

**Senator Curtis S. Bramble** proposes the following substitute bill:

**NURSE PRACTITIONER AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David P. Hinkins**

House Sponsor: Justin L. Fawson

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**LONG TITLE**

**General Description:**

This bill allows an advanced practice registered nurse to prescribe a Schedule II controlled substance without supervision by a consulting physician under certain circumstances.

**Highlighted Provisions:**

This bill:

- ▶ allows an advanced practice registered nurse to prescribe a Schedule II controlled substance without supervision by a consulting physician 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 Worker's 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



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **58-31b-102**, as last amended by Laws of Utah 2011, Chapter 366

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

32 **58-31d-103**, as last amended by Laws of Utah 2015, Chapter 258

33 ENACTS:

34 **58-31b-803**, Utah Code Annotated 1953



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

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

38 **58-31b-102. Definitions.**

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

40 (1) "Administrative penalty" means a monetary fine or citation imposed by the division  
41 for acts or omissions determined to constitute unprofessional or unlawful conduct in  
42 accordance with a fine schedule established by rule and as a result of an adjudicative  
43 proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

51 (5) "Consultation and referral plan" means a written plan jointly developed by an  
52 advanced practice registered nurse and a consulting physician that permits the advanced  
53 practice registered nurse to prescribe Schedule II[=HH] controlled substances in consultation  
54 with the consulting physician.

55 (6) "Consulting physician" means a physician and surgeon or osteopathic physician and  
56 surgeon licensed in accordance with this title who has agreed to consult with an advanced

57 practice registered nurse with a controlled substance license, a DEA registration number, and  
 58 who will be prescribing Schedule II[~~III~~] controlled substances.

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

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

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

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

68 (a) a nursing care facility;

69 (b) a small health care facility;

70 (c) an intermediate care facility for people with an intellectual disability;

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

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

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

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

75 (b) has received a minimum of 60 hours of classroom and 40 hours of practical training  
 76 that is approved by the division in collaboration with the board, in administering routine  
 77 medications to patients or residents of long-term care facilities; and

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

79 (12) Pain clinic" means a facility at which 50% or more of the patients:

80 (a) receive treatment for pain or chronic pain; and

81 (b) are provided treatment for non-malignant pain or chronic pain that includes a  
 82 prescription for opioids, benzodiazepines, barbiturates, or carisoprodol.

83 [~~(12)~~] (13) (a) "Practice as a medication aide certified" means the limited practice of  
 84 nursing under the supervision, as defined by the division by administrative rule, of a licensed  
 85 nurse, involving routine patient care that requires minimal or limited specialized or general  
 86 knowledge, judgment, and skill, to an individual who:

87 (i) is ill, injured, infirm, has a physical, mental, developmental, or intellectual

88 disability; and

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

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

91 (i) includes:

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

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

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

98 ~~[(13)]~~ (14) "Practice of advanced practice registered nursing" means the practice of  
99 nursing within the generally recognized scope and standards of advanced practice registered  
100 nursing as defined by rule and consistent with professionally recognized preparation and  
101 education standards of an advanced practice registered nurse by a person licensed under this  
102 chapter as an advanced practice registered nurse. Advanced practice registered nursing  
103 includes:

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

105 (b) diagnosis, treatment, correction, consultation, and referral for common health  
106 problems;

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

108 (i) local anesthesia;

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

110 (iii) Schedule II~~[=III]~~ controlled substances in accordance with ~~[a consultation and~~  
111 ~~referral plan]~~ [Section 58-31b-803](#); or

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

115 (i) preanesthesia preparation and evaluation including:

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

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

- 119 (C) selecting, ordering, or administering appropriate medications;
- 120 (ii) anesthesia induction, maintenance, and emergence, including:
  - 121 (A) selecting and initiating the planned anesthetic technique;
  - 122 (B) selecting and administering anesthetics and adjunct drugs and fluids; and
  - 123 (C) administering general, regional, and local anesthesia;
- 124 (iii) postanesthesia follow-up care, including:
  - 125 (A) evaluating the patient's response to anesthesia and implementing corrective
  - 126 actions; and
  - 127 (B) selecting, ordering, or administering the medications and studies listed in
  - 128 Subsection [~~(13)~~] (14)(d); and
  - 129 (iv) other related services within the scope of practice of a certified registered nurse
  - 130 anesthetist, including:
    - 131 (A) emergency airway management;
    - 132 (B) advanced cardiac life support; and
    - 133 (C) the establishment of peripheral, central, and arterial invasive lines; and
    - 134 (v) for purposes of Subsection [~~(13)~~] (14)(d), "upon the request of a licensed health
    - 135 care professional":
      - 136 (A) means a health care professional practicing within the scope of the health care
      - 137 professional's license, requests anesthesia services for a specific patient; and
      - 138 (B) does not require an advanced practice registered nurse specializing as a certified
      - 139 registered nurse anesthetist to enter into a consultation and referral plan or obtain additional
      - 140 authority to select, administer, or provide preoperative, intraoperative, or postoperative
      - 141 anesthesia care and services.
- 142 [~~(14)~~] (15) "Practice of nursing" means assisting individuals or groups to maintain or
- 143 attain optimal health, implementing a strategy of care to accomplish defined goals and
- 144 evaluating responses to care and treatment. The practice of nursing requires substantial
- 145 specialized or general knowledge, judgment, and skill based upon principles of the biological,
- 146 physical, behavioral, and social sciences, and includes:
  - 147 (a) initiating and maintaining comfort measures;
  - 148 (b) promoting and supporting human functions and responses;
  - 149 (c) establishing an environment conducive to well-being;

- 150 (d) providing health counseling and teaching;
- 151 (e) collaborating with health care professionals on aspects of the health care regimen;
- 152 (f) performing delegated procedures only within the education, knowledge, judgment,
- 153 and skill of the licensee; and
- 154 (g) delegating nurse interventions that may be performed by others and are not in
- 155 conflict with this chapter.

156 ~~[(15)]~~ (16) "Practice of practical nursing" means the performance of nursing acts in the

157 generally recognized scope of practice of licensed practical nurses as defined by rule and as

158 provided in this Subsection ~~[(15)]~~ (16) by a person licensed under this chapter as a licensed

159 practical nurse and under the direction of a registered nurse, licensed physician, or other

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

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

167 ~~[(16)]~~ (17) "Practice of registered nursing" means performing acts of nursing as

168 provided in this Subsection ~~[(16)]~~ (17) by a person licensed under this chapter as a registered

169 nurse within the generally recognized scope of practice of registered nurses as defined by rule.

170 Registered nursing acts include:

- 171 (a) assessing the health status of individuals and groups;
- 172 (b) identifying health care needs;
- 173 (c) establishing goals to meet identified health care needs;
- 174 (d) planning a strategy of care;
- 175 (e) prescribing nursing interventions to implement the strategy of care;
- 176 (f) implementing the strategy of care;
- 177 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
- 178 indirectly;
- 179 (h) evaluating responses to interventions;
- 180 (i) teaching the theory and practice of nursing; and

181 (j) managing and supervising the practice of nursing.

182 [~~(17)~~] (18) "Routine medications":

183 (a) means established medications administered to a medically stable individual as  
184 determined by a licensed health care practitioner or in consultation with a licensed medical  
185 practitioner; and

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

187 (i) oral;

188 (ii) sublingual;

189 (iii) buccal;

190 (iv) eye;

191 (v) ear;

192 (vi) nasal;

193 (vii) rectal;

194 (viii) vaginal;

195 (ix) skin ointments, topical including patches and transdermal;

196 (x) premeasured medication delivered by aerosol/nebulizer; and

197 (xi) medications delivered by metered hand-held inhalers.

198 [~~(18)~~] (19) "Unlawful conduct" [~~is as~~] means the same as that term is defined in  
199 Sections 58-1-501 and 58-31b-501.

200 [~~(19)~~] (20) "Unlicensed assistive personnel" means any unlicensed person, regardless  
201 of title, to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance  
202 with the standards of the profession.

203 [~~(20)~~] (21) "Unprofessional conduct" [~~is as~~] means the same as that term is defined in  
204 Sections 58-1-501 and 58-31b-502 and as may be further defined by rule.

205 Section 2. Section 58-31b-502 is amended to read:

206 **58-31b-502. Unprofessional conduct.**

207 "Unprofessional conduct" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



- 243 (13) breach of a statutory, common law, regulatory, or ethical requirement of
- 244 confidentiality with respect to a person who is a patient, unless ordered by a court;
- 245 (14) failure to pay a penalty imposed by the division;
- 246 (15) prescribing a Schedule II-III controlled substance without [~~a consulting physician~~
- 247 ~~or outside of a consultation and referral plan;~~] complying with the requirements in Section
- 248 58-31b-803;
- 249 (16) violating Section 58-31b-801; [~~and~~]
- 250 (17) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b, Part
- 251 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if
- 252 applicable[~~-~~]; and
- 253 (18) establishing or operating a pain clinic without a consultation and referral plan for
- 254 Schedule II and II controlled substances.

255 Section 3. Section **58-31b-803** is enacted to read:

256 **58-31b-803. Prescriptive authority for advanced practice registered nurses-**  
257 **Schedule II controlled substance or device - worker's compensation -- Pain clinics.**

- 258 (1) This section does not apply to an advanced practice registered nurse specializing as
- 259 a certified registered nurse anesthetist under Subsection 58-31b-102(14)(d).
- 260 (2) Except as provided in Subsection (3), an advanced practice registered nurse shall
- 261 prescribe or administer a Schedule II controlled substance in accordance with a consultation
- 262 and referral plan.
- 263 (3) Except as provided by Subsection 58-31b-502(18), an advanced practice registered
- 264 nurse may prescribe or administer a Schedule II controlled substance without a consultation
- 265 and referral plan if the advanced practice registered nurse:
- 266 (a) has the lesser of:
- 267 (i) two years of licensure as a nurse practicing advanced practice registered nursing; or
- 268 (ii) 2,000 hours of experience practicing advanced practice registered nursing;
- 269 (b) (i) prior to the first time prescribing or administering a Schedule II or III controlled
- 270 substance or device to a particular patient, checks information about the patient in the
- 271 Controlled Substance Database created in Section 58-37f-201; and
- 272 (ii) periodically, thereafter, checks information about the patient in the Controlled
- 273 Substance Database created in Section 58-37f-201; and

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

- 277 (i) the patient is an injured worker; and
- 278 (ii) the Schedule II or III controlled substance is prescribed for chronic pain.

279 Section 4. Section **58-31d-103** is amended to read:

280 **58-31d-103. Rulemaking authority -- Enabling provisions.**

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

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

284 (3) For purposes of the Advanced Practice Registered Nurse Compact, "APRN" as  
285 defined in Article II (1) of the compact includes an individual who is:

286 (a) licensed to practice under Subsection **58-31b-301**(2) as an advanced practice  
287 registered nurse; or

288 (b) licensed to practice under Section **58-44a-301** as a certified nurse midwife.

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

292 (a) advanced health assessment;

293 (b) pharmacotherapeutics; and

294 (c) diagnosis and treatment.

295 (5) (a) An APRN practicing in this state under a multistate privilege who seeks to  
296 obtain prescriptive authority must:

297 (i) meet all the requirements of Subsection (4) and this Subsection (5); and

298 (ii) be placed on a registry with the division.

299 (b) To be placed on a registry under Subsection (5)(a)(ii), an APRN must:

300 (i) submit a form prescribed by the division;

301 (ii) pay a fee; and

302 (iii) if prescribing a controlled substance:

303 (A) obtain a controlled substance license as required under Section **58-37-6**; and

304 (B) [~~if prescribing~~] that is a Schedule II [~~or III~~] controlled substance, [~~have a~~

305 consultation and referral plan with a physician licensed in Utah as required under Subsection  
306 ~~58-31b-102(13)(c)(iii) or 58-44a-102(9)(c)(iii)(C)]~~ comply with the requirements of Section  
307 58-31b-803.