

HB0127S03 compared with HB0127S01

~~text~~ shows text that was in HB0127S01 but was deleted in HB0127S03.

text shows text that was not in HB0127S01 but was inserted into HB0127S03.

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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

HB0127S03 compared with HB0127S01

- ▶ makes technical and corresponding changes.

Money Appropriated in this Bill:

None

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 2021, Chapter 337

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

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

ENACTS:

~~{ **58-1-112**, Utah Code Annotated 1953~~

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

58-68-809, Utah Code Annotated 1953

78B-3-427, Utah Code Annotated 1953

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

Section 1. Section ~~{**58-1-112**}~~ **58-67-102** is ~~{enacted}~~ amended to read:

~~{ **58-1-112. Collection of data regarding hormonal transgender procedures upon a minor -- Data available to the public.**~~

~~_____ (1) On or before October 31, 2022, the division shall:~~

~~_____ (a) establish a system to receive, organize, and maintain the information required in Sections 58-67-809 and 58-68-809; and~~

~~_____ (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the procedures a physician must follow to report the information required under Sections 58-67-809 and 58-68-809.~~

~~_____ (2) The division shall:~~

~~_____ (a) make the information reported under Subsection (1) accessible to the public; and~~

~~_____ (b) organize the information by reporting physician, but may not disclose the name or other personally identifiable information of the physician to the public.~~

HB0127S03 compared with HB0127S01

~~Section 2. 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.

~~(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.

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

~~(8)~~ ~~(10)~~ (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

HB0127S03 compared with HB0127S01

devices, and excludes ANSI designated Class IIIa and lower powered devices.

(b) Notwithstanding Subsection [(8)] (~~(10)~~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 [(8)] (~~(10)~~11)(a).

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

[(10)] (~~(12)~~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 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)~~13)(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)~~13)(a); or

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

[(11)] (~~(13)~~14) "LCME" means the Liaison Committee on Medical Education of the American Medical Association.

[(12)] (~~(14)~~15) "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)] (~~(15)~~16) "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)~~17) "Medically underserved population" means a specified group of people

HB0127S03 compared with HB0127S01

living in a defined geographic area with a shortage of primary care health services, as determined by the Department of Health.

~~[(15)]~~ ~~(17)~~ 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)]~~ ~~(17)~~ 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 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)]~~ ~~(18)~~ 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)]~~ ~~(19)~~ 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) performing a hormonal transgender procedure as defined in Section 58-67-809;

~~[(ii)]~~ (iii) 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)]~~ (iv) to maintain an office or place of business for the purpose of doing any of the acts described in this Subsection ~~[(17)]~~ ~~(19)~~ 20(a) whether or not for compensation; or

~~[(iv)]~~ (v) 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

HB0127S03 compared with HB0127S01

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)] ~~(19)~~20(b)(ii), the conduct described in Subsection [(17)] ~~(19)~~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 58-67-501(2).

[(18)] ~~(20)~~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)] ~~(21)~~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.

~~(22)~~23 (a) "Sex characteristic-altering surgical 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 ~~(22)~~23(a)(i) or (ii), that would result in the sterilization of an individual who is

HB0127S03 compared with HB0127S01

non-sterile; or

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

(b) "Sex characteristic-altering surgical 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)~~] (~~(23)~~24) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

[~~(21)~~] (~~(24)~~25) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-67-501.

[~~(22)~~] (~~(25)~~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 ~~(3)~~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

HB0127S03 compared with HB0127S01

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

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

or

(f) performing, or causing to be performed:

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

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

(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 or acting as a limited medical provider, as those terms are 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 ~~{4}~~3. Section **58-67-809** is enacted to read:

HB0127S03 compared with HB0127S01

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

(1) As used in this section:

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

(i) a dose 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

(ii) a dose of estrogen or a synthetic compound 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.

(b) "Hormonal transgender procedure" means:

(i) administration of cross-sex hormones; or

(ii) performing a puberty inhibition procedure.

(c) "~~Psychologist or psychiatrist~~ Licensed mental health professional" means:

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

(ii) ~~an individual who is licensed to the engage in practice of psychology as defined in Section 58-61-102~~ a psychologist licensed under Chapter 61, Psychologist Licensing Act;

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

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

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

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

(A) gonadotropin-releasing hormone agonists;

(B) progestins; or

(C) androgen receptor inhibitors.

(ii) "Puberty inhibition procedure" does not include administering or supplying a

HB0127S03 compared with HB0127S01

treatment described in Subsection (1)(d)(i) to an individual if the treatment is medically necessary as a treatment for:

- (A) precocious puberty;
- (B) idiopathic short stature;
- (C) endometriosis; or
- (D) a sex hormone-stimulated cancer.

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

- (a) informed consent in writing from:
 - (i) the minor patient; and
 - (ii) the minor patient's parent or guardian, unless the patient is an emancipated minor

under Title 80, Chapter 7, Emancipation; and

(b) an independent evaluation of the patient from a licensed ~~psychologist or psychiatrist~~ mental health professional who is not associated with:

- (i) the physician who is performing the hormonal transgender procedure; or
- (ii) the physician's employer, health care group, or health care organization.

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

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

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

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

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

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

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

HB0127S03 compared with HB0127S01

(i) has persisted for more than ~~{24}~~18 months since initial diagnosis; and
(ii) is confirmed after at least ~~{12}~~nine separate therapy sessions; and
(b) a written report from the licensed ~~{psychologist or psychiatrist}~~mental health professional explaining the licensed ~~{psychologist or psychiatrist's}~~mental health professional's assessment regarding potential contributions of emotional or other mental health concerns on the patient's feelings and beliefs about the patient's biological sex at birth, which shall include:

(i) relationships with family members;
(ii) relationships with peers;
(iii) depression;
(iv) anxieties;
(v) past or present emotional, physical, or sexual abuse of either the minor or a family member;

(vi) autism spectrum disorders; and
(vii) events surrounding the onset of the minor's gender dysphoria.
(6) A physician shall retain all records relating to any transgender hormonal procedure upon an individual who is younger than 18 years old until the later of:

(a) the day on which the patient is ~~{30}~~27 years old; ~~{and}~~or
(b) the day on which, for any lawsuit for damages arising from the transgender procedure, a final judgement has been entered and all appeals of the final judgement have been exhausted or the parties enter into a settlement for all issues in the action.

~~{~~ (7) Beginning November 1, 2022, and in accordance with rules made by the division under Section 58-1-112, a physician shall report the following information to the division for each transgender hormonal procedure performed by the physician upon an individual who is younger than 18 years old:

~~——~~ (a) the hormone or drug prescribed;
~~——~~ (b) the hormonal transgender procedure for which the hormone or drug was prescribed;
~~——~~ (c) the date of the prescription;
~~——~~ (d) the age of the minor at the time the prescription was issued;
~~——~~ (e) the biological sex at birth of the minor; and
~~——~~ (f) whether the prescription for the hormone or drug was the first prescription for that hormone or drug or a continuation of an existing prescription for the minor.

HB0127S03 compared with HB0127S01

~~(8) The physician may not include the patient's name or other personal identifying information in the report to the division under Subsection (7).~~

† Section ~~(5)~~4. 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.

(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.

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

(8) "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.

~~(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.

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

~~(9)~~ ~~(11)~~12 (a) "Cosmetic medical device" means tissue altering energy based

HB0127S03 compared with HB0127S01

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)]~~ ~~(1112)~~(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)]~~ ~~(1112)~~(a).

~~[(10)]~~ ~~(1213)~~ "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)]~~ ~~(1314)~~ "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 ~~[(11)]~~ ~~(1314)~~(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection ~~[(11)]~~ ~~(1314)~~(a); or

(d) to make an examination or determination as described in Subsection ~~[(11)]~~ ~~(1314)~~(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)]~~ ~~(1415)~~ "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)]~~ ~~(1516)~~ "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.

HB0127S03 compared with HB0127S01

~~[(14)]~~ ~~(16;17)~~ "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.

~~[(15)]~~ ~~(17;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)]~~ ~~(17;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)]~~ ~~(18;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)]~~ ~~(19;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) performing a hormonal transgender procedure as defined in Section 58-68-809;

~~[(ii)]~~ ~~(iii)~~ 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)]~~ ~~(iv)~~ to maintain an office or place of business for the purpose of doing any of the acts described in this Subsection ~~[(17)]~~ ~~(19;20)~~(a) whether or not for compensation; or

~~[(iv)]~~ ~~(v)~~ 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,

HB0127S03 compared with HB0127S01

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 [(17)] ~~(19)~~20(b)(ii), the conduct described in Subsection [(17)] ~~(19)~~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)] ~~(20)~~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)] ~~(21)~~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.

~~(22)~~23 (a) "Sex characteristic-altering surgical 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

HB0127S03 compared with HB0127S01

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 (~~(22)~~23)(a)(i) or (ii), that would result in the sterilization of an individual who is non-sterile; or

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

(b) "Sex characteristic-altering surgical 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)]~~ ~~(~~23~~24)~~ "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

~~[(21)]~~ ~~(~~24~~25)~~ "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-68-501.

~~[(22)]~~ ~~(~~25~~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 ~~(6)~~5. 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;

HB0127S03 compared with HB0127S01

(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:

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

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

(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 or acting as a limited medical provider, as those terms are 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

HB0127S03 compared with HB0127S01

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

Section ~~{7}~~6. Section **58-68-809** is enacted to read:

58-68-809. Requirements for a hormonal transgender procedure upon a minor -- Reporting -- Maintenance of records.

(1) As used in this section:

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

(i) a dose 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

(ii) a dose of estrogen or a synthetic compound 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.

(b) "Hormonal transgender procedure" means:

(i) administration of cross-sex hormones; or

(ii) performing a puberty inhibition procedure.

(c) "~~Psychologist or psychiatrist~~Licensed mental health professional" means:

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

(ii) ~~an individual who is licensed to engage in the practice of psychology as defined in Section 58-61-102;~~a psychologist licensed under Chapter 61, Psychologist Licensing Act;

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

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

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

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

(A) gonadotropin-releasing hormone agonists;

HB0127S03 compared with HB0127S01

(B) progestins; or

(C) androgen receptor inhibitors.

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

(A) precocious puberty;

(B) idiopathic short stature;

(C) endometriosis; or

(D) a sex hormone-stimulated cancer.

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

(a) informed consent in writing from:

(i) the minor patient; and

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

(b) an independent evaluation of the patient from a licensed ~~psychologist or psychiatrist~~ mental health professional who is not associated with:

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

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

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

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

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

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

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

HB0127S03 compared with HB0127S01

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

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

(i) has persisted for more than ~~{24}~~18 months since initial diagnosis; and

(ii) is confirmed after at least ~~{12}~~nine separate therapy sessions; and

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

(i) relationships with family members;

(ii) relationships with peers;

(iii) depression;

(iv) anxieties;

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

(vi) autism spectrum disorders; and

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

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

(a) the day on which the patient is ~~{30}~~27 years old; ~~{and}~~or

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

~~{—— (7) Beginning November 1, 2022, and in accordance with rules made by the division under Section 58-1-112, a physician shall report the following information to the division for each transgender hormonal procedure performed by the physician upon an individual who is younger than 18 years old:~~

~~—— (a) the hormone or drug prescribed;~~

~~—— (b) the hormonal transgender procedure for which the hormone or drug was prescribed;~~

~~—— (c) the date of the prescription;~~

~~—— (d) the age of the minor at the time the prescription was issued;~~

HB0127S03 compared with HB0127S01

- ~~(e) the biological sex at birth of the minor; and~~
- ~~(f) whether the prescription for the hormone or drug was the first prescription for that hormone or drug or a continuation of an existing prescription for the minor.~~
- ~~(8) The physician may not include the patient's name or other personal identifying information in the report to the division under Subsection (7).~~

‡ Section ~~{8}~~7. Section **78B-3-427** is enacted to read:

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

(1) As used in this section:

(a) "~~{Sex characteristic-altering}~~Cosmetic breast surgical procedure" means the same as that term is defined in Section 58-67-102.

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

~~{b}~~c "Transgender procedure upon a minor" means any of the following performed upon an individual who is younger than 18 years old:

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

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

(2) This section applies to ~~{a transgender procedure upon a minor}~~the following procedures that ~~{begins}~~begin or ~~{is}~~are continued on or after May 4, 2022~~{;}~~:

(a) a transgender procedure upon a minor; and

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

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

(a) performing a hormonal transgender procedure upon a minor without obtaining informed consent in accordance with Subsection 58-67-809(2) or 58-68-809(2);

(b) negligence in performing a hormonal transgender procedure upon a minor;~~{ or }~~

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

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

HB0127S03 compared with HB0127S01

(4) Notwithstanding any other provision of law, a malpractice action against a health care provider under Subsection (3) may be brought before the plaintiff or patient is ~~30~~²⁷ years old.

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