

# HB0287S01 compared with HB0287

~~text~~ shows text that was in HB0287 but was deleted in HB0287S01.

text shows text that was not in HB0287 but was inserted into HB0287S01.

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Representative Douglas R. Welton proposes the following substitute bill:

## NURSE PRACTICE ACT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Douglas R. Welton**

Senate Sponsor: \_\_\_\_\_

Curtis S. Bramble

Cosponsors:

Kera Birkeland

Walt Brooks

Jefferson S. Burton

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Travis M. Seegmiller

V. Lowry Snow

Andrew Stoddard

Norman K. Thurston

Christine F. Watkins

Mike Winder

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### LONG TITLE

#### General Description:

This bill modifies the Nurse Practice Act.

## HB0287S01 compared with HB0287

### Highlighted Provisions:

This bill:

- ▶ ~~{allows}~~ modifies the requirements a nurse practitioner ~~{to prescribe}~~ must meet before prescribing a Schedule II controlled ~~{substances without consulting a doctor or experienced nurse}~~ 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

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

~~{58-31d-103}~~ 58-31b-803, as last amended by Laws of Utah ~~{2019}~~ 2020, Chapter ~~{233}~~ 339

**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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*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 be unprofessional or unlawful conduct in accordance with a fine schedule established by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) "Applicant" means an individual who applies for licensure or certification under this chapter by submitting a completed application for licensure or certification and the

## HB0287S01 compared with HB0287

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, except as provided in Subsection 58-31b-803(4), a consulting physician that permits the advanced practice registered nurse to prescribe Schedule H 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 H controlled substances.]~~

~~[(7)]~~ (5) "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)]~~ (6) "Examinee" means an individual who applies to take or does take any examination required under this chapter for licensure.

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

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

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

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

- (a) has a minimum of 2,000 hours experience working as a certified nurse aide;
- (b) has received a minimum of 60 hours of classroom and 40 hours of practical training that is approved by the division in collaboration with the board, in administering routine

## HB0287S01 compared with HB0287

medications to patients or residents of long-term care facilities; and

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

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

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

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

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

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

(i) includes:

(A) providing direct personal assistance or care; and

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

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

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

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

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

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

## HB0287S01 compared with HB0287

- (i) local anesthesia;~~{ and }~~
- (ii) Schedule ~~{ } III-V~~ ~~{ II-V }~~ controlled substances; ~~{ } and { or }~~
- ~~{ } (iii) Subject to Section 58-31b-803, Schedule II controlled substances; or { }~~
- (d) the provision of preoperative, intraoperative, and postoperative anesthesia care and related services upon the request of a licensed health care professional by an advanced practice registered nurse specializing as a certified registered nurse anesthetist, including:
  - (i) preanesthesia preparation and evaluation including:
    - (A) performing a preanesthetic assessment of the patient;
    - (B) ordering and evaluating appropriate lab and other studies to determine the health of the patient; and
    - (C) selecting, ordering, or administering appropriate medications;
  - (ii) anesthesia induction, maintenance, and emergence, including:
    - (A) selecting and initiating the planned anesthetic technique;
    - (B) selecting and administering anesthetics and adjunct drugs and fluids; and
    - (C) administering general, regional, and local anesthesia;
  - (iii) postanesthesia follow-up care, including:
    - (A) evaluating the patient's response to anesthesia and implementing corrective actions; and
    - (B) selecting, ordering, or administering the medications and studies listed in this Subsection ~~[(14)] (11)~~(d); and
  - (iv) other related services within the scope of practice of a certified registered nurse anesthetist, including:
    - (A) emergency airway management;
    - (B) advanced cardiac life support; and
    - (C) the establishment of peripheral, central, and arterial invasive lines; and
  - (v) for purposes of this Subsection ~~[(14)] (11)~~(d), "upon the request of a licensed health care professional":
    - (A) means a health care professional practicing within the scope of the health care professional's license, requests anesthesia services for a specific patient; and
    - (B) does not require an advanced practice registered nurse specializing as a certified registered nurse anesthetist to ~~[enter into a consultation and referral plan or]~~ obtain additional

## HB0287S01 compared with HB0287

authority to select, administer, or provide preoperative, intraoperative, or postoperative anesthesia care and services.

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

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

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

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

## HB0287S01 compared with HB0287

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

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

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

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

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

- (i) oral;
- (ii) sublingual;
- (iii) buccal;
- (iv) eye;
- (v) ear;
- (vi) nasal;
- (vii) rectal;
- (viii) vaginal;
- (ix) skin ointments, topical including patches and transdermal;
- (x) premeasured medication delivered by aerosol/nebulizer; and

## HB0287S01 compared with HB0287

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

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

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

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

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

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

(1) "Unprofessional conduct" includes:

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

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

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

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

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

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



## HB0287S01 compared with HB0287

- (ii) exploiting the patient by use of the licensee's or person with a certification's knowledge of the patient obtained while acting as a nurse or a medication aide certified;
- (e) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;
- (f) unauthorized taking or personal use of nursing supplies from an employer;
- (g) unauthorized taking or personal use of a patient's personal property;
- (h) unlawful or inappropriate delegation of nursing care;
- (i) failure to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse;
- (j) employing or aiding and abetting the employment of an unqualified or unlicensed person to practice as a nurse;
- (k) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;
- (l) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by a court;
- (m) failure to pay a penalty imposed by the division;
- ~~ff~~(n) prescribing a Schedule II controlled substance without complying with the requirements in Section 58-31b-803, if applicable;~~ff~~
- ~~ff~~(o)~~ff~~(n) violating Section 58-31b-801;
- ~~ff~~(p)~~ff~~(o) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable; or
- ~~[(q) establishing or operating a pain clinic without a consultation and referral plan for Schedule II or III controlled substances; or]~~
- ~~[(r)]~~ ~~(ff)~~~~g~~ falsely making an entry in, or altering, a medical record with the intent to conceal:
  - (i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or
  - (ii) conduct described in Subsections (1)(a) through ~~[(r)]~~ (o) or Subsection 58-1-501(1).
- (2) "Unprofessional conduct" does not include, in accordance with Title 26, Chapter

## HB0287S01 compared with HB0287

61a, Utah Medical Cannabis Act, when registered as a qualified medical provider, as that term is defined in Section 26-61a-102, recommending the use of medical cannabis.

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

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

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

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

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

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

†:

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

(b) when obtaining or renewing licensure with the division, demonstrates completion

of:

(i) opioid specific education that is approved by the division; and

(ii) continuing education credits specifically related to pharmacology.

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

(a) ~~(†)~~ is engaged in independent solo practice; and

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

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

~~(b) owns or operates a pain clinic.~~

~~(5)~~ Notwithstanding Subsection 58-31b-102(5), an advanced practice registered nurse

## HB0287S01 compared with HB0287

with at least three years of experience as a licensed advanced practice registered nurse may supervise a consultation and referral plan for an advanced practice registered nurse described in Subsection (4)(a):

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

~~58-31d-103. Rulemaking authority -- Enabling provisions:~~

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

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

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

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

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

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

~~(a) advanced health assessment;~~

~~(b) pharmacotherapeutics; and~~

~~(c) diagnosis and treatment.~~

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

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

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

~~(b) To be placed on a registry under Subsection (5)(a)(ii), an APRN [must] shall:~~

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

~~(ii) pay a fee; and~~

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

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

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

## HB0287S01 compared with HB0287

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

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

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

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

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

(b) a child psychiatrist.

(4) The oversight team shall monitor foster children:

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

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

(5) The oversight team shall, upon request, be given information or records related to the foster child's health care history, including psychotropic medication history and mental and behavioral health history, from:

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

(b) the foster child; or

(c) the foster child's:

(i) current or past health care provider;

(ii) natural parents; or

(iii) foster parents.

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

(a) the foster child's history;

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

## HB0287S01 compared with HB0287

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

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

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

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

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

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

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

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

~~{ Section 5. Repealer.~~

~~— This bill repeals:~~

~~— Section 58-31b-803, Limitations on prescriptive authority for advanced practice registered nurses.~~

~~}~~