

**NURSE PRACTICE ACT AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Douglas R. Welton**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill modifies the Nurse Practice Act.

**Highlighted Provisions:**

This bill:

- ▶ allows a nurse practitioner to prescribe controlled substances without consulting a doctor or experienced nurse; 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

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

**58-31d-103**, as last amended by Laws of Utah 2019, Chapter 233

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

REPEALS:

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

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

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

30 **58-31b-102. Definitions.**

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

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

37 (2) "Applicant" means an individual who applies for licensure or certification under  
38 this chapter by submitting a completed application for licensure or certification and the  
39 required 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 H controlled substances in consultation with the consulting physician.]~~

48 [~~(6) "Consulting physician" means a physician and surgeon or osteopathic physician  
49 and 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 H controlled substances.]~~

52 [~~(7)~~ (5) "Diagnosis" means the identification of and discrimination between physical  
53 and psychosocial signs and symptoms essential to the effective execution and management of  
54 health care.

55 [~~(8)~~ (6) "Examinee" means an individual who applies to take or does take any  
56 examination required under this chapter for licensure.

57 [~~(9)~~ (7) "Licensee" means an individual who is licensed or certified under this chapter.

58 [~~(10)~~ (8) "Long-term care facility" means any of the following facilities licensed by

59 the 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 ~~[(H)]~~ (9) "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)]~~ (10) (a) "Practice as a medication aide certified" means the limited practice of  
74 nursing under the supervision, as defined by the division by rule made in accordance with Title  
75 63G, Chapter 3, Utah Administrative Rulemaking Act, of a licensed nurse, involving routine  
76 patient care that requires minimal or limited specialized or general knowledge, judgment, and  
77 skill, to an individual who:

- 78 (i) is ill, injured, infirm, has a physical, mental, developmental, or intellectual  
79 disability; and
- 80 (ii) is in a regulated long-term care facility.

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

82 (i) includes:

- 83 (A) providing direct personal assistance or care; and
- 84 (B) administering routine medications to patients in accordance with a formulary and  
85 protocols to be defined by the division by rule made in accordance with Title 63G, Chapter 3,  
86 Utah Administrative Rulemaking Act; and

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

90 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

91 ~~[(14)]~~ (11) "Practice of advanced practice registered nursing" means the practice of  
92 nursing within the generally recognized scope and standards of advanced practice registered  
93 nursing as defined by rule and consistent with professionally recognized preparation and  
94 education standards of an advanced practice registered nurse by a person licensed under this  
95 chapter as an advanced practice registered nurse. "Practice of advanced practice registered  
96 nursing" includes:

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

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

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

101 (i) local anesthesia; and

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

103 ~~[(iii) Subject to Section 58-31b-803, Schedule II controlled substances, or]~~

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

107 (i) preanesthesia preparation and evaluation including:

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

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

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

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

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

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

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

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

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

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

120 Subsection ~~[(14)]~~ (11)(d); and

121 (iv) other related services within the scope of practice of a certified registered nurse  
122 anesthetist, including:  
123 (A) emergency airway management;  
124 (B) advanced cardiac life support; and  
125 (C) the establishment of peripheral, central, and arterial invasive lines; and  
126 (v) for purposes of this Subsection ~~[(14)]~~ (11)(d), "upon the request of a licensed health  
127 care professional":

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

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

134 ~~[(15)]~~ (12) "Practice of nursing" means assisting individuals or groups to maintain or  
135 attain optimal health, implementing a strategy of care to accomplish defined goals and  
136 evaluating responses to care and treatment, and requires substantial specialized or general  
137 knowledge, judgment, and skill based upon principles of the biological, physical, behavioral,  
138 and social sciences. "Practice of nursing" includes:

139 (a) initiating and maintaining comfort measures;  
140 (b) promoting and supporting human functions and responses;  
141 (c) establishing an environment conducive to well-being;  
142 (d) providing health counseling and teaching;  
143 (e) collaborating with health care professionals on aspects of the health care regimen;  
144 (f) performing delegated procedures only within the education, knowledge, judgment,  
145 and skill of the licensee;  
146 (g) delegating nursing tasks that may be performed by others, including an unlicensed  
147 assistive personnel; and

148 (h) supervising an individual to whom a task is delegated under Subsection ~~[(15)]~~  
149 (12)(g) as the individual performs the task.

150 ~~[(16)]~~ (13) "Practice of practical nursing" means the performance of nursing acts in the  
151 generally recognized scope of practice of licensed practical nurses as defined by division rule

152 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and as  
153 provided in this Subsection [~~(16)~~] (13) by an individual licensed under this chapter as a  
154 licensed practical nurse and under the direction of a registered nurse, licensed physician, or  
155 other specified health care professional as defined by division rule made in accordance with  
156 Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Practical nursing acts include:

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

163 [~~(17)~~] (14) "Practice of registered nursing" means performing acts of nursing as  
164 provided in this Subsection [~~(17)~~] (14) by an individual licensed under this chapter as a  
165 registered nurse within the generally recognized scope of practice of registered nurses as  
166 defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
167 Rulemaking Act. Registered nursing acts include:

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

179 [~~(18)~~] (15) "Routine medications":

- 180 (a) means established medications administered to a medically stable individual as  
181 determined by a licensed health care practitioner or in consultation with a licensed medical  
182 practitioner; and

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

184 (i) oral;

185 (ii) sublingual;

186 (iii) buccal;

187 (iv) eye;

188 (v) ear;

189 (vi) nasal;

190 (vii) rectal;

191 (viii) vaginal;

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

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

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

195 [~~19~~] (16) "Unlawful conduct" means the same as that term is defined in Sections  
196 58-1-501 and 58-31b-501.

197 [~~20~~] (17) "Unlicensed assistive personnel" means any unlicensed individual,  
198 regardless of title, who is delegated a task by a licensed nurse as permitted by division rule  
199 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the  
200 standards of the profession.

201 [~~21~~] (18) "Unprofessional conduct" means the same as that term is defined in  
202 Sections 58-1-501 and 58-31b-502 and as may be further defined by division rule made in  
203 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

205 **58-31b-502. Unprofessional conduct.**

206 (1) "Unprofessional conduct" includes:

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

211 (b) failure to provide nursing service or service as a medication aide certified in a  
212 manner that demonstrates respect for the patient's human dignity and unique personal character  
213 and needs without regard to the patient's race, religion, ethnic background, socioeconomic

- 214 status, age, sex, or the nature of the patient's health problem;
- 215 (c) engaging in sexual relations with a patient during any:
  - 216 (i) period when a generally recognized professional relationship exists between the
  - 217 person licensed or certified under this chapter and the patient; or
  - 218 (ii) extended period when a patient has reasonable cause to believe a professional
  - 219 relationship exists between the person licensed or certified under the provisions of this chapter
  - 220 and the patient;
  - 221 (d) (i) as a result of any circumstance under Subsection (1)(c), exploiting or using
  - 222 information about a patient or exploiting the licensee's or the person with a certification's
  - 223 professional relationship between the licensee or holder of a certification under this chapter and
  - 224 the patient; or
  - 225 (ii) exploiting the patient by use of the licensee's or person with a certification's
  - 226 knowledge of the patient obtained while acting as a nurse or a medication aide certified;
  - 227 (e) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;
  - 228 (f) unauthorized taking or personal use of nursing supplies from an employer;
  - 229 (g) unauthorized taking or personal use of a patient's personal property;
  - 230 (h) unlawful or inappropriate delegation of nursing care;
  - 231 (i) failure to exercise appropriate supervision of persons providing patient care services
  - 232 under supervision of the licensed nurse;
  - 233 (j) employing or aiding and abetting the employment of an unqualified or unlicensed
  - 234 person to practice as a nurse;
  - 235 (k) failure to file or record any medical report as required by law, impeding or
  - 236 obstructing the filing or recording of such a report, or inducing another to fail to file or record
  - 237 such a report;
  - 238 (l) breach of a statutory, common law, regulatory, or ethical requirement of
  - 239 confidentiality with respect to a person who is a patient, unless ordered by a court;
  - 240 (m) failure to pay a penalty imposed by the division;
  - 241 ~~[(n) prescribing a Schedule II controlled substance without complying with the~~
  - 242 ~~requirements in Section 58-31b-803, if applicable;]~~
  - 243 ~~[(o)]~~ (n) violating Section 58-31b-801;
  - 244 ~~[(p)]~~ (o) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b,



245 Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy,  
 246 if applicable; or

247 ~~[(q) establishing or operating a pain clinic without a consultation and referral plan for~~  
 248 ~~Schedule II or III controlled substances; or]~~

249 ~~[(r)]~~ (p) falsely making an entry in, or altering, a medical record with the intent to  
 250 conceal:

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

253 (ii) conduct described in Subsections (1)(a) through ~~[(q)]~~ (o) or Subsection  
 254 58-1-501(1).

255 (2) "Unprofessional conduct" does not include, in accordance with Title 26, Chapter  
 256 61a, Utah Medical Cannabis Act, when registered as a qualified medical provider, as that term  
 257 is defined in Section 26-61a-102, recommending the use of medical cannabis.

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

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

262 **58-31d-103. Rulemaking authority -- Enabling provisions.**

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

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

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

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

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

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

274 (a) advanced health assessment;

275 (b) pharmacotherapeutics; and

276 (c) diagnosis and treatment.  
277 (5) (a) An APRN practicing in this state under a multistate privilege who seeks to  
278 obtain prescriptive authority must:

- 279 (i) meet all the requirements of Subsection (4) and this Subsection (5); and
- 280 (ii) be placed on a registry with the division.
- 281 (b) To be placed on a registry under Subsection (5)(a)(ii), an APRN [~~must~~] shall:
- 282 (i) submit a form prescribed by the division;
- 283 (ii) pay a fee; and
- 284 (iii) if prescribing a controlled substance[~~-(A)~~], obtain a controlled substance license  
285 as required under Section 58-37-6[~~;~~ and].

286 [~~(B) that is a Schedule II controlled substance, comply with the requirements of~~  
287 ~~Section 58-31b-803, if applicable.~~]

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

289 **62A-4a-213. Psychotropic medication oversight pilot program.**

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

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

296 (3) The division shall establish an oversight team to manage the psychotropic  
297 medication oversight program, composed of at least the following individuals:

298 (a) an "advanced practice registered nurse," as defined in [~~Subsection~~] Section  
299 58-31b-102[~~(14)~~], employed by the Department of Health; and

300 (b) a child psychiatrist.

301 (4) The oversight team shall monitor foster children:

302 (a) six years old or younger who are being prescribed one or more psychotropic  
303 medications; and

304 (b) seven years old or older who are being prescribed two or more psychotropic  
305 medications.

306 (5) The oversight team shall, upon request, be given information or records related to

307 the foster child's health care history, including psychotropic medication history and mental and  
308 behavioral health history, from:

309 (a) the foster child's current or past caseworker;

310 (b) the foster child; or

311 (c) the foster child's:

312 (i) current or past health care provider;

313 (ii) natural parents; or

314 (iii) foster parents.

315 (6) The oversight team may review and monitor the following information about a  
316 foster child:

317 (a) the foster child's history;

318 (b) the foster child's health care, including psychotropic medication history and mental  
319 or behavioral health history;

320 (c) whether there are less invasive treatment options available to meet the foster child's  
321 needs;

322 (d) the dosage or dosage range and appropriateness of the foster child's psychotropic  
323 medication;

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

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

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

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

333 (8) The division may adopt administrative rules in accordance with Title 63G, Chapter  
334 3, Utah Administrative Rulemaking Act, necessary to administer this section.

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

338           Section 5. **Repealer.**

339           This bill repeals:

340           Section **58-31b-803**, **Limitations on prescriptive authority for advanced practice**

341 **registered nurses.**