

MEDICATION AIDE CERTIFIED

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca D. Lockhart

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill amends the Nurse Practice Act to create a medication aide certified in long-term care facilities.

Highlighted Provisions:

This bill:

- ▶ defines a medication aide certified and the practice of a medication aide certified;
- ▶ creates a pilot program for the medication aide certified which sunsets on May 15, 2010;
- ▶ establishes qualifications and training for a medication aide certified;
- ▶ amends provisions related to unlawful and unprofessional conduct; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-31b-102, as last amended by Chapters 50 and 134, Laws of Utah 2005

58-31b-301, as last amended by Chapters 50 and 134, Laws of Utah 2005

58-31b-302, as last amended by Chapters 50 and 134, Laws of Utah 2005



- 28 **58-31b-303**, as last amended by Chapter 134, Laws of Utah 2005
- 29 **58-31b-304**, as last amended by Chapter 134, Laws of Utah 2005
- 30 **58-31b-305**, as last amended by Chapter 268, Laws of Utah 2001
- 31 **58-31b-401**, as last amended by Chapter 50, Laws of Utah 2005
- 32 **58-31b-501**, as last amended by Chapters 50 and 134, Laws of Utah 2005
- 33 **58-31b-502**, as last amended by Chapter 134, Laws of Utah 2005
- 34 **58-31b-503**, as last amended by Chapter 290, Laws of Utah 2002
- 35 **58-31b-601**, as last amended by Chapter 134, Laws of Utah 2005
- 36 **58-31d-103**, as last amended by Chapters 50, 71 and 134, Laws of Utah 2005
- 37 **63-55b-158**, as last amended by Chapter 134, Laws of Utah 2005

38 ENACTS:

39 **58-31b-301.6**, Utah Code Annotated 1953



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

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

43 **58-31b-102. Definitions.**

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

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

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

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

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

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

59 the consulting physician.

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

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

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

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

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

73 (a) a nursing care facility;

74 (b) a small health care facility;

75 (c) an intermediate care facility for the mentally retarded;

76 (d) an assisted living facility Type I or II; or

77 (e) a designated swing bed unit in a general hospital.

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

79 (a) has a minimum of 2,000 hours experience working as a certified nurse aide;

80 (b) has received a minimum of 40 hours of classroom and 20 hours of practical training
81 that is approved by the division in collaboration with the board, in administering routine
82 medications to patients or residents of long-term care facilities; and

83 (c) is certified by the division as a medication aide certified.

84 (12) (a) "Practice as a medication aide certified" means the limited practice of nursing
85 under the supervision, as defined by the division by administrative rule, of a licensed nurse,
86 involving routine patient care that requires minimal or limited specialized or general
87 knowledge, judgment, and skill, to an individual who is ill, injured, infirm, developmentally or
88 physically disabled, mentally disabled, or mentally retarded, and who is in a regulated
89 long-term care facility.

90 **(b) "Practice as a medication aide certified" includes:**
91 **(i) providing direct personal assistance or care; and**
92 **(ii) administering routine medications to patients in accordance with a formulary and**
93 **protocols to be defined by the division by rule.**

94 ~~[(15)]~~ **(13) "Practice of advanced practice registered nursing" means the practice of**
95 **nursing within the generally recognized scope and standards of advanced practice registered**
96 **nursing as defined by rule and consistent with professionally recognized preparation and**
97 **education standards of an advanced practice registered nurse by a person licensed under this**
98 **chapter as an advanced practice registered nurse. Advanced practice registered nursing**
99 **includes:**

- 100 **(a) maintenance and promotion of health and prevention of disease;**
- 101 **(b) diagnosis, treatment, correction, consultation, and referral for common health**
102 **problems; and**
- 103 **(c) prescription or administration of prescription drugs or devices including:**
 - 104 **(i) local anesthesia;**
 - 105 **(ii) schedule IV-V controlled substances; and**
 - 106 **(iii) schedule II-III controlled substances in accordance with a consultation and referral**
107 **plan.**

108 ~~[(12)]~~ **(14) (a) "Practice of nurse anesthesia" means the practice of nursing related to**
109 **the provision of preoperative, intraoperative, and postoperative anesthesia care and related**
110 **services upon the request of a physician, surgeon, or other licensed professional, who is acting**
111 **within the scope of their practice, by a person licensed under this chapter as a certified**
112 **registered nurse anesthetist and includes:**

- 113 **(i) preanesthesia preparation and evaluation including:**
 - 114 **(A) performing a preanesthetic assessment of the patient;**
 - 115 **(B) ordering and evaluating appropriate lab and other studies to determine the health of**
116 **the patient; and**
 - 117 **(C) selecting, ordering, or administering appropriate medications;**
- 118 **(ii) anesthesia induction, maintenance, and emergence, including:**
 - 119 **(A) selecting and initiating the planned anesthetic technique;**
 - 120 **(B) selecting and administering anesthetics and adjunct drugs and fluids; and**

- 121 (C) administering general, regional, and local anesthesia;
- 122 (iii) postanesthesia follow-up care, including:
- 123 (A) evaluating the patient's response to anesthesia and implementing corrective
- 124 actions; and
- 125 (B) selecting, ordering, or administering the above medications and studies; and
- 126 (iv) other related services within the scope of practice of a certified registered nurse
- 127 anesthetist, including:
- 128 (A) emergency airway management;
- 129 (B) advanced cardiac life support; and
- 130 (C) the establishment of peripheral, central, and arterial invasive lines.
- 131 (b) Nothing in this section shall be construed as to require a certified registered nurse
- 132 anesthetist to obtain an advance practice registered nurse license in order to select, administer,
- 133 or provide preoperative, intraoperative, or postoperative anesthesia care and services.
- 134 ~~[(11)]~~ (15) "Practice of nursing" means assisting individuals or groups to maintain or
- 135 attain optimal health, implementing a strategy of care to accomplish defined goals and
- 136 evaluating responses to care and treatment. The practice of nursing requires substantial
- 137 specialized or general knowledge, judgment, and skill based upon principles of the biological,
- 138 physical, behavioral, and social sciences, and includes:
- 139 (a) initiating and maintaining comfort measures;
- 140 (b) promoting and supporting human functions and responses;
- 141 (c) establishing an environment conducive to well-being;
- 142 (d) providing health counseling and teaching;
- 143 (e) collaborating with health care professionals on aspects of the health care regimen;
- 144 (f) performing delegated procedures only within the education, knowledge, judgment,
- 145 and skill of the licensee; and
- 146 (g) delegating nurse interventions that may be performed by others and are not in
- 147 conflict with this chapter.
- 148 ~~[(13)]~~ (16) "Practice of practical nursing" means the performance of nursing acts in the
- 149 generally recognized scope of practice of licensed practical nurses as defined by rule and as
- 150 provided in this Subsection ~~[(13)]~~ (16) by a person licensed under this chapter as a licensed
- 151 practical nurse and under the direction of a registered nurse, licensed physician, or other

152 specified health care professional as defined by rule. Practical nursing acts include:

- 153 (a) contributing to the assessment of the health status of individuals and groups;
- 154 (b) participating in the development and modification of the strategy of care;
- 155 (c) implementing appropriate aspects of the strategy of care;
- 156 (d) maintaining safe and effective nursing care rendered to a patient directly or
- 157 indirectly; and
- 158 (e) participating in the evaluation of responses to interventions.

159 ~~[(14)]~~ (17) "Practice of registered nursing" means performing acts of nursing as
 160 provided in this Subsection ~~[(14)]~~ (17) by a person licensed under this chapter as a registered
 161 nurse within the generally recognized scope of practice of registered nurses as defined by rule.

162 Registered nursing acts include:

- 163 (a) assessing the health status of individuals and groups;
- 164 (b) identifying health care needs;
- 165 (c) establishing goals to meet identified health care needs;
- 166 (d) planning a strategy of care;
- 167 (e) prescribing nursing interventions to implement the strategy of care;
- 168 (f) implementing the strategy of care;
- 169 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
- 170 indirectly;
- 171 (h) evaluating responses to interventions;
- 172 (i) teaching the theory and practice of nursing; and
- 173 (j) managing and supervising the practice of nursing.

174 (18) "Routine medications" ~~H→~~ :

174a (a) ~~←H~~ means established medications administered to a medically
 175 stable individual as determined by a licensed health care practitioner or in consultation with a
 176 licensed medical practitioner ~~H→~~ ;and

176a (b) is limited to medications that are administered by the following routes:

176b (i) oral;

176c (ii) sublingual;

176d (iv) buccal;

176e (v) eye;

176f (vi) ear;

176g (vii) nasal;

176h (viii) rectal;

- 176i (ix) vaginal;
- 176j (x) skin ointments, topical including patches and transdermal;
- 176k (xi) gastronomy or jejunostomy tubes;
- 176l (xii) pre-measured medication delivered by aresol/nebulizer; and
- 176m (xiii) medications delivered by metered hand-held inhalers. ←Ĥ .
- 177 [~~(16)~~] (19) "Unlawful conduct" is as defined in Sections 58-1-501 and [~~58-31b-501.2~~]
- 178 58-31b-501.
- 179 [~~(17)~~] (20) "Unlicensed assistive personnel" means any unlicensed person, regardless
- 180 of title, to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance
- 181 with the standards of the profession.
- 182 [~~(18)~~] (21) "Unprofessional conduct" is as defined in Sections 58-1-501 and

183 58-31b-502 and as may be further defined by rule.

184 Section 2. Section **58-31b-301** is amended to read:

185 **58-31b-301. License or certification required -- Classifications.**

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

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

- 190 (a) licensed practical nurse;
- 191 (b) registered nurse;
- 192 (c) advanced practice registered nurse intern;
- 193 (d) advanced practice registered nurse; [~~and~~]
- 194 (e) certified registered nurse anesthetist[-]; and
- 195 (f) medication aide certified.

196 (3) An individual holding an advanced practice registered nurse license as of July 1,
197 1998, who cannot document the successful completion of advanced course work in patient
198 assessment, diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be
199 issued an "APRN - without prescriptive practice" license.

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

203 Section 3. Section **58-31b-301.6** is enacted to read:

204 **58-31b-301.6. Medication aide certified pilot program.**

205 (1) (a) The division shall establish a medication aide certified pilot program ~~H~~→ , limited to
205a adult patients only, ←~~H~~ to
206 determine the safety and efficiency of regulating medication aides certified.

207 (b) The pilot program begins on January 1, 2007, and sunsets in accordance with
208 Section 63-55b-158.

209 (c) The division shall collect data regarding the safety and efficiency of medication
210 aides certified and shall make the data available to the public.

211 (d) If the Legislature does not reauthorize the medication aides certified in accordance
212 with Section 63-55b-158, all certifications will automatically expire on the sunset date.

213 (2) If at any time the division determines the certification pilot program has become a

214 threat, or potential threat to the public health, safety, or welfare, the division may authorize
215 emergency rules to place the certification program in abeyance until the next legislative
216 session.

217 Section 4. Section **58-31b-302** is amended to read:

218 **58-31b-302. Qualifications for licensure or certification -- Criminal background**
219 **checks.**

220 (1) An applicant for certification as a medication aide shall:

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

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

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

224 (d) have a current certification as a nurse aide, in good standing, from the Department
225 of Health;

226 (e) have a minimum of 2,000 hours of experience within the two years prior to
227 application, working as a certified nurse aide in a long-term care facility;

228 (f) obtain letters of recommendation from a long-term care facility administrator and
229 one licensed nurse familiar with the applicant's work practices as a certified nurse aide;

230 (g) be in a condition of physical and mental health that will permit the applicant to
231 practice safely as a medication aide certified;

232 (h) have completed an approved education program or an equivalent as determined by
233 the division in collaboration with the board;

234 (i) have passed the examinations as required by division rule made in collaboration
235 with the board; and

236 (j) meet with the board, if requested, to determine the applicant's qualifications for
237 certification.

238 [(+)] (2) An applicant for licensure as a licensed practical nurse shall:

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

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

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

242 (d) be in a condition of physical and mental health that will permit the applicant to
243 practice safely as a licensed practical nurse;

244 (e) have completed an approved practical nursing education program or an equivalent

245 as determined by the board;

246 (f) have passed the examinations as required by division rule made in collaboration
247 with the board; and

248 (g) meet with the board, if requested, to determine the applicant's qualifications for
249 licensure.

250 [~~(2)~~] (3) An applicant for licensure as a registered nurse shall:

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

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

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

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

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

257 (f) have passed the examinations as required by division rule made in collaboration
258 with the board; and

259 (g) meet with the board, if requested, to determine the applicant's qualifications for
260 licensure.

261 [~~(3)~~] (4) Applicants for licensure as an advanced practice registered nurse shall:

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

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

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

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

268 (e) have earned a graduate degree in an advanced practice registered nurse nursing
269 education program or a related area of specialized knowledge as determined appropriate by the
270 division in collaboration with the board;

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

274 (g) have successfully completed clinical practice in psychiatric and mental health
275 nursing, including psychotherapy as defined by division rule, after completion of the masters

276 degree required for licensure, to practice within the psychiatric and mental health nursing
277 specialty;

278 (h) have passed the examinations as required by division rule made in collaboration
279 with the board;

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

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

284 [~~(4)~~] (5) An applicant for licensure as a certified registered nurse anesthetist shall:

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

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

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

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

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

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

295 (g) meet with the board, if requested, to determine the applicant's qualifications for
296 licensure.

297 [~~(5)~~] (6) An applicant for licensure or certification under this chapter:

298 (a) (i) shall submit fingerprint cards in a form acceptable to the division at the time the
299 license application is filed and shall consent to a fingerprint background check by the Utah
300 Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the
301 application; and

302 (ii) the division shall request the Department of Public Safety to complete a Federal
303 Bureau of Investigation criminal background check for each applicant through the national
304 criminal history system (NCIC) or any successor system; and

305 (b) if convicted of one or more felonies, must receive an absolute discharge from the
306 sentences for all felony convictions five or more years prior to the date of filing an application

307 for licensure or certification under this chapter.

308 ~~[(6)]~~ (7) For purposes of conducting the criminal background checks required in
309 Subsection ~~[(5)]~~ (6), the division shall have direct access to criminal background information
310 maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

311 ~~[(7)]~~ (8) (a) (i) Any new nurse license or certification issued under this section shall be
312 conditional, pending completion of the criminal background check.

313 (ii) If the criminal background check discloses the applicant has failed to accurately
314 disclose a criminal history, the license or certification shall be immediately and automatically
315 revoked.

316 (b) (i) Any person whose conditional license or certification has been revoked under
317 Subsection ~~[(7)]~~ (8)(a) shall be entitled to a postrevocation hearing to challenge the revocation.

318 (ii) The hearing shall be conducted in accordance with Title 63, Chapter 46b,
319 Administrative Procedures Act.

320 Section 5. Section **58-31b-303** is amended to read:

321 **58-31b-303. Qualifications for licensure -- Graduates of nonapproved nursing**
322 **programs.**

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

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

327 (a) meet all requirements of Subsection 58-31b-302~~[(1)]~~(2), except Subsection ~~[(1)]~~
328 (2)(e); and

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

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

334 (a) meet all requirements of Subsection 58-31b-302~~[(2)]~~ (3), except Subsection ~~[(2)]~~
335 (3)(e); and

336 (b) (i) pass the Commission on Graduates of Foreign Nursing Schools (CGFNS)
337 Examination; or

338 (ii) produce evidence acceptable to the division and the board that the applicant is
 339 currently licensed as a registered nurse in one of the states, territories, or the District of
 340 Columbia of the United States and has passed the NCLEX-RN examination.

341 Section 6. Section **58-31b-304** is amended to read:

342 **58-31b-304. Qualifications for admission to the examinations.**

343 (1) To be admitted to the examinations required for certification as a medication aide
 344 certified, a person shall:

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

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

347 (c) meet all requirements of Subsection 58-31b-302(1), except the passing of the
 348 examination.

349 [~~(1)~~] (2) To be admitted to the examinations required for licensure as a practical nurse,
 350 a person shall:

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

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

353 (c) meet all requirements of Subsection 58-31b-302[~~(1)~~](2), except Subsection [~~(1)~~]

354 (2)(f).

355 [~~(2)~~] (3) To be admitted to the examinations required for licensure as a registered
 356 nurse, a person shall:

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

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

359 (c) meet all the requirements of Subsection 58-31b-302[~~(2)~~](3), except Subsection [~~(2)~~]

360 (3)(f).

361 Section 7. Section **58-31b-305** is amended to read:

362 **58-31b-305. Term of license -- Expiration -- Renewal.**

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

366 (2) At the time of renewal, the licensee or person certified under this chapter shall
 367 show satisfactory evidence of each of the following renewal requirements:

368 (a) complete and submit an application for renewal in a form prescribed by the division

369 and pay the renewal fee determined under Section 63-38-3.2; and

370 (b) meet continuing competency requirements as established by rule ~~H~~→ , which shall
370a include continuing education requirements for medication aide certified established by the
370b board and adopted by the division by rule ←~~H~~ .

371 (3) In addition to the renewal requirements under Subsection (2), a person licensed as a
372 advanced practice registered nurse shall be currently certified by a program approved by the
373 division in collaboration with the board and submit evidence satisfactory to the division of that
374 qualification or if licensed prior to July 1, 1992, meet the requirements established by rule.

375 (4) In addition to the renewal requirements under Subsection (2), a person licensed as a
376 certified registered nurse anesthetist shall be currently certified in anesthesia by a program
377 approved by the division in collaboration with the board and submit evidence satisfactory to
378 the division of the certification.

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

381 Section 8. Section ~~58-31b-401~~ is amended to read:

382 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**
383 **proceedings.**

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

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

395 (3) (a) If the division and the majority of the board find reasonable cause to believe a
396 nurse who is not determined judicially to be an incapacitated person or to be mentally ill, is
397 incapable of practicing nursing with reasonable skill regarding the safety of patients, because of
398 illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the
399 board shall recommend that the director file a petition with the division, and cause the petition

400 to be served upon the nurse with a notice of hearing on the sole issue of the capacity of the
401 nurse to competently, safely engage in the practice of nursing.

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

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

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

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

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

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

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

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

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

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

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

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

- 435 (a) he is or is not able to safely and competently engage in the practice of nursing; and
 436 (b) he is qualified to have his license to practice under this chapter restored completely
 437 or in part.

438 (7) Nothing in Section 63-2-206 may be construed as limiting the authority of the
 439 division to report current significant investigative information to the coordinated licensure
 440 information system for transmission to party states as required of the division by Article VII of
 441 the Nurse Licensure Compact in Section 58-31c-102.

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

443 (a) "licensed" or "license" includes "certified" or "certification" under this chapter[;];
 444 and

445 (b) ~~It~~ → any terms or conditions applied to the word ← ~~It~~ "nurse" ~~It~~ → in this section or
 445a Section 58-31b-402 also apply to [~~includes~~] ← ~~It~~ a medication aide certified.

446 Section 9. Section **58-31b-501** is amended to read:

447 **58-31b-501. Unlawful conduct.**

448 "Unlawful conduct" includes:

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

451 (a) nurse;

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

453 (c) medication aide certified, or M.A.C.;

454 [~~(d)~~] (d) registered nurse or R.N.;

455 [~~(e)~~] (e) registered nurse practitioner, N.P., or R.N.P.;

456 [~~(f)~~] (f) registered nurse specialist, N.S., or R.N.S.;

457 [~~(g)~~] (g) registered psychiatric mental health nurse specialist;

458 [~~(h)~~] (h) advanced practice registered nurse;

459 [~~(i)~~] (i) nurse anesthetist, certified nurse anesthetist, certified registered nurse
 460 anesthetist, or C.R.N.A.; or

461 [~~(j)~~] (j) other generally recognized names or titles used in the profession of nursing;

462 (2) ~~H~~→ (a) ←~~H~~ using any other name, title, or initials that would cause a reasonable
 462a person to
 463 believe the user is licensed or certified under this chapter if the user is not properly licensed or
 464 certified under this chapter; and

464a ~~H~~→ (b) for purposes of Subsection (2)(a), it is unlawful conduct for a medication aide
 464b certified to use the term "nurse"; and ←~~H~~

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

468 Section 10. Section **58-31b-502** is amended to read:

469 **58-31b-502. Unprofessional conduct.**

470 "Unprofessional conduct" includes:

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

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

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

480 (a) period when a generally recognized professional relationship exists between the
 481 [~~nurse~~] person licensed or certified under this chapter and patient; or

482 (b) extended period when a patient has reasonable cause to believe a professional
 483 relationship exists between the [~~nurse~~] person licensed or certified under the provisions of this
 484 chapter and the patient;

485 (4) (a) as a result of any circumstance under Subsection (3), exploiting or using
 486 information about a patient or exploiting the licensee's or the person with a certification's
 487 professional relationship between the licensee or holder of a certification under this chapter and
 488 the patient; or

489 (b) exploiting the patient by use of the licensee's or person with a certification's
 490 knowledge of the patient obtained while acting as a nurse or a medication aide certified;

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

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

- 493 (7) unauthorized taking or personal use of a patient's personal property;
- 494 (8) knowingly entering into any medical record any false or misleading information or
495 altering a medical record in any way for the purpose of concealing an act, omission, or record
496 of events, medical condition, or any other circumstance related to the patient and the medical or
497 nursing care provided;
- 498 (9) unlawful or inappropriate delegation of nursing care;
- 499 (10) failure to exercise appropriate supervision of persons providing patient care
500 services under supervision of the licensed nurse;
- 501 (11) employing or aiding and abetting the employment of an unqualified or unlicensed
502 person to practice as a nurse;
- 503 (12) failure to file or record any medical report as required by law, impeding or
504 obstructing the filing or recording of such a report, or inducing another to fail to file or record
505 such a report;
- 506 (13) breach of a statutory, common law, regulatory, or ethical requirement of
507 confidentiality with respect to a person who is a patient, unless ordered by a court;
- 508 (14) failure to pay a penalty imposed by the division;
- 509 (15) prescribing a schedule II-III controlled substance without a consulting physician or
510 outside of a consultation and referral plan; and
- 511 (16) violating Section 58-31b-801.

512 Section 11. Section **58-31b-503** is amended to read:

513 **58-31b-503. Penalty for unlawful conduct.**

- 514 (1) Any person who violates the unlawful conduct provision specifically defined in
515 Subsection 58-1-501(1)(a)~~(i)~~ is guilty of a third degree felony.
- 516 (2) Any person who violates any of the unlawful conduct provisions specifically
517 defined in Subsections 58-1-501(1)~~(a)(ii) through (v)~~ (b) through (f) and
518 58-31b-501(1)~~(c)~~ (d) is guilty of a class A misdemeanor.
- 519 (3) Any person who violates any of the unlawful conduct provisions specifically
520 defined in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B
521 misdemeanor.
- 522 (4) Subject to Subsection (5), the division may assess administrative penalties in
523 accordance with the provisions of Section 58-31b-402 for acts of unprofessional or unlawful

524 conduct or any other appropriate administrative action in accordance with the provisions of
525 Section 58-31b-401.

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

530 Section 12. Section **58-31b-601** is amended to read:

531 **58-31b-601. Minimum standards for nursing programs.**

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

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

536 (3) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
537 the division shall make rules defining the minimum standards a medication aide certified
538 training program to qualify a person for certification under this chapter as a medication aide
539 certified.

540 (b) A medication aide certified training program shall include a minimum of 40 hours
541 of classroom and 20 hours of practical training.

542 Section 13. Section **58-31d-103** is amended to read:

543 **58-31d-103. Rulemaking authority -- Enabling provisions.**

544 (1) The division may adopt rules necessary to implement Section 58-31d-102.

545 (2) As used in Article VIII (1) of the Advanced Practice Registered Nurse Compact,
546 "head of the licensing board" means the executive administrator of the Utah Board of Nursing.

547 (3) For purposes of the Advanced Practice Registered Nurse Compact, "APRN" as
548 defined in Article II (1) of the compact includes an individual who is licensed to practice under
549 Subsection 58-31b-301(2) as an advanced practice registered nurse.

550 (4) An APRN practicing in this state under a multistate licensure privilege may only be
551 granted prescriptive authority if that individual can document completion of graduate level
552 course work in the following areas:

553 (a) advanced health assessment;

554 (b) pharmacotherapeutics; and

- 555 (c) diagnosis and treatment.
- 556 (5) (a) An APRN practicing in this state under a multistate privilege who seeks to
- 557 obtain prescriptive authority must:
- 558 (i) meet all the requirements of Subsection (4) and this Subsection (5); and
- 559 (ii) be placed on a registry with the division.
- 560 (b) To be placed on a registry under Subsection (5)(a)(ii), an APRN must:
- 561 (i) submit a form prescribed by the division;
- 562 (ii) pay a fee; and
- 563 (iii) if prescribing a controlled substance:
- 564 (A) obtain a controlled substance license as required under Section 58-37-6; and
- 565 (B) if prescribing a Schedule II or III controlled substance, have a consultation and
- 566 referral plan with a physician licensed in Utah as required under Subsection 58-31b-102 [(15)]
- 567 (13)(c)(iii).

568 Section 14. Section **63-55b-158** is amended to read:

569 **63-55b-158. Repeal dates -- Title 58.**

570 [~~Section 58-31b-301.5, Geriatric Care Manager Pilot Program, is repealed May 2,~~

571 ~~2005.~~]

572 Section 58-31b-301.6, Medication Aide Certified Pilot Program, is repealed May 15,

573 2010.

Legislative Review Note
as of 12-13-05 1:56 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

The pilot program will generate \$1,500 in revenue to the Commerce Service Fund from fees paid by an estimated 30 participants. Cost for a consultant to design and evaluate the pilot program will cost an estimated \$9,000.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
Commerce Service Fund	\$9,000	\$9,000	\$1,500	\$1,500
TOTAL	\$9,000	\$9,000	\$1,500	\$1,500

Individual and Business Impact

Participants will pay a \$50 application fee and a \$39 fingerprint fee. They will probably get at least a \$1/hour raise once they become certified. Facilities will save money on salaries as they shift duties from higher paid LPNs and RNs to certified medication aides.

Office of the Legislative Fiscal Analyst