

MEDICATION AIDE CERTIFIED

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca D. Lockhart

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill amends the Nurse Practice Act.

Highlighted Provisions:

This bill:

- ▶ changes the status of Medication Aide Certified from a pilot program to an ongoing certification by the Division of Occupational and Professional Licensing;
- ▶ amends definitions;
- ▶ moves the authority to impose a penalty from one code section to another code section;
- ▶ permits the use of the restricted funds in the Nurse Education and Enforcement Fund for reviewing and approving nurse education and medication aide certified education programs;
- ▶ authorizes the division to issue citations and take administrative action for unlawful or unprofessional conduct; and
- ▶ makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 30 **58-31b-102**, as last amended by Laws of Utah 2007, Chapter 57
- 31 **58-31b-103**, as enacted by Laws of Utah 1998, Chapter 288
- 32 **58-31b-401**, as last amended by Laws of Utah 2006, Chapter 291
- 33 **58-31b-503**, as last amended by Laws of Utah 2006, Chapter 291
- 34 **58-31b-601**, as last amended by Laws of Utah 2006, Chapter 291
- 35 **63-55b-158**, as last amended by Laws of Utah 2006, Chapters 46 and 291

36 REPEALS:

- 37 **58-31b-301.6**, as enacted by Laws of Utah 2006, Chapter 291
- 38 **58-31b-402**, as last amended by Laws of Utah 2002, Chapter 290



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

41 Section 1. Section **58-31b-102** is amended to read:

42 **58-31b-102. Definitions.**

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

44 (1) "Administrative penalty" means a monetary fine or citation imposed by the division
45 for acts or omissions determined to constitute unprofessional or unlawful conduct in accordance
46 with a fine schedule established by rule and as a result of an adjudicative proceeding conducted
47 in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

48 (2) "Applicant" means a person who applies for licensure or certification under this
49 chapter by submitting a completed application for licensure or certification and the required fees
50 to the department.

51 (3) "Approved education program" means a nursing education program that meets the
52 minimum standards for educational programs established under this chapter and by division rule
53 in collaboration with the board.

54 (4) "Board" means the Board of Nursing created in Section 58-31b-201.

55 (5) "Consultation and referral plan" means a written plan jointly developed by an
56 advanced practice registered nurse and a consulting physician that permits the advanced practice
57 registered nurse to prescribe schedule II-III controlled substances in consultation with the

58 consulting physician.

59 (6) "Consulting physician" means a physician and surgeon or osteopathic physician and
60 surgeon licensed in accordance with this title who has agreed to consult with an advanced
61 practice registered nurse with a controlled substance license, a DEA registration number, and
62 who will be prescribing schedule II-III controlled substances.

63 (7) "Diagnosis" means the identification of and discrimination between physical and
64 psychosocial signs and symptoms essential to the effective execution and management of health
65 care.

66 (8) "Examinee" means a person who applies to take or does take any examination
67 required under this chapter for licensure.

68 (9) "Licensee" means a person who is licensed or certified under this chapter.

69 (10) "Long-term care facility" means any of the following facilities licensed by the
70 Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and
71 Inspection Act:

- 72 (a) a nursing care facility;
- 73 (b) a small health care facility;
- 74 (c) an intermediate care facility for the mentally retarded;
- 75 (d) an assisted living facility Type I or II; or
- 76 (e) a designated swing bed unit in a general hospital.

77 (11) "Medication aide certified" means a certified nurse aide who:

- 78 (a) has a minimum of 2,000 hours experience working as a certified nurse aide;
- 79 (b) has received a minimum of [~~40~~] 60 hours of classroom and [~~20~~] 40 hours of
80 practical training that is approved by the division in collaboration with the board, in
81 administering routine medications to patients or residents of long-term care facilities; and
82 (c) is certified by the division as a medication aide certified.

83 (12) (a) "Practice as a medication aide certified" means the limited practice of nursing
84 under the supervision, as defined by the division by administrative rule, of a licensed nurse,
85 involving routine patient care that requires minimal or limited specialized or general knowledge,

86 judgment, and skill, to an individual who is ill, injured, infirm, developmentally or physically
87 disabled, mentally disabled, or mentally retarded, and who is in a regulated long-term care
88 facility.

89 (b) "Practice as a medication aide certified":

90 (i) includes:

91 [(†)] (A) providing direct personal assistance or care; and

92 [(†)] (B) administering routine medications to patients in accordance with a formulary
93 and protocols to be defined by the division by rule[-]; and

94 (ii) does not include assisting a resident of an assisted living facility, a long term care
95 facility, or an intermediate care facility for the mentally retarded to self administer a medication,
96 as regulated by the Department of Health by administrative rule.

97 (13) "Practice of advanced practice registered nursing" means the practice of nursing
98 within the generally recognized scope and standards of advanced practice registered nursing as
99 defined by rule and consistent with professionally recognized preparation and education
100 standards of an advanced practice registered nurse by a person licensed under this chapter as an
101 advanced practice registered nurse. Advanced practice registered nursing includes:

102 (a) maintenance and promotion of health and prevention of disease;

103 (b) diagnosis, treatment, correction, consultation, and referral for common health
104 problems;

105 (c) prescription or administration of prescription drugs or devices including:

106 (i) local anesthesia;

107 (ii) schedule IV-V controlled substances; and

108 (iii) schedule II-III controlled substances in accordance with a consultation and referral
109 plan; or

110 (d) the provision of preoperative, intraoperative, and postoperative anesthesia care and
111 related services upon the request of a licensed health care professional by an advanced practice
112 registered nurse specializing as a certified registered nurse anesthetist, including:

113 (i) preanesthesia preparation and evaluation including:

- 114 (A) performing a preanesthetic assessment of the patient;
- 115 (B) ordering and evaluating appropriate lab and other studies to determine the health of
- 116 the patient; and
- 117 (C) selecting, ordering, or administering appropriate medications;
- 118 (ii) anesthesia induction, maintenance, and emergence, including:
- 119 (A) selecting and initiating the planned anesthetic technique;
- 120 (B) selecting and administering anesthetics and adjunct drugs and fluids; and
- 121 (C) administering general, regional, and local anesthesia;
- 122 (iii) postanesthesia follow-up care, including:
- 123 (A) evaluating the patient's response to anesthesia and implementing corrective actions;
- 124 and
- 125 (B) selecting, ordering, or administering the medications and studies listed in
- 126 Subsection (13)(d); and
- 127 (iv) other related services within the scope of practice of a certified registered nurse
- 128 anesthetist, including:
- 129 (A) emergency airway management;
- 130 (B) advanced cardiac life support; and
- 131 (C) the establishment of peripheral, central, and arterial invasive lines; and
- 132 (v) for purposes of Subsection (13)(d), "upon the request of a licensed health care
- 133 professional":
- 134 (A) means a health care professional practicing within the scope of the health care
- 135 professional's license, requests anesthesia services for a specific patient; and
- 136 (B) does not require an advanced practice registered nurse specializing as a certified
- 137 registered nurse anesthetist to enter into a consultation and referral plan or obtain additional
- 138 authority to select, administer, or provide preoperative, intraoperative, or postoperative
- 139 anesthesia care and services.
- 140 (14) "Practice of nursing" means assisting individuals or groups to maintain or attain
- 141 optimal health, implementing a strategy of care to accomplish defined goals and evaluating

142 responses to care and treatment. The practice of nursing requires substantial specialized or
143 general knowledge, judgment, and skill based upon principles of the biological, physical,
144 behavioral, and social sciences, and includes:

- 145 (a) initiating and maintaining comfort measures;
- 146 (b) promoting and supporting human functions and responses;
- 147 (c) establishing an environment conducive to well-being;
- 148 (d) providing health counseling and teaching;
- 149 (e) collaborating with health care professionals on aspects of the health care regimen;
- 150 (f) performing delegated procedures only within the education, knowledge, judgment,
151 and skill of the licensee; and
- 152 (g) delegating nurse interventions that may be performed by others and are not in
153 conflict with this chapter.

154 (15) "Practice of practical nursing" means the performance of nursing acts in the
155 generally recognized scope of practice of licensed practical nurses as defined by rule and as
156 provided in this Subsection (15) by a person licensed under this chapter as a licensed practical
157 nurse and under the direction of a registered nurse, licensed physician, or other specified health
158 care professional as defined by rule. Practical nursing acts include:

- 159 (a) contributing to the assessment of the health status of individuals and groups;
- 160 (b) participating in the development and modification of the strategy of care;
- 161 (c) implementing appropriate aspects of the strategy of care;
- 162 (d) maintaining safe and effective nursing care rendered to a patient directly or
163 indirectly; and
- 164 (e) participating in the evaluation of responses to interventions.

165 (16) "Practice of registered nursing" means performing acts of nursing as provided in
166 this Subsection (16) by a person licensed under this chapter as a registered nurse within the
167 generally recognized scope of practice of registered nurses as defined by rule. Registered
168 nursing acts include:

- 169 (a) assessing the health status of individuals and groups;

- 170 (b) identifying health care needs;
- 171 (c) establishing goals to meet identified health care needs;
- 172 (d) planning a strategy of care;
- 173 (e) prescribing nursing interventions to implement the strategy of care;
- 174 (f) implementing the strategy of care;
- 175 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
- 176 indirectly;
- 177 (h) evaluating responses to interventions;
- 178 (i) teaching the theory and practice of nursing; and
- 179 (j) managing and supervising the practice of nursing.
- 180 (17) "Routine medications":
- 181 (a) means established medications administered to a medically stable individual as
- 182 determined by a licensed health care practitioner or in consultation with a licensed medical
- 183 practitioner; and
- 184 (b) is limited to medications that are administered by the following routes:
- 185 (i) oral;
- 186 (ii) sublingual;
- 187 (iii) buccal;
- 188 (iv) eye;
- 189 (v) ear;
- 190 (vi) nasal;
- 191 (vii) rectal;
- 192 (viii) vaginal;
- 193 (ix) skin ointments, topical including patches and transdermal;
- 194 [~~(x)~~ gastronomy or jejunostomy tubes;]
- 195 [~~(xi)~~ (x) premeasured medication delivered by aerosol/nebulizer; and
- 196 [~~(xii)~~ (xi) medications delivered by metered hand-held inhalers.
- 197 (18) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-31b-501.

198 (19) "Unlicensed assistive personnel" means any unlicensed person, regardless of title,
199 to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance with the
200 standards of the profession.

201 (20) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-31b-502 and
202 as may be further defined by rule.

203 Section 2. Section **58-31b-103** is amended to read:

204 **58-31b-103. Education and enforcement fund.**

205 (1) There is created within the General Fund a restricted account known as the "Nurse
206 Education and Enforcement Fund."

207 (2) The account shall be nonlapsing and consist of:

208 (a) administrative penalties imposed under Section [~~58-31b-402~~] 58-31b-503; and

209 (b) interest earned on monies in the account.

210 (3) Monies in the account may be appropriated by the Legislature for the following
211 purposes:

212 (a) education and training of licensees or potential licensees under this chapter;

213 (b) enforcement of this chapter by:

214 (i) investigating unprofessional or unlawful conduct;

215 (ii) providing legal representation to the division when legal action is taken against a
216 person engaging in unprofessional or unlawful conduct; and

217 (iii) monitoring compliance of renewal requirements;

218 (c) survey nursing education programs throughout the state; [~~and~~]

219 (d) education and training of board members[~~;~~]; and

220 (e) review and approve nursing education programs and medication aide certified
221 training programs.

222 Section 3. Section **58-31b-401** is amended to read:

223 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**
224 **proceedings.**

225 (1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license

226 of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to
227 issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in
228 accordance with Section 58-1-401.

229 (2) If a court of competent jurisdiction determines a nurse is an incapacitated person as
230 defined in Section 75-1-201 or that he is mentally ill as defined in Section 62A-15-602, and
231 unable to safely engage in the practice of nursing, the director shall immediately suspend the
232 license of the nurse upon the entry of the judgment of the court, without further proceedings
233 under Title 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal
234 from the court's ruling is pending. The director shall promptly notify the nurse in writing of the
235 suspension.

236 (3) (a) If the division and the majority of the board find reasonable cause to believe a
237 nurse who is not determined judicially to be an incapacitated person or to be mentally ill, is
238 incapable of practicing nursing with reasonable skill regarding the safety of patients, because of
239 illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the
240 board shall recommend that the director file a petition with the division, and cause the petition
241 to be served upon the nurse with a notice of hearing on the sole issue of the capacity of the
242 nurse to competently, safely engage in the practice of nursing.

243 (b) The hearing shall be conducted under Section 58-1-109 and Title 63, Chapter 46b,
244 Administrative Procedures Act, except as provided in Subsection (4).

245 (4) (a) Every nurse who accepts the privilege of being licensed under this chapter gives
246 consent to:

247 (i) submitting to an immediate mental or physical examination, at the nurse's expense
248 and by a division-approved practitioner selected by the nurse when directed in writing by the
249 division and a majority of the board to do so; and

250 (ii) the admissibility of the reports of the examining practitioner's testimony or
251 examination, and waives all objections on the ground the reports constitute a privileged
252 communication.

253 (b) The examination may be ordered by the division, with the consent of a majority of

254 the board, only upon a finding of reasonable cause to believe:

255 (i) the nurse is mentally ill or incapacitated or otherwise unable to practice nursing with
256 reasonable skill and safety; and

257 (ii) immediate action by the division and the board is necessary to prevent harm to the
258 nurse's patients or the general public.

259 (c) (i) Failure of a nurse to submit to the examination ordered under this section is a
260 ground for the division's immediate suspension of the nurse's license by written order of the
261 director.

262 (ii) The division may enter the order of suspension without further compliance with
263 Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to
264 submit to the examination ordered under this section was due to circumstances beyond the
265 control of the nurse and was not related directly to the illness or incapacity of the nurse.

266 (5) (a) A nurse whose license is suspended under Subsection (2), (3), or (4)(c) has the
267 right to a hearing to appeal the suspension within ten days after the license is suspended.

268 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
269 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for
270 the continuance of the order of suspension in order to prevent harm to the nurse's patients or
271 the general public.

272 (6) A nurse whose license is revoked, suspended, or in any way restricted under this
273 section may request the division and the board to consider, at reasonable intervals, evidence
274 presented by the nurse, under procedures established by division rule, regarding any change in
275 the nurse's condition, to determine whether:

276 (a) he is or is not able to safely and competently engage in the practice of nursing; and

277 (b) he is qualified to have his license to practice under this chapter restored completely
278 or in part.

279 (7) Nothing in Section 63-2-206 may be construed as limiting the authority of the
280 division to report current significant investigative information to the coordinated licensure
281 information system for transmission to party states as required of the division by Article VII of

282 the Nurse Licensure Compact in Section 58-31c-102.

283 (8) For purposes of this section [~~and Section 58-31b-402~~]:

284 (a) "licensed" or "license" includes "certified" or "certification" under this chapter; and

285 (b) any terms or conditions applied to the word "nurse" in this section [~~or Section~~

286 ~~58-31b-402~~] also apply to a medication aide certified.

287 Section 4. Section **58-31b-503** is amended to read:

288 **58-31b-503. Penalties and administrative actions for unlawful conduct and**
289 **unprofessional conduct.**

290 (1) Any person who violates the unlawful conduct provision specifically defined in
291 Subsection 58-1-501(1)(a) is guilty of a third degree felony.

292 (2) Any person who violates any of the unlawful conduct provisions specifically defined
293 in Subsections 58-1-501(1)(b) through (f) and 58-31b-501(1)(d) is guilty of a class A
294 misdemeanor.

295 (3) Any person who violates any of the unlawful conduct provisions specifically defined
296 in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B misdemeanor.

297 [~~(4) Subject to Subsection (5), the division may assess administrative penalties in~~
298 ~~accordance with the provisions of Section 58-31b-402 for acts of unprofessional or unlawful~~
299 ~~conduct or any other appropriate administrative action in accordance with the provisions of~~
300 ~~Section 58-31b-401.]~~

301 [~~(5) If a licensee has been convicted of violating Section 58-31b-501 prior to an~~
302 ~~administrative finding of a violation of the same section, the licensee may not be assessed an~~
303 ~~administrative penalty under this chapter for the same offense for which the conviction was~~
304 ~~obtained.]~~

305 (4) (a) Subject to Subsection (6) and in accordance with Section 58-31b-401, for acts
306 of unprofessional or unlawful conduct, the division may:

307 (i) assess administrative penalties; and

308 (ii) take any other appropriate administrative action.

309 (b) An administrative penalty imposed pursuant to this section shall be deposited in the

310 "Nurse Education and Enforcement Fund" as provided in Section 58-31b-103.

311 (5) If a licensee has been convicted of violating Section 58-31b-501 prior to an
312 administrative finding of a violation of the same section, the licensee may not be assessed an
313 administrative fine under this chapter for the same offense for which the conviction was
314 obtained.

315 (6) (a) If upon inspection or investigation, the division concludes that a person has
316 violated the provisions of Sections 58-31b-401, 58-31b-501, or 58-31b-502, Chapter 1,
317 Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled
318 Substances Act, or any rule or order issued with respect to these provisions, and that
319 disciplinary action is appropriate, the director or the director's designee from within the division
320 shall:

321 (i) promptly issue a citation to the person according to this chapter and any pertinent
322 administrative rules;

323 (ii) attempt to negotiate a stipulated settlement; or

324 (iii) notify the person to appear before an adjudicative proceeding conducted under
325 Title 63, Chapter 46b, Administrative Procedures Act.

326 (b) Any person who is in violation of a provision described in Subsection (6)(a), as
327 evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an
328 adjudicative proceeding may be assessed a fine:

329 (i) pursuant to this Subsection (6) of up to \$10,000 per single violation or up to \$2,000
330 per day of ongoing violation, whichever is greater, in accordance with a fine schedule
331 established by rule; and

332 (ii) in addition to or in lieu of the fine imposed under Subsection (6)(b)(i), be ordered to
333 cease and desist from violating a provision of Sections 58-31b-501 and 58-31b-502, Chapter 1,
334 Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled
335 Substances Act, or any rule or order issued with respect to those provisions.

336 (c) Except for an administrative fine and a cease and desist order, the licensure
337 sanctions cited in Section 58-31b-401 may not be assessed through a citation.

- 338 (d) Each citation issued under this section shall:
- 339 (i) be in writing; and
- 340 (ii) clearly describe or explain:
- 341 (A) the nature of the violation, including a reference to the provision of the chapter,
- 342 rule, or order alleged to have been violated;
- 343 (B) that the recipient must notify the division in writing within 20 calendar days of
- 344 service of the citation in order to contest the citation at a hearing conducted under Title 63,
- 345 Chapter 46b, Administrative Procedures Act; and
- 346 (C) the consequences of failure to timely contest the citation or to make payment of any
- 347 finances assessed by the citation within the time specified in the citation; and
- 348 (iii) be served upon any person upon whom a summons may be served:
- 349 (A) in accordance with the Utah Rules of Civil Procedure;
- 350 (B) personally or upon the person's agent by a division investigator or by any person
- 351 specially designated by the director; or
- 352 (C) by mail.
- 353 (e) If within 20 calendar days from the service of a citation, the person to whom the
- 354 citation was issued fails to request a hearing to contest the citation, the citation becomes the
- 355 final order of the division and is not subject to further agency review. The period to contest the
- 356 citation may be extended by the division for cause.
- 357 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
- 358 the license of a licensee who fails to comply with the citation after it becomes final.
- 359 (g) The failure of an applicant for licensure to comply with a citation after it becomes
- 360 final is a ground for denial of license.
- 361 (h) No citation may be issued under this section after the expiration of six months
- 362 following the occurrence of any violation.

363 Section 5. Section **58-31b-601** is amended to read:
364 **58-31b-601. Minimum standards for nursing programs -- Medication aide**
365 **training.**

366 (1) A nursing education program shall be affiliated with an accredited institution of
367 higher education in order to be approved by the division.

368 (2) The minimum standards a nursing program shall meet to qualify graduates for
369 licensure under this chapter shall be defined by division rule.

370 (3) ~~(a)~~ In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
371 Act, and the provisions of this chapter, the division shall make rules defining the minimum
372 standards for a medication aide certified training program to qualify a person for certification
373 under this chapter as a medication aide certified.

374 ~~[(b) A medication aide certified training program shall include a minimum of 40 hours
375 of classroom and 20 hours of practical training.]~~

376 Section 6. Section **63-55b-158** is amended to read:

377 **63-55b-158. Repeal dates -- Title 58.**

378 ~~[Section 58-31b-301.6, Medication Aide Certified Pilot Program, is repealed May 15,
379 2010.]~~

380 Section 7. **Repealer.**

381 This bill repeals:

382 Section **58-31b-301.6, Medication aide certified pilot program.**

383 Section **58-31b-402, Authority to assess penalty.**