

1 **NURSE PRACTICE ACT AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: Curtis S. Bramble

6
7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ permits certain licensed nurse practitioners to prescribe a Schedule II controlled
14 substance; and
15 ▶ removes certain requirements for advanced practice nurse practitioners to have
16 prescriptive authority for controlled substances.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **58-31b-102**, as last amended by Laws of Utah 2016, Chapters 26 and 127

24 **58-31b-502**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

25 **58-31d-103**, as last amended by Laws of Utah 2016, Chapter 127

26 REPEALS:

27 **58-31b-803**, as enacted by Laws of Utah 2016, Chapter 127



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

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

58-31b-102. Definitions.

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

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

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

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

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

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

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

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

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

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

(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; and

98 (ii) Schedule ~~[II-V]~~ II-V controlled substances; ~~[and]~~ or

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

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

103 (i) preanesthesia preparation and evaluation including:

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

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

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

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

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

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

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

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

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

115 (B) selecting, ordering, or administering the medications and studies listed in

116 Subsection (14)(d); and

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

119 (A) emergency airway management;

120 (B) advanced cardiac life support; and

121 (C) the establishment of peripheral, central, and arterial invasive lines; and
122 (v) for purposes of Subsection (14)(d), "upon the request of a licensed health care
123 professional":

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

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

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

- 135 (a) initiating and maintaining comfort measures;
- 136 (b) promoting and supporting human functions and responses;
- 137 (c) establishing an environment conducive to well-being;
- 138 (d) providing health counseling and teaching;
- 139 (e) collaborating with health care professionals on aspects of the health care regimen;
- 140 (f) performing delegated procedures only within the education, knowledge, judgment,
141 and skill of the licensee; and
- 142 (g) delegating nurse interventions that may be performed by others and are not in
143 conflict with this chapter.

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

- 149 (a) contributing to the assessment of the health status of individuals and groups;
- 150 (b) participating in the development and modification of the strategy of care;
- 151 (c) implementing appropriate aspects of the strategy of care;

- 152 (d) maintaining safe and effective nursing care rendered to a patient directly or
- 153 indirectly; and
- 154 (e) participating in the evaluation of responses to interventions.
- 155 (17) "Practice of registered nursing" means performing acts of nursing as provided in
- 156 this Subsection (17) by a person licensed under this chapter as a registered nurse within the
- 157 generally recognized scope of practice of registered nurses as defined by rule. Registered
- 158 nursing acts include:
 - 159 (a) assessing the health status of individuals and groups;
 - 160 (b) identifying health care needs;
 - 161 (c) establishing goals to meet identified health care needs;
 - 162 (d) planning a strategy of care;
 - 163 (e) prescribing nursing interventions to implement the strategy of care;
 - 164 (f) implementing the strategy of care;
 - 165 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
 - 166 indirectly;
 - 167 (h) evaluating responses to interventions;
 - 168 (i) teaching the theory and practice of nursing; and
 - 169 (j) managing and supervising the practice of nursing.
- 170 (18) "Routine medications":
 - 171 (a) means established medications administered to a medically stable individual as
 - 172 determined by a licensed health care practitioner or in consultation with a licensed medical
 - 173 practitioner; and
 - 174 (b) is limited to medications that are administered by the following routes:
 - 175 (i) oral;
 - 176 (ii) sublingual;
 - 177 (iii) buccal;
 - 178 (iv) eye;
 - 179 (v) ear;
 - 180 (vi) nasal;
 - 181 (vii) rectal;
 - 182 (viii) vaginal;

- 183 (ix) skin ointments, topical including patches and transdermal;
184 (x) premeasured medication delivered by aerosol/nebulizer; and
185 (xi) medications delivered by metered hand-held inhalers.

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

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

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

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

194 **58-31b-502. Unprofessional conduct.**

195 (1) "Unprofessional conduct" includes:

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

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

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

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

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

210 (d) (i) as a result of any circumstance under Subsection (1)(c), exploiting or using
211 information about a patient or exploiting the licensee's or the person with a certification's
212 professional relationship between the licensee or holder of a certification under this chapter and
213 the patient; or

- 214 (ii) exploiting the patient by use of the licensee's or person with a certification's
- 215 knowledge of the patient obtained while acting as a nurse or a medication aide certified;
- 216 (e) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;
- 217 (f) unauthorized taking or personal use of nursing supplies from an employer;
- 218 (g) unauthorized taking or personal use of a patient's personal property;
- 219 (h) knowingly entering into any medical record any false or misleading information or
- 220 altering a medical record in any way for the purpose of concealing an act, omission, or record
- 221 of events, medical condition, or any other circumstance related to the patient and the medical or
- 222 nursing care provided;
- 223 (i) unlawful or inappropriate delegation of nursing care;
- 224 (j) failure to exercise appropriate supervision of persons providing patient care services
- 225 under supervision of the licensed nurse;
- 226 (k) employing or aiding and abetting the employment of an unqualified or unlicensed
- 227 person to practice as a nurse;
- 228 (l) failure to file or record any medical report as required by law, impeding or
- 229 obstructing the filing or recording of such a report, or inducing another to fail to file or record
- 230 such a report;
- 231 (m) breach of a statutory, common law, regulatory, or ethical requirement of
- 232 confidentiality with respect to a person who is a patient, unless ordered by a court;
- 233 (n) failure to pay a penalty imposed by the division;
- 234 ~~[(o) prescribing a Schedule II or III controlled substance without complying with the~~
- 235 ~~requirements in Section 58-31b-803;]~~
- 236 ~~[(p)]~~ (o) violating Section 58-31b-801;
- 237 ~~[(q)]~~ (p) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b,
- 238 Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy,
- 239 if applicable; and
- 240 ~~[(r)]~~ (q) establishing or operating a pain clinic without a consultation and referral plan
- 241 for Schedule II or III controlled substances.
- 242 (2) "Unprofessional conduct" does not include, in accordance with Title 26, Chapter
- 243 61a, Utah Medical Cannabis Act, when registered as a qualified medical provider, as that term
- 244 is defined in Section 26-61a-102, recommending the use of medical cannabis.

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

248 Section 3. Section **58-31d-103** is amended to read:

249 **58-31d-103. Rulemaking authority -- Enabling provisions.**

250 (1) The division may adopt rules necessary to implement Section [58-31d-102](#).

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

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

255 (a) licensed to practice under Subsection [58-31b-301](#)(2) as an advanced practice
 256 registered nurse; or

257 (b) licensed to practice under Section [58-44a-301](#) as a certified nurse midwife.

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

261 (a) advanced health assessment;

262 (b) pharmacotherapeutics; and

263 (c) diagnosis and treatment.

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

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

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

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

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

270 (ii) pay a fee; and

271 (iii) if prescribing a controlled substance[~~-(A)~~], obtain a controlled substance license
 272 as required under Section [58-37-6](#)[~~and~~].

273 [~~(B) that is a Schedule II controlled substance, comply with the requirements of~~
 274 ~~Section [58-31b-803](#);~~]

275 Section 4. **Repealer.**

276 This bill repeals:

277 Section **58-31b-803**, Prescriptive authority for advanced practice registered nurses

278 -- **Schedule II controlled substance or device -- Workers' compensation -- Pain clinics.**