above those normally found in an individual whose biological sex at
227 birth is female; or

228 (ii) a dose of estrogen or a synthetic compound with estrogenic activity or effect to an
229 individual whose biological sex at birth is male at levels above those normally found in an
230 individual whose biological sex at birth is male.

231 (b) "Hormonal transgender procedure" means:

232 (i) administration of cross-sex hormones; or

233 (ii) performing a puberty inhibition procedure.

234 (c) "Licensed mental health professional" means:

235 (i) a physician who is board eligible for a psychiatry specialization recognized by the
236 American Board of Medical Specialists or the American Osteopathic Association's Bureau of
237 Osteopathic Specialists;

238 (ii) a psychologist licensed under Chapter 61, Psychologist Licensing Act;

239 (iii) a clinical social worker licensed under Chapter 60, Part 2, Social Worker

240 Licensing Act;

241 (iv) a marriage and family therapist licensed under Chapter 60, Part 3, Marriage and
242 Family Therapist Licensing Act; or

243 (v) a clinical mental health counselor licensed under Chapter 60, Part 4, Clinical
244 Mental Health Counselor Licensing Act.

245 (d) (i) "Puberty inhibition procedure" means administering or supplying, alone or in
246 combination with aromatase inhibitors:

247 (A) gonadotropin-releasing hormone agonists;

248 (B) progestins; or

249 (C) androgen receptor inhibitors.

250 (ii) "Puberty inhibition procedure" does not include administering or supplying a
251 treatment described in Subsection (1)(d)(i) to an individual if the treatment is medically
252 necessary as a treatment for:

253 (A) precocious puberty;

254 (B) idiopathic short stature;

255 (C) endometriosis; or

256 (D) a sex hormone-stimulated cancer.

257 (2) Before performing a hormonal transgender procedure upon an individual younger
258 than 18 years old, a physician shall obtain:

259 (a) informed consent in writing from:

260 (i) the minor patient; and

261 (ii) the minor patient's parent or guardian, unless the patient is an emancipated minor
262 under Title 80, Chapter 7, Emancipation; and

263 (b) an independent evaluation of the patient from a licensed mental health professional
264 who is not associated with:

265 (i) the physician who is performing the hormonal transgender procedure; or

266 (ii) the physician's employer, health care group, or health care organization.

267 (3) The informed consent described in Subsection (2)(a) shall include a discussion with
268 the minor patient and the patient's parent or guardian regarding:

269 (a) every element of the hormonal transgender procedure and the possible
270 consequences or effects that may result from the procedure;

271 (b) the expectations or hopes of the patient and, if the patient is not an emancipated
272 minor, the patient's parent or guardian, regarding what the hormonal transgender procedure will
273 or may accomplish; and

274 (c) the likelihood that the hormonal transgender procedure may or may not accomplish
275 the hopes or expectations of the minor patient and, if the patient is not an emancipated minor,
276 the minor patient's parents or guardian.

277 (4) The physician shall document the substance of the discussion of each element
278 required under Subsection (3) in the patient's medical record.

279 (5) The independent evaluation described in Subsection (2)(b) shall include:

280 (a) a written diagnosis that the patient suffers from gender dysphoria in accordance
281 with the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders that:

282 (i) has persisted for more than 18 months since initial diagnosis; and

283 (ii) is confirmed after at least nine separate therapy sessions; and

284 (b) a written report from the licensed mental health professional explaining the
285 licensed mental health professional's assessment regarding potential contributions of emotional
286 or other mental health concerns on the patient's feelings and beliefs about the patient's
287 biological sex at birth, which shall include:

288 (i) relationships with family members;

289 (ii) relationships with peers;

290 (iii) depression;

291 (iv) anxieties;

292 (v) past or present emotional, physical, or sexual abuse of either the minor or a family
293 member;

294 (vi) autism spectrum disorders; and

295 (vii) events surrounding the onset of the minor's gender dysphoria.

296 (6) A physician shall retain all records relating to any transgender hormonal procedure
297 upon an individual who is younger than 18 years old until the later of:

298 (a) the day on which the patient is 27 years old; or

299 (b) the day on which, for any lawsuit for damages arising from the transgender
300 procedure, a final judgement has been entered and all appeals of the final judgement have been
301 exhausted or the parties enter into a settlement for all issues in the action.

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

303 **58-68-102. Definitions.**

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

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

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

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

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

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

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

319 [~~(6)~~] (7) "Board" means the Osteopathic Physician and Surgeon's Licensing Board
320 created in Section 58-68-201.

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

324 [~~(7)~~] (9) "Collaborating physician" means an individual licensed under Section
325 58-68-302 who enters into a collaborative practice arrangement with an associate physician.

326 [~~(8)~~] (10) "Collaborative practice arrangement" means the arrangement described in
327 Section 58-68-807.

328 (11) "Cosmetic breast surgical procedure" means a breast reduction surgery for
329 non-medical reasons.

330 [~~(9)~~] (12) (a) "Cosmetic medical device" means tissue altering energy based devices
331 that have the potential for altering living tissue and that are used to perform ablative or
332 nonablative procedures, such as American National Standards Institute (ANSI) designated
333 Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic
334 devices and excludes ANSI designated Class IIIa and lower powered devices.

335 (b) Notwithstanding Subsection [~~(9)~~] (12)(a), if an ANSI designated Class IIIa and

336 lower powered device is being used to perform an ablative procedure, the device is included in
337 the definition of cosmetic medical device under Subsection [~~(9)~~] (12)(a).

338 [~~(10)~~] (13) "Cosmetic medical procedure":

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

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

342 [~~(11)~~] (14) "Diagnose" means:

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

347 (b) to attempt to conduct an examination or determination described under Subsection
348 [~~(11)~~] (14)(a);

349 (c) to hold oneself out as making or to represent that one is making an examination or
350 determination as described in Subsection [~~(11)~~] (14)(a); or

351 (d) to make an examination or determination as described in Subsection [~~(11)~~] (14)(a)
352 upon or from information supplied directly or indirectly by another person, whether or not in
353 the presence of the person making or attempting the diagnosis or examination.

354 [~~(12)~~] (15) "Medical assistant" means an unlicensed individual working under the
355 indirect supervision of a licensed osteopathic physician and surgeon and engaged in specific
356 tasks assigned by the licensed osteopathic physician and surgeon in accordance with the
357 standards and ethics of the profession.

358 [~~(13)~~] (16) "Medically underserved area" means a geographic area in which there is a
359 shortage of primary care health services for residents, as determined by the Department of
360 Health.

361 [~~(14)~~] (17) "Medically underserved population" means a specified group of people
362 living in a defined geographic area with a shortage of primary care health services, as
363 determined by the Department of Health.

364 [~~(15)~~] (18) (a) (i) "Nonablative procedure" means a procedure that is expected or
365 intended to alter living tissue, but is not expected or intended to excise, vaporize, disintegrate,
366 or remove living tissue.

367 (ii) Notwithstanding Subsection ~~[(15)]~~ (18)(a)(i), nonablative procedure includes hair
368 removal.

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

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

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

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

375 ~~[(16)]~~ (19) "Physician" means both physicians and surgeons licensed under Section
376 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
377 Section 58-68-301, Utah Osteopathic Medical Practice Act.

378 ~~[(17)]~~ (20) (a) "Practice of osteopathic medicine" means:

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

385 (ii) performing a hormonal transgender procedure as defined in Section 58-68-809;

386 ~~[(11)]~~ (iii) when a person not licensed as a physician directs a licensee under this
387 chapter to withhold or alter the health care services that the licensee has ordered;

388 ~~[(11)]~~ (iv) to maintain an office or place of business for the purpose of doing any of the
389 acts described in this Subsection ~~[(17)]~~ (20)(a) whether or not for compensation; or

390 ~~[(14)]~~ (v) to use, in the conduct of any occupation or profession pertaining to the
391 diagnosis or treatment of human diseases or conditions, in any printed material, stationery,
392 letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic
393 medicine," "osteopathic physician," "osteopathic surgeon," "osteopathic physician and
394 surgeon," "Dr.," "D.O.," or any combination of these designations in any manner which might
395 cause a reasonable person to believe the individual using the designation is a licensed
396 osteopathic physician, and if the party using the designation is not a licensed osteopathic
397 physician, the designation must additionally contain the description of the branch of the healing

398 arts for which the person has a license, provided that an individual who has received an earned
399 degree of doctor of osteopathic medicine but is not a licensed osteopathic physician and
400 surgeon in Utah may use the designation "D.O." if it is followed by "Not Licensed" or "Not
401 Licensed in Utah" in the same size and style of lettering.

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

403 (i) except for an ablative medical procedure as provided in Subsection [~~(17)~~]

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

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

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

410 [~~(18)~~] (21) "Prescription device" means an instrument, apparatus, implement, machine,
411 contrivance, implant, in vitro reagent, or other similar or related article, and any component
412 part or accessory, which is required under federal or state law to be prescribed by a practitioner
413 and dispensed by or through a person or entity licensed under this chapter or exempt from
414 licensure under this chapter.

415 [~~(19)~~] (22) "Prescription drug" means a drug that is required by federal or state law or
416 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

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

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

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

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

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

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

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

429 (A) is born with external biological sex characteristics that are irresolvably ambiguous;
 430 (B) is born with 46, XX chromosomes with virilization;
 431 (C) is born with 46, XY chromosomes with undervirilization;
 432 (D) has both ovarian and testicular tissue; or
 433 (E) has been diagnosed by a physician, based on genetic or biochemical testing, with a
 434 sex development disorder characterized by abnormal sex chromosome structure, sex steroid
 435 hormone production, or sex steroid hormone action for a male or female; or

436 (ii) removing a body part:

437 (A) because it is cancerous or diseased; or

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

440 ~~[(20)]~~ (24) "SPEX" means the Special Purpose Examination of the Federation of State
 441 Medical Boards.

442 ~~[(21)]~~ (25) "Unlawful conduct" means the same as that term is defined in Sections
 443 58-1-501 and 58-68-501.

444 ~~[(22)]~~ (26) "Unprofessional conduct" means the same as that term is defined in
 445 Sections 58-1-501 and 58-68-502 and as may be further defined by division rule.

446 Section 5. Section 58-68-502 is amended to read:

447 **58-68-502. Unprofessional conduct.**

448 (1) "Unprofessional conduct" includes, in addition to the definition in Section
 449 58-1-501:

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

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

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

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

458 [or]

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

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

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

463 or

464 (f) performing, or causing to be performed:

465 (i) a sex characteristic-altering surgical procedure upon an individual who is less than
466 18 years old; or

467 (ii) a cosmetic breast surgical procedure upon an individual who is less than 18 years
468 old.

469 (2) "Unprofessional conduct" does not include:

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

471 (i) obtaining an investigational drug or investigational device;

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

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

474 or

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

476 (i) when registered as a qualified medical provider or acting as a limited medical
477 provider, as those terms are defined in Section 26-61a-102, recommending the use of medical
478 cannabis;

479 (ii) when registered as a pharmacy medical provider, as that term is defined in Section
480 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

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

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

486 Section 6. Section 58-68-809 is enacted to read:

487 **58-68-809. Requirements for a hormonal transgender procedure upon a minor --**

488 **Reporting -- Maintenance of records.**

489 (1) As used in this section:

490 (a) "Administration of cross-sex hormones" means administering or supplying:

- 491 (i) a dose of testosterone or other androgens to an individual whose biological sex at
492 birth is female at levels above those normally found in an individual whose biological sex at
493 birth is female; or
- 494 (ii) a dose of estrogen or a synthetic compound with estrogenic activity or effect to an
495 individual whose biological sex at birth is male at levels above those normally found in an
496 individual whose biological sex at birth is male.
- 497 (b) "Hormonal transgender procedure" means:
- 498 (i) administration of cross-sex hormones; or
499 (ii) performing a puberty inhibition procedure.
- 500 (c) "Licensed mental health professional" means:
- 501 (i) a physician who is board eligible for a psychiatry specialization recognized by the
502 American Board of Medical Specialists or the American Osteopathic Association's Bureau of
503 Osteopathic Specialists;
- 504 (ii) a psychologist licensed under Chapter 61, Psychologist Licensing Act;
505 (iii) a clinical social worker licensed under Chapter 60, Part 2, Social Worker
506 Licensing Act;
- 507 (iv) a marriage and family therapist licensed under Chapter 60, Part 3, Marriage and
508 Family Therapist Licensing Act; or
- 509 (v) a clinical mental health counselor licensed under Chapter 60, Part 4, Clinical
510 Mental Health Counselor Licensing Act.
- 511 (d) (i) "Puberty inhibition procedure" means administering or supplying, alone or in
512 combination with aromatase inhibitors:
- 513 (A) gonadotropin-releasing hormone agonists;
514 (B) progestins; or
515 (C) androgen receptor inhibitors.
- 516 (ii) "Puberty inhibition procedure" does not include administering or supplying a
517 treatment described in Subsection (1)(d)(i) to an individual if the treatment is medically
518 necessary as a treatment for:
- 519 (A) precocious puberty;
520 (B) idiopathic short stature;
521 (C) endometriosis; or

522 (D) a sex hormone-stimulated cancer.

523 (2) Before performing a hormonal transgender procedure upon an individual younger
524 than 18 years old, a physician shall obtain:

525 (a) informed consent in writing from:

526 (i) the minor patient; and

527 (ii) the minor patient's parent or guardian, unless the patient is an emancipated minor
528 under Title 80, Chapter 7, Emancipation; and

529 (b) an independent evaluation of the patient from a licensed mental health professional
530 who is not associated with:

531 (i) the physician who is performing the hormonal transgender procedure; or

532 (ii) the physician's employer, health care group, or health care organization.

533 (3) The informed consent described in Subsection (2)(a) shall include a discussion with
534 the minor patient and the patient's parent or guardian regarding:

535 (a) every element of the hormonal transgender procedure and the possible
536 consequences or effects that may result from the procedure;

537 (b) the expectations or hopes of the patient and, if the patient is not an emancipated
538 minor, the patient's parent or guardian, regarding what the hormonal transgender procedure will
539 or may accomplish; and

540 (c) the likelihood that the hormonal transgender procedure may or may not accomplish
541 the hopes or expectations of the minor patient and, if the patient is not an emancipated minor,
542 the minor patient's parents or guardian.

543 (4) The physician shall document the substance of the discussion of each element
544 required under Subsection (3) in the patient's medical record.

545 (5) The independent evaluation described in Subsection (2)(b) shall include:

546 (a) a written diagnosis that the patient suffers from gender dysphoria in accordance
547 with the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders that:

548 (i) has persisted for more than 18 months since initial diagnosis; and

549 (ii) is confirmed after at least nine separate therapy sessions; and

550 (b) a written report from the licensed mental health professional explaining the
551 licensed mental health professional's assessment regarding potential contributions of emotional
552 or other mental health concerns on the patient's feelings and beliefs about the patient's

553 biological sex at birth, which shall include:

554 (i) relationships with family members;

555 (ii) relationships with peers;

556 (iii) depression;

557 (iv) anxieties;

558 (v) past or present emotional, physical, or sexual abuse of either the minor or a family
559 member;

560 (vi) autism spectrum disorders; and

561 (vii) events surrounding the onset of the minor's gender dysphoria.

562 (6) A physician shall retain all records relating to any transgender hormonal procedure
563 upon an individual who is younger than 18 years old until the later of:

564 (a) the day on which the patient is 27 years old; or

565 (b) the day on which, for any lawsuit for damages arising from the transgender
566 procedure, a final judgement has been entered and all appeals of the final judgment have been
567 exhausted or the parties enter into a settlement for all issues in the action.

568 Section 7. Section **78B-3-427** is enacted to read:

569 **78B-3-427. Transgender procedures upon a minor -- Right of action - Informed**
570 **consent requirements: Statute of limitations.**

571 (1) As used in this section:

572 (a) "Cosmetic breast surgical procedure" means the same as that term is defined in
573 Section [58-67-102](#).

574 (b) "Sex characteristic-altering surgical procedure" means the same as that term is
575 defined in Section [58-67-102](#).

576 (c) "Transgender procedure upon a minor" means any of the following performed upon
577 an individual who is younger than 18 years old:

578 (i) a hormonal transgender procedure as defined in Section [58-67-809](#); or

579 (ii) a sex-characteristic-altering surgical procedure.

580 (2) This section applies to the following procedures that begin or are continued on or
581 after May 4, 2022:

582 (a) a transgender procedure upon a minor; and

583 (b) a cosmetic breast surgical procedure upon an individual who is less than 18 years

584 old.

585 (3) Notwithstanding any other provision of law, a malpractice action against a health
586 care provider may be brought against a health care provider for damages arising from:

587 (a) performing a hormonal transgender procedure upon a minor without obtaining

588 informed consent in accordance with Subsection [58-67-809\(2\)](#) or [58-68-809\(2\)](#);

589 (b) negligence in performing a hormonal transgender procedure upon a minor;

590 (c) performing a sex characteristic-altering surgical procedure upon an individual who
591 is younger than 18 years old; or

592 (d) performing a cosmetic breast surgical procedure upon an individual who is less
593 than 18 years old.

594 (4) Notwithstanding any other provision of law, a malpractice action against a health
595 care provider under Subsection (3) may be brought before the plaintiff or patient is 27 years
596 old.

597 (5) Sections [78B-3-404](#) and [78B-3-406](#) do not apply to an action arising from
598 performing a transgender procedure upon a minor.