

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

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

28

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 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.