

Senator Michael S. Kennedy proposes the following substitute bill:

1 **TRANSGENDER MEDICAL TREATMENTS AND PROCEDURES**

2 **AMENDMENTS**

3 2023 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Michael S. Kennedy**

6 House Sponsor: Katy Hall

8 **LONG TITLE**

9 **General Description:**

10 This bill enacts provisions regarding transgender medical treatments and procedures.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ requires the Department of Health and Human Services to study hormonal
15 transgender treatments and provide recommendations to the Legislature;
- 16 ▶ requires the Division of Professional Licensing to create a certification for
17 providing hormonal transgender treatments;
- 18 ▶ requires a health care provider to meet certain requirements before providing a
19 hormonal transgender treatment;
- 20 ▶ prohibits a health care provider from providing a hormonal transgender treatment to
21 patients who have not previously received a hormonal transgender treatment;
- 22 ▶ prohibits performing sex characteristic surgical procedures on a minor for the
23 purpose of effectuating a sex change;
- 24 ▶ specifies that a patient may bring a medical malpractice action for a hormonal
25 transgender treatment;



- 26 ▶ extends the medical malpractice statute of limitations for a hormonal transgender
- 27 treatment that is provided to minors;
- 28 ▶ grants rulemaking authority; and
- 29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **58-67-102**, as last amended by Laws of Utah 2022, Chapter 233

37 **58-67-502**, as last amended by Laws of Utah 2021, Chapter 337

38 **58-68-102**, as last amended by Laws of Utah 2022, Chapter 233

39 **58-68-502**, as last amended by Laws of Utah 2021, Chapter 337

40 ENACTS:

41 **26B-1-214**, Utah Code Annotated 1953

42 **58-1-603**, Utah Code Annotated 1953

43 **58-1-603.1**, Utah Code Annotated 1953

44 **78B-3-427**, Utah Code Annotated 1953



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

47 Section 1. Section **26B-1-214** is enacted to read:

48 **26B-1-214. Study of hormonal transgender treatments.**

49 (1) As used in this section, "hormonal transgender treatment" means the same as that
50 term is defined in Section [58-1-603](#).

51 (2) The department, in consultation with the Division of Professional Licensing created
52 in Section [58-1-103](#), the Physicians Licensing Board created in Section [58-67-201](#), the
53 Osteopathic Physician and Surgeon's Licensing Board created in Section [58-68-201](#), and the
54 University of Utah, shall conduct a study regarding the provision of hormonal transgender
55 treatments to minors.

56 (3) The purpose of the study is to provide the Legislature with recommendations to

57 consider when deciding whether to lift the moratorium described in Section [58-1-603.1](#).

58 (4) The study shall:

59 (a) analyze hormonal transgender treatments that are prescribed to a minor with gender
60 dysphoria, including:

61 (i) analyzing any effects and side effects of the treatment; and

62 (ii) whether each treatment has been approved by the federal Food and Drug

63 Administration to treat gender dysphoria;

64 (b) review the scientific literature regarding hormonal transgender treatments in
65 minors, including literature from other countries;

66 (c) review the quality of evidence cited in any scientific literature;

67 (d) include high quality clinical research assessing the benefits and harms of hormonal
68 transgender treatments prescribed to minors with gender dysphoria;

69 (e) specify the conditions under which the department recommends that a treatment not
70 be permitted;

71 (f) recommend what information a minor and the minor's parent should understand
72 before consenting to a hormonal transgender treatment;

73 (g) recommend the best practices a health care provider should follow to provide the
74 information described in Subsection (4)(e);

75 (h) describe the assumptions and value determinations used to reach a
76 recommendation; and

77 (i) include any other information the department, in consultation with the entities
78 described in Subsection (2), determines would assist the Legislature in enacting legislation
79 related to the provision of hormonal transgender treatment to minors.

80 (5) Upon the completion of the study, the department shall provide the study to the
81 Health and Human Services Interim Committee.

82 Section 2. Section **58-1-603** is enacted to read:

83 **58-1-603. Hormonal transgender treatment on minors -- Requirements.**

84 (1) As used in this section:

85 (a) "Approved organization" means an organization with expertise regarding
86 transgender health care for minors that is approved by the division.

87 (b) "Biological sex at birth" means an individual's sex, as being male or female,

88 according to distinct reproductive roles as manifested by sex and reproductive organ anatomy,
89 chromosomal makeup, and endogenous hormone profiles.

90 (c) "Disorder of sexual development" means a sexual development disorder where an
91 individual:

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

93 (ii) is born with 46, XX chromosomes with virilization;

94 (iii) is born with 46, XY chromosomes with undervirilization;

95 (iv) has both ovarian and testicular tissue; or

96 (v) has been diagnosed by a physician, based on genetic or biochemical testing, with
97 abnormal:

98 (A) sex chromosome structure;

99 (B) sex steroid hormone production; or

100 (C) sex steroid hormone action for a male or female.

101 (d) "Health care provider" means:

102 (i) a physician;

103 (ii) a physician assistant licensed under Chapter 70a, Utah Physician Assistant Act; or

104 (iii) an advanced practice registered nurse licensed under Subsection [58-31b-301\(2\)\(e\)](#).

105 (e) (i) "Hormonal transgender treatment" means administering, prescribing, or
106 supplying:

107 (A) to an individual whose biological sex at birth is female, a dose of testosterone or
108 other androgens at levels above those normally found in an individual whose biological sex at
109 birth is female;

110 (B) to an individual whose biological sex at birth is male, a dose of estrogen or a
111 synthetic compound with estrogenic activity or effect at levels above those normally found in
112 an individual whose biological sex at birth is male; or

113 (C) a puberty inhibition drug.

114 (ii) "Hormonal transgender treatment" does not include administering, prescribing, or
115 supplying a substance described in Subsection (1)(e)(i) to an individual if the treatment is
116 medically necessary as a treatment for:

117 (A) precocious puberty;

118 (B) idiopathic short stature;

- 119 (C) endometriosis;
- 120 (D) a menstrual, ovarian, or uterine disorder;
- 121 (E) a sex-hormone stimulated cancer; or
- 122 (F) a disorder of sexual development.
- 123 (f) "Mental health professional" means any of the following:
- 124 (i) a physician who is board certified for a psychiatry specialization recognized by the
- 125 American Board of Medical Specialists or the American Osteopathic Association's Bureau of
- 126 Osteopathic Specialists;
- 127 (ii) a psychologist licensed under Chapter 61, Psychologist Licensing Act;
- 128 (iii) a clinical social worker licensed under Chapter 60, Part 2, Social Worker
- 129 Licensing Act;
- 130 (iv) a marriage and family therapist licensed under Chapter 60, Part 3, Marriage and
- 131 Family Therapist Licensing Act; or
- 132 (v) a clinical mental health counselor licensed under Chapter 60, Part 4, Clinical
- 133 Mental Health Counselor Licensing Act.
- 134 (g) "Minor" means an individual who is less than 18 years old.
- 135 (h) "Physician" means an individual licensed under:
- 136 (i) Chapter 67, Utah Medical Practice Act; or
- 137 (ii) Chapter 68, Utah Osteopathic Medical Practice Act.
- 138 (i) "Puberty inhibition drug" means any of the following alone or in combination with
- 139 aromatase inhibitors:
- 140 (i) gonadotropin-releasing hormone agonists; or
- 141 (ii) androgen receptor inhibitors.
- 142 (j) "Transgender treatment certification" means a certification described in Subsection
- 143 (2).
- 144 (2) (a) The division shall create a transgender treatment certification on or before July
- 145 1, 2023.
- 146 (b) The division may issue the transgender treatment certification to an individual if the
- 147 individual:
- 148 (i) is a health care provider or a mental health professional; and
- 149 (ii) has completed at least 40 hours of education related to transgender health care for

150 minors from an approved organization.

151 (c) The division may renew a transgender treatment certification:

152 (i) at the time an individual renews the individual's license; and

153 (ii) if the individual has completed at least 20 hours of continuing education related to

154 transgender health care for minors from an approved organization during the individual's

155 continuing education cycle.

156 (d) Beginning January 1, 2024, providing a hormonal transgender treatment to a minor
157 without a transgender treatment certification is unprofessional conduct.

158 (3) (a) A health care provider may provide a hormonal transgender treatment to a
159 minor only if the minor has been diagnosed with gender dysphoria for at least six months.

160 (b) Beginning July 1, 2023, before providing a hormonal transgender treatment to a
161 minor described in Subsection (3)(a), a health care provider shall:

162 (i) if the minor has other physical or mental health conditions, consider whether
163 treating those conditions before treating the gender dysphoria would provide the minor the best
164 long-term outcome;

165 (ii) consider whether an alternative medical treatment or behavioral intervention to
166 treat the minor's gender dysphoria would provide the minor the best long-term outcome;

167 (iii) document in the medical record that:

168 (A) the health care provider has complied with Subsections (3)(b)(i) and (ii); and

169 (B) providing the hormonal transgender treatment will likely result in the best
170 long-term outcome for the minor;

171 (iv) obtain written consent from:

172 (A) the minor; and

173 (B) the minor's parent or guardian unless the minor is emancipated;

174 (v) discuss with the minor:

175 (A) the risks of the hormonal transgender treatment;

176 (B) the minor's expectations regarding the effect that the hormonal transgender
177 treatment will have on the minor; and

178 (C) the likelihood that the hormonal transgender treatment will meet the expectations
179 described in Subsection (3)(b)(v)(B);

180 (vi) unless the minor is emancipated, discuss with the minor's parent or guardian:

- 181 (A) the risks of the hormonal transgender treatment;
182 (B) the minor's expectations regarding the effect that the hormonal transgender
183 treatment will have on the minor;
184 (C) the parent or guardian's expectations regarding the effect that the hormonal
185 transgender treatment will have on the minor; and
186 (D) the likelihood that the hormonal transgender treatment will meet the expectations
187 described in Subsections (3)(b)(vi)(B) and (C); and
188 (vii) upon the completion of any relevant information privacy release, obtain a mental
189 health evaluation of the minor as described in Subsection (4).
190 (4) The mental health evaluation shall:
191 (a) be performed by a mental health professional who:
192 (i) beginning January 1, 2024, has a current transgender treatment certification; and
193 (ii) is not the health care provider that is recommending or providing the hormonal
194 transgender treatment;
195 (b) contain a determination regarding whether the minor suffers from gender dysphoria
196 in accordance with the fifth edition of the Diagnostic and Statistical Manual of Mental
197 Disorders;
198 (c) confirm that the minor and the mental health professional have had at least three
199 therapy sessions; and
200 (d) document all of the minor's mental health diagnoses and any significant life events
201 that may be contributing to the diagnoses.
202 (5) A violation of Subsection (3) is unprofessional conduct.
203 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
204 division may make rules for implementing this section.
205 Section 3. Section **58-1-603.1** is enacted to read:
206 **58-1-603.1. Hormonal transgender treatment moratorium.**
207 (1) As used in this section:
208 (a) "Health care provider" means the same as that term is defined in Section [58-1-603](#).
209 (b) "Hormonal transgender treatment" means the same as that term is defined in
210 Section [58-1-603](#).
211 (2) A health care provider may not provide a hormonal transgender treatment to a

212 patient who:

213 (a) is a minor as defined in Section 58-1-603; and

214 (b) has not initiated a hormonal transgender treatment before May 3, 2023.

215 (3) A violation of Subsection (2) is unprofessional conduct.

216 Section 4. Section **58-67-102** is amended to read:

217 **58-67-102. Definitions.**

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

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

222 (b) "Ablative procedure" does not include hair removal.

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

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

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

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

234 (6) "Biological sex at birth" means an individual's sex, as being male or female,
235 according to distinct reproductive roles as manifested by:

236 (a) sex and reproductive organ anatomy;

237 (b) chromosomal makeup; and

238 (c) endogenous hormone profiles.

239 [~~5~~] (7) "Board" means the Physicians Licensing Board created in Section 58-67-201.

240 [~~6~~] (8) "Collaborating physician" means an individual licensed under Section
241 58-67-302 who enters into a collaborative practice arrangement with an associate physician.

242 [~~7~~] (9) "Collaborative practice arrangement" means the arrangement described in

243 Section [58-67-807](#).

244 ~~[(8)]~~ (10) (a) "Cosmetic medical device" means tissue altering energy based devices
245 that have the potential for altering living tissue and that are used to perform ablative or
246 nonablative procedures, such as American National Standards Institute (ANSI) designated
247 Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic
248 devices, and excludes ANSI designated Class IIIa and lower powered devices.

249 (b) Notwithstanding Subsection ~~[(8)(a)]~~ (10)(a), if an ANSI designated Class IIIa and
250 lower powered device is being used to perform an ablative procedure, the device is included in
251 the definition of cosmetic medical device under Subsection ~~[(8)(a)]~~ (10)(a).

252 ~~[(9)]~~ (11) "Cosmetic medical procedure":

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

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

256 ~~[(10)]~~ (12) "Diagnose" means:

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

261 (b) to attempt to conduct an examination or determination described under Subsection
262 ~~[(10)(a);]~~ (12)(a);

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

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

268 ~~[(11)]~~ (13) "LCME" means the Liaison Committee on Medical Education of the
269 American Medical Association.

270 ~~[(12)]~~ (14) "Medical assistant" means an unlicensed individual who may perform tasks
271 as described in Subsection [58-67-305\(6\)](#).

272 ~~[(13)]~~ (15) "Medically underserved area" means a geographic area in which there is a
273 shortage of primary care health services for residents, as determined by the Department of

274 Health and Human Services.

275 ~~[(14)]~~ (16) "Medically underserved population" means a specified group of people
276 living in a defined geographic area with a shortage of primary care health services, as
277 determined by the Department of Health and Human Services.

278 ~~[(15)]~~ (17) (a) (i) "Nonablative procedure" means a procedure that is expected or
279 intended to alter living tissue, but is not intended or expected to excise, vaporize, disintegrate,
280 or remove living tissue.

281 (ii) Notwithstanding Subsection ~~[(15)(a)(i);]~~ (17)(a)(i) nonablative procedure includes
282 hair removal.

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

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

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

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

289 ~~[(16)]~~ (18) "Physician" means both physicians and surgeons licensed under Section
290 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
291 Section 58-68-301, Utah Osteopathic Medical Practice Act.

292 ~~[(17)]~~ (19) (a) "Practice of medicine" means:

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

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

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

302 (iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
303 treatment of human diseases or conditions in any printed material, stationery, letterhead,
304 envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine,"

305 "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these
 306 designations in any manner which might cause a reasonable person to believe the individual
 307 using the designation is a licensed physician and surgeon, and if the party using the designation
 308 is not a licensed physician and surgeon, the designation must additionally contain the
 309 description of the branch of the healing arts for which the person has a license, provided that an
 310 individual who has received an earned degree of doctor of medicine degree but is not a licensed
 311 physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not
 312 Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

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

314 (i) except for an ablative medical procedure as provided in Subsection [~~(17)(b)(ii)~~]
 315 (19)(b)(ii) the conduct described in Subsection [~~(17)(a)(i)~~] (19)(a)(i) that is performed in
 316 accordance with a license issued under another chapter of this title;

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

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

321 [~~(18)~~] (20) "Prescription device" means an instrument, apparatus, implement, machine,
 322 contrivance, implant, in vitro reagent, or other similar or related article, and any component
 323 part or accessory, which is required under federal or state law to be prescribed by a practitioner
 324 and dispensed by or through a person or entity licensed under this chapter or exempt from
 325 licensure under this chapter.

326 [~~(19)~~] (21) "Prescription drug" means a drug that is required by federal or state law or
 327 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

328 (22) (a) "Primary sex characteristic surgical procedure" means any of the following if
 329 done for the purpose of effectuating or facilitating an individual's attempted sex change:

330 (i) for an individual whose biological sex at birth is male, castration, orchiectomy,
 331 penectomy, vaginoplasty, or vulvoplasty;

332 (ii) for an individual whose biological sex at birth is female, hysterectomy,
 333 oophorectomy, metoidioplasty, or phalloplasty; or

334 (iii) any surgical procedure that is related to or necessary for a procedure described in
 335 Subsection (22)(a)(i) or (ii), that would result in the sterilization of an individual who is not

336 sterile.

337 (b) "Primary sex characteristic surgical procedure" does not include:

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

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

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

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

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

343 (E) has been diagnosed by a physician, based on genetic or biochemical testing, with a

344 sex development disorder characterized by abnormal sex chromosome structure, sex steroid

345 hormone production, or sex steroid hormone action for a male or female; or

346 (ii) removing a body part:

347 (A) because the body part is cancerous or diseased; or

348 (B) for a reason that is medically necessary, other than to effectuate or facilitate an

349 individual's attempted sex change.

350 (23) (a) "Secondary sex characteristic surgical procedure" means any of the following

351 if done for the purpose of effectuating or facilitating an individual's attempted sex change:

352 (i) for an individual whose biological sex at birth is male, breast augmentation surgery,

353 chest feminization surgery, or facial feminization surgery; or

354 (ii) for an individual whose biological sex at birth is female, mastectomy, breast

355 reduction surgery, chest masculinization surgery, or facial masculinization surgery.

356 (b) "Secondary sex characteristic surgical procedure" does not include:

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

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

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

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

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

362 (E) has been diagnosed by a physician, based on genetic or biochemical testing, with a

363 sex development disorder characterized by abnormal sex chromosome structure, sex steroid

364 hormone production, or sex steroid hormone action for a male or female; or

365 (ii) removing a body part:

366 (A) because the body part is cancerous or diseased; or

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

369 [~~20~~] (24) "SPEX" means the Special Purpose Examination of the Federation of State
370 Medical Boards.

371 [~~21~~] (25) "Unlawful conduct" means the same as that term is defined in Sections
372 58-1-501 and 58-67-501.

373 [~~22~~] (26) "Unprofessional conduct" means the same as that term is defined in
374 Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

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

376 **58-67-502. Unprofessional conduct.**

377 (1) "Unprofessional conduct" includes, in addition to the definition in Section
378 58-1-501:

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

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

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

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

387 [or]

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

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

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

392 or

393 (f) performing, or causing to be performed, upon an individual who is less than 18
394 years old:

395 (i) a primary sex characteristic surgical procedure; or

396 (ii) a secondary sex characteristic surgical procedure.

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

- 398 (a) in compliance with Section 58-85-103:
399 (i) obtaining an investigational drug or investigational device;
400 (ii) administering the investigational drug to an eligible patient; or
401 (iii) treating an eligible patient with the investigational drug or investigational device;

402 or

- 403 (b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:
404 (i) when registered as a qualified medical provider or acting as a limited medical
405 provider, as those terms are defined in Section 26-61a-102, recommending the use of medical
406 cannabis;
407 (ii) when registered as a pharmacy medical provider, as that term is defined in Section
408 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or
409 (iii) when registered as a state central patient portal medical provider, as that term is
410 defined in Section 26-61a-102, providing state central patient portal medical provider services.
411 (3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and
412 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define
413 unprofessional conduct for a physician described in Subsection (2)(b).

414 Section 6. Section 58-68-102 is amended to read:

415 **58-68-102. Definitions.**

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

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

420 (b) "Ablative procedure" does not include hair removal.

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

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

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

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

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

432 (7) "Biological sex at birth" means an individual's sex, as being male or female,
433 according to distinct reproductive roles as manifested by:

434 (a) sex and reproductive organ anatomy;

435 (b) chromosomal makeup; and

436 (c) endogenous hormone profiles.

437 ~~[(6)]~~ (8) "Board" means the Osteopathic Physician and Surgeon's Licensing Board
438 created in Section 58-68-201.

439 ~~[(7)]~~ (9) "Collaborating physician" means an individual licensed under Section
440 58-68-302 who enters into a collaborative practice arrangement with an associate physician.

441 ~~[(8)]~~ (10) "Collaborative practice arrangement" means the arrangement described in
442 Section 58-68-807.

443 ~~[(9)]~~ (11) (a) "Cosmetic medical device" means tissue altering energy based devices
444 that have the potential for altering living tissue and that are used to perform ablative or
445 nonablative procedures, such as American National Standards Institute (ANSI) designated
446 Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic
447 devices and excludes ANSI designated Class IIIa and lower powered devices.

448 (b) Notwithstanding Subsection ~~[(9)(a)]~~ (11)(a), if an ANSI designated Class IIIa and
449 lower powered device is being used to perform an ablative procedure, the device is included in
450 the definition of cosmetic medical device under Subsection ~~[(9)(a)]~~ (11)(a).

451 ~~[(10)]~~ (12) "Cosmetic medical procedure":

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

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

455 ~~[(11)]~~ (13) "Diagnose" means:

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

460 (b) to attempt to conduct an examination or determination described under Subsection
461 ~~[(11)(a)]~~ (13)(a);

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

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

467 ~~[(12)]~~ (14) "Medical assistant" means an unlicensed individual who may perform tasks
468 as described in Subsection 58-68-305(6).

469 ~~[(13)]~~ (15) "Medically underserved area" means a geographic area in which there is a
470 shortage of primary care health services for residents, as determined by the Department of
471 Health and Human Services.

472 ~~[(14)]~~ (16) "Medically underserved population" means a specified group of people
473 living in a defined geographic area with a shortage of primary care health services, as
474 determined by the Department of Health and Human Services.

475 ~~[(15)]~~ (17) (a) (i) "Nonablative procedure" means a procedure that is expected or
476 intended to alter living tissue, but is not expected or intended to excise, vaporize, disintegrate,
477 or remove living tissue.

478 (ii) Notwithstanding Subsection ~~[(15)(a)(i)]~~ (17)(a)(i), nonablative procedure includes
479 hair removal.

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

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

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

483 (iii) the use of photo therapy lasers for neuromusculoskeletal treatments that are
484 ~~[performed]~~ performed by an individual licensed under this title who is acting within the
485 individual's scope of practice.

486 ~~[(16)]~~ (18) "Physician" means both physicians and surgeons licensed under Section
487 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
488 Section 58-68-301, Utah Osteopathic Medical Practice Act.

489 ~~[(17)]~~ (19) (a) "Practice of osteopathic medicine" means:

490 (i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human

491 disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real
492 or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part
493 is based upon emphasis of the importance of the musculoskeletal system and manipulative
494 therapy in the maintenance and restoration of health, by an individual in Utah or outside of the
495 state upon or for any human within the state;

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

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

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

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

513 (i) except for an ablative medical procedure as provided in Subsection ~~[(17)(b)(ii)]~~
514 (19)(b)(ii), the conduct described in Subsection ~~[(17)(a)(i)]~~ (19)(a)(i) that is performed in
515 accordance with a license issued under another chapter of this title;

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

519 (iii) conduct under Subsection [58-68-501\(2\)](#).

520 ~~[(18)]~~ (20) "Prescription device" means an instrument, apparatus, implement, machine,
521 contrivance, implant, in vitro reagent, or other similar or related article, and any component

522 part or accessory, which is required under federal or state law to be prescribed by a practitioner
523 and dispensed by or through a person or entity licensed under this chapter or exempt from
524 licensure under this chapter.

525 ~~[(19)]~~ (21) "Prescription drug" means a drug that is required by federal or state law or
526 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

527 (22) (a) "Primary sex characteristic surgical procedure" means any of the following if
528 done for the purpose of effectuating or facilitating an individual's attempted sex change:

529 (i) for an individual whose biological sex at birth is male, castration, orchiectomy,
530 penectomy, vaginoplasty, or vulvoplasty;

531 (ii) for an individual whose biological sex at birth is female, hysterectomy,
532 oophorectomy, metoidioplasty, or phalloplasty; or

533 (iii) any surgical procedure that is related to or necessary for a procedure described in
534 Subsection (22)(a)(i) or (ii), that would result in the sterilization of an individual who is not
535 sterile.

536 (b) "Primary sex characteristic surgical procedure" does not include:

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

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

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

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

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

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

545 (ii) removing a body part:

546 (A) because the body part is cancerous or diseased; or

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

549 (23) (a) "Secondary sex characteristic surgical procedure" means any of the following
550 if done for the purpose of effectuating or facilitating an individual's attempted sex change:

551 (i) for an individual whose biological sex at birth is male, breast augmentation surgery,
552 chest feminization surgery, or facial feminization surgery; or

553 (ii) for an individual whose biological sex at birth is female, mastectomy, breast
554 reduction surgery, chest masculinization surgery, or facial masculinization surgery.

555 (b) "Secondary sex characteristic surgical procedure" does not include:

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

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

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

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

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

561 (E) has been diagnosed by a physician, based on genetic or biochemical testing, with a
562 sex development disorder characterized by abnormal sex chromosome structure, sex steroid

563 hormone production, or sex steroid hormone action for a male or female; or

564 (ii) removing a body part:

565 (A) because the body part is cancerous or diseased; or

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

568 [~~20~~] (24) "SPEX" means the Special Purpose Examination of the Federation of State
569 Medical Boards.

570 [~~21~~] (25) "Unlawful conduct" means the same as that term is defined in Sections
571 58-1-501 and 58-68-501.

572 [~~22~~] (26) "Unprofessional conduct" means the same as that term is defined in
573 Sections 58-1-501 and 58-68-502 and as may be further defined by division rule.

574 Section 7. Section 58-68-502 is amended to read:

575 **58-68-502. Unprofessional conduct.**

576 (1) "Unprofessional conduct" includes, in addition to the definition in Section
577 58-1-501:

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

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

583 (c) making a material misrepresentation regarding the qualifications for licensure under

584 Section 58-68-302.5;

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

586 [or]

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

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

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

591 or

592 (f) performing, or causing to be performed, upon an individual who is less than 18
593 years old:

594 (i) a primary sex characteristic surgical procedure; or

595 (ii) a secondary sex characteristic surgical procedure.

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

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

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

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

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

601 or

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

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

604 provider, as those terms are defined in Section 26-61a-102, recommending the use of medical
605 cannabis;

606 (ii) when registered as a pharmacy medical provider, as that term is defined in Section
607 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

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

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

613 Section 8. Section 78B-3-427 is enacted to read:

614 **78B-3-427. Transgender procedures upon a minor -- Right of action -- Informed**

615 **consent requirements -- Statute of limitations.**

616 (1) As used in this section:

617 (a) "Hormonal transgender treatment" means the same as that term is defined in
618 Section [58-1-603](#).

619 (b) "Minor" means the same as that term is defined in Section [58-1-603](#).

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

622 (a) providing a hormonal transgender treatment to a minor without complying with the
623 requirements described in Section [58-1-603](#); or

624 (b) negligence in providing a hormonal transgender treatment to a minor.

625 (3) Notwithstanding any other provision of law, a malpractice action against a health
626 care provider described in Subsection (2) may be brought before the patient is 25 years old if
627 the treatment at issue in the malpractice action began, occurred, or continued on or after May 3,
628 2023.

629 (4) Sections [78B-3-404](#) and [78B-3-406](#) do not apply to an action described in this
630 section.