

1 § [~~————NURSE~~] NURSING § PRACTICE § [~~ACT~~] § AMENDMENTS

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 Sponsor: Paula F. Julander

5 AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; AMENDING THE  
6 MAKE-UP OF THE BOARD OF NURSING; ELIMINATING THE STATUTORY  
7 REQUIREMENT THAT EXAMINATIONS BE TAKEN WITHIN A PRESCRIBED TIME  
8 PERIOD; AMENDING THE LICENSING REQUIREMENTS OF A NURSE WHO  
9 GRADUATES FROM A NONAPPROVED NURSING PROGRAM; AMENDING THE  
10 RENEWAL REQUIREMENTS OF ADVANCED PRACTICE REGISTERED NURSES;  
11 AMENDING THE ADMINISTRATIVE PROCEDURES FOR SUSPENDING A LICENSE  
12 BECAUSE OF IMPAIRMENT; § AMENDING THE QUALITY REVIEW PROGRAM REQUIRED OF  
12a NURSES AND NURSE MIDWIVES; § AND PROVIDING AN EFFECTIVE DATE.

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

14 AMENDS:

15 58-31b-201, as enacted by Chapter 288, Laws of Utah 1998

16 58-31b-302, as enacted by Chapter 288, Laws of Utah 1998

17 58-31b-303, as enacted by Chapter 288, Laws of Utah 1998

18 58-31b-305, as enacted by Chapter 288, Laws of Utah 1998

19 58-31b-401, as last amended by Chapter 65, Laws of Utah 1999

19a § 58-44a-303, as last amended by Chapter 288, Laws of Utah 1998 §

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

21 Section 1. Section 58-31b-201 is amended to read:

22 58-31b-201. Board.

23 (1) There is created the Board of Nursing that consists of the following [~~13~~] nine  
24 members[ ~~whose appointments shall provide broad representation of the various interests and~~  
25 ~~constituencies in the nursing profession~~]:

26 [~~(a) six persons licensed as registered nurses:~~]

27 [~~(i) three of whom are actively involved in approved nursing education programs and~~]

28 represent various types of education programs; and]

29 ~~[(ii) one of whom is employed in a nursing administrative position within a licensed health~~  
30 ~~care facility;]~~

31 ~~[(b) two persons licensed as licensed practical nurses;]~~

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

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

35 (a) seven nurses in a manner as may be further defined in division rule; and

36 (b) two members of the public.

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

38 (3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and  
39 58-1-203 and shall:

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

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

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

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

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

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

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

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

58 Section 2. Section **58-31b-302** is amended to read:

59 **58-31b-302. Qualifications for licensure.**

60 (1) An applicant for licensure as a licensed practical nurse shall:

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

62 (b) pay to the division a fee determined under Section 63-38-3.2;

63 (c) have a high school diploma or its equivalent;

64 (d) be in a condition of physical and mental health that will permit the applicant to practice  
65 safely as a licensed practical nurse;66 (e) have completed an approved practical nursing education program or an equivalent as  
67 determined by the board;68 (f) have passed the examinations [~~prescribed~~] as required by division rule made in  
69 collaboration with the board [~~within two years after completion of the approved practical nursing~~  
70 ~~education program required under Subsection (1)(e) and within three years of the date of~~  
71 ~~application for a Utah license~~]; and72 (g) meet with the board, if requested, to determine the applicant's qualifications for  
73 licensure.

74 (2) An applicant for licensure as a registered nurse shall:

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

76 (b) pay to the division a fee determined under Section 63-38-3.2;

77 (c) have a high school diploma or its equivalent;

78 (d) be in a condition of physical and mental health that will allow the applicant to practice  
79 safely as a registered nurse;

80 (e) have completed an approved registered nursing education program;

81 (f) have passed the examinations [~~prescribed~~] as required by division rule made in  
82 collaboration with the board [~~within two years after completion of the approved registered nursing~~  
83 ~~education program required under Subsection (2)(e) and within three years of the date of~~  
84 ~~application for a Utah license~~]; and85 (g) meet with the board, if requested, to determine the applicant's qualifications for  
86 licensure.

87 (3) Applicants for licensure as an advanced practice registered nurse shall:

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

89 (b) pay to the division a fee determined under Section 63-38-3.2;

90 (c) be in a condition of physical and mental health which will allow the applicant to  
91 practice safely as an advanced practice registered nurse;

92 (d) hold a current registered nurse license in good standing issued by the state or be  
93 qualified at the time for licensure as a registered nurse;

94 (e) have earned a graduate degree in nursing or a related area of specialized knowledge as  
95 determined appropriate by the division in collaboration with the board;

96 (f) have completed course work in patient assessment, diagnosis and treatment, and  
97 pharmacotherapeutics from an education program approved by the division in collaboration with  
98 the board;

99 (g) have successfully completed clinical practice in psychiatric and mental health nursing,  
100 including psychotherapy as defined by division rule, after completion of the masters degree  
101 required for licensure, to practice within the psychiatric and mental health nursing specialty;

102 (h) have passed the examinations [~~prescribed~~] as required by division rule made in  
103 collaboration with the board [~~within two years after completion of the approved education program~~  
104 ~~required under Subsection (3)(f)~~];

105 (i) be currently certified by a program approved by the division in collaboration with the  
106 board and submit evidence satisfactory to the division of the certification; and

107 (j) meet with the board, if requested, to determine the applicant's qualifications for  
108 licensure.

109 (4) An applicant for licensure as a certified registered nurse anesthetist shall:

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

111 (b) pay to the division a fee determined under Section 63-38-3.2;

112 (c) be in a condition of physical and mental health which will allow the applicant to  
113 practice safely as a certified registered nurse anesthetist;

114 (d) hold a current registered nurse license in good standing issued by the state or be  
115 qualified at the time for licensure as a registered nurse;

116 (e) complete a nurse anesthesia program which is approved by the Council on  
117 Accreditation of Nurse Anesthesia Educational Programs;

118 (f) be currently certified by a program approved by the division in collaboration with the  
119 board and submit evidence satisfactory to the division of the certification; and

120 (g) meet with the board, if requested, to determine the applicant's qualifications for

121 licensure.

122 Section 3. Section **58-31b-303** is amended to read:

123 **58-31b-303. Qualifications for licensure -- Graduates of nonapproved nursing**  
124 **programs.**

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

128 (1) An applicant for licensure as a licensed practical nurse shall:

129 (a) meet all requirements of Subsection 58-31b-302(1), except Subsection (1)(e); and

130 (b) produce evidence acceptable to the division and the board that the nursing education  
131 program completed by the applicant is equivalent to the minimum standards established by the  
132 division in collaboration with the board for an approved licensed practical nursing education  
133 program.

134 (2) An applicant for licensure as a registered nurse shall:

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

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

137 Examination; or

138 (ii) produce evidence acceptable to the division and the board that the applicant is currently  
139 licensed as a registered nurse in one of the states, territories, or the District of Columbia of the  
140 United States and has ~~[practiced satisfactorily as a licensed registered nurse in that jurisdiction for~~  
141 ~~a period of not less than 4,000 hours]~~ passed the NCLEX-RN examination.

142 Section 4. Section **58-31b-305** is amended to read:

143 **58-31b-305. Term of license -- Expiration -- Renewal.**

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

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

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

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

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

154 (a) be currently certified by a program approved by the division in collaboration with the  
155 board and submit evidence satisfactory to the division of that qualification or if licensed prior to  
156 July 1, 1992, meet the requirements established by rule; and

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

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

162 [(ii) conducted by or under the direction of:]

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

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

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

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

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

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

176 Section 5. Section **58-31b-401** is amended to read:

177 **58-31b-401. Grounds for denial of licensure and disciplinary proceedings.**

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

182 [~~(2)(a) If a court of competent jurisdiction determines that a nurse is an "incapacitated~~

183 person" as defined in Section 75-1-201, the director shall suspend the license of the nurse upon  
184 entry of the judgment, regardless of the pendency of an appeal.]

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

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

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

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

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

206 (2) If a court of competent jurisdiction determines a nurse is an incapacitated person as  
207 defined in Section 75-1-201 or that he is mentally ill as defined in Section 62A-12-202, and unable  
208 to safely engage in the practice of nursing, the director shall immediately suspend the license of  
209 the nurse upon the entry of the judgment of the court, without further proceedings under Title 63,  
210 Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's  
211 ruling is pending. The director shall promptly notify the nurse, in writing, of the suspension.

212 (3) (a) If the division and the majority of the board find reasonable cause to believe a  
213 nurse, who is not determined judicially to be an incapacitated person or to be mentally ill, is

214 incapable of practicing nursing with reasonable skill regarding the safety of patients, because of  
215 illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the  
216 board shall recommend that the director file a petition with the division, and cause the petition to  
217 be served upon the nurse with a notice of hearing on the sole issue of the capacity of the nurse to  
218 competently, safely engage in the practice of nursing.

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

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

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

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

229 (b) The examination may be ordered by the division, with the consent of a majority of the  
230 board, only upon a finding of reasonable cause to believe:

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

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

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

238 (ii) The division may enter the order of suspension without further compliance with Title  
239 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to  
240 the examination ordered under this section was due to circumstances beyond the control of the  
241 nurse and was not related directly to the illness or incapacity of the nurse.

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

244 (b) The hearing held under this Subsection (5) shall be conducted in accordance with

245 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for  
 246 the continuance of the order of suspension in order to prevent harm to the nurse's patients or the  
 247 general public.

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

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

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

255 ~~[(3)]~~ (7) Nothing in Section 63-2-206 may be construed as limiting the authority of the  
 256 division to report current significant investigative information to the coordinated licensure  
 257 information system for transmission to party states as required of the division by Article VII of the  
 258 Nurse Licensure Compact in Section 58-31c-102.

258a **§ Section 6. Section 58-44a-303 is amended to read:**

258b **58-44a-303. Term of license -- Expiration -- Renewal.**

258c **(1) (a) Each license issued under this chapter shall be issued in accordance with a two-year**  
 258d **renewal cycle established by rule.**

258e **(b) A renewal period may be extended or shortened by as much as one year to maintain**  
 258f **established renewal cycles or to change an established renewal cycle.**

258g **(2) At the time of renewal, the licensee shall:**

258h **(a) hold a valid certification from the American College of Nurse Midwives Certification**  
 258i **Council, Inc.;**

258j **(b) have met continuing competency requirements defined by the division rule in**  
 258k **collaboration with the board; and**

258l **(c) as a condition precedent for license renewal commencing on and after July 1, 1999,**  
 258m **actively participate on a continuing basis in a quality review program based on criteria established by**  
 258n **the division by rule in collaboration with the board. ~~[A quality review program shall be:]~~**

258o **~~[(i) based in a hospital or other licensed health care facility, as defined in Section 26-21-2, at~~**  
 258p **~~which the licensee regularly engages in practice; or]~~**

258q **~~[(ii) conducted by or under the direction of:]~~**

258r **~~[(A) a professional association approved by the division in collaboration with the board; or]~~**

258s **~~[(B) another organization approved by the division in collaboration with the board as defined~~**  
 258t **by division rule.] §**

259 Section § ~~[6]~~ 7 § . **Effective date.**

260 This act takes effect on July 1, 2000.

**Legislative Review Note**  
**as of 1-26-00 6:59 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**