

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

- * The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- * Please address questions regarding information on this notice to the agency.
- * The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- * The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:

44119

Date filed:

10-7-2019

State Admin Rule Filing Id:

Time filed:

	Agency No.	Rule No.	Section No.
Utah Admin. Code Ref (R no.):	R 156	- 31b	-
Changed to Admin. Code Ref. (R no.):	R	-	-

1. **Agency:** Commerce/Division of Occupational and Professional Licensing

Room no.:

Building: Heber M. Wells Building

Street address 1: 160 East 300 South

Street address 2:

City, state, zip: Salt Lake City UT 84111-2316

Mailing address 1: PO Box 146741

Mailing address 2:

City, state, zip: Salt Lake City UT 84114-6741

Contact person(s):

Name:	Phone:	Fax:	E-mail:
Jeff Busjahn	801-530-6789	801-530-6511	jbusjahn@utah.gov

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

2. **Title of rule or section (catchline):**

Nurse Practice Act Rule

3. **Type of notice:**

New ___; Amendment XXXX Repeal ___; Repeal and Reenact ___

4. **Purpose of the rule or reason for the change:**

As authorized by Section 58-31b-503, the Board of Nursing recommends proposed amendments to provide monetary fines for nurses who fail to comply with new Utah Code provisions enacted by 2019 HB 191 and 2018 HB 3001.

5. **This change is a response to comments from the Administrative Rules Review Committee.**

No XXX Yes _____

6. **Summary of the rule or change:**

Section R156-31b-402: These proposed amendments add to the fine schedule for nurses the following sanctions: (1) for an APRN who violates 58-37-19: initial offense \$250; second offense \$500; third and subsequent offense(s) \$1,000; for an APRN who violates Title 26, Chapter 61a: initial offense \$250; second offense \$500; third and subsequent offense(s) \$1,000. In addition, the amendments replace the fine schedule language with a table. Section R156-31b-502: These proposed amendments add to the list of unprofessional conduct: (1) for an APRN, failing to discuss the risks of using an opiate with a patient or the patient's guardian in accordance with Subsection 58-37-19; (2) for an APRN, violating any provision of Title 26, Chapter 61a, the Utah Medical Cannabis Act; and (3) failing to practice within limits of competency.

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No ; Yes

The fiscal note for 2019 HB 191 estimated that two prescribers annually would pay a fine of \$500 to \$1,000 for non-compliance, for aggregate revenue of approximately \$1,500 annually. The fiscal note for 2018 HB 3001 estimated the impact and is available at: <https://le.utah.gov/~2018S3/bills/static/HB3001.html>. Any fines levied would be paid into the Nurse Education and Enforcement Account. The Division estimates that the proposed amendment may result in two additional investigations of violations or complaints at a cost of \$300 each for a total of \$600. These amendments are not expected to impact any existing state practices or procedures, and as described below in the analysis for small business and non-small business, the Division does not expect any state agencies that may be acting as employers of licensees to experience any measurable fiscal impacts. No other impact to the State is expected beyond a minimal cost to the Division of approximately \$75 to disseminate the rule once the proposed amendment is made effective.

B) Local government:

Affected: No Yes

The Division estimates that the proposed amendments will have no measurable impact on local government. None of these amendments are expected to impact existing local government practices or procedures. Additionally, as described below in the analysis for small business and non-small business, the Division does not expect any local governments that may be acting as employers of licensees to experience any measurable fiscal impacts.

C) Small businesses ("small business" means a business employing fewer than 50 persons):

Affected: No ; Yes

The proposed amendment will regulate the APRNs (advanced practice registered nurses) practicing in Utah, which may indirectly affect the estimated 403 small businesses in Utah comprising establishments of licensed APRNs or who employ APRNs, such as private or group practices, clinics, hospitals, private mental health practices or medical centers (NAICS 621399, 621330, 621498, and 621999). However, the amendments are not expected to result in any measurable fiscal impact to small business. First, the amendments only impose a penalty for noncompliance with Utah Code requirements, and the practices of most small businesses are, or should be, already consistent with existing requirements. Second, the amendments will only affect licensees who violate the statute and are sanctioned, and as described below for other persons, for the typical licensee the proposed amendments will have no fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most small businesses will never be impacted. Finally, although a small business employing a licensee who is sanctioned may face indirect financial costs, it is impossible to estimate what those costs might be because any such violations are unforeseeable, and because any indirect costs that a small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer and the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):

Affected: No Yes

There are approximately 2,908 licensed APRNs that may be affected by these proposed amendments. No measurable fiscal impact to these persons is expected. First, the proposed amendments will only affect licensees who violate the statute(s) and are sanctioned, so that most licensees will never be impacted. The amendments only impose a penalty for noncompliance with existing Utah Code requirements, and the practices of most licensees are or should be already consistent with existing professional practice requirements. Further, the goal of the rules is to provide a deterrent, such that there is a \$0 net impact on all parties involved and minimal occasions to sanction a licensee for noncompliance. Therefore, for the typical licensee, the proposed amendments are expected to have no direct or indirect fiscal impact. Second, although a licensee who is sanctioned may experience a fiscal impact, it is impossible to estimate what such costs might be with any accuracy at present, both because they would apply only in cases of unforeseeable violations, and because any potential costs would depend on the unique characteristics and actions of each individual licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

8. Compliance costs for affected persons:

As described above for other persons, the Division does not anticipate any compliance costs for any affected persons from these proposed amendments.

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

These proposed amendments replace the fine schedule language with a table. The amendments also provide monetary fines for nurses who fail to comply with new Utah Code provisions enacted by 2019 HB 191 and 2018 HB 3001. In addition, the amendments add to the list of unprofessional conduct: (1) failing to discuss the risks of using an opiate with a patient or the patient's guardian in accordance with Subsection 58-37-19 U.C.A., (2) violating any provision of Title 26, Chapter 61a, the Utah Medical Cannabis Act; and (3) failing to practice within limits of competency. Small Businesses (less than 50 employees): The proposed amendment will regulate the advanced practice registered nurses (APRNs) practicing in Utah, which may indirectly affect the estimated 403 small businesses in Utah comprising establishments of licensed APRNs or who employ APRNs, such as private or group practices, clinics, hospitals, private mental health practices or medical centers (NAICS 621399, 621330, 621498, and 621999). However, the amendments are not expected to result in any measurable fiscal impact to small business. First, the amendments only impose a penalty for noncompliance with Utah Code requirements, and the practices of most small businesses are, or should be, already consistent with existing requirements. Second, the amendments will only affect licensees who violate the statute and are sanctioned. For the typical licensee, the proposed amendments will have no fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most small businesses will never be impacted. Finally, although a small business employing a licensee who is sanctioned may face indirect financial costs, it is impossible to estimate what those costs might be because any such violations are unforeseeable, and because any indirect costs that a small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer and the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive. Regulatory Impact to Non-Small Businesses (50 or more employees): The proposed amendment will regulate APRNs practicing in Utah, which may indirectly affect the estimated 101 non-small businesses in Utah comprising establishments of APRNs or who employ APRNs, such as private or group practices, hospitals, or medical centers (NAICS 621110, 622210, 622310). However, the proposed amendments are not expected to result in any measurable fiscal impact for non-small business for the same reasons as described above for small business. They are either inestimable, for the reasons stated, or there is no fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Francine A. Giani, Executive Director

10 This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV):

Section 58-31b-101

Subsection 58-1-106(1)(a)

Subsection 58-1-202(1)(a)

11 This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; if none, leave blank):

First Incorporation

Second Incorporation

**Official Title of Materials
Incorporated (from title page)**
Publisher
Date Issued
Issue, or version
ISBN Number (optional)
ISSN Number (optional)
Cost of Incorporated Reference
Action: Adds, updates, or removes

(If this rule incorporates more than two items by reference, please attach additional pages)

- 12 **The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) **Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):** 12/02/2019

B) **A public hearing (optional) will be held:**

On (mm/dd/yyyy):

11/06/2019

At (hh:mm AM/PM):

10:30 AM

At (place):

160 East 300 South, Conference Room 475
(4th floor), Salt Lake City, Utah

- 13 **This rule change may become effective on (mm/dd/yyyy):** 12/09/2019

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

- 14 **Indexing information -- keywords** (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")); may not include the name of the agency:

licensing

nurses

- 15 **Attach an RTF document containing the text of this rule change** R156-31b.pro
(filename):

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

AGENCY AUTHORIZATION

Agency head or
designee, and title:



Date

(mm/dd/yyyy)

: 12/7/2019

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$675	\$600	\$600
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$675	\$600	\$600
Fiscal Benefits			
State Government	\$1,500	\$1,500	\$1,500
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$1,500	\$1,500	\$1,500
Net Fiscal Benefits:	\$825	\$900	\$900

*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

The proposed amendment will regulate APRNs practicing in Utah, which may indirectly affect the estimated 101 non-small businesses in Utah comprising establishments of APRNs or who employ APRNs, such as private or group practices, hospitals, or medical centers (NAICS 621110, 622210, 622310, However, the proposed amendment is not expected to result in any measurable fiscal impact for non-small business. First, the amendments only impose a penalty for noncompliance with the Utah Code requirements, and the practices of most non-small businesses are, or should be, already consistent with existing requirements. Second, the amendments will only affect licensees who violate the statute and are sanctioned, and as described above for other persons, for the typical licensee the proposed amendments will have no fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most non-small businesses will never be impacted. Finally, although a non-small business employing a licensee who is sanctioned may face indirect financial costs, it is impossible to estimate what those costs might be because any such violations are unforeseeable, and

because any indirect costs that a non-small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer and the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

Include agency head sign-off here. The head of the Department of Commerce, Francine Giani, has reviewed and approved this fiscal analysis.

R156. Commerce, Occupational and Professional Licensing.

R156-31b. Nurse Practice Act Rule.

R156-31b-402. Administrative Penalties.

In accordance with Sections 58-1-501, 58-31b-501, 58-31b-502, 58-31b-502.5, 58-31b-~~[801]~~503, Subsection 58-31b-102(1), and Section R156-31b-502, and unless otherwise ordered by the presiding officer, the following fine schedule shall apply: ~~[-to a nurse or MAC.]~~

TABLE

FINE SCHEDULE

<u>VIOLATION</u>	<u>FIRST OFFENSE</u>	<u>SUBSEQUENT OFFENSE</u>
58-31b-501(1)	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
58-31b-501(2)	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
58-31b-501(3)	\$ 2,000 - \$ 7,500	\$ 7,500 - \$ 9,500
58-31b-601	\$ 2,000 - \$ 7,500	\$ 7,500 - \$ 9,500
R156-31b-602	\$ 2,000 - \$ 7,500	\$ 7,500 - \$ 9,500
58-1-501(1)(a)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(b)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(c)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(d)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(e)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(f)(i)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(a)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(b)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(c)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(d)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(e)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(f)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(g)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(h)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(i)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(j)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(k)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(l)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(m)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(o)	\$ 250 - \$ 4,000	\$ 4,000 - \$ 8,000
58-31b-502(1)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(2)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(3)	\$ 4,000 - \$ 8,000	\$ 8,000 - \$10,000
58-31b-502(4)	\$ 2,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(5)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(6)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000

58-31b-502(7)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(8)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(9)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(10)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(11)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(12)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(13)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(14)	double the original penalty, up to \$20,000	
58-31b-502(15)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-801	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(a)	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
R156-31b-502(1)(b)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(f)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(e)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(g)	\$ 250 - \$ 1,500	\$ 1,500 - \$10,000
R156-31b-502(1)(h)	\$ 250 - \$ 1,500	\$ 1,500 - \$10,000
58-31b-502.5(1)	\$ 500 - \$ 5,000	\$ 1,500 - \$10,000
Ongoing:\$2,000 per day but not less than the second offense		
58-31b-502.5(2)	\$ 500 - \$ 5,000	\$ 1,500 - \$10,000
Ongoing:\$2,000 per day but not less than the second offense		
58-31b-502.5(3)	\$ 5,000	\$ 10,000
Ongoing:	\$ 2,000 per day but not less than the	
	second offense	
R156-31b-502(1)(i)	\$ 250	second offense \$500
		third and subsequent offenses \$1,000
R156-31b-502(1)(j)	\$ 250	second offense \$500
		third and subsequent offenses \$1,000
Subsequent offenses. Sanctions for an offense subsequent to second offense, shall be \$10,000 or \$2,000 per day.		

~~[(1) Initial and second offenses.~~

~~(a) Using a protected title, name, or initials, if the user is not properly licensed under this chapter, in violation of Subsection 58-31b-501(1):~~

~~initial offense: \$500 - \$4,000~~

~~second offense: \$4,000 - \$8,000~~

~~(b) Using any name, title, or initials that would cause a reasonable person to believe the user is licensed or certified under this chapter if the user is not properly licensed or certified under this chapter, in violation of Subsection 58-31b-501(2):~~

~~initial offense: \$500 - \$4,000~~

~~second offense: \$4,000 - \$8,000~~

~~———— (c) Conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601 or Subsection R156-31b-602, in violation of Subsection 58-31b-501(3):~~

~~———— initial offense: \$2,000 - \$7,500~~

~~———— second offense: \$7,500 - \$9,500~~

~~———— (d) Practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in the practice of nursing, if the person is not licensed to do so or exempted from licensure under Utah Code 58-31b et seq or restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license, or in violation of restrictions that have been placed on a license, in violation of Subsection 58-1-501(1)(a):~~

~~———— initial offense: \$500 - \$5,000~~

~~———— second offense: \$5,000 - \$10,000~~

~~———— (e) Impersonating another licensee, or practicing an occupation or profession under a false or assumed name, in violation of Subsection 58-1-501(1)(b):~~

~~———— initial offense: \$500 - \$5,000~~

~~———— second offense: \$5,000 - \$10,000~~

~~———— (f) Knowingly employing a person to practice or engage in or attempt to practice or engage in the practice of nursing if the employee is not licensed to do so, in violation of Subsection 58-1-501(1)(c):~~

~~———— initial offense: \$500 - \$5,000~~

~~———— second offense: \$5,000 - \$10,000~~

~~———— (g) Knowingly permitting the person's authority to engage in the practice of nursing to be used by another person, in violation of Subsection 58-1-501(1)(d):~~

~~———— initial offense: \$500 - \$5,000~~

~~———— second offense: \$5,000 - \$10,000~~

~~———— (h) Obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):~~

~~———— initial offense: \$500 - \$5,000~~

~~———— second offense: \$5,000 - \$10,000~~

~~———— (i) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state without prescriptive authority conferred by a license, or by an exception to licensure; or with prescriptive authority conferred by an exception or a multistate practice privilege, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions and to identify contraindications to the proposed treatment, in violation of~~

~~Subsection 58-1-501(1)(f)(i):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(j) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating the practice of nursing, in violation of Subsection 58-1-501(2)(a):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(k) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard applicable to the practice of nursing, in violation of Subsection 58-1-501(2)(b):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(l) Engaging in conduct that results in conviction or a plea of nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the practice of nursing, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the profession, in violation of Subsection 58-1-501(2)(c):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(m) Engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the profession of nursing if the conduct would, in the state of Utah, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401, in violation of Subsection 58-1-501(2)(d):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(n) Engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in practice of the nursing profession, in violation of Subsection 58-1-501(2)(e):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(o) Practicing or attempting to practice the profession of nursing despite being physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(p) Practicing or attempting to practice the profession of nursing~~

~~through gross incompetence, gross negligence, or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2) (g):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(q) Practicing or attempting to practice the profession of nursing by any form of action or communication which is false, misleading, deceptive, or fraudulent, in violation of Subsection 58-1-501(2) (h):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(r) Practicing or attempting to practice the profession of nursing beyond the individual's scope of competency, abilities, or education, in violation of Subsection 58-1-501(2) (i):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(s) Practicing or attempting to practice the profession of nursing beyond the scope of licensure, in violation of Subsection 58-1-501(2) (j):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(t) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice in the profession of nursing or otherwise facilitated by the licensee's license, in violation of Subsection 58-1-501(2) (k):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(u) Acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or under these rules, in violation of Subsection 58-1-502(2) (l):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(v) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment, or with prescriptive authority conferred by an exception issued under this title, or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(2) (m):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(w) Failing 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, in violation of Subsection 58-31b-502(1):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(x) Failing to provide nursing service 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, gender, or nature of the patient's health problem, in violation of Subsection 58-31b-502(2):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(y) Engaging in sexual relations with a patient, in violation of Subsection 58-31b-502(3):~~

~~initial offense: \$4,000 - \$8,000~~

~~second offense: \$8,000 - \$10,000~~

~~(z) Exploiting or using information about a patient or exploiting the professional relationship by use of knowledge of the patient obtained while practicing the occupation or profession, in violation of Subsection 58-31b-502(4):~~

~~initial offense: \$2,000 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(aa) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug, in violation of Subsection 58-31b-502(5):~~

~~initial offense: \$1,000 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(bb) Unauthorized taking or personal use of nursing supplies from an employer, in violation of Subsection 58-31b-502(6):~~

~~initial offense: \$1,000 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(cc) Unauthorized taking or personal use of a patient's personal property, in violation of Subsection 58-31b-502(7):~~

~~initial offense: \$1,000 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(dd) Knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any circumstance related to the patient and the medical or nursing care provided, in violation of Subsection 58-31b-502(8):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(ee) Unlawful or inappropriate delegation of nursing care, in violation of Subsection 58-31b-502(9):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(ff) Failing to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse, in violation of Subsection 58-31b-502(10):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(gg) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice as a nurse or MAC, in violation of Subsection 58-31b-502(11):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(hh) Failing 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, in violation of Subsection 58-31b-502(12):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(ii) Breaching a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, in violation of Subsection 58-31b-502(13):~~

~~initial offense: \$1,000 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(jj) Failing to pay a penalty imposed by the Division, in violation of Subsection 58-31b-502(14): double the original penalty amount up to \$20,000~~

~~(kk) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan, in violation of Subsections 58-31b-502(1)(o), 58-31b-502(1)(r), and Section 58-31b-803:~~

~~initial offense: \$1,000 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(ll) Failing to confine practice within the limits of competency, in violation of Section 58-31b-801:~~

~~initial offense: \$1,000 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(mm) Engaging in any other conduct which constitutes unprofessional or unlawful conduct, in violation of Subsection 58-1-501(1) or (2):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(nn) Engaging in a sexual relationship with a patient surrogate concurrent with the professional relationship, in violation of Subsection R156-31b-502(1)(e):~~

~~initial offense: \$1,000 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(oo) Failing to destroy a license that has expired due to the issuance~~

~~and receipt of an increased scope of practice license, in violation of Subsection R156-31b-502(1)(a):~~

~~initial offense: \$500 - \$4,000~~

~~second offense: \$4,000 - \$8,000~~

~~(pp) Knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information, in violation of Subsection R156-31b-502(1)(b):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(qq) Engaging in practice in a disruptive manner, in violation of Subsection R156-31b-502(1)(f):~~

~~initial offense: \$500 - \$5,000~~

~~second offense: \$5,000 - \$10,000~~

~~(rr) Violating the term of an order governing a license, in violation of Subsection 58-1-501(2)(o):~~

~~initial offense: \$250 - \$4,000~~

~~second offense: \$4,000 - \$8,000~~

~~(ss) Administering sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, without first obtaining the required consent from the patient in writing, in violation of Subsection 58-31b-502.5(1):~~

~~first offense: \$500 - \$5,000~~

~~second offense: \$1,500 - \$10,000~~

~~ongoing offense(s): \$2,000 per day but not less than the second offense~~

~~(tt) failing to report any adverse event under Section 26-1-40, with respect to the administering of sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, in violation of Subsection 58-31b-502.5(2):~~

~~first offense: \$500 - \$5,000~~

~~second offense: \$1,500 - \$10,000~~

~~ongoing offense(s): \$2,000 per day but not less than the second offense~~

~~(uu) during a procedure for which sedation or anesthesia will be administered intravenously to a patient in an outpatient setting that is not an emergency department, failing to have access to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association, in violation of Subsection 58-31b-502.5(3):~~

~~first offense: \$5,000~~

~~second offense: \$10,000~~

~~ongoing offense(s): \$2,000 per day but not less than the second offense~~

~~(2) Subsequent offenses. Sanctions for an offense subsequent to the second offense, shall be \$10,000 or \$2,000 per day.]~~

R156-31b-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license;

(b) knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information;

(c) as ~~[to]~~an RN or LPN, issuing a prescription for a prescription drug to a patient, except in accordance with the provisions of Section 58-17b-620~~[7]~~ or as may be otherwise legally permissible;

(d) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(i) that standards of nursing practice are established and carried out;

(ii) that safe and effective nursing care is provided to patients;

(iii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients; or

(iv) that the nurses employed by the agency have the knowledge, skills, ability and current competence to carry out the requirements of their jobs;

(e) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:

(i) did not result in any form of abuse or exploitation of the surrogate or patient; and

(ii) did not adversely alter or affect in any way:

(A) the nurse's professional judgment in treating the patient;

(B) the nature of the nurse's relationship with the surrogate; or

(C) the nature of the nurse's relationship with the patient;

(f) engaging in disruptive behavior in the practice of nursing;

(g) prescribing to oneself any controlled substance drug, in violation of Subsection R156-37-502(1)(a); ~~[and]~~

(h) violating any federal or state law relating to controlled substances, including self-administering any controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug, in violation of Section R156-37-502;

(i) as an APRN, failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription in accordance with Section 58-37-19;

(j) as an APRN, violating a provision of Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(k) failing to practice within limits of competency, in violation of Section 58-31b-801.

(2) In accordance with a prescribing practitioner's order and an IHP, a registered nurse who, in reliance on a school's policies or the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a, delegates or trains an unlicensed assistive person to administer medications under

Sections 53A-11-601, R156-31b-701 and R156-31b-701a, shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

KEY: licensing, nurses

Date of Enactment or Last Substantive Amendment: [~~August 22,~~]2019

Notice of Continuation: January 8, 2018

Authorizing, and Implemented or Interpreted Law: 58-31b-101; 58-1-106(1)(a);
58-1-202(1)(a)