

NURSE PRACTICE ACT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas R. Welton

Senate Sponsor: Curtis S. Bramble

| | | | |
|----|-------------------------|----------------------|----------------------|
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| 11 | James A. Dunnigan | Paul Ray | |
| 12 | Marsha Judkins | Travis M. Seegmiller | |

LONG TITLE

General Description:

This bill modifies the Nurse Practice Act.

Highlighted Provisions:

This bill:

- ▶ modifies the requirements a nurse practitioner must meet before prescribing a Schedule II controlled substance; and
- ▶ makes technical changes.

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 2020, Chapter 314

29 **58-31b-502**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4

30 **58-31b-803**, as last amended by Laws of Utah 2020, Chapter 339

31 **62A-4a-213**, as last amended by Laws of Utah 2019, Chapter 257

32

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

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

35 **58-31b-102. Definitions.**

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

37 (1) "Administrative penalty" means a monetary fine or citation imposed by the division
38 for acts or omissions determined to be unprofessional or unlawful conduct in accordance with a
39 fine schedule established by division rule made in accordance with Title 63G, Chapter 3, Utah
40 Administrative Rulemaking Act, and as a result of an adjudicative proceeding conducted in
41 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

49 ~~[(5) "Consultation and referral plan" means a written plan jointly developed by an
50 advanced practice registered nurse and, except as provided in Subsection **58-31b-803**(4), a
51 consulting physician that permits the advanced practice registered nurse to prescribe Schedule
52 H controlled substances in consultation with the consulting physician.]~~

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

57 ~~[(7)]~~ (5) "Diagnosis" means the identification of and discrimination between physical
58 and psychosocial signs and symptoms essential to the effective execution and management of
59 health care.

60 ~~[(8)]~~ (6) "Examinee" means an individual who applies to take or does take any
61 examination required under this chapter for licensure.

62 ~~[(9)]~~ (7) "Licensee" means an individual who is licensed or certified under this chapter.

63 ~~[(10)]~~ (8) "Long-term care facility" means any of the following facilities licensed by
64 the Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and
65 Inspection Act:

- 66 (a) a nursing care facility;
- 67 (b) a small health care facility;
- 68 (c) an intermediate care facility for people with an intellectual disability;
- 69 (d) an assisted living facility Type I or II; or
- 70 (e) a designated swing bed unit in a general hospital.

71 ~~[(11)]~~ (9) "Medication aide certified" means a certified nurse aide who:

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

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

78 ~~[(13)]~~ (10) (a) "Practice as a medication aide certified" means the limited practice of
79 nursing under the supervision, as defined by the division by rule made in accordance with Title
80 63G, Chapter 3, Utah Administrative Rulemaking Act, of a licensed nurse, involving routine
81 patient care that requires minimal or limited specialized or general knowledge, judgment, and
82 skill, to an individual who:

- 83 (i) is ill, injured, infirm, has a physical, mental, developmental, or intellectual
84 disability; and

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

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

87 (i) includes:

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

89 (B) administering routine medications to patients in accordance with a formulary and
90 protocols to be defined by the division by rule made in accordance with Title 63G, Chapter 3,
91 Utah Administrative Rulemaking Act; and

92 (ii) does not include assisting a resident of an assisted living facility, a long term care
93 facility, or an intermediate care facility for people with an intellectual disability to self
94 administer a medication, as regulated by the Department of Health by rule made in accordance
95 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

96 ~~[(14)]~~ (11) "Practice of advanced practice registered nursing" means the practice of
97 nursing within the generally recognized scope and standards of advanced practice registered
98 nursing as defined by rule and consistent with professionally recognized preparation and
99 education standards of an advanced practice registered nurse by a person licensed under this
100 chapter as an advanced practice registered nurse. "Practice of advanced practice registered
101 nursing" includes:

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

103 (b) diagnosis, treatment, correction, consultation, and referral ~~[for common health~~
104 ~~problems]~~;

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

106 (i) local anesthesia;

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

108 (iii) Subject to Section 58-31b-803, Schedule II controlled substances; or

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

112 (i) preanesthesia preparation and evaluation including:

- 113 (A) performing a preanesthetic assessment of the patient;
- 114 (B) ordering and evaluating appropriate lab and other studies to determine the health of
115 the patient; and
- 116 (C) selecting, ordering, or administering appropriate medications;
- 117 (ii) anesthesia induction, maintenance, and emergence, including:
 - 118 (A) selecting and initiating the planned anesthetic technique;
 - 119 (B) selecting and administering anesthetics and adjunct drugs and fluids; and
 - 120 (C) administering general, regional, and local anesthesia;
- 121 (iii) postanesthesia follow-up care, including:
 - 122 (A) evaluating the patient's response to anesthesia and implementing corrective
123 actions; and
 - 124 (B) selecting, ordering, or administering the medications and studies listed in this
125 Subsection [(14)] (11)(d); and
 - 126 (iv) other related services within the scope of practice of a certified registered nurse
127 anesthetist, including:
 - 128 (A) emergency airway management;
 - 129 (B) advanced cardiac life support; and
 - 130 (C) the establishment of peripheral, central, and arterial invasive lines; and
 - 131 (v) for purposes of this Subsection [(14)] (11)(d), "upon the request of a licensed health
132 care professional":
 - 133 (A) means a health care professional practicing within the scope of the health care
134 professional's license, requests anesthesia services for a specific patient; and
 - 135 (B) does not require an advanced practice registered nurse specializing as a certified
136 registered nurse anesthetist to [~~enter into a consultation and referral plan or~~] obtain additional
137 authority to select, administer, or provide preoperative, intraoperative, or postoperative
138 anesthesia care and services.
- 139 [(15)] (12) "Practice of nursing" means assisting individuals or groups to maintain or
140 attain optimal health, implementing a strategy of care to accomplish defined goals and

141 evaluating responses to care and treatment, and requires substantial specialized or general
142 knowledge, judgment, and skill based upon principles of the biological, physical, behavioral,
143 and social sciences. "Practice of nursing" includes:

- 144 (a) initiating and maintaining comfort measures;
- 145 (b) promoting and supporting human functions and responses;
- 146 (c) establishing an environment conducive to well-being;
- 147 (d) providing health counseling and teaching;
- 148 (e) collaborating with health care professionals on aspects of the health care regimen;
- 149 (f) performing delegated procedures only within the education, knowledge, judgment,
150 and skill of the licensee;
- 151 (g) delegating nursing tasks that may be performed by others, including an unlicensed
152 assistive personnel; and
- 153 (h) supervising an individual to whom a task is delegated under Subsection [~~(15)~~]
154 (12)(g) as the individual performs the task.

155 [~~(16)~~] (13) "Practice of practical nursing" means the performance of nursing acts in the
156 generally recognized scope of practice of licensed practical nurses as defined by division rule
157 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and as
158 provided in this Subsection [~~(16)~~] (13) by an individual licensed under this chapter as a
159 licensed practical nurse and under the direction of a registered nurse, licensed physician, or
160 other specified health care professional as defined by division rule made in accordance with
161 Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Practical nursing acts include:

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

168 [~~(17)~~] (14) "Practice of registered nursing" means performing acts of nursing as

169 provided in this Subsection [~~(17)~~] (14) by an individual licensed under this chapter as a
170 registered nurse within the generally recognized scope of practice of registered nurses as
171 defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative
172 Rulemaking Act. Registered nursing acts include:

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

184 [~~(18)~~] (15) "Routine medications":

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

- 188 (b) is limited to medications that are administered by the following routes:
 - 189 (i) oral;
 - 190 (ii) sublingual;
 - 191 (iii) buccal;
 - 192 (iv) eye;
 - 193 (v) ear;
 - 194 (vi) nasal;
 - 195 (vii) rectal;
 - 196 (viii) vaginal;

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

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

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

200 [~~(19)~~] (16) "Unlawful conduct" means the same as that term is defined in Sections
201 58-1-501 and 58-31b-501.

202 [~~(20)~~] (17) "Unlicensed assistive personnel" means any unlicensed individual,
203 regardless of title, who is delegated a task by a licensed nurse as permitted by division rule
204 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the
205 standards of the profession.

206 [~~(21)~~] (18) "Unprofessional conduct" means the same as that term is defined in
207 Sections 58-1-501 and 58-31b-502 and as may be further defined by division rule made in
208 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

210 **58-31b-502. Unprofessional conduct.**

211 (1) "Unprofessional conduct" includes:

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

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

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

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

223 (ii) extended period when a patient has reasonable cause to believe a professional
224 relationship exists between the person licensed or certified under the provisions of this chapter

225 and the patient;

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

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

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

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

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

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

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

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

240 (k) 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 (l) 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 (m) failure to pay a penalty imposed by the division;

246 (n) prescribing a Schedule II controlled substance without complying with the
247 requirements in Section 58-31b-803, if applicable;

248 (o) violating Section 58-31b-801;

249 (p) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b, Part
250 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if
251 applicable; or

252 [~~(q) establishing or operating a pain clinic without a consultation and referral plan for~~

253 ~~Schedule II or III controlled substances; or]~~

254 ~~[(†)] (q)~~ falsely making an entry in, or altering, a medical record with the intent to
255 conceal:

256 (i) a wrongful or negligent act or omission of an individual licensed under this chapter
257 or an individual under the direction or control of an individual licensed under this chapter; or

258 (ii) conduct described in Subsections (1)(a) through ~~[(†)] (o)~~ or Subsection
259 [58-1-501\(1\)](#).

260 (2) "Unprofessional conduct" does not include, in accordance with Title 26, Chapter
261 61a, Utah Medical Cannabis Act, when registered as a qualified medical provider, as that term
262 is defined in Section [26-61a-102](#), recommending the use of medical cannabis.

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

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

267 **58-31b-803. Limitations on prescriptive authority for advanced practice**
268 **registered nurses.**

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

271 (2) Except as provided in ~~[Subsections (3) and [58-31b-502\(1\)\(q\)](#)]~~ Subsection (3), an
272 advanced practice registered nurse may prescribe or administer a Schedule II controlled
273 substance ~~[without a consultation and referral plan]~~.

274 (3) An advanced practice registered nurse described in Subsection (4) may not
275 prescribe or administer a Schedule II controlled substance unless the advanced practice
276 registered nurse ~~[prescribes or administers Schedule II controlled substances in accordance~~
277 ~~with a consultation and referral plan.]~~:

278 (a) receives a board certification from a nationally recognized organization;

279 (b) completes at least 30 hours of instruction, or the equivalent number of credit hours,
280 pertaining to advanced pharmacology during a graduate education program;

281 (c) when obtaining licensure with the division, demonstrates completion of at least
282 seven hours of continuing education pertaining to prescribing opioids; and

283 (d) participates in a prescribing mentorship under which the advanced practice
284 registered nurse:

285 (i) is mentored by:

286 (A) a physician licensed in accordance with this title; or

287 (B) an advance practice registered nurse who has been licensed at least three years; and

288 (ii) periodically provides the mentor described in Subsection (4)(d)(i) timesheets that,
289 in total, demonstrate 1,000 hours of clinical experience.

290 (4) Subsection (3) applies to an advanced practice registered nurse who:

291 (a) ~~[(i)]~~ is engaged in independent solo practice; and

292 ~~[(ii)-(A)]~~ (b) (i) has been licensed as an advanced practice registered nurse for less than
293 one year; or

294 ~~[(B)]~~ (ii) has less than 2,000 hours of experience practicing as a licensed advanced
295 practice registered nurse~~[-or].~~

296 ~~[(b) owns or operates a pain clinic.]~~

297 ~~[(5) Notwithstanding Subsection 58-31b-102(5), an advanced practice registered nurse~~
298 ~~with at least three years of experience as a licensed advanced practice registered nurse may~~
299 ~~supervise a consultation and referral plan for an advanced practice registered nurse described in~~
300 ~~Subsection (4)(a).]~~

301 Section 4. Section 62A-4a-213 is amended to read:

302 **62A-4a-213. Psychotropic medication oversight pilot program.**

303 (1) As used in this section, "psychotropic medication" means medication prescribed to
304 affect or alter thought processes, mood, or behavior, including antipsychotic, antidepressant,
305 anxiolytic, or behavior medication.

306 (2) The division shall, through contract with the Department of Health, establish and
307 operate a psychotropic medication oversight pilot program for children in foster care to ensure
308 that foster children are being prescribed psychotropic medication consistent with their needs.

- 309 (3) The division shall establish an oversight team to manage the psychotropic
310 medication oversight program, composed of at least the following individuals:
- 311 (a) an "advanced practice registered nurse," as defined in [~~Subsection~~] Section
312 58-31b-102~~[(14)]~~, employed by the Department of Health; and
- 313 (b) a child psychiatrist.
- 314 (4) The oversight team shall monitor foster children:
- 315 (a) six years old or younger who are being prescribed one or more psychotropic
316 medications; and
- 317 (b) seven years old or older who are being prescribed two or more psychotropic
318 medications.
- 319 (5) The oversight team shall, upon request, be given information or records related to
320 the foster child's health care history, including psychotropic medication history and mental and
321 behavioral health history, from:
- 322 (a) the foster child's current or past caseworker;
- 323 (b) the foster child; or
- 324 (c) the foster child's:
- 325 (i) current or past health care provider;
- 326 (ii) natural parents; or
- 327 (iii) foster parents.
- 328 (6) The oversight team may review and monitor the following information about a
329 foster child:
- 330 (a) the foster child's history;
- 331 (b) the foster child's health care, including psychotropic medication history and mental
332 or behavioral health history;
- 333 (c) whether there are less invasive treatment options available to meet the foster child's
334 needs;
- 335 (d) the dosage or dosage range and appropriateness of the foster child's psychotropic
336 medication;

337 (e) the short-term or long-term risks associated with the use of the foster child's
338 psychotropic medication; or

339 (f) the reported benefits of the foster child's psychotropic medication.

340 (7) (a) The oversight team may make recommendations to the foster child's health care
341 providers concerning the foster child's psychotropic medication or the foster child's mental or
342 behavioral health.

343 (b) The oversight team shall provide the recommendations made in Subsection (7)(a)
344 to the foster child's parent or guardian after discussing the recommendations with the foster
345 child's current health care providers.

346 (8) The division may adopt administrative rules in accordance with Title 63G, Chapter
347 3, Utah Administrative Rulemaking Act, necessary to administer this section.

348 (9) The division shall report to the Child Welfare Legislative Oversight Panel
349 regarding the psychotropic medication oversight pilot program by October 1 of each even
350 numbered year.