

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 conduct a systematic
15 review of the medical evidence regarding hormonal transgender treatments and
16 provide recommendations to the Legislature;
- 17 ▶ requires the Division of Professional Licensing to create a certification for
18 providing hormonal transgender treatments;
- 19 ▶ requires a health care provider to meet certain requirements before providing a
20 hormonal transgender treatment;
- 21 ▶ prohibits a health care provider from providing a hormonal transgender treatment to
22 new patients who were not diagnosed with gender dysphoria before a certain date;
- 23 ▶ prohibits performing sex characteristic surgical procedures on a minor for the
24 purpose of effectuating a sex change;
- 25 ▶ specifies that an individual may bring a medical malpractice action related to certain
26 medical treatments and procedures;
- 27 ▶ specifies that an individual may disaffirm consent under certain circumstances;
- 28 ▶ allows an individual to bring a medical malpractice action for treatment provided to

- 29 the individual as a minor if the individual later disaffirms consent;
- 30 ▶ extends the medical malpractice statute of limitations related to providing certain
- 31 medical treatments and procedures; and
- 32 ▶ makes technical changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 This bill provides a special effective date.

37 This bill provides revisor instructions.

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **58-67-102**, as last amended by Laws of Utah 2022, Chapter 233

41 **58-67-502**, as last amended by Laws of Utah 2021, Chapter 337

42 **58-68-102**, as last amended by Laws of Utah 2022, Chapter 233

43 **58-68-502**, as last amended by Laws of Utah 2021, Chapter 337

44 ENACTS:

45 **26B-1-214**, Utah Code Annotated 1953

46 **58-1-603**, Utah Code Annotated 1953

47 **58-1-603.1**, Utah Code Annotated 1953

48 **78B-3-427**, Utah Code Annotated 1953

49 **Utah Code Sections Affected by Revisor Instructions:**

50 **58-1-603.1**, Utah Code Annotated 1953

51 **78B-3-427**, Utah Code Annotated 1953



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

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

55 **26B-1-214.** **Systematic medical evidence review of hormonal transgender**

56 **treatments.**

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

59 (2) The department, in consultation with the Division of Professional Licensing created
60 in Section 58-1-103, the Physicians Licensing Board created in Section 58-67-201, the
61 Osteopathic Physician and Surgeon's Licensing Board created in Section 58-68-201, the
62 University of Utah, and a non-profit hospital system with multiple hospitals in Utah and
63 experience in specialty pediatric care, shall conduct a systematic medical evidence review
64 regarding the provision of hormonal transgender treatments to minors.

65 (3) The purpose of the systematic medical evidence review is to provide the Legislature
66 with recommendations to consider when deciding whether to lift the moratorium described in
67 Section 58-1-603.1.

68 (4) The systematic medical evidence review shall:

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

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

72 (ii) whether each treatment has been approved by the federal Food and Drug
73 Administration to treat gender dysphoria;

74 (b) review the scientific literature regarding hormonal transgender treatments in
75 minors, including short-term and long-term impacts, literature from other countries, and rates
76 of desistence and time to desistence where applicable;

77 (c) review the quality of evidence cited in any scientific literature including to analyze
78 and report on the quality of the data based on techniques such as peer review, selection bias,
79 self-selection bias, randomization, sample size, and other applicable best research practices;

80 (d) include high quality clinical research assessing the short-term and long-term
81 benefits and harms of hormonal transgender treatments prescribed to minors with gender
82 dysphoria and the short-term and long-term benefits and harms of interrupting the natural

83 puberty and development processes of the child;

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

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

88 (g) recommend the best practices a health care provider should follow to provide the
89 information described in Subsection (4)(f);

90 (h) describe the assumptions and value determinations used to reach a
91 recommendation; and

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

95 (5) Upon the completion of the systematic medical evidence review, the department
96 shall provide the systematic medical evidence review to the Health and Human Services
97 Interim Committee.

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

99 **58-1-603. Hormonal transgender treatment on minors -- Requirements.**

100 (1) As used in this section:

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

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

106 (c) "Disorder of sexual development" means a sexual development disorder where an
107 individual:

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

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

- 110 (iii) is born with 46, XY chromosomes with undervirilization;
- 111 (iv) has both ovarian and testicular tissue; or
- 112 (v) has been diagnosed by a physician, based on genetic or biochemical testing, with
- 113 abnormal:
 - 114 (A) sex chromosome structure;
 - 115 (B) sex steroid hormone production; or
 - 116 (C) sex steroid hormone action for a male or female.
- 117 (d) "Health care provider" means:
 - 118 (i) a physician;
 - 119 (ii) a physician assistant licensed under Chapter 70a, Utah Physician Assistant Act; or
 - 120 (iii) an advanced practice registered nurse licensed under Subsection [58-31b-301\(2\)\(e\)](#).
- 121 (e) (i) "Hormonal transgender treatment" means administering, prescribing, or
- 122 supplying for effectuating or facilitating an individual's attempted sex change:
 - 123 (A) to an individual whose biological sex at birth is female, a dose of testosterone or
 - 124 other androgens at levels above those normally found in an individual whose biological sex at
 - 125 birth is female;
 - 126 (B) to an individual whose biological sex at birth is male, a dose of estrogen or a
 - 127 synthetic compound with estrogenic activity or effect at levels above those normally found in
 - 128 an individual whose biological sex at birth is male; or
 - 129 (C) a puberty inhibition drug.
- 130 (ii) "Hormonal transgender treatment" does not include administering, prescribing, or
- 131 supplying a substance described in Subsection (1)(e)(i) to an individual if the treatment is
- 132 medically necessary as a treatment for:
 - 133 (A) precocious puberty;
 - 134 (B) endometriosis;
 - 135 (C) a menstrual, ovarian, or uterine disorder;
 - 136 (D) a sex-hormone stimulated cancer; or

- 137 (E) a disorder of sexual development.
- 138 (f) "Mental health professional" means any of the following:
- 139 (i) a physician who is board certified for a psychiatry specialization recognized by the
140 American Board of Medical Specialists or the American Osteopathic Association's Bureau of
141 Osteopathic Specialists;
- 142 (ii) a psychologist licensed under Chapter 61, Psychologist Licensing Act;
- 143 (iii) a clinical social worker licensed under Chapter 60, Part 2, Social Worker
144 Licensing Act;
- 145 (iv) a marriage and family therapist licensed under Chapter 60, Part 3, Marriage and
146 Family Therapist Licensing Act; or
- 147 (v) a clinical mental health counselor licensed under Chapter 60, Part 4, Clinical
148 Mental Health Counselor Licensing Act.
- 149 (g) "Minor" means an individual who is less than 18 years old.
- 150 (h) "Physician" means an individual licensed under:
- 151 (i) Chapter 67, Utah Medical Practice Act; or
- 152 (ii) Chapter 68, Utah Osteopathic Medical Practice Act.
- 153 (i) "Puberty inhibition drug" means any of the following alone or in combination with
154 aromatase inhibitors:
- 155 (i) gonadotropin-releasing hormone agonists; or
- 156 (ii) androgen receptor inhibitors.
- 157 (j) "Transgender treatment certification" means a certification described in Subsection
158 (2).
- 159 (2) (a) The division shall create a transgender treatment certification on or before July
160 1, 2023.
- 161 (b) The division may issue the transgender treatment certification to an individual if the
162 individual:
- 163 (i) is a health care provider or a mental health professional; and

164 (ii) has completed at least 40 hours of education related to transgender health care for
165 minors from an approved organization.

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

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

168 (ii) if the individual has completed at least 20 hours of continuing education related to
169 transgender health care for minors from an approved organization during the individual's
170 continuing education cycle.

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

173 (3) (a) A health care provider may provide a hormonal transgender treatment to a
174 minor only if the health care provider has been treating the minor for gender dysphoria for at
175 least six months.

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

178 (i) determine if the minor has other physical or mental health conditions, identify and
179 document any condition, and consider whether treating those conditions before treating the
180 gender dysphoria would provide the minor the best long-term outcome;

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

183 (iii) document in the medical record that:

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

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

187 (iv) obtain written consent from:

188 (A) the minor; and

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

190 (v) discuss with the minor:

191 (A) the risks of the hormonal transgender treatment;
192 (B) the minor's short-term and long-term expectations regarding the effect that the
193 hormonal transgender treatment will have on the minor; and
194 (C) the likelihood that the hormonal transgender treatment will meet the short-term and
195 long-term expectations described in Subsection (3)(b)(v)(B);
196 (vi) unless the minor is emancipated, discuss with the minor's parent or guardian:
197 (A) the risks of the hormonal transgender treatment;
198 (B) the minor's short-term and long-term expectations regarding the effect that the
199 hormonal transgender treatment will have on the minor;
200 (C) the parent or guardian's short-term and long-term expectations regarding the effect
201 that the hormonal transgender treatment will have on the minor; and
202 (D) the likelihood that the hormonal transgender treatment will meet the short-term and
203 long-term expectations described in Subsections (3)(b)(vi)(B) and (C);
204 (vii) document in the medical record that the health care provider has provided the
205 information described in Subsections (3)(b)(viii) and (ix);
206 (viii) provide the minor the following information if providing the minor a puberty
207 inhibition drug:
208 (A) puberty inhibition drugs are not approved by the FDA for the treatment of gender
209 dysphoria;
210 (B) possible adverse outcomes of puberty blockers are known to include diminished
211 bone density, pseudotumor cerebri and long term adult sexual dysfunction;
212 (C) research on the long-term risks to children of prolonged treatment with puberty
213 blockers for the treatment of gender dysphoria has not yet occurred; and
214 (D) the full effects of puberty blockers on brain development and cognition are
215 unknown;
216 (ix) provide the minor the following information if providing a cross-sex hormone as
217 described in Subsection (1)(e)(i)(A) or (B):

218 (A) the use of cross-sex hormones in males is associated with risks that include blood
219 clots, gallstones, coronary artery disease, heart attacks, tumors of the pituitary gland, strokes,
220 elevated levels of triglycerides in the blood, breast cancer, and irreversible infertility; and

221 (B) the use of cross-sex hormones in females is associated with risks of erythrocytosis,
222 severe liver dysfunction, coronary artery disease, hypertension, and increased risk of breast and
223 uterine cancers; and

224 (x) upon the completion of any relevant information privacy release, obtain a mental
225 health evaluation of the minor as described in Subsection (4).

226 (4) The mental health evaluation shall:

227 (a) be performed by a mental health professional who:

228 (i) beginning January 1, 2024, has a current transgender treatment certification; and

229 (ii) is not the health care provider that is recommending or providing the hormonal
230 transgender treatment;

231 (b) contain a determination regarding whether the minor suffers from gender dysphoria
232 in accordance with the fifth edition of the Diagnostic and Statistical Manual of Mental
233 Disorders;

234 (c) confirm that the minor and the mental health professional have had at least three
235 therapy sessions; and

236 (d) document all of the minor's mental health diagnoses and any significant life events
237 that may be contributing to the diagnoses.

238 (5) A violation of Subsection (3) is unprofessional conduct.

239 Section 3. Section **58-1-603.1** is enacted to read:

240 **58-1-603.1. Hormonal transgender treatment moratorium.**

241 (1) As used in this section:

242 (a) "Health care provider" means the same as that term is defined in Section [58-1-603](#).

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

245 (2) A health care provider may not provide a hormonal transgender treatment to a
246 patient who:

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

248 (b) is not diagnosed with gender dysphoria before the effective date of this bill.

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

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

251 **58-67-102. Definitions.**

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

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

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

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

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

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

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

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

270 (a) sex and reproductive organ anatomy;

271 (b) chromosomal makeup; and

272 (c) endogenous hormone profiles.
273 ~~[(5)]~~ (7) "Board" means the Physicians Licensing Board created in Section 58-67-201.
274 ~~[(6)]~~ (8) "Collaborating physician" means an individual licensed under Section
275 58-67-302 who enters into a collaborative practice arrangement with an associate physician.
276 ~~[(7)]~~ (9) "Collaborative practice arrangement" means the arrangement described in
277 Section 58-67-807.
278 ~~[(8)]~~ (10) (a) "Cosmetic medical device" means tissue altering energy based devices
279 that have the potential for altering living tissue and that are used to perform ablative or
280 nonablative procedures, such as American National Standards Institute (ANSI) designated
281 Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic
282 devices, and excludes ANSI designated Class IIIa and lower powered devices.
283 (b) Notwithstanding Subsection ~~[(8)(a)]~~ (10)(a), if an ANSI designated Class IIIa and
284 lower powered device is being used to perform an ablative procedure, the device is included in
285 the definition of cosmetic medical device under Subsection ~~[(8)(a)]~~ (10)(a).
286 ~~[(9)]~~ (11) "Cosmetic medical procedure":
287 (a) includes the use of cosmetic medical devices to perform ablative or nonablative
288 procedures; and
289 (b) does not include a treatment of the ocular globe such as refractive surgery.
290 ~~[(10)]~~ (12) "Diagnose" means:
291 (a) to examine in any manner another person, parts of a person's body, substances,
292 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's
293 body, to determine the source, nature, kind, or extent of a disease or other physical or mental
294 condition;
295 (b) to attempt to conduct an examination or determination described under Subsection
296 ~~[(10)(a);]~~ (12)(a);
297 (c) to hold oneself out as making or to represent that one is making an examination or
298 determination as described in Subsection ~~[(10)(a);]~~ (12)(a); or

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

302 [~~(11)~~] (13) "LCME" means the Liaison Committee on Medical Education of the
303 American Medical Association.

304 [~~(12)~~] (14) "Medical assistant" means an unlicensed individual who may perform tasks
305 as described in Subsection 58-67-305(6).

306 [~~(13)~~] (15) "Medically underserved area" means a geographic area in which there is a
307 shortage of primary care health services for residents, as determined by the Department of
308 Health and Human Services.

309 [~~(14)~~] (16) "Medically underserved population" means a specified group of people
310 living in a defined geographic area with a shortage of primary care health services, as
311 determined by the Department of Health and Human Services.

312 [~~(15)~~] (17) (a) (i) "Nonablative procedure" means a procedure that is expected or
313 intended to alter living tissue, but is not intended or expected to excise, vaporize, disintegrate,
314 or remove living tissue.

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

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

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

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

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

323 [~~(16)~~] (18) "Physician" means both physicians and surgeons licensed under Section
324 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
325 Section 58-68-301, Utah Osteopathic Medical Practice Act.

326 [~~(17)~~] (19) (a) "Practice of medicine" means:

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

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

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

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

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

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

351 (ii) an ablative cosmetic medical procedure if the scope of practice for the person
352 performing the ablative cosmetic medical procedure includes the authority to operate or

353 perform a surgical procedure; or

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

355 ~~[(18)]~~ (20) "Prescription device" means an instrument, apparatus, implement, machine,
356 contrivance, implant, in vitro reagent, or other similar or related article, and any component
357 part or accessory, which is required under federal or state law to be prescribed by a practitioner
358 and dispensed by or through a person or entity licensed under this chapter or exempt from
359 licensure under this chapter.

360 ~~[(19)]~~ (21) "Prescription drug" means a drug that is required by federal or state law or
361 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

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

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

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

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

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

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

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

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

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

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

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

380 (ii) removing a body part:
381 (A) because the body part is cancerous or diseased; or
382 (B) for a reason that is medically necessary, other than to effectuate or facilitate an
383 individual's attempted sex change.

384 (23) (a) "Secondary sex characteristic surgical procedure" means any of the following
385 if done for the purpose of effectuating or facilitating an individual's attempted sex change:
386 (i) for an individual whose biological sex at birth is male, breast augmentation surgery,
387 chest feminization surgery, or facial feminization surgery; or
388 (ii) for an individual whose biological sex at birth is female, mastectomy, breast
389 reduction surgery, chest masculinization surgery, or facial masculinization surgery.

390 (b) "Secondary sex characteristic surgical procedure" does not include:
391 (i) surgery or other procedures or treatments performed on an individual who:
392 (A) is born with external biological sex characteristics that are irresolvably ambiguous;
393 (B) is born with 46, XX chromosomes with virilization;
394 (C) is born with 46, XY chromosomes with undervirilization;
395 (D) has both ovarian and testicular tissue; or
396 (E) has been diagnosed by a physician, based on genetic or biochemical testing, with a
397 sex development disorder characterized by abnormal sex chromosome structure, sex steroid
398 hormone production, or sex steroid hormone action for a male or female; or
399 (ii) removing a body part:
400 (A) because the body part is cancerous or diseased; or
401 (B) for a reason that is medically necessary, other than to effectuate or facilitate an
402 individual's attempted sex change.

403 ~~[(20)]~~ (24) "SPEX" means the Special Purpose Examination of the Federation of State
404 Medical Boards.

405 ~~[(21)]~~ (25) "Unlawful conduct" means the same as that term is defined in Sections
406 58-1-501 and 58-67-501.

407 [~~(22)~~] (26) "Unprofessional conduct" means the same as that term is defined in
408 Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

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

410 **58-67-502. Unprofessional conduct.**

411 (1) "Unprofessional conduct" includes, in addition to the definition in Section
412 58-1-501:

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

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

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

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

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

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

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

426 or

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

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

430 (ii) a secondary sex characteristic surgical procedure.

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

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

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

434 (ii) administering the investigational drug to an eligible patient; or
435 (iii) treating an eligible patient with the investigational drug or investigational device;

436 or

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

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

441 (ii) when registered as a pharmacy medical provider, as that term is defined in Section
442 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

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

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

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

449 **58-68-102. Definitions.**

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

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

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

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

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

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

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

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

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

468 (a) sex and reproductive organ anatomy;

469 (b) chromosomal makeup; and

470 (c) endogenous hormone profiles.

471 ~~[(6)]~~ (8) "Board" means the Osteopathic Physician and Surgeon's Licensing Board
472 created in Section 58-68-201.

473 ~~[(7)]~~ (9) "Collaborating physician" means an individual licensed under Section
474 58-68-302 who enters into a collaborative practice arrangement with an associate physician.

475 ~~[(8)]~~ (10) "Collaborative practice arrangement" means the arrangement described in
476 Section 58-68-807.

477 ~~[(9)]~~ (11) (a) "Cosmetic medical device" means tissue altering energy based devices
478 that have the potential for altering living tissue and that are used to perform ablative or
479 nonablative procedures, such as American National Standards Institute (ANSI) designated
480 Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic
481 devices and excludes ANSI designated Class IIIa and lower powered devices.

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

485 ~~[(10)]~~ (12) "Cosmetic medical procedure":

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

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

489 ~~[(11)]~~ (13) "Diagnose" means:

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

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

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

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

501 ~~[(12)]~~ (14) "Medical assistant" means an unlicensed individual who may perform tasks
502 as described in Subsection 58-68-305(6).

503 ~~[(13)]~~ (15) "Medically underserved area" means a geographic area in which there is a
504 shortage of primary care health services for residents, as determined by the Department of
505 Health and Human Services.

506 ~~[(14)]~~ (16) "Medically underserved population" means a specified group of people
507 living in a defined geographic area with a shortage of primary care health services, as
508 determined by the Department of Health and Human Services.

509 ~~[(15)]~~ (17) (a) (i) "Nonablative procedure" means a procedure that is expected or
510 intended to alter living tissue, but is not expected or intended to excise, vaporize, disintegrate,
511 or remove living tissue.

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

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

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

520 ~~[(16)]~~ (18) "Physician" means both physicians and surgeons licensed under Section
521 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under
522 Section 58-68-301, Utah Osteopathic Medical Practice Act.

523 ~~[(17)]~~ (19) (a) "Practice of osteopathic medicine" means:

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

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

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

534 (iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
535 treatment of human diseases or conditions, in any printed material, stationery, letterhead,
536 envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine,"
537 "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.,"
538 "D.O.," or any combination of these designations in any manner which might cause a
539 reasonable person to believe the individual using the designation is a licensed osteopathic
540 physician, and if the party using the designation is not a licensed osteopathic physician, the
541 designation must additionally contain the description of the branch of the healing arts for which

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

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

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

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

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

554 [~~(18)~~] (20) "Prescription device" means an instrument, apparatus, implement, machine,
555 contrivance, implant, in vitro reagent, or other similar or related article, and any component
556 part or accessory, which is required under federal or state law to be prescribed by a practitioner
557 and dispensed by or through a person or entity licensed under this chapter or exempt from
558 licensure under this chapter.

559 [~~(19)~~] (21) "Prescription drug" means a drug that is required by federal or state law or
560 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

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

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

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

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

569 sterile.

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

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

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

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

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

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

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

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

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

579 (ii) removing a body part:

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

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

582 individual's attempted sex change.

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

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

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

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

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

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

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

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

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

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

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

596 sex development disorder characterized by abnormal sex chromosome structure, sex steroid
597 hormone production, or sex steroid hormone action for a male or female; or

598 (ii) removing a body part:

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

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

602 [~~20~~] (24) "SPEX" means the Special Purpose Examination of the Federation of State
603 Medical Boards.

604 [~~21~~] (25) "Unlawful conduct" means the same as that term is defined in Sections
605 58-1-501 and 58-68-501.

606 [~~22~~] (26) "Unprofessional conduct" means the same as that term is defined in
607 Sections 58-1-501 and 58-68-502 and as may be further defined by division rule.

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

609 **58-68-502. Unprofessional conduct.**

610 (1) "Unprofessional conduct" includes, in addition to the definition in Section
611 58-1-501:

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

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

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

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

620 [or]

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

622 (i) a wrongful or negligent act or omission of an individual licensed under this chapter

623 or an individual under the direction or control of an individual licensed under this chapter; or

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

625 or

626 (f) performing, or causing to be performed, upon an individual who is less than 18

627 years old:

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

629 (ii) a secondary sex characteristic surgical procedure.

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

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

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

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

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

635 or

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

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

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

639 cannabis;

640 (ii) when registered as a pharmacy medical provider, as that term is defined in Section

641 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

642 (iii) when registered as a state central patient portal medical provider, as that term is

643 defined in Section 26-61a-102, providing state central patient portal medical provider services.

644 (3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and

645 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define

646 unprofessional conduct for a physician described in Subsection (2)(b).

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

648 **78B-3-427. Transgender procedures upon a minor -- Right of action -- Informed**

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

650 (1) As used in this section:

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

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

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

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

658 (ii) negligence in providing a hormonal transgender treatment to a minor; or

659 (iii) providing a treatment or procedure described in Subsection (2)(b)(ii) to a minor
660 without the minor's consent including if the minor disaffirms consent under Subsection (3).

661 (3) (a) Notwithstanding any other provision of law, an individual who gave informed
662 consent as a minor or for whom consent was given under Section [78B-3-406](#), may disaffirm the
663 consent if:

664 (i) the treatment at issue began after the effective date of this bill;

665 (ii) the consent was provided for any of the following:

666 (A) a hormonal transgender treatment;

667 (B) a primary sex characteristic surgical procedure as defined in Section [58-67-102](#); or

668 (C) a secondary sex characteristic surgical procedure as defined in Section [58-67-102](#);

669 (iii) under the totality of the circumstances, a health care provider would have reason to
670 believe that the minor, or a similarly situated minor, could later regret having given consent;

671 (iv) the individual suffered a permanent physical injury; and

672 (v) the consent is disaffirmed in writing before the individual reaches the age of 25
673 years old.

674 (b) A disaffirmation of consent under this Subsection (3) relates back to the day the
675 original consent was given.

676 (4) Notwithstanding any other provision of law, a malpractice action against a health

677 care provider described in Subsection (2)(a) may be brought before the patient is 25 years old if
678 the treatment at issue in the malpractice action began, occurred, or continued on or after the
679 effective date of this bill.

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

682 Section 9. **Effective date.**

683 If approved by two-thirds of all the members elected to each house, this bill takes effect
684 upon approval by the governor, or the day following the constitutional time limit of Utah
685 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
686 the date of veto override.

687 Section 10. **Revisor instructions.**

688 The Legislature intends that the Office of Legislative Research and General Counsel, in
689 preparing the Utah Code database for publication, replace each instance of the phrase "the
690 effective date of this bill" with the bill's actual effective date in the following Utah Code
691 sections:

692 (1) Section [58-1-603.1](#); and

693 (2) Section [78B-3-427](#).