

**Representative James A. Dunnigan** proposes the following substitute bill:

**NURSE PRACTICE ACT AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to the prescriptive authority of certain licensed nurse practitioners.

**Highlighted Provisions:**

This bill:

- ▶ amends definitions;
- ▶ permits certain licensed nurse practitioners to prescribe a Schedule II controlled substance; and
- ▶ amends certain requirements for advanced practice nurse practitioners to have prescriptive authority for controlled substances.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**58-31b-102**, as last amended by Laws of Utah 2016, Chapters 26 and 127

**58-31b-502**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1



26 [58-31b-803](#), as enacted by Laws of Utah 2016, Chapter 127

27 [58-31d-103](#), as last amended by Laws of Utah 2016, Chapter 127

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

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

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

32 In addition to the definitions in Section [58-1-102](#), as used in this chapter:

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

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

40 (3) "Approved education program" means a nursing education program that is  
41 accredited by an accrediting body for nursing education that is approved by the United States  
42 Department of Education.

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

44 (5) "Consultation and referral plan" means a written plan jointly developed by an  
45 advanced practice registered nurse and, except as provided in Subsection [58-31b-803\(4\)](#), a  
46 consulting physician that permits the advanced practice registered nurse to prescribe Schedule  
47 II controlled substances in consultation with the consulting physician.

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

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

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

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

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

61 (a) a nursing care facility;

62 (b) a small health care facility;

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

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

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

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

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

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

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

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

73 (13) (a) "Practice as a medication aide certified" means the limited practice of nursing  
74 under the supervision, as defined by the division by administrative rule, of a licensed nurse,  
75 involving routine patient care that requires minimal or limited specialized or general  
76 knowledge, judgment, and skill, to an individual who:

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

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

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

81 (i) includes:

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

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

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

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

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

94 (b) diagnosis, treatment, correction, consultation, and referral for common health  
95 problems;

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

97 (i) local anesthesia;

98 (ii) Schedule III-V controlled substances; and

99 (iii) Subject to Section 58-31b-803, Schedule II controlled substances[~~in accordance~~  
100 ~~with Section 58-31b-803~~]; or

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

104 (i) preanesthesia preparation and evaluation including:

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

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

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

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

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

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

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

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

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

116 (B) selecting, ordering, or administering the medications and studies listed in  
117 Subsection (14)(d); and

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

119 anesthetist, including:

120 (A) emergency airway management;

121 (B) advanced cardiac life support; and

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

123 (v) for purposes of Subsection (14)(d), "upon the request of a licensed health care  
124 professional":

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

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

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

136 (a) initiating and maintaining comfort measures;

137 (b) promoting and supporting human functions and responses;

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

139 (d) providing health counseling and teaching;

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

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

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

145 (16) "Practice of practical nursing" means the performance of nursing acts in the  
146 generally recognized scope of practice of licensed practical nurses as defined by rule and as  
147 provided in this Subsection (16) by a person licensed under this chapter as a licensed practical  
148 nurse and under the direction of a registered nurse, licensed physician, or other specified health  
149 care professional as defined by rule. Practical nursing acts include:

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

156 (17) "Practice of registered nursing" means performing acts of nursing as provided in  
157 this Subsection (17) by a person licensed under this chapter as a registered nurse within the  
158 generally recognized scope of practice of registered nurses as defined by rule. Registered  
159 nursing acts include:

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

171 (18) "Routine medications":

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

- 175 (b) is limited to medications that are administered by the following routes:
- 176 (i) oral;
- 177 (ii) sublingual;
- 178 (iii) buccal;
- 179 (iv) eye;
- 180 (v) ear;

- 181 (vi) nasal;
- 182 (vii) rectal;
- 183 (viii) vaginal;
- 184 (ix) skin ointments, topical including patches and transdermal;
- 185 (x) premeasured medication delivered by aerosol/nebulizer; and
- 186 (xi) medications delivered by metered hand-held inhalers.

187 (19) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501  
188 and 58-31b-501.

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

192 (21) "Unprofessional conduct" means the same as that term is defined in Sections  
193 58-1-501 and 58-31b-502 and as may be further defined by rule.

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

195 **58-31b-502. Unprofessional conduct.**

196 (1) "Unprofessional conduct" includes:

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

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

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

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

208 (ii) extended period when a patient has reasonable cause to believe a professional  
209 relationship exists between the person licensed or certified under the provisions of this chapter  
210 and the patient;

211 (d) (i) as a result of any circumstance under Subsection (1)(c), exploiting or using

212 information about a patient or exploiting the licensee's or the person with a certification's  
213 professional relationship between the licensee or holder of a certification under this chapter and  
214 the patient; or

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

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

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

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

220 (h) knowingly entering into any medical record any false or misleading information or  
221 altering a medical record in any way for the purpose of concealing an act, omission, or record  
222 of events, medical condition, or any other circumstance related to the patient and the medical or  
223 nursing care provided;

224 (i) unlawful or inappropriate delegation of nursing care;

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

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

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

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

234 (n) failure to pay a penalty imposed by the division;

235 (o) prescribing a Schedule II [~~or III~~] controlled substance without complying with the  
236 requirements in Section [58-31b-803](#), if applicable;

237 (p) violating Section [58-31b-801](#);

238 (q) violating the dispensing requirements of Section [58-17b-309](#) or Chapter 17b, Part  
239 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if  
240 applicable; and

241 (r) establishing or operating a pain clinic without a consultation and referral plan for  
242 Schedule II or III controlled substances.



243 (2) "Unprofessional conduct" does not include, in accordance with Title 26, Chapter  
244 61a, Utah Medical Cannabis Act, when registered as a qualified medical provider, as that term  
245 is defined in Section 26-61a-102, recommending the use of medical cannabis.

246 (3) Notwithstanding Subsection (2), the division, in consultation with the board and in  
247 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define  
248 unprofessional conduct for an advanced practice registered nurse described in Subsection (2).

249 Section 3. Section 58-31b-803 is amended to read:

250 **58-31b-803. Limitations on prescriptive authority for advanced practice**  
251 **registered nurses.**

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

254 [~~(2) Except as provided in Subsection (3), an advanced practice registered nurse shall~~  
255 ~~prescribe or administer a Schedule II controlled substance in accordance with a consultation~~  
256 ~~and referral plan.]~~

257 [~~(3)~~] (2) Except as provided [~~by Subsection~~] in Subsections (3) and  
258 58-31b-502[~~(18)~~](1)(r), an advanced practice registered nurse may prescribe or administer a  
259 Schedule II controlled substance without a consultation and referral plan [~~if the advanced~~  
260 ~~practice registered nurse:].~~

261 [~~(a) has the lesser of:]~~

262 [~~(i) two years of licensure as a nurse practicing advanced practice registered nursing;~~  
263 ~~or]~~

264 [~~(ii) 2,000 hours of experience practicing advanced practice registered nursing;]~~

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

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

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

274 ~~[(i) the patient is an injured worker; and]~~  
 275 ~~[(ii) the Schedule II or III controlled substance is prescribed for chronic pain.]~~  
 276 (3) An advanced practice registered nurse described in Subsection (4) may not  
 277 prescribe or administer a Schedule II controlled substance unless the advanced practice  
 278 registered nurse prescribes or administers Schedule II controlled substances in accordance with  
 279 a consultation and referral plan.

280 (4) Subsection (3) applies to an advanced practice registered nurse who:  
 281 (a) (i) is engaged in independent ~~H~~→ solo ←~~H~~ practice; and  
 282 (ii) (A) has been licensed as an advanced practice registered nurse for less than one  
 283 year; or  
 284 (B) has less than 2,000 hours of experience practicing as a licensed advanced practice  
 285 registered nurse; or

286 (b) owns or operates a pain clinic.

287 (5) Notwithstanding Subsection 58-31b-102(5), an advanced practice registered nurse  
 288 with at least three years of experience as a licensed advanced practice registered nurse may  
 289 supervise a consultation and referral plan for an advanced practice registered nurse described in  
 290 Subsection (4)(a).

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

292 **58-31d-103. Rulemaking authority -- Enabling provisions.**

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

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

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

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

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

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

304 (a) advanced health assessment;

- 305 (b) pharmacotherapeutics; and  
306 (c) diagnosis and treatment.  
307 (5) (a) An APRN practicing in this state under a multistate privilege who seeks to  
308 obtain prescriptive authority must:  
309 (i) meet all the requirements of Subsection (4) and this Subsection (5); and  
310 (ii) be placed on a registry with the division.  
311 (b) To be placed on a registry under Subsection (5)(a)(ii), an APRN must:  
312 (i) submit a form prescribed by the division;  
313 (ii) pay a fee; and  
314 (iii) if prescribing a controlled substance:  
315 (A) obtain a controlled substance license as required under Section 58-37-6; and  
316 (B) that is a Schedule II controlled substance, comply with the requirements of Section  
317 58-31b-803, if applicable.