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NURSE PRACTITIONER AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Justin L. Fawson

LONG TITLE

General Description:

This bill allows an advanced practice registered nurse to prescribe a Schedule II controlled substance without a consultation and referral plan under certain circumstances.

Highlighted Provisions:

This bill:

- ▶ defines pain clinic for Title 58, Division of Occupational and Professional Licensing Act;
- ▶ allows an advanced practice registered nurse to prescribe a Schedule II controlled substance without a consultation and referral plan if the advanced practice registered nurse:
 - meets certain experience requirements;
 - consults the Controlled Substance Database; and
 - when treating an injured worker, follows prescribing for chronic pain guidelines developed by the Workers' Compensation System;
- ▶ prohibits an advanced practice registered nurse from establishing an independent pain clinic without a consultation and referral plan; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **26-55-102**, as enacted by Laws of Utah 2014, Chapter 130

34 **58-1-102**, as last amended by Laws of Utah 2012, Chapter 362

35 **58-31b-102**, as last amended by Laws of Utah 2011, Chapter 366

36 **58-31b-502**, as last amended by Laws of Utah 2014, Chapter 72

37 **58-31d-103**, as last amended by Laws of Utah 2015, Chapter 258

38 ENACTS:

39 **58-31b-803**, Utah Code Annotated 1953



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

42 Section 1. Section **26-55-102** is amended to read:

43 **26-55-102. Definitions.**

44 As used in this chapter:

45 (1) "Health care facility" means a hospital, a hospice inpatient residence, a nursing
46 facility, a dialysis treatment facility, an assisted living residence, an entity that provides home-
47 and community-based services, a hospice or home health care agency, or another facility that
48 provides or contracts to provide health care services, which facility is licensed under Chapter
49 21, Health Care Facility Licensing and Inspection Act.

50 (2) "Health care provider" means:

51 (a) a physician as defined in Section **58-67-102**;

52 (b) an advanced practice registered nurse as defined in [~~Subsection~~] Section

53 **58-31b-102**[~~(13)~~]; or

54 (c) a physician assistant as defined in Section **58-70a-102**.

55 (3) "Opiate" is as defined in Section **58-37-2**.

56 (4) "Opiate antagonist" means naloxone hydrochloride or any similarly acting drug that
57 is not a controlled substance and that is approved by the federal Food and Drug Administration

58 for the treatment of a drug overdose.

59 (5) "Opiate-related drug overdose event" means an acute condition, including a
60 decreased level of consciousness or respiratory depression resulting from the consumption or
61 use of a controlled substance, or another substance with which a controlled substance was
62 combined, and that a person would reasonably believe to require medical assistance.

63 Section 2. Section **58-1-102** is amended to read:

64 **58-1-102. Definitions.**

65 For purposes of this title:

66 (1) "Ablative procedure" is as defined in Section [58-67-102](#).

67 (2) "Cosmetic medical procedure":

68 (a) is as defined in Section [58-67-102](#); and

69 (b) except for Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah

70 Osteopathic Medical Practice Act, does not apply to the scope of practice of an individual
71 licensed under this title if the individual's scope of practice includes the authority to operate or
72 perform surgical procedures.

73 (3) "Department" means the Department of Commerce.

74 (4) "Director" means the director of the Division of Occupational and Professional
75 Licensing.

76 (5) "Division" means the Division of Occupational and Professional Licensing created
77 in Section [58-1-103](#).

78 (6) "Executive director" means the executive director of the Department of Commerce.

79 (7) "Licensee" includes any holder of a license, certificate, registration, permit, student
80 card, or apprentice card authorized under this title.

81 (8) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to
82 alter living tissue, but not intended or expected to excise, vaporize, disintegrate, or remove
83 living tissue.

84 (ii) Notwithstanding Subsection (8)(a)(i), nonablative procedure includes hair removal.

85 (b) "Nonablative procedure" does not include:

- 86 (i) a superficial procedure;
- 87 (ii) the application of permanent make-up; or
- 88 (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are
- 89 performed by an individual licensed under this title who is acting within their scope of practice.

90 (9) "Pain clinic" means:

- 91 (a) a clinic that advertises its primary purpose is the treatment of chronic pain; or
- 92 (b) a clinic in which greater than 50% of the clinic's annual patient population receive
- 93 treatment primarily for non-terminal chronic pain using Schedule II-III controlled substances.

94 (10) "Superficial procedure" means a procedure that is expected or intended to

95 temporarily alter living skin tissue and may excise or remove stratum corneum but have no

96 appreciable risk of damage to any tissue below the stratum corneum.

97 [~~(10)~~] (11) "Unlawful conduct" has the meaning given in Subsection 58-1-501(1).

98 [~~(11)~~] (12) "Unprofessional conduct" has the meaning given in Subsection

99 58-1-501(2).

100 Section 3. Section 58-31b-102 is amended to read:

101 **58-31b-102. Definitions.**

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

103 (1) "Administrative penalty" means a monetary fine or citation imposed by the division

104 for acts or omissions determined to constitute unprofessional or unlawful conduct in

105 accordance with a fine schedule established by rule and as a result of an adjudicative

106 proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

107 (2) "Applicant" means a person who applies for licensure or certification under this

108 chapter by submitting a completed application for licensure or certification and the required

109 fees to the department.

110 (3) "Approved education program" means a nursing education program that meets the

111 minimum standards for educational programs established under this chapter and by division

112 rule in collaboration with the board.

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

114 (5) "Consultation and referral plan" means a written plan jointly developed by an
115 advanced practice registered nurse and a consulting physician that permits the advanced
116 practice registered nurse to prescribe Schedule II[~~HH~~] controlled substances in consultation
117 with the consulting physician.

118 (6) "Consulting physician" means a physician and surgeon or osteopathic physician and
119 surgeon licensed in accordance with this title who has agreed to consult with an advanced
120 practice registered nurse with a controlled substance license, a DEA registration number, and
121 who will be prescribing Schedule II[~~HH~~] controlled substances.

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

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

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

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

- 131 (a) a nursing care facility;
- 132 (b) a small health care facility;
- 133 (c) an intermediate care facility for people with an intellectual disability;
- 134 (d) an assisted living facility Type I or II; or
- 135 (e) a designated swing bed unit in a general hospital.

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

- 137 (a) has a minimum of 2,000 hours experience working as a certified nurse aide;
- 138 (b) has received a minimum of 60 hours of classroom and 40 hours of practical training
139 that is approved by the division in collaboration with the board, in administering routine
140 medications to patients or residents of long-term care facilities; and
- 141 (c) is certified by the division as a medication aide certified.

142 (12) "Pain clinic" means the same as that term is defined in Section [58-1-102](#).

143 ~~[(12)]~~ (13) (a) "Practice as a medication aide certified" means the limited practice of
144 nursing under the supervision, as defined by the division by administrative rule, of a licensed
145 nurse, involving routine patient care that requires minimal or limited specialized or general
146 knowledge, judgment, and skill, to an individual who:

147 (i) is ill, injured, infirm, has a physical, mental, developmental, or intellectual
148 disability; and

149 (ii) is in a regulated long-term care facility.

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

151 (i) includes:

152 (A) providing direct personal assistance or care; and

153 (B) administering routine medications to patients in accordance with a formulary and
154 protocols to be defined by the division by rule; and

155 (ii) does not include assisting a resident of an assisted living facility, a long term care
156 facility, or an intermediate care facility for people with an intellectual disability to self
157 administer a medication, as regulated by the Department of Health by administrative rule.

158 ~~[(13)]~~ (14) "Practice of advanced practice registered nursing" means the practice of
159 nursing within the generally recognized scope and standards of advanced practice registered
160 nursing as defined by rule and consistent with professionally recognized preparation and
161 education standards of an advanced practice registered nurse by a person licensed under this
162 chapter as an advanced practice registered nurse. Advanced practice registered nursing
163 includes:

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

165 (b) diagnosis, treatment, correction, consultation, and referral for common health
166 problems;

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

168 (i) local anesthesia;

169 (ii) Schedule ~~[IV]~~ III-V controlled substances; and

170 (iii) Schedule II~~[=HH]~~ controlled substances in accordance with ~~[a consultation and~~
171 ~~referral plan]~~ Section 58-31b-803; or

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

175 (i) preanesthesia preparation and evaluation including:

176 (A) performing a preanesthetic assessment of the patient;

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

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

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

181 (A) selecting and initiating the planned anesthetic technique;

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

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

184 (iii) postanesthesia follow-up care, including:

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

187 (B) selecting, ordering, or administering the medications and studies listed in
188 Subsection ~~[(13)]~~ (14)(d); and

189 (iv) other related services within the scope of practice of a certified registered nurse
190 anesthetist, including:

191 (A) emergency airway management;

192 (B) advanced cardiac life support; and

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

194 (v) for purposes of Subsection ~~[(13)]~~ (14)(d), "upon the request of a licensed health
195 care professional":

196 (A) means a health care professional practicing within the scope of the health care
197 professional's license, requests anesthesia services for a specific patient; and

198 (B) does not require an advanced practice registered nurse specializing as a certified
199 registered nurse anesthetist to enter into a consultation and referral plan or obtain additional
200 authority to select, administer, or provide preoperative, intraoperative, or postoperative
201 anesthesia care and services.

202 [~~(14)~~] (15) "Practice of nursing" means assisting individuals or groups to maintain or
203 attain optimal health, implementing a strategy of care to accomplish defined goals and
204 evaluating responses to care and treatment. The practice of nursing requires substantial
205 specialized or general knowledge, judgment, and skill based upon principles of the biological,
206 physical, behavioral, and social sciences, and includes:

- 207 (a) initiating and maintaining comfort measures;
- 208 (b) promoting and supporting human functions and responses;
- 209 (c) establishing an environment conducive to well-being;
- 210 (d) providing health counseling and teaching;
- 211 (e) collaborating with health care professionals on aspects of the health care regimen;
- 212 (f) performing delegated procedures only within the education, knowledge, judgment,
213 and skill of the licensee; and
- 214 (g) delegating nurse interventions that may be performed by others and are not in
215 conflict with this chapter.

216 [~~(15)~~] (16) "Practice of practical nursing" means the performance of nursing acts in the
217 generally recognized scope of practice of licensed practical nurses as defined by rule and as
218 provided in this Subsection [~~(15)~~] (16) by a person licensed under this chapter as a licensed
219 practical nurse and under the direction of a registered nurse, licensed physician, or other
220 specified health care professional as defined by rule. Practical nursing acts include:

- 221 (a) contributing to the assessment of the health status of individuals and groups;
- 222 (b) participating in the development and modification of the strategy of care;
- 223 (c) implementing appropriate aspects of the strategy of care;
- 224 (d) maintaining safe and effective nursing care rendered to a patient directly or
225 indirectly; and

- 226 (e) participating in the evaluation of responses to interventions.
- 227 [(+6)] (17) "Practice of registered nursing" means performing acts of nursing as
228 provided in this Subsection [(+6)] (17) by a person licensed under this chapter as a registered
229 nurse within the generally recognized scope of practice of registered nurses as defined by rule.
- 230 Registered nursing acts include:
- 231 (a) assessing the health status of individuals and groups;
 - 232 (b) identifying health care needs;
 - 233 (c) establishing goals to meet identified health care needs;
 - 234 (d) planning a strategy of care;
 - 235 (e) prescribing nursing interventions to implement the strategy of care;
 - 236 (f) implementing the strategy of care;
 - 237 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
238 indirectly;
 - 239 (h) evaluating responses to interventions;
 - 240 (i) teaching the theory and practice of nursing; and
 - 241 (j) managing and supervising the practice of nursing.
- 242 [(+7)] (18) "Routine medications":
- 243 (a) means established medications administered to a medically stable individual as
244 determined by a licensed health care practitioner or in consultation with a licensed medical
245 practitioner; and
 - 246 (b) is limited to medications that are administered by the following routes:
 - 247 (i) oral;
 - 248 (ii) sublingual;
 - 249 (iii) buccal;
 - 250 (iv) eye;
 - 251 (v) ear;
 - 252 (vi) nasal;
 - 253 (vii) rectal;

- 254 (viii) vaginal;
- 255 (ix) skin ointments, topical including patches and transdermal;
- 256 (x) premeasured medication delivered by aerosol/nebulizer; and
- 257 (xi) medications delivered by metered hand-held inhalers.

258 [~~(18)~~] (19) "Unlawful conduct" [~~is as~~] means the same as that term is defined in
259 Sections 58-1-501 and 58-31b-501.

260 [~~(19)~~] (20) "Unlicensed assistive personnel" means any unlicensed person, regardless
261 of title, to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance
262 with the standards of the profession.

263 [~~(20)~~] (21) "Unprofessional conduct" [~~is as~~] means the same as that term is defined in
264 Sections 58-1-501 and 58-31b-502 and as may be further defined by rule.

265 Section 4. Section 58-31b-502 is amended to read:

266 **58-31b-502. Unprofessional conduct.**

267 "Unprofessional conduct" includes:

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

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

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

277 (a) period when a generally recognized professional relationship exists between the
278 person licensed or certified under this chapter and patient; or

279 (b) extended period when a patient has reasonable cause to believe a professional
280 relationship exists between the person licensed or certified under the provisions of this chapter
281 and the patient;

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

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

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

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

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

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

295 (9) unlawful or inappropriate delegation of nursing care;

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

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

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

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

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

306 (15) prescribing a Schedule II-III controlled substance without [~~a consulting physician~~
307 ~~or outside of a consultation and referral plan;~~] complying with the requirements in Section
308 [58-31b-803](#);

309 (16) violating Section [58-31b-801](#); [~~and~~]

310 (17) violating the dispensing requirements of Section [58-17b-309](#) or Chapter 17b, Part
311 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if
312 applicable[-]; and

313 (18) establishing or operating a pain clinic without a consultation and referral plan for
314 Schedule II-III controlled substances.

315 Section 5. Section **58-31b-803** is enacted to read:

316 **58-31b-803. Prescriptive authority for advanced practice registered nurses --**
317 **Schedule II controlled substance or device -- Workers' compensation -- Pain clinics.**

318 (1) This section does not apply to an advanced practice registered nurse specializing as
319 a certified registered nurse anesthetist under Subsection [58-31b-102](#)(14)(d).

320 (2) Except as provided in Subsection (3), an advanced practice registered nurse shall
321 prescribe or administer a Schedule II controlled substance in accordance with a consultation
322 and referral plan.

323 (3) Except as provided by Subsection [58-31b-502](#)(18), an advanced practice registered
324 nurse may prescribe or administer a Schedule II controlled substance without a consultation
325 and referral plan if the advanced practice registered nurse:

326 (a) has the lesser of:

327 (i) two years of licensure as a nurse practicing advanced practice registered nursing; or

328 (ii) 2,000 hours of experience practicing advanced practice registered nursing;

329 (b) (i) prior to the first time prescribing or administering a Schedule III controlled
330 substance for chronic pain, or a Schedule II controlled substance to a particular patient, unless
331 treating the patient in a licensed general acute hospital, checks information about the patient in
332 the Controlled Substance Database created in Section [58-37f-201](#); and

333 (ii) periodically, thereafter, checks information about the patient in the Controlled
334 Substance Database created in Section [58-37f-201](#); and

335 (c) follows the health care provider prescribing guidelines for the treatment of an
336 injured worker, developed by the Labor Commission under Title 34A, Chapter 2, Workers'
337 Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act, if:

338 (i) the patient is an injured worker; and
339 (ii) the Schedule II or III controlled substance is prescribed for chronic pain.
340 Section 6. Section **58-31d-103** is amended to read:
341 **58-31d-103. Rulemaking authority -- Enabling provisions.**
342 (1) The division may adopt rules necessary to implement Section **58-31d-102**.
343 (2) As used in Article VIII (1) of the Advanced Practice Registered Nurse Compact,
344 "head of the licensing board" means the executive administrator of the Utah Board of Nursing.
345 (3) For purposes of the Advanced Practice Registered Nurse Compact, "APRN" as
346 defined in Article II (1) of the compact includes an individual who is:
347 (a) licensed to practice under Subsection **58-31b-301**(2) as an advanced practice
348 registered nurse; or
349 (b) licensed to practice under Section **58-44a-301** as a certified nurse midwife.
350 (4) An APRN practicing in this state under a multistate licensure privilege may only be
351 granted prescriptive authority if that individual can document completion of graduate level
352 course work in the following areas:
353 (a) advanced health assessment;
354 (b) pharmacotherapeutics; and
355 (c) diagnosis and treatment.
356 (5) (a) An APRN practicing in this state under a multistate privilege who seeks to
357 obtain prescriptive authority must:
358 (i) meet all the requirements of Subsection (4) and this Subsection (5); and
359 (ii) be placed on a registry with the division.
360 (b) To be placed on a registry under Subsection (5)(a)(ii), an APRN must:
361 (i) submit a form prescribed by the division;
362 (ii) pay a fee; and
363 (iii) if prescribing a controlled substance:
364 (A) obtain a controlled substance license as required under Section **58-37-6**; and
365 (B) ~~[if prescribing]~~ that is a Schedule II ~~[or III]~~ controlled substance, ~~[have a~~

366 consultation and referral plan with a physician licensed in Utah as required under Subsection
367 ~~58-31b-102(13)(c)(iii) or 58-44a-102(9)(c)(iii)(C)]~~ comply with the requirements of Section
368 58-31b-803.