

NURSE PRACTICE ACT AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Christine R. Fox-Finlinson

AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; REPEALING THE EXISTING NURSE PRACTICE ACT AND ENACTING A NEW NURSE PRACTICE ACT IN ITS PLACE; DEFINING TERMS; ESTABLISHING DIFFERENT LICENSING CLASSIFICATIONS; DEFINING THE SCOPE OF PRACTICE AND QUALIFICATIONS FOR EACH CLASSIFICATION; EXTENDING PRESCRIPTIVE AUTHORITY TO CERTAIN LICENSEES; CREATING A NURSING BOARD; AUTHORIZING THE NURSING BOARD TO DENY, APPROVE, OR WITHDRAW APPROVAL OF AN EDUCATIONAL PROGRAM; ESTABLISHING AN EXECUTIVE ADMINISTRATOR FOR THE BOARD; AUTHORIZING THE IMPOSITION OF ADMINISTRATIVE FINES FOR UNPROFESSIONAL CONDUCT; CREATING A RESTRICTED ACCOUNT INTO WHICH ADMINISTRATIVE FINES ARE PLACED AND APPROPRIATED FOR ACTIVITIES RELATED TO THE REGULATION OF NURSING; CREATING A PRESCRIPTIVE PRACTICE ADVISORY PEER COMMITTEE; AUTHORIZING CONTINUING EDUCATION REQUIREMENTS TO BE ESTABLISHED BY RULE; AUTHORIZING THE IMMEDIATE SUSPENSION OF A LICENSE UNDER CERTAIN CIRCUMSTANCES; DEFINING UNPROFESSIONAL AND UNLAWFUL CONDUCT; EXTENDING IMMUNITY TO ORGANIZATIONS THAT REPORT PROFESSIONAL MISCONDUCT IN GOOD FAITH; AMENDING THE LAW GOVERNING NURSE MIDWIVES TO INCLUDE ADMINISTRATIVE PENALTIES, THE CREATION OF A RESTRICTED ACCOUNT, AND CONTINUING EDUCATION REQUIREMENTS; MAKING CONFORMING AND TECHNICAL AMENDMENTS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

58-13-2, as last amended by Chapter 248 and renumbered and amended by Chapter 253, Laws of Utah 1996

58-13-3, as last amended by Chapter 248 and renumbered and amended by Chapter 253, Laws of Utah 1996

58-44a-102, as last amended by Chapter 10, Laws of Utah 1997

58-44a-201, as enacted by Chapter 187, Laws of Utah 1994

58-44a-301, as enacted by Chapter 187, Laws of Utah 1994

58-44a-302, as last amended by Chapter 28, Laws of Utah 1995

58-44a-303, as enacted by Chapter 187, Laws of Utah 1994

58-44a-305, as enacted by Chapter 187, Laws of Utah 1994

75-5-311, as last amended by Chapter 161, Laws of Utah 1997

78-14-3, as last amended by Chapters 232, 247, 248 and 282, Laws of Utah 1996

ENACTS:

26-21-22, Utah Code Annotated 1953

58-31b-101, Utah Code Annotated 1953

58-31b-102, Utah Code Annotated 1953

58-31b-103, Utah Code Annotated 1953

58-31b-201, Utah Code Annotated 1953

58-31b-202, Utah Code Annotated 1953

58-31b-301, Utah Code Annotated 1953

58-31b-302, Utah Code Annotated 1953

58-31b-303, Utah Code Annotated 1953

58-31b-304, Utah Code Annotated 1953

58-31b-305, Utah Code Annotated 1953

58-31b-306, Utah Code Annotated 1953

58-31b-307, Utah Code Annotated 1953

58-31b-308, Utah Code Annotated 1953

58-31b-309, Utah Code Annotated 1953

58-31b-401, Utah Code Annotated 1953

58-31b-402, Utah Code Annotated 1953

- 58-31b-501**, Utah Code Annotated 1953
- 58-31b-502**, Utah Code Annotated 1953
- 58-31b-503**, Utah Code Annotated 1953
- 58-31b-601**, Utah Code Annotated 1953
- 58-31b-701**, Utah Code Annotated 1953
- 58-31b-702**, Utah Code Annotated 1953
- 58-31b-801**, Utah Code Annotated 1953
- 58-44a-103**, Utah Code Annotated 1953
- 58-44a-402**, Utah Code Annotated 1953
- 58-44a-502**, Utah Code Annotated 1953
- 58-44a-503**, Utah Code Annotated 1953

REPEALS AND REENACTS:

- 58-44a-501**, as enacted by Chapter 187, Laws of Utah 1994
- 58-44a-601**, as enacted by Chapter 187, Laws of Utah 1994

REPEALS:

- 58-31-1**, as repealed and reenacted by Chapter 82, Laws of Utah 1992
- 58-31-2**, as last amended by Chapter 10, Laws of Utah 1997
- 58-31-3**, as last amended by Chapter 187, Laws of Utah 1994
- 58-31-4**, as last amended by Chapter 297, Laws of Utah 1993
- 58-31-5**, as last amended by Chapter 10, Laws of Utah 1997
- 58-31-6**, as repealed and reenacted by Chapter 297, Laws of Utah 1993
- 58-31-6.5**, as enacted by Chapter 297, Laws of Utah 1993
- 58-31-7**, as last amended by Chapter 28, Laws of Utah 1995
- 58-31-8**, as repealed and reenacted by Chapter 82, Laws of Utah 1992
- 58-31-9**, as last amended by Chapter 28, Laws of Utah 1995
- 58-31-10**, as last amended by Chapter 28, Laws of Utah 1995
- 58-31-11**, as last amended by Chapter 297, Laws of Utah 1993
- 58-31-12**, as repealed and reenacted by Chapter 82, Laws of Utah 1992

58-31-13, as last amended by Chapter 297, Laws of Utah 1993

58-31-13.5, as enacted by Chapter 297, Laws of Utah 1993

58-31-15, as last amended by Chapter 297, Laws of Utah 1993

58-31-16, as repealed and reenacted by Chapter 82, Laws of Utah 1992

58-31-17, as last amended by Chapter 297, Laws of Utah 1993

58-31-18, as enacted by Chapter 82, Laws of Utah 1992

58-31-19, as last amended by Chapter 10, Laws of Utah 1997

58-31-20, as enacted by Chapter 82, Laws of Utah 1992

58-31-21, as enacted by Chapter 82, Laws of Utah 1992

58-31-22, as enacted by Chapter 82, Laws of Utah 1992

58-44a-701, as enacted by Chapter 187, Laws of Utah 1994

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

Section 1. Section **26-21-22** is enacted to read:

26-21-22. Reporting of disciplinary information -- Immunity from liability.

A health care facility licensed under this chapter which reports disciplinary information on a licensed nurse to the Division of Occupational and Professional Licensing within the Department of Commerce as required by Section 58-31b-702 is entitled to the immunity from liability provided by that section.

Section 2. Section **58-13-2** is amended to read:

58-13-2. Emergency care rendered by licensee.

A person licensed under Title 58, Occupations and Professions, to practice as any of the following health care professionals, who is under no legal duty to respond, and who in good faith renders emergency care at the scene of an emergency gratuitously and in good faith, is not liable for any civil damages as a result of any acts or omissions by the person in rendering the emergency care:

- (1) osteopathic physician;
- (2) physician and surgeon;
- (3) naturopath;
- (4) dentist or dental hygienist;

- (5) chiropractic physician;
- (6) physician assistant; or
- (7) nurse licensed [~~in a classification~~] under [~~Subsection 58-31-6(2)~~] Section 58-31b-301.

Section 3. Section **58-13-3** is amended to read:

58-13-3. Qualified immunity -- Health professionals -- Charity care.

(1) (a) The Legislature finds many residents of this state do not receive medical care and preventive health care because they lack health insurance or because of financial difficulties or cost. The Legislature also finds that many physicians, charity health care facilities, and other health care professionals in this state would be willing to volunteer medical and allied services without compensation if they were not subject to the high exposure of liability connected with providing these services.

(b) The Legislature therefore declares that its intention in enacting this section is to encourage the provision of uncompensated volunteer health care in charity care settings in exchange for a limitation on liability for the health care facilities and health care professionals who provide those volunteer services.

(2) As used in this section:

(a) "Health care facility" means any clinic or hospital, church, or organization whose primary purpose is to sponsor, promote, or organize uncompensated health care services for people unable to pay for health care services.

(b) "Health care professional" means individuals licensed under Title 58, Occupations and Professions, as physicians and surgeons, osteopaths, podiatrists, chiropractors, dentists, dental hygienists, registered nurses, certified nurse midwives, and other nurses [~~in license classifications~~] licensed under [~~Subsection 58-31-6(2)~~] Section 58-31b-301.

(c) "Remuneration or compensation":

(i) (A) means direct or indirect receipt of any payment by the physician and surgeon, health care facility, other health care professional, or organization, on behalf of the patient, including payment or reimbursement under medicare or medicaid, or under the state program for the medically indigent on behalf of the patient; and

(B) compensation, salary, or reimbursement to the health care professional from any source for the health care professional's services or time in volunteering to provide uncompensated health care; and

(ii) does not mean any grant or donation to the health care facility used to offset direct costs associated with providing the uncompensated health care such as medical supplies or drugs.

(3) A health care professional who provides health care treatment at a health care facility is not liable in a medical malpractice action if:

(a) the treatment was within the scope of the health care professional's license under this title;

(b) neither the health care professional nor the health care facility received compensation or remuneration for the treatment;

(c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and

(d) prior to rendering services, the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation and that in exchange for receiving uncompensated health care, the patient consents to waive any right to sue for professional negligence except for acts or omissions which are grossly negligent or are willful and wanton.

(4) A health care facility which sponsors, promotes, or organizes the uncompensated care is not liable in a medical malpractice action for acts and omissions if:

(a) the health care facility meets the requirements in Subsection (3)(b);

(b) the acts and omissions of the health care facility were not grossly negligent or willful and wanton; and

(c) the health care facility has posted, in a conspicuous place, a notice that in accordance with this section the health care facility is not liable for any civil damages for acts or omissions except for those acts or omissions that are grossly negligent or are willful and wanton.

(5) Immunity from liability under this section does not extend to the use of general anesthesia or care that requires an overnight stay in a general acute or specialty hospital licensed

under Title 26, Chapter 21, Health Care Facility [Licensure] Licensing and Inspection Act.

Section 4. Section **58-31b-101** is enacted to read:

CHAPTER 31b. NURSE PRACTICE ACT

Part 1. General Provisions

58-31b-101. Title.

This chapter is known as the "Nurse Practice Act."

Section 5. Section **58-31b-102** is enacted to read:

58-31b-102. Definitions.

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

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

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

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

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

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

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

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

care.

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

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

(10) "Practice of nursing" means assisting individuals or groups to maintain or attain optimal health, implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment. The practice of nursing requires substantial specialized or general knowledge, judgment, and skill based upon principles of the biological, physical, behavioral, and social sciences, and includes:

(a) initiating and maintaining comfort measures;

(b) promoting and supporting human functions and responses;

(c) establishing an environment conducive to well-being;

(d) providing health counseling and teaching;

(e) collaborating with health care professionals on aspects of the health care regimen;

(f) performing delegated procedures only within the education, knowledge, judgment, and skill of the licensee; and

(g) delegating nurse interventions that may be performed by others and are not in conflict with this chapter.

(11) (a) "Practice of nurse anesthesia" means the practice of nursing related to the provision of preoperative, intraoperative, and postoperative anesthesia care and related services upon the request of a physician, surgeon, or other licensed professional, who is acting within the scope of their practice, by a person licensed under this chapter as a certified registered nurse anesthetist and includes:

(i) preanesthesia preparation and evaluation including:

(A) performing a preanesthetic assessment of the patient;

(B) ordering and evaluating appropriate lab and other studies to determine the health of the patient; and

(C) selecting, ordering, or administering appropriate medications;

(ii) anesthesia induction, maintenance, and emergence, including:

(A) selecting and initiating the planned anesthetic technique;

(B) selecting and administering anesthetics and adjunct drugs and fluids; and

(C) administering general, regional, and local anesthesia;

(iii) postanesthesia follow-up care, including:

(A) evaluating the patient's response to anesthesia and implementing corrective actions; and

(B) selecting, ordering, or administering the above medications and studies; and

(iv) other related services within the scope of practice of a certified registered nurse

anesthetist, including:

(A) emergency airway management;

(B) advanced cardiac life support; and

(C) the establishment of peripheral, central, and arterial invasive lines.

(b) Nothing in this section shall be construed as to require a certified registered nurse anesthetist to obtain an advance practice registered nurse license in order to select, administer, or provide preoperative, intraoperative, or postoperative anesthesia care and services.

(12) "Practice of practical nursing" means the performance of nursing acts in the generally recognized scope of practice of licensed practical nurses as defined by rule and as provided in this Subsection (12) by a person licensed under this chapter as a licensed practical nurse and under the direction of a registered nurse, licensed physician, or other specified health care professional as defined by rule. Practical nursing acts include:

(a) contributing to the assessment of the health status of individuals and groups;

(b) participating in the development and modification of the strategy of care;

(c) implementing appropriate aspects of the strategy of care;

(d) maintaining safe and effective nursing care rendered to a patient directly or indirectly;

and

(e) participating in the evaluation of responses to interventions.

(13) "Practice of registered nursing" means performing acts of nursing as provided in this Subsection (13) by a person licensed under this chapter as a registered nurse within the generally

recognized scope of practice of registered nurses as defined by rule. Registered nursing acts include:

- (a) assessing the health status of individuals and groups;
- (b) identifying health care needs;
- (c) establishing goals to meet identified health care needs;
- (d) planning a strategy of care;
- (e) prescribing nursing interventions to implement the strategy of care;
- (f) implementing the strategy of care;
- (g) maintaining safe and effective nursing care that is rendered to a patient directly or

indirectly;

- (h) evaluating responses to interventions;
- (i) teaching the theory and practice of nursing; and
- (j) managing and supervising the practice of nursing.

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

- (a) maintenance and promotion of health and prevention of disease;
- (b) diagnosis, treatment, correction, consultation, and referral for common health problems;

and

- (c) prescription or administration of prescription drugs or devices including:
 - (i) local anesthesia;
 - (ii) schedule IV-V controlled substances; and
 - (iii) schedule II-III controlled substances in accordance with a consultation and referral plan.

(15) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-31b-501.

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

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

Section 6. Section **58-31b-103** is enacted to read:

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

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

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

(a) administrative penalties imposed under Section 58-31b-402; and

(b) interest earned on monies in the account.

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

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

(b) enforcement of this chapter by:

(i) investigating unprofessional or unlawful conduct;

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

(iii) monitoring compliance of renewal requirements;

(c) survey nursing education programs throughout the state; and

(d) education and training of board members.

Section 7. Section **58-31b-201** is enacted to read:

Part 2. Board

58-31b-201. Board.

(1) There is created the Board of Nursing that consists of the following 13 members, whose appointments shall provide broad representation of the various interests and constituencies in the nursing profession:

(a) six persons licensed as registered nurses:

(i) three of whom are actively involved in approved nursing education programs and represent various types of education programs; and

(ii) one of whom is employed in a nursing administrative position within a licensed health

care facility;

(b) two persons licensed as licensed practical nurses;

(c) three persons licensed as advanced practice registered nurses or certified registered nurse anesthetists, one of whom also holds a controlled substance license; and

(d) two members of the public who are not licensed health care providers.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and 58-1-203 and shall:

(a) (i) recommend to the division minimum standards for educational programs qualifying a person for licensure under this chapter;

(ii) recommend to the division denial, approval, or withdrawal of approval regarding educational programs that meet or fail to meet the established minimum standards; and

(iii) designate one of its members on a permanent or rotating basis to:

(A) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(B) advise the division in its investigation of these complaints.

(b) A board member who has, under Subsection (3)(a)(iii), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

(4) (a) The director shall appoint an individual to serve as the executive administrator of the Board of Nursing. Except when the board serves as a presiding officer in an adjudicative procedure, the executive administrator shall serve as an ex officio member of the board and shall represent the position of the division in matters considered by the board.

(b) The executive administrator shall be a licensed registered nurse, shall have earned a masters degree in nursing, and shall have a minimum of five years of experience working in nursing administration or nursing education.

Section 8. Section **58-31b-202** is enacted to read:

58-31b-202. Prescriptive Practice Peer Committee.

(1) (a) There is created under Subsection 58-1-203(6) the Prescriptive Practice Peer Committee.

(b) The Prescriptive Practice Peer Committee shall:

(i) advise the board of nursing regarding prescriptive practice issues;

(ii) periodically audit and review the prescribing records of advanced practice registered nurses located on the Controlled Substance Data Bank on a schedule established by rule;

(iii) recommend the scope of prescriptive practice authority of advanced practice registered nurses consistent with this chapter and with professionally accepted therapies and treatments;

(iv) periodically review the current consultation and referral plans prepared in accordance with Subsection 58-31b-102(14)(c)(iii) and evaluate compliance with the proposed plans; and

(v) recommend disciplinary action.

(c) The composition of this committee shall be:

(i) two individuals who are licensed as advanced practice registered nurses who prescribe within their practice and possess a controlled substance license;

(ii) two individuals licensed as physicians and surgeons or osteopathic physicians and surgeons; and

(iii) one individual who is a pharmacologist.

(2) The division, in collaboration with the board, may create other peer committees to the Board of Nursing pursuant to Subsection 58-1-203(6) to make recommendations to the board regarding licensure, practice, and education issues.

Section 9. Section **58-31b-301** is enacted to read:

Part 3. Licensing

58-31b-301. License required - License classifications.

(1) A license is required to engage in the practice of nursing, except as specifically provided in Sections 58-1-307 and 58-31b-308.

(2) The division shall issue to a person who qualifies under this chapter a license in the classification of:

(a) licensed practical nurse;

- (b) registered nurse;
- (c) advanced practice registered nurse intern;
- (d) advanced practice registered nurse; and
- (e) certified registered nurse anesthetist.

(3) An individual holding an advanced practice registered nurse license as of July 1, 1998, who cannot document the successful completion of advanced course work in patient assessment, diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be issued an "APRN - without prescriptive practice" license.

(4) The division shall grant an advanced practice registered nurse license to any licensed advanced practice registered nurse currently holding prescriptive authority under any predecessor act on July 1, 1998.

Section 10. Section **58-31b-302** is enacted to read:

58-31b-302. Qualifications for licensure.

- (1) An applicant for licensure as a licensed practical nurse shall:
- (a) submit to the division an application in a form prescribed by the division;
 - (b) pay to the division a fee determined under Section 63-38-3.2;
 - (c) have a high school diploma or its equivalent;
 - (d) be in a condition of physical and mental health that will permit the applicant to practice safely as a licensed practical nurse;
 - (e) have completed an approved practical nursing education program or an equivalent as determined by the board;
 - (f) have passed the examinations prescribed by division rule made in collaboration with the board within two years after completion of the approved practical nursing education program required under Subsection (1)(e) and within three years of the date of application for a Utah license; and
 - (g) meet with the board, if requested, to determine the applicant's qualifications for licensure.
- (2) An applicant for licensure as a registered nurse shall:
- (a) submit to the division an application form prescribed by the division;

- (b) pay to the division a fee determined under Section 63-38-3.2;
 - (c) have a high school diploma or its equivalent;
 - (d) be in a condition of physical and mental health that will allow the applicant to practice safely as a registered nurse;
 - (e) have completed an approved registered nursing education program;
 - (f) have passed the examinations prescribed by division rule made in collaboration with the board within two years after completion of the approved registered nursing education program required under Subsection (2)(e) and within three years of the date of application for a Utah license;
and
 - (g) meet with the board, if requested, to determine the applicant's qualifications for licensure.
- (3) Applicants for licensure as an advanced practice registered nurse shall:
- (a) submit to the division an application on a form prescribed by the division;
 - (b) pay to the division a fee determined under Section 63-38-3.2;
 - (c) be in a condition of physical and mental health which will allow the applicant to practice safely as an advanced practice registered nurse;
 - (d) hold a current registered nurse license in good standing issued by the state or be qualified at the time for licensure as a registered nurse;
 - (e) have earned a graduate degree in nursing or a related area of specialized knowledge as determined appropriate by the division in collaboration with the board;
 - (f) have completed course work in patient assessment, diagnosis and treatment, and pharmacotherapeutics from an education program approved by the division in collaboration with the board;
 - (g) have successfully completed clinical practice in psychiatric and mental health nursing, including psychotherapy as defined by division rule, after completion of the masters degree required for licensure, to practice within the psychiatric and mental health nursing specialty;
 - (h) have passed the examinations prescribed by division rule made in collaboration with the board within two years after completion of the approved education program required under Subsection (3)(f);

- (i) be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification; and
- (j) meet with the board, if requested, to determine the applicant's qualifications for licensure.
- (4) An applicant for licensure as a certified registered nurse anesthetist shall:
 - (a) submit to the division an application on a form prescribed by the division;
 - (b) pay to the division a fee determined under Section 63-38-3.2;
 - (c) be in a condition of physical and mental health which will allow the applicant to practice safely as a certified registered nurse anesthetist;
 - (d) hold a current registered nurse license in good standing issued by the state or be qualified at the time for licensure as a registered nurse;
 - (e) complete a nurse anesthesia program which is approved by the Council on Accreditation of Nurse Anesthesia Educational Programs;
 - (f) be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification; and
 - (g) meet with the board, if requested, to determine the applicant's qualifications for licensure.

Section 11. Section **58-31b-303** is enacted to read:

58-31b-303. Qualifications for licensure -- Graduates of nonapproved nursing programs.

An applicant for licensure as a practical nurse or registered nurse who is a graduate of a nursing education program not approved by the division in collaboration with the board must comply with the requirements of this section.

- (1) An applicant for licensure as a licensed practical nurse shall:
 - (a) meet all requirements of Subsection 58-31b-302(1), except Subsection (1)(e); and
 - (b) produce evidence acceptable to the division and the board that the nursing education program completed by the applicant is equivalent to the minimum standards established by the division in collaboration with the board for an approved licensed practical nursing education program.
- (2) An applicant for licensure as a registered nurse shall:

(a) meet all requirements of Subsection 58-31b-302(2), except Subsection (2)(e); and

(b) (i) pass the Commission on Graduates of Foreign Nursing Schools (CGFNS)

Examination; or

(ii) produce evidence acceptable to the division and the board that the applicant is currently licensed as a registered nurse in one of the states, territories, or the District of Columbia of the United States and has practiced satisfactorily as a licensed registered nurse in that jurisdiction for a period of not less than 4,000 hours.

Section 12. Section **58-31b-304** is enacted to read:

58-31b-304. Qualifications for admission to the examinations.

(1) To be admitted to the examinations required for licensure as a practical nurse, a person shall:

(a) submit an application form prescribed by the division;

(b) pay a fee as determined by the division under Section 63-38-3.2; and

(c) meet all requirements of Subsection 58-31b-302(1), except Subsection (1)(f).

(2) To be admitted to the examinations required for licensure as a registered nurse, a person shall:

(a) submit an application form prescribed by the division;

(b) pay a fee as determined by the division under Section 63-38-3.2; and

(c) meet all the requirements of Subsection 58-31b-302(2), except Subsection (2)(f).

Section 13. Section **58-31b-305** is enacted to read:

58-31b-305. Term of license -- Expiration -- Renewal.

(1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show satisfactory evidence of each of the following renewal requirements:

(a) complete and submit an application for renewal in a form prescribed by the division and pay the renewal fee determined under Section 63-38-3.2; and

(b) meet continuing competency requirements as established by rule.

(3) In addition to the renewal requirements under Subsection (2), a person licensed as a advanced practice registered nurse shall:

(a) be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of that qualification; and

(b) as a condition precedent for license renewal commencing on and after July 1, 1999, actively participate on a continuing basis in a quality review program based on criteria established by the division by rule in collaboration with the board. A quality review program shall be:

(i) based in a hospital or other licensed health care facility, as defined in Section 26-21-2, at which the licensee regularly engages in practice; or

(ii) conducted by or under the direction of:

(A) a professional association approved by the division in collaboration with the board; or

(B) another organization approved by the division in collaboration with the board as defined by division rule.

(4) In addition to the renewal requirements under Subsection (2), a person licensed as a certified registered nurse anesthetist shall:

(a) actively participate on a continuing regular basis in an anesthesia quality assurance program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the participation; and

(b) be currently certified in anesthesia by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification.

(5) Each license automatically expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Section 14. Section **58-31b-306** is enacted to read:

58-31b-306. APRN intern license.

(1) (a) The division may issue an APRN intern license to a person who meets all qualifications for a license as an advanced practice registered nurse under this chapter, except for the passing of required examinations, if the applicant:

(i) is a graduate of an approved nursing education program within the year immediately preceding application for an intern license;

(ii) has never before taken the examinations; and

(iii) submits to the division evidence of having secured employment conditioned upon issuance of the APRN intern license, and the employment is under the supervision of an advanced practice registered nurse or physician as defined by division rule.

(b) An APRN intern license issued under Subsection (1)(a) expires on the earlier of:

(i) a date following a period established by division rule;

(ii) the date upon which the division receives notice from the examination agency that the individual failed to take or pass the examinations upon notification to the applicant; or

(iii) the date upon which the division issues the individual an APRN license.

(2) An applicant specializing in psychiatric mental health nursing may be issued an APRN intern license upon completion of all licensure requirements, except for the passing of required examinations and completion of required clinical practice hours.

(3) (a) The division may issue an APRN intern license to a person who meets all qualifications for a license as an advanced practice registered nurse under this chapter, except course work in patient assessment or pharmacotherapeutics, if that applicant:

(i) is licensed in good standing as an advanced practice registered nurse in another state or jurisdiction; and

(ii) submits to the division evidence of having secured employment conditioned upon issuance of the APRN intern license, and the employment is under the supervision of an advanced practice registered nurse or physician as defined by division rule.

(b) An APRN intern license issued under Subsection (3)(a) expires on the earlier of:

(i) a date following a period established by division rule; or

(ii) the date upon which the division issues the individual a regular license.

Section 15. Section **58-31b-307** is enacted to read:

58-31b-307. Licensure by endorsement.

An applicant for licensure by endorsement as an advanced practice registered nurse under

the provisions of Section 58-1-302 shall also:

(1) demonstrate that the applicant has successfully engaged in active practice as an advanced practice registered nurse for not less than 1,500 hours per year in not less than three of the past five years immediately preceding the application for licensure; and

(2) demonstrate that the applicant has completed course work as required in Subsection 58-31b-302(3)(f).

Section 16. Section **58-31b-308** is enacted to read:

58-31b-308. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts included within the definition of the practice of nursing, subject to the stated circumstances and limitations, without being licensed under this chapter:

(1) friends, family members, foster parents, or legal guardians of a patient performing gratuitous nursing care for the patient;

(2) persons providing care in a medical emergency;

(3) persons engaged in the practice of religious tenets of a church or religious denomination;
and

(4) persons engaged in the practice of nursing under any interstate agreements or multistate licensure as defined by division rule.

Section 17. Section **58-31b-309** is enacted to read:

58-31b-309. Continuing education.

(1) The division in collaboration with the board may establish continuing education requirements for each classification of nurse licensure.

(2) The division may discriminate between classifications of licensure with respect to continuing education requirements upon finding the continuing education requirements are necessary to reasonably protect the public health, safety, or welfare.

Section 18. Section **58-31b-401** is enacted to read:

Part 4. License Denial and Discipline

58-31b-401. Grounds for denial of licensure and disciplinary proceedings.

(1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

(2) (a) If a court of competent jurisdiction determines that a nurse is an "incapacitated person" as defined in Section 75-1-201, the director shall suspend the license of the nurse upon entry of the judgment, regardless of the pendency of an appeal.

(b) If it appears to the board that there is reasonable cause to believe that a nurse, even though the nurse has not been judicially determined to be incompetent, mentally incompetent, or incapable, is unable to practice nursing with reasonable skill and safety to patients because of illness, drunkenness, excessive use of drugs, narcotics, chemical, or any other type of material, or as a result of any mental or physical condition, a complaint in the name of the board shall be served upon the nurse for hearing on the sole issue of the capacity of the nurse to conduct properly the practice of nursing.

(c) (i) Failure of a nurse to submit to a mental or physical examination within 30 days when directed by the board in connection with a hearing instituted under Subsection (2)(b) constitutes grounds for immediate suspension of the nurse's license, unless the failure was due to circumstances beyond the control of the nurse.

(ii) A licensee who submits to an examination under this Subsection (2) waives all objections to the admissibility of an examining physician's testimony or examination report on the ground that they constitute a privileged communication.

(iii) The director may enter an order of suspension of the license without the taking of testimony or the presentation of evidence upon a finding of reasonable cause to believe that an order of suspension is necessary to protect the public health, safety, or welfare, if a hearing is scheduled to occur within 30 days of the order of suspension.

(d) A nurse whose license is suspended under Subsection (2) shall, at reasonable intervals defined by rule, be afforded the opportunity to demonstrate that the nurse can resume the competent practice of nursing with reasonable skill and safety to patients.

Section 19. Section **58-31b-402** is enacted to read:

58-31b-402. Authority to assess penalty.

(1) After a proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the division may impose an administrative penalty of up to \$10,000 for unprofessional or unlawful conduct under this chapter in accordance with a fine schedule established by rule.

(2) The assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.

(3) The division may impose an administrative penalty of up to \$500 for any violation of Subsection 58-31b-501(1) or (2), consistent with Section 58-31b-503.

Section 20. Section **58-31b-501** is enacted to read:

Part 5. Unlawful and Unprofessional Conduct - Penalties

58-31b-501. Unlawful conduct.

"Unlawful conduct" includes:

(1) using the following titles, names or initials, if the user is not properly licensed under this chapter:

(a) nurse;

(b) licensed practical nurse, practical nurse, or L.P.N.;

(c) registered nurse or R.N.;

(d) registered nurse practitioner, N.P., or R.N.P.;

(e) registered nurse specialist, N.S., or R.N.S.;

(f) registered psychiatric mental health nurse specialist;

(g) advanced practice registered nurse;

(h) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or C.R.N.A.; or

(i) other generally recognized names or titles used in the profession of nursing;

(2) using any other name, title, or initials that would cause a reasonable person to believe the user is licensed under this chapter if the user is not properly licensed under this chapter; and

(3) conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601.

Section 21. Section **58-31b-502** is enacted to read:

58-31b-502. Unprofessional conduct.

"Unprofessional conduct" includes:

(1) failure to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's position or practice as a nurse;

(2) failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's health problem;

(3) engaging in sexual relations with a patient during any:

(a) period when a generally recognized professional relationship exists between the nurse and patient; or

(b) extended period when a patient has reasonable cause to believe a professional relationship exists between the nurse and patient;

(4) (a) as a result of any circumstance under Subsection (3), exploiting or using information about a patient or exploiting the licensee's professional relationship between the licensee and the patient; or

(b) exploiting the patient by use of the licensee's knowledge of the patient obtained while acting as a nurse;

(5) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;

(6) unauthorized taking or personal use of nursing supplies from an employer;

(7) unauthorized taking or personal use of a patient's personal property;

(8) knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any other circumstance related to the patient and the medical or nursing

care provided;

(9) unlawful or inappropriate delegation of nursing care;

(10) failure to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse;

(11) employing or aiding and abetting the employment of an unqualified or unlicensed person to practice as a nurse;

(12) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;

(13) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by a court;

(14) failure to pay a penalty imposed by the division; and

(15) prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan; and

(16) violating Section 58-31b-801.

Section 22. Section **58-31b-503** is enacted to read:

58-31b-503. Penalty for unlawful conduct.

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

(2) Any person who violates any of the unlawful conduct provisions specifically defined in Subsections 58-1-501(1)(b) through (e) and 58-31b-501(3) is guilty of a class A misdemeanor.

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

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

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

Section 23. Section **58-31b-601** is enacted to read:

Part 6. Nursing Education Programs

58-31b-601. Minimum standards for nursing programs.

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

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

Section 24. Section **58-31b-701** is enacted to read:

Part 7. Immunity Provisions

58-31b-701. Immunity from liability.

A person licensed under this chapter:

(1) who provides emergency care in accordance with Section 78-11-22 is entitled to the immunity from civil liability provided under that section; and

(2) is considered a health care provider under Chapter 13, Health Care Providers Immunity from Liability Act, and is entitled to the immunity from civil liability provided under that chapter.

Section 25. Section **58-31b-702** is enacted to read:

58-31b-702. Reporting of disciplinary action -- Immunity from liability.

(1) A licensed health care facility or organization or a professional society of nurses in the state that takes disciplinary action against a person licensed under this chapter relating to any of the following shall report the action in writing to the division within 30 days after the action is taken:

(a) that person's professional acts or omissions as a licensed nurse;

(b) that person's nursing competence or ability to practice nursing safely; or

(c) that person's use of alcohol or drugs in an unlawful manner or to the extent the person is impaired in his ability to practice nursing safely.

(2) Any person or organization furnishing information in accordance with this section is immune from liability to the extent that the information is furnished in good faith and without malice.

Section 26. Section **58-31b-801** is enacted to read:

Part 8. Practice Standards

58-31b-801. Practice within limits of competency.

(1) Each person licensed under this chapter is responsible for confining his practice as a nurse to those acts and practices permitted by law.

(2) A person licensed under this act may not engage in any act or practice for which he is not competent.

Section 27. Section **58-44a-102** is amended to read:

58-44a-102. Definitions.

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

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

~~[(1)]~~ (2) "Board" means the [Registered Nurse] Certified Nurse Midwife Board created in Section 58-44a-201.

(3) "Consultation and Referral Plan" means a written plan jointly developed by a certified nurse midwife, as defined in Subsection (6), and a consulting physician that permits the certified nurse midwife to prescribe schedule II-III controlled substances in consultation with the consulting physician.

~~[(2)]~~ (4) "Consulting physician" means a physician and surgeon or osteopathic physician:

(a) licensed as a physician [under Title 58, Chapter 67, Utah Medical Practice Act];

(b) qualified by education, training, and current practice in obstetrics, gynecology, or both to act as a consulting physician to a nurse midwife practicing under this chapter[;] and providing intrapartum care or prescribing Schedule II-III controlled substances; and

(c) who has agreed under a practice plan to be available to consult with a nurse midwife, which plan does not include the consulting physician's being present at the time or place the nurse midwife is engaged in practice[; and].

~~[(d) approved by the division and board to serve as a consulting physician.]~~

[(3)] (5) "Individual" means a natural person.

[(4)] (6) "Nurse midwife" means a person licensed under this chapter to engage in practice as a [registered nurse] certified nurse midwife.

[(5)] (7) "Physician" means a physician and surgeon or osteopathic surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act.

[(6)] (8) "Practice as a certified nurse midwife" means:

(a) practice as a registered nurse as defined in Section [58-31-2] 58-31b-102, and as consistent with the education, training, experience, and current competency of the licensee; and

(b) practice [~~under a written practice plan approved by the division in collaboration with the board, entered into with a consulting physician, and detailing guidelines by which the nurse midwife may diagnose, treat, prescribe, consult, collaborate, and refer patients in~~] of nursing within the generally recognized scope [~~of practice of a~~] and standards of nurse [~~midwife consistent with standards published by the American College of Nurse-Midwives, set forth in this chapter, and set forth in rules adopted by the division, which plan includes the authority to~~] midwifery as defined by rule and consistent with professionally recognized preparations and educational standards of a certified nurse midwife by a person licensed under this chapter, which practice includes the authority to:

(i) elicit and record a patient's complete health information, including physical examination, history, and laboratory findings commonly used in providing obstetrical, gynecological, and well infant services to a patient;

(ii) assess findings and upon abnormal findings from the history, physical examination, or laboratory findings, manage the treatment of the patient, collaborate with the consulting physician or another qualified physician, or refer the patient to the consulting physician or to another qualified physician as appropriate;

(iii) diagnose, plan, and implement appropriate patient care[;], including the administration and prescribing of:

(A) prescription drugs;

- (B) schedule IV-V controlled substances; and
- (C) schedule II-III controlled substances in accordance with a consultation and referral plan;
- (iv) evaluate the results of patient care;
- (v) consult as is appropriate regarding patient care and the results of patient care;
- (vi) manage the intrapartum period according to accepted standards of nurse midwifery practice and a written practice and referral plan, including performance of routine episiotomy and repairs, and administration of anesthesia, including local, pudendal, or paracervical block anesthesia, but not including general anesthesia and major conduction anesthesia;
- (vii) manage the postpartum period;
- (viii) provide gynecological services;
- (ix) provide noncomplicated newborn and infant care to the age of one year; and
- (x) represent or hold oneself out as a [~~registered nurse certified nurse midwife,~~] certified nurse midwife, or nurse midwife, or use the title [~~registered nurse certified nurse midwife,~~] certified nurse midwife, nurse midwife, or the initials [~~R.N.C.N.M.,~~] C.N.M., N.M., or R.N.

(9) "Practice and referral plan" means a written plan entered into with a consulting physician and detailing guidelines by which a certified nurse midwife consults, collaborates, and refers patients.

~~[(7)]~~ (10) "Unlawful conduct" is defined in ~~[Section]~~ Sections 58-1-501 and ~~[also includes:]~~ 58-44a-501.

~~[(a) engaging in practice as a nurse midwife when not licensed or exempted from licensure under this chapter, or engaging in practice as a registered nurse when not licensed or exempted from licensure under this chapter or Title 58, Chapter 31, Nurse Practice Act; and]~~

~~[(b) (i) representing or holding oneself out as a registered nurse certified nurse midwife, certified nurse midwife, nurse midwife, or identifying oneself by the initials R.N.C.N.M., C.N.M., or N.M. when not licensed under this chapter;]~~

~~[(ii) representing or holding out oneself as a registered nurse or identifying oneself by the initials R.N. when not licensed under this chapter or Title 58, Chapter 31; or]~~

~~[(iii) use of any other title, initials, or any other means indicating that one is licensed under~~

~~this chapter.]~~

~~(11) "Unlicensed assistive personnel" means any unlicensed person, regardless of title, to whom tasks are delegated by a licensed certified nurse midwife in accordance with the standards of the profession as defined by rule.~~

~~[(8)] (12) "Unprofessional conduct" is defined in [Section] Sections 58-1-501 and [also includes:] 58-44a-502 and as may be further defined by rule.~~

~~[(a) any unlawful act, omission, or practice as a nurse midwife;]~~

~~[(b) failure to practice in accordance with accepted standards and ethics of the profession;]~~

~~[(c) disregard for a patient's dignity or right to privacy as to her person, condition, possessions, or medical record;]~~

~~[(d) verbally or physically abusing a patient;]~~

~~[(e) engaging in an act, practice, or omission which when considered with the duties and responsibilities of a nurse midwife does or could jeopardize the health, safety, or welfare of a patient or the public;]~~

~~[(f) failure to confine one's practice as a nurse midwife to those acts or practices permitted by law;]~~

~~[(g) engaging in any act or practice as a nurse midwife in which one is not competent by education, preparation, experience, or physical or mental condition; or]~~

~~[(h) acts, practices, or omissions which result in the individual's license to practice in any health care profession in Utah or any other jurisdiction being subjected to disciplinary action.]~~

Section 28. Section **58-44a-103** is enacted to read:

58-44a-103. Education and enforcement fund.

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

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

(a) administrative penalties imposed under Section 58-44a-402; and

(b) interest earned on monies in the account.

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

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

(b) enforcement of this chapter by:

(i) investigating unprofessional or unlawful conduct;

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

(iii) monitoring compliance of renewal requirements; and

(c) education and training of board members.

Section 29. Section **58-44a-201** is amended to read:

58-44a-201. Board.

(1) There is created the [~~Registered Nurse~~] Certified Nurse Midwife Board consisting of four certified nurse midwives and one member representing the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203, and the board shall also:

(a) designate one of its members on a permanent or rotating basis to assist the division in reviewing complaints concerning the unlawful or unprofessional practice of a certified nurse midwife~~[-];~~ and [~~to~~]

(b) advise the division [regarding] in its investigation of these complaints[-; and].

~~[(b) disqualify any board member from participating as a member of the board in his capacity as a presiding officer in any administrative procedure in which that member has previously reviewed the complaint or advised the division.]~~

(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Section 30. Section **58-44a-301** is amended to read:

58-44a-301. Licensure required -- License classification.

(1) A license is required to engage in practice as a certified nurse midwife, except as provided in Section 58-1-307.

(2) The division shall issue to individuals qualified under the provisions of this chapter a license in the classification [~~registered nurse~~] certified nurse midwife.

(3) An individual holding a certified nurse midwife license as of July 1, 1998, who cannot document the successful completion of advanced course work approved by the division in collaboration with the board in patient assessment, diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be issued a "CNM without prescriptive practice" license.

(4) The division shall grant a certified nurse midwife license to any licensed certified nurse midwife currently holding prescriptive authority under any predecessor act on July 1, 1998.

Section 31. Section **58-44a-302** is amended to read:

58-44a-302. Qualifications for licensure.

An applicant for licensure as a nurse midwife shall:

- (1) submit an application in a form as prescribed by the division;
- (2) pay a fee as determined by the department under Section 63-38-3.2;
- (3) be of good moral character;
- (4) at the time of application for licensure hold a license in good standing as a registered nurse in Utah, or be at that time qualified for a license as a registered nurse under Title 58, Chapter 31b, Nurse Practice Act;

(5) have completed:

(a) a certified nurse midwifery education program accredited by the American College of Nurse Midwives and approved by the division; or

(b) have completed a nurse midwifery education program located outside of the United States which is approved by the division and is equivalent to a program accredited by the American College of Nurse Midwives, as demonstrated by a graduate's being accepted to sit for the national certifying examination administered by the American College of Nurse Midwives [Certification Council, Inc.] or its designee; and

(6) have passed examinations established by the division rule in collaboration with the board within two years after completion of the approved education program required under Subsection (5).

Section 32. Section **58-44a-303** is amended to read:

58-44a-303. Term of license -- Expiration -- Renewal.

(1) (a) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule.

(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal, the licensee shall:

(a) hold a valid certification from the American College of Nurse Midwives Certification Council, Inc.; [and]

(b) have met continuing competency requirements defined by the division rule in collaboration with the board[-]; and

(c) as a condition precedent for license renewal commencing on and after July 1, 1999, actively participate on a continuing basis in a quality review program based on criteria established by the division by rule in collaboration with the board. A quality review program shall be:

(i) based in a hospital or other licensed health care facility, as defined in Section 26-21-2, at which the licensee regularly engages in practice; or

(ii) conducted by or under the direction of:

(A) a professional association approved by the division in collaboration with the board; or

(B) another organization approved by the division in collaboration with the board as defined by division rule.

Section 33. Section **58-44a-305** is amended to read:

58-44a-305. Intern license.

(1) The division may issue [~~a temporary~~] an intern license to an individual who meets all qualifications for licensure except the passing of the qualifying examination if the applicant:

(a) graduated from an approved education program within the 12 months immediately preceding the application for licensure;

(b) has never before taken the qualifying examination;

(c) is registered to take the next qualifying examination; and

(d) presents a plan acceptable to the division and board under which the applicant will practice under any [temporary] intern license issued only under the direct supervision of a nurse midwife or physician.

(2) [~~A temporary~~] An intern license issued under this section expires on:

(a) the date of the next qualifying examination immediately following issuance of the [temporary] intern license if the [temporary] intern license holder does not sit for that examination;

(b) the date the examination results are available if the [temporary] intern license holder sits for the next succeeding qualifying examination and fails the examination; or

(c) the date on which a regular license is issued if the [temporary] intern license holder passes the examination and is otherwise qualified for licensure.

Section 34. Section **58-44a-402** is enacted to read:

58-44a-402. Authority to assess penalty.

(1) After a proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the division may impose an administrative penalty of up to \$10,000 for unprofessional or unlawful conduct under this chapter in accordance with a fine schedule established by rule.

(2) The assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.

(3) The division may impose an administrative penalty of up to \$500 for any violation of Subsection 58-44a-501(2), (3), or (4), consistent with Section 58-44a-503.

Section 35. Section **58-44a-501** is repealed and reenacted to read:

58-44a-501. Unlawful conduct.

"Unlawful conduct" includes:

(1) engaging in practice as a certified nurse midwife when not licensed or exempted from licensure under this chapter, or engaging in practice as a registered nurse when not licensed or exempted from licensure under this chapter or Title 58, Chapter 31b, Nurse Practice Act;

(2) representing or holding oneself out as a certified nurse midwife, nurse midwife, or identifying oneself by the initials C.N.M. or N.M. when not licensed under this chapter;

(3) representing or holding out oneself as a registered nurse or identifying oneself by the initials R.N. when not licensed under this chapter or Title 58, Chapter 31b, Nurse Practice Act; and

(4) using any other title, initials, or any other means indicating that one is licensed under this chapter.

Section 36. Section **58-44a-502** is enacted to read:

58-44a-502. Unprofessional conduct.

"Unprofessional conduct" includes:

(1) disregard for a patient's dignity or right to privacy as to his person, condition, possessions, or medical record;

(2) engaging in an act, practice, or omission which when considered with the duties and responsibilities of a certified nurse midwife does or could jeopardize the health, safety, or welfare of a patient or the public;

(3) failure to confine one's practice as a certified nurse midwife to those acts or practices permitted by law;

(4) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;

(5) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by the court;

(6) failure to pay a penalty imposed by the division; and

(7) prescribing a schedule II-III controlled substance without a consulting physician.

Section 37. Section **58-44a-503** is enacted to read:

58-44a-503. Penalty for unlawful conduct.

(1) Any individual who violates the unlawful conduct provisions of Subsection 58-44a-501(1) is guilty of a third degree felony.

(2) Any individual who violates the unlawful conduct provisions of Subsection 58-44a-501(2), (3), or (4) is guilty of a class A misdemeanor.

(3) Subject to Subsection (4), the division may assess administrative penalties in accordance with the provisions of Section 58-44a-402 for acts of unprofessional or unlawful conduct, or any

other appropriate administrative action in accordance with the provisions of Section 58-44a-401.

(4) If a licensee has been convicted of violating Section 58-44a-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed a administrative penalty under this chapter for the same offense for which the conviction was obtained.

Section 38. Section **58-44a-601** is repealed and reenacted to read:

Part 6. Delivery by Parents

58-44a-601. Parents delivering their children.

This chapter does not abridge, limit, or change in any way the right of parents to deliver their baby where, when, how, and with whom they choose, regardless of licensure under this chapter.

Section 39. Section **75-5-311** is amended to read:

75-5-311. Who may be guardian -- Priorities.

(1) As used in this section:

(a) "Specialized care professional" means a person who:

(i) has been certified or designated as a provider of guardianship services by a nationally recognized guardianship accrediting organization;

(ii) is licensed by or registered with the Division of Occupational and Professional Licensing as a health care provider including, but not limited to, a registered nurse licensed under Section [58-31-9] 58-31b-301, a social service worker, certified social worker, or clinical social worker licensed under Section 58-60-205, a marriage and family therapist licensed under Section 58-60-305, a physician licensed under Title 58, Chapter 67, or a psychologist licensed under Title 58, Chapter 61; or

(iii) has been approved by the court as one with specialized training and experience in the care of incapacitated persons.

(b) "Suitable institution" means any nonprofit or for profit corporation, partnership, sole proprietorship, or other type of business organization that is owned, operated by, or employs a specialized care professional.

(2) Any competent person or suitable institution may be appointed guardian of an incapacitated person.

(3) The court shall appoint a guardian in accordance with the incapacitated person's most recent nomination, unless that person is disqualified or the court finds other good cause why the person should not serve as guardian. That nomination shall have been made prior to the person's incapacity, shall be in writing and shall be signed by the person making the nomination. The nomination shall be in substantially the following form:

Nomination of Guardian by an Adult

I, (Name), being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as my guardian in the event that after the date of this instrument I become incapacitated.

Executed at _____ (city, state)

on this _____ day of _____

(Signature)

(4) Except as provided in Subsection (3), persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person who has been nominated by the incapacitated person, by any means other than that described in Subsection (3), if the incapacitated person was 14 years of age or older when the nomination was executed and, in the opinion of the court, that person acted with sufficient mental capacity to make the nomination;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will, written instrument, or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition;

(f) a person nominated by the person who is caring for him or paying benefits to him; or

(g) a specialized care professional, so long as the specialized care professional does not:

(i) profit financially or otherwise from or receive compensation for acting in that capacity,

except for the direct costs of providing guardianship or conservatorship services; or

(ii) otherwise have a conflict of interest in providing those services.

Section 40. Section **78-14-3** is amended to read:

78-14-3. Definitions.

As used in this chapter:

(1) "Audiologist" means a person licensed to practice audiology under Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act.

(2) "Certified social worker" means a person licensed to practice as a certified social worker under Section 58-60-305.

(3) "Chiropractic physician" means a person licensed to practice chiropractic under Title 58, Chapter 73, Chiropractic Physician Practice Act.

(4) "Clinical social worker" means a person licensed to practice as a clinical social worker under Section 58-60-305.

(5) "Commissioner" means the commissioner of insurance as provided in Section 31A-2-102.

(6) "Dental hygienist" means a person licensed to practice dental hygiene as defined in Section 58-69-102.

(7) "Dentist" means a person licensed to practice dentistry as defined in Section 58-69-102.

(8) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(9) "Future damages" includes damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering of the judgment creditor.

(10) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(11) "Health care provider" includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, physician, registered nurse, licensed practical nurse, nurse-midwife, dentist,

dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of their employment.

(12) "Hospital" means a public or private institution licensed under Title 26, Chapter 21, Health Care Facility [~~Licensure~~] Licensing and Inspection Act.

(13) "Licensed practical nurse" means a person licensed to practice as a licensed practical nurse as provided in Section [~~58-31-6~~] 58-31b-301.

(14) "Malpractice action against a health care provider" means any action against a health care provider, whether in contract, tort, breach of warranty, wrongful death, or otherwise, based upon alleged personal injuries relating to or arising out of health care rendered or which should have been rendered by the health care provider.

(15) "Marriage and family therapist" means a person licensed to practice as a marriage therapist or family therapist under Section 58-60-405.

(16) "Naturopathic physician" means a person licensed to practice naturopathy as defined in Section 58-71-102.

(17) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife under Section [~~58-44a-302 or 58-44a-305~~] 58-44a-301.

(18) "Optometrist" means a person licensed to practice optometry under Title 58, Chapter 16a, Utah Optometry Practice Act.

(19) "Osteopathic physician" means a person licensed to practice osteopathy under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(20) "Patient" means a person who is under the care of a health care provider, under a contract, express or implied.

(21) "Pharmacist" means a person licensed to practice pharmacy as provided in Section

58-17a-301.

(22) "Physical therapist" means a person licensed to practice physical therapy under Title 58, Chapter 24a, Physical Therapist Practice Act.

(23) "Physician" means a person licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act.

(24) "Podiatric physician" means a person licensed to practice podiatry under Title 58, Chapter [5] 5a, Podiatric Physician Licensing Act.

(25) "Practitioner of obstetrics" means a person licensed to practice as a physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(26) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to practice psychology as defined in Section 58-61-102.

(27) "Registered nurse" means a person licensed to practice professional nursing as provided in Section [~~58-31-9~~] 58-31b-301.

(28) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact, or other legal agent of the patient.

(29) "Social service worker" means a person licensed to practice as a social service worker under Section 58-60-305.

(30) "Speech-language pathologist" means a person licensed to practice speech-language pathology under Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act.

(31) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another.

Section 41. Repealer.

This act repeals:

Section 58-31-1, Short title.

Section 58-31-2, Definitions.

Section 58-31-3, Boards created -- Membership.

Section 58-31-4, Functions of Board of Nursing and Prescriptive Practice Board.

Section 58-31-5, Peer review committees created -- Duties.

Section 58-31-6, License required -- License classifications.

Section 58-31-6.5, Exceptions from licensure.

Section 58-31-7, Qualifications for licensure.

Section 58-31-8, Qualifications for licensure -- Graduates of non-approved nursing programs.

Section 58-31-9, Qualifications for admission to the examinations.

Section 58-31-10, Expiration of license -- Renewal.

Section 58-31-11, Temporary license.

Section 58-31-12, Licensure by endorsement.

Section 58-31-13, Grounds for denial of licensure and disciplinary proceedings.

Section 58-31-13.5, Penalty for unlawful conduct.

Section 58-31-15, Prescriptive authority.

Section 58-31-16, Consulting physician -- Limitation.

Section 58-31-17, Administration of anesthesia.

Section 58-31-18, Minimum standards for nursing programs -- Approval of nursing education programs -- Unlawful conduct of nursing education program.

Section 58-31-19, Immunity from liability.

Section 58-31-20, Reporting of disciplinary action -- Immunity from liability.

Section 58-31-21, Continuing education.

Section 58-31-22, Practice within limits of competency.

Section 58-44a-701, Parents delivering their children.

Section 42. Effective date.

This act takes effect on July 1, 1998.