

SB0016S01 compared with SB0016

~~{deleted text}~~ shows text that was in SB0016 but was deleted in SB0016S01.

inserted text shows text that was not in SB0016 but was inserted into SB0016S01.

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~~{SEX CHARACTERISTIC SURGICAL PROCEDURES}~~ Senator Michael S. Kennedy proposes the following substitute bill:

TRANSGENDER MEDICAL TREATMENTS AND PROCEDURES

AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael S. Kennedy

House Sponsor: _____

LONG TITLE

~~{Committee Note:~~

~~_____ The Health and Human Services Interim Committee recommended this bill.~~

~~_____ Legislative Vote: 12 voting for 5 voting against 1 absent~~

~~{General Description:~~

~~{}~~ This bill enacts provisions regarding ~~{sex characteristic surgical}~~ transgender medical treatments and procedures.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Department of Health and Human Services to study hormonal

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transgender treatments and provide recommendations to the Legislature;

- ▶ requires the Division of Professional Licensing to create a certification for providing hormonal transgender treatments;
- ▶ requires a health care provider to meet certain requirements before providing a hormonal transgender treatment;
- ▶ prohibits a health care provider from providing a hormonal transgender treatment to patients who have not previously received a hormonal transgender treatment;
- ▶ prohibits performing sex characteristic surgical procedures on a minor for the purpose of effectuating a sex change;
- ▶ specifies that a patient may bring a medical malpractice action for a hormonal transgender treatment;
- ▶ extends the medical malpractice statute of limitations for a hormonal transgender treatment that is provided to minors;
- ▶ grants rulemaking authority; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

ENACTS:

26B-1-214, Utah Code Annotated 1953

58-1-603, Utah Code Annotated 1953

58-1-603.1, Utah Code Annotated 1953

78B-3-427, Utah Code Annotated 1953

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

Section 1. Section ~~{58-67-102}~~26B-1-214 is enacted to read:

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

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

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

(3) The purpose of the study is to provide the Legislature with recommendations to consider when deciding whether to lift the moratorium described in Section 58-1-603.1.

(4) The study shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

(iv) has both ovarian and testicular tissue; or

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

(A) sex chromosome structure;

(B) sex steroid hormone production; or

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

(d) "Health care provider" means:

(i) a physician;

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

(iii) an advanced practice registered nurse licensed under Subsection 58-31b-301(2)(e).

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

(A) to an individual whose biological sex at birth is female, a dose of testosterone or

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other androgens at levels above those normally found in an individual whose biological sex at birth is female;

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

(C) a puberty inhibition drug.

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

(A) precocious puberty;

(B) idiopathic short stature;

(C) endometriosis;

(D) a menstrual, ovarian, or uterine disorder;

(E) a sex-hormone stimulated cancer; or

(F) a disorder of sexual development.

(f) "Mental health professional" means any of the following:

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

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

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

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

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

(g) "Minor" means an individual who is less than 18 years old.

(h) "Physician" means an individual licensed under:

(i) Chapter 67, Utah Medical Practice Act; or

(ii) Chapter 68, Utah Osteopathic Medical Practice Act.

(i) "Puberty inhibition drug" means any of the following alone or in combination with

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aromatase inhibitors:

(i) gonadotropin-releasing hormone agonists; or

(ii) androgen receptor inhibitors.

(j) "Transgender treatment certification" means a certification described in Subsection

(2).

(2) (a) The division shall create a transgender treatment certification on or before July 1, 2023.

(b) The division may issue the transgender treatment certification to an individual if the individual:

(i) is a health care provider or a mental health professional; and

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

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

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

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

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

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

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

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

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

(iii) document in the medical record that:

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

(B) providing the hormonal transgender treatment will likely result in the best

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long-term outcome for the minor;

(iv) obtain written consent from:

(A) the minor; and

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

(v) discuss with the minor:

(A) the risks of the hormonal transgender treatment;

(B) the minor's expectations regarding the effect that the hormonal transgender

treatment will have on the minor; and

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

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

(A) the risks of the hormonal transgender treatment;

(B) the minor's expectations regarding the effect that the hormonal transgender

treatment will have on the minor;

(C) the parent or guardian's expectations regarding the effect that the hormonal transgender treatment will have on the minor; and

(D) the likelihood that the hormonal transgender treatment will meet the expectations described in Subsections (3)(b)(vi)(B) and (C); and

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

(4) The mental health evaluation shall:

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

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

(ii) is not the health care provider that is recommending or providing the hormonal

transgender treatment;

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

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

(d) document all of the minor's mental health diagnoses and any significant life events

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that may be contributing to the diagnoses.

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

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules for implementing this section.

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

58-1-603.1. Hormonal transgender treatment moratorium.

(1) As used in this section:

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

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

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

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

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

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

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

58-67-102. Definitions.

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

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

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

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

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

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

(5) "Attempted sex change" means an attempt or effort to change an individual's body

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to present that individual as being of a sex or gender that is different from the individual's biological sex at birth.

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

(a) sex and reproductive organ anatomy;

(b) chromosomal makeup; and

(c) endogenous hormone profiles.

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

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

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

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

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

~~(9)~~ (11) "Cosmetic medical procedure":

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

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

~~(10)~~ (12) "Diagnose" means:

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

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

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

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

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

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

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

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

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

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

(b) "Nonablative procedure" does not include:

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

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

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

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

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

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

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disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the state upon or for any human within the state;

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

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

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

(b) The practice of medicine does not include:

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

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

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

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

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licensure under this chapter.

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

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

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

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

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

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

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

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

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

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

(D) has both ovarian and testicular tissue; or

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

(ii) removing a body part:

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

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

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

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

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

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

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

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

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

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

(D) has both ovarian and testicular tissue; or

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

(ii) removing a body part:

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

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

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

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

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

Section ~~{2}~~5. Section **58-67-502** is amended to read:

58-67-502. Unprofessional conduct.

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

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

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

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

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

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[or]

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

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

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

or

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

(i) a primary sex characteristic surgical procedure; or

(ii) a secondary sex characteristic surgical procedure.

(2) "Unprofessional conduct" does not include:

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

(i) obtaining an investigational drug or investigational device;

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

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

or

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

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

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

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

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

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

58-68-102. Definitions.

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

(1) (a) "Ablative procedure" means a procedure that is expected to excise, vaporize,

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disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium: YAG lasers.

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

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

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

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

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

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

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

(a) sex and reproductive organ anatomy;

(b) chromosomal makeup; and

(c) endogenous hormone profiles.

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

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

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

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

(b) Notwithstanding Subsection ~~[(9)(a)]~~ (11)(a), if an ANSI designated Class IIIa and

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lower powered device is being used to perform an ablative procedure, the device is included in the definition of cosmetic medical device under Subsection [~~(9)(a)~~] (11)(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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(b) "Nonablative procedure" does not include:

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

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

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

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

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

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

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

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

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

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in the same size and style of lettering.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) has both ovarian and testicular tissue; or

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

(ii) removing a body part:

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

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

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

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

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

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

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

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

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

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

(D) has both ovarian and testicular tissue; or

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

(ii) removing a body part:

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

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

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

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

~~[(22)]~~ (26) "Unprofessional conduct" means the same as that term is defined in

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Sections 58-1-501 and 58-68-502 and as may be further defined by division rule.

Section ~~{4}~~7. Section **58-68-502** is amended to read:

58-68-502. Unprofessional conduct.

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

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

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

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

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

[or]

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

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

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

or

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

(i) a primary sex characteristic surgical procedure; or

(ii) a secondary sex characteristic surgical procedure.

(2) "Unprofessional conduct" does not include:

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

(i) obtaining an investigational drug or investigational device;

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

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

or

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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