

NURSE MIDWIFE PRACTICE ACT

Part 1 - General Provisions

58-44a-101. Title.

This chapter is the "Nurse Midwife Practice Act."

58-44a-102. Definitions.

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

- (1) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct in accordance with a fine schedule established by rule and as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) "Board" means the Certified Nurse Midwife Board created in Section 58-44a-201.
- (3) "Consultation and Referral Plan" means a written plan jointly developed by a certified nurse midwife, as defined in Subsection (6), and a consulting physician that permits the certified nurse midwife to prescribe Schedule II-III controlled substances in consultation with the consulting physician.
- (4) "Consulting physician" means a physician and surgeon or osteopathic physician:
 - (a) licensed as a physician;
 - (b) qualified by education, training, and current practice in obstetrics, gynecology, or both to act as a consulting physician to a nurse midwife practicing under this chapter and providing intrapartum care or prescribing Schedule II-III controlled substances; and
 - (c) who has agreed under a practice plan to be available to consult with a nurse midwife, which plan does not include the consulting physician's being present at the time or place the nurse midwife is engaged in practice.
- (5) "Individual" means a natural person.
- (6) "Nurse midwife" means a person licensed under this chapter to engage in practice as a certified nurse midwife.
- (7) "Physician" means a physician and surgeon or osteopathic surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act.
- (8) "Practice as a certified nurse midwife" means:
 - (a) practice as a registered nurse as defined in Section 58-31b-102, and as consistent with the education, training, experience, and current competency of the licensee; and
 - (b) practice of nursing within the generally recognized scope and standards of nurse midwifery as defined by rule and consistent with professional recognized preparations and educational standards of a certified nurse midwife by a person licensed under this chapter, which practice includes the authority to:
 - (i) elicit and record a patient's complete health information, including physical examination, history, and laboratory findings commonly used in providing obstetrical, gynecological, and well infant services to a patient;
 - (ii) assess findings and upon abnormal findings from the history, physical examination, or laboratory findings, manage the treatment of the patient, collaborate with the consulting physician or another qualified physician, or refer the patient to the consulting physician or to another qualified physician as

- appropriate;
 - (iii) diagnose, plan, and implement appropriate patient care, including the administration and prescribing of:
 - (A) prescription drugs
 - (B) Schedule IV-V controlled substances; and
 - (C) Schedule II-III controlled substances in accordance with a consultation and referral plan;
 - (iv) evaluate the results of patient care;
 - (v) consult as is appropriate regarding patient care and the results of patient care;
 - (vi) manage the intrapartum period according to accepted standards of nurse midwifery practice and a written practice and referral plan, including performance of routine episiotomy and repairs, and administration of anesthesia, including local, pudendal, or paracervical block anesthesia, but not including general anesthesia and major conduction anesthesia;
 - (vii) manage the postpartum period;
 - (viii) provide gynecological services;
 - (ix) provide noncomplicated newborn and infant care to the age of one year; and
 - (x) represent or hold oneself out as a certified nurse midwife, or nurse midwife, or use the title certified nurse midwife, nurse midwife, or the initials C.N.M., N.M., or R.N.
- (9) "Practice and referral plan" means a written plan entered into with a consulting physician and detailing guidelines by which a certified nurse midwife consults, collaborates, and refers patients.
- (10) "Unlawful conduct" is defined in Sections 58-1-501 and 58-44a-501.
- (11) "Unlicensed assistive personnel" means any unlicensed person, regarding of title, to whom tasks are delegated by a licensed certified nurse midwife in accordance with the standards of the profession as defined by rule.
- (12) "Unprofessional conduct" is defined in Sections 58-1-501 and 58-44a-502 and as may be further defined by rule.

58-44a-103. Education and enforcement fund.

- (1) There is created within the General Fund a restricted account known as the "Certified Nurse Midwife Education and Enforcement Fund."
- (2) The account shall be nonlapsing and consist of:
 - (a) administrative penalties imposed under Section 58-44a-402; and
 - (b) interest earned on monies in the account.
- (3) Monies in the account may be appropriated by the Legislature for the following purposes:
 - (a) education and training of licensees under this chapter;
 - (b) enforcement of this chapter by:
 - (i) investigating unprofessional or unlawful conduct;
 - (ii) providing legal representation to the division when legal action is taken against a person engaging in unprofessional or unlawful conduct; and
 - (iii) monitoring compliance of renewal requirements; and
 - (c) education and training of board members.

Part 2 - Board

58-44a-201. Board.

- (1) There is created the Certified Nurse Midwife Board consisting of four certified nurse midwives and one member representing the general public.

- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203, and the board shall also:
 - (a) designate one of its members on a permanent or rotating basis to assist the division in reviewing complaints concerning the unlawful or unprofessional practice of a certified nurse midwife; and
 - (b) advise the division in its investigation of these complaints.
- (4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Part 3 - Licensing

58-44a-301. Licensure required - License classification.

- (1) A license is required to engage in practice as a certified nurse midwife, except as provided in Section 58-1-307.
- (2) The division shall issue to individuals qualified under the provisions of this chapter a license in the classification certified nurse midwife.
- (3) An individual holding a certified nurse midwife license as of July 1, 1998, who cannot document the successful completion of advanced course work approved by the division in collaboration with the board in patient assessment, diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be issued a "CNM without prescriptive practice" license.
- (4) The division shall grant a certified nurse midwife license to any licensed certified nurse midwife currently holding prescriptive practice under any predecessor act on July 1, 1998.

58-44a-302. Qualifications for licensure.

- (1) An applicant for licensure as a nurse midwife shall:
 - (a) submit an application in a form as prescribed by the division;
 - (b) pay a fee as determined by the department under Section 63J-1-504;
 - (c) be of good moral character;
 - (d) at the time of application for licensure hold a license in good standing as a registered nurse in Utah, or be at that time qualified for a license as a registered nurse under Title 58, Chapter 31, Nurse Practice Act;
 - (e) have completed:
 - (i) a certified nurse midwifery education program accredited by the American College of Nurse Midwives and approved by the division; or
 - (ii) a nurse midwifery education program located outside of the United States which is approved by the division and is equivalent to a program accredited by the American College of Nurse Midwives, as demonstrated by a graduate's being accepted to sit for the national certifying examination administered by the American College of Nurse Midwives or its designee; and
 - (f) have passed examinations established by the division rule in collaboration with the board within two years after completion of the approved education program required under Subsection (1)(e).
- (2) For purposes of Subsection (1)(e), as of January 1, 2010, the accredited education program or it's equivalent must grant a graduate degree, including post-master's certificate, in nurse midwifery.

58-44a-303. Term of license - Expiration - Renewal.

- (1) (a) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule.
- (b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
- (2) At the time of renewal, the licensee shall:
 - (a) hold a valid certification from the American College of Nurse Midwives Certification Council, Inc;
 - (b) have met continuing competency requirements defined by the division rule in collaboration with the board.

58-44a-304. Continuing education.

The division in collaboration with the board may establish by rule continuing education requirements for renewal of licensure under this chapter, upon a finding by the division that continuing education requirements are necessary to protect the public health, safety, and welfare.

58-44a-305. Temporary license.

- (1) The division may issue an intern license to an individual who meets all qualifications for licensure except the passing of the qualifying examination if the applicant:
 - (a) graduated from an approved education program within the 12 months immediately preceding the application for licensure;
 - (b) has never before taken the qualifying examination;
 - (c) is registered to take the next qualifying examination; and
 - (d) presents a plan acceptable to the division and board under which the applicant will practice under any intern license issued only under the direct supervision of a nurse midwife or physician.
- (2) An intern license issued under this section expires on:
 - (a) the date of the next qualifying examination immediately following issuance of the intern license if the intern license holder does not sit for that examination;
 - (b) the date the examination results are available if the intern license holder sits for the next succeeding qualifying examination and fails the examination; or
 - (c) the date on which a regular license is issued if the intern license holder passes the examination and is otherwise qualified for licensure.

Part 4 - License Denial and Discipline

58-44a-401. Grounds for denial of license - Disciplinary proceedings.

Division grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders are in accordance with Section 58-1-401.

58-44a-402. Authority to assess penalty.

- (1) After a proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the division may impose an administrative penalty

of up to \$10,000 for unprofessional or unlawful conduct under this chapter in accordance with a fine schedule established by rule.

- (2) The assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.
- (3) The division may impose an administrative penalty of up to \$500 for any violation of Subsection 58-44a-401(2), (3), or (4), consistent with Section 58-44a-503.

Part 5 - Unlawful Conduct

58-44a-501. Penalty for unlawful conduct.

"Unlawful conduct" includes:

- (1) engaging in practice as a certified nurse midwife when not licensed or exempted from licensure under this chapter, or engaging in practice as a registered nurse when not licensed or exempted from licensure under this chapter or Title 58, Chapter 31b, Nurse Practice Act;
- (2) representing or holding oneself out as a certified nurse midwife, nurse midwife, or identifying oneself by the initials C.N.M. or N.M. when not licensed under this chapter;
- (3) representing or holding out oneself as a registered nurse or identifying oneself by the initials R.N. when not licensed under this chapter or Title 58, Chapter 31b, Nurse Practice Act; and
- (4) using any other title, initials, or any other means indicating that one is licensed under this chapter.

58-44a-502. Unprofessional conduct.

"Unprofessional conduct" includes:

- (1) disregard for a patient's dignity or right to privacy as to his person, condition, possession, or medical record;
- (2) engaging in an act, practice, or omission which when considered with the duties and responsibilities of a certified nurse midwife does or could jeopardize the health, safety, or welfare of a patient or the public;
- (3) failure to confine one's practice as a certified nurse midwife to those acts or practices permitted by law;
- (4) 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;
- (5) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by the court;
- (6) failure to pay a penalty imposed by the division; and
- (7) prescribing a Schedule II-III controlled substance without a consulting physician.

58-44a-503. Penalty for unlawful conduct.

- (1) Any individual who violates the unlawful conduct provisions of Subsection 458-44a-401(1) is guilty of a third degree felony.
- (2) Any individual who violates the unlawful conduct provisions of Subsection 58-44a-501(2), (3), or (4) is guilty of a class A misdemeanor.
- (3) Subject to Subsection (4), the division may assess administrative penalties in accordance with the provisions of Section 58-44a-402 for acts of unprofessional or unlawful conduct, or any other appropriate administrative action in accordance with the provisions of Section 58-44a-401.

- (4) If a licensee has been convicted of violating Section 58-44a-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative penalty under this chapter for the same offense for which the conviction was obtained.

Part 6 - Delivery by Parents

58-44a-601. Parents delivering their children.

This chapter does not abridge, limit, or change in any way the right of parents to deliver their baby where, when, how, and with whom they choose, regardless of licensure under this chapter.

NURSE MIDWIFE PRACTICE ACT

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