BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.159.301 definitions, 24.159.1229 foreign educated applicants for RN licensure requirements, 24.159.1404, 24.159.1405, 24.159.1411 through 24.159.1414, 24.159.1416, 24.159.1418, 24.159.1427, 24.159.1428, 24.159.1430, 24.159.1431, 24.159.1436, 24.159.1443, 24.159.1461 through 24.159.1464, 24.159.1466 through 24.159.1468, 24.159.1470, 24.159.1475, 24.159.1480, 24.159.1485, 24.159.1490, adoption of NEW RULE I, and repeal of 24.159.1401, 24.159.1415, 24.159.1417, 24.159.1426, 24.159.1442, and 24.159.1465 pertaining to APRNs	))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On May 8, 2008, the Board of Nursing (board) published MAR Notice No. 24-159-71 regarding the proposed amendment, adoption, and repeal of the above-stated rules, at page 875 of the 2008 Montana Administrative Register, issue no. 9.

2. On May 30, 2008, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the June 9, 2008, deadline.

3. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Numerous commenters stated that because the board lacks statutory authority to define the APRN scope of practice, the board also lacks authority to delegate the establishment of the APRN's scope of practice to any national professional organization for APRN specialties. Commenters recommended the board delete all references to scope of practice in the proposed rule amendments.

RESPONSE 1: The board agrees that the Montana Legislature is the entity with the authority to establish scope of practice for all nurses in Montana. To acknowledge both the limitations of the board's empowerment and the actual role of national professional organizations, the board decided to remove all references to scope of practice in the proposed rule amendments and charge APRNs to look to their national professional organizations for practice standards and guidelines. The board

is amending ARM 24.159.1405, 24.159.1470, 24.159.1475, 24.159.1480, 24.159.1485, and 24.159.1490 accordingly.

COMMENT 2: Several commenters suggested that because each APRN is qualified in a specialized area of practice, the requirement in ARM 24.159.1405 that the APRN "possess the knowledge, judgment, and skill to safely and competently perform *any* APRN function" holds APRNs to an irrationally comprehensive level of performance and also exposes APRNs to considerable legal liability.

RESPONSE 2: The board concurs with the comments and determined that replacing "any" with "an" will limit the requirements of APRN competence to the performance of those functions within the APRN's specialty. The board is amending ARM 24.159.1405 accordingly.

COMMENT 3: Numerous commenters objected to the new requirement that the graduate APRN working with a temporary permit must be "directly supervised" by a consultant. Commenters pointed out that APRN independent and/or collaborative practice successfully withstood the scrutiny of the Montana Supreme Court in the case of *Montana Society of Anesthesiologists v. Montana Board of Nursing*, 2007 MT 290, 339 Mont. 472, 171 P.3d 704. Commenters claimed that rural hospitals would be unable to hire graduate registered nurse anesthetists (RNAs) under the proposed rule amendment because the consultants for most RNAs are CRNAs. Commenters stated that the practice of most physicians does not encompass anesthesiology and general practitioners repeatedly have stated that they will not supervise RNAs. In rural hospitals, the consultant CRNA may not be on staff at the facility where the graduate RNA works or may be engaged in a concurrent procedure, although available by telephone or pager at all times. Most commenters advocated the removal of any requirements for supervision of the graduate APRN, but alternative suggestions included describing the graduate APRN's oversight as "close collaboration" or "close consultation." Other commenters suggested that the board allow local credentials committees or medical staff to establish the necessary level of oversight of the graduate APRN.

RESPONSE 3: The board concurs that the direct supervision requirement for the graduate APRN may be overly burdensome for the consultant. The board notes that there is no evidence suggesting that the present level of oversight provided by consultants poses a safety issue for Montana citizens. The rule currently requires that the consultant be "available to the graduate APRN at all times" and does not mandate direct supervision. The consultant may be either immediately available via telephone or present in the facility. The board is therefore amending ARM 24.159.1411 accordingly to delete the direct supervision requirement.

COMMENT 4: A commenter asserted that consultants for graduate APRNs should be required to hold a Montana license because to properly supervise, a consultant needs to be aware of limitations to APRN practice and applicable Montana statutes and rules. When a consultant is subject to discipline, the board may act swiftly to see that the Montana-licensed consultant is replaced. The commenter suggested

that the board establish a separate rule to address consultants working in the federal, military, and Indian Health Service systems.

RESPONSE 4: The board anticipates and intends that all consultants, except those working in the federal, military, and Indian Health Service systems, will possess Montana licenses, which is a prerequisite to working in a Montana health care facility. However, the board agrees that amending the rule to restate the Montana licensure requirement and make specific reference to the licensure exemption statute for those working in a federal enclave will clarify the issues. The board is amending ARM 24.159.1411 accordingly.

COMMENT 5: One commenter urged that reference in ARM 24.159.1413 to national certification be followed with "by board approved certifying bodies" to bring congruence with the definition of "certifying body" in ARM 24.159.301. The commenter stated that not all certifying bodies have board approval and not all national certifications are at the advanced practice level. Another commenter objected to the board maintaining a list of board approved national certifying bodies on its web site and in the board office and instead suggested the board include this list in the administrative rules. The commenter also suggested that the board specifically approve APRN certifying examinations.

RESPONSE 5: The board defines "certifying body" in ARM 24.159.301 as "a national certifying organization that has been approved by the board to use psychometrically sound and legally defensible examinations for certification of nursing specialties." Because a national certifying body is, by definition, one that is approved by the board, the board sees no need to repeat the board approval requirement throughout the rules. The approved certifying bodies, again by definition, offer board approved examinations for certification. Therefore, it is unnecessary for the board to maintain a list of approved certification exams.

The list of board approved certifying bodies is frequently updated by the board. The decision to make available an updated list of the board approved certifying bodies on the board web site and in hard copy from the board office is a practical one. Rule amendments are expensive and time consuming and new certifying bodies are established with some frequency. The board decided to maintain the ability to respond in a timely manner to add or remove certifying bodies from the list, without incurring the four to six month delay of a rule amendment. All board decisions regarding approval of certifying bodies will occur in open, public meetings for which the public and all interested parties will receive prior notice.

COMMENT 6: One commenter stated that calling the APRN endorsement a "license" in ARM 24.159.1413 is confusing and suggested the board use the term "endorsement."

RESPONSE 6: Section 37-1-130, MCA, defines license as "permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration." The board notes that all APRNs must

possess a Montana RN license in addition to the APRN licensure endorsement and that the APRN endorsement constitutes a separate license. Because all APRNs hold a minimum of two licenses, the board concluded that referring to the APRN endorsement as a separate license achieves greater clarity in the rules.

COMMENT 7: Several commenters suggested that the date of APRN certification by a national certification body, rather than the date of initial licensure, should be used in the scheme of ascending educational qualifications for APRN licensure, but offered no explanation or justification for the suggested change.

RESPONSE 7: The board discerns no reason why the date of APRN certification would be better than initial licensure date for determining the level of education required for APRN licensure in Montana. The board noted that some states do not require APRNs to be certified by a national certifying body. By contrast, the date of original APRN licensure may be universally applied to all out of state APRNs seeking Montana licensure by endorsement.

COMMENT 8: One commenter stated that the masters prepared RN who attains post-masters certification in an APRN specialty in 2008 or after will be barred from APRN licensure in Montana. The commenter argued that ample evidence demonstrates that the post-masters certificate, when coupled with appropriate didactic and preceptor hours, ensures appropriate preparation for APRN practice.

RESPONSE 8: The board agrees and acknowledges an oversight in the rules. The board is amending ARM 24.159.1414 to recognize that applicants holding a post-masters certificate from an accredited APRN program qualify for Montana APRN licensure.

COMMENT 9: A commenter urged the board to require supervisors for APRNs on probation to be licensed in Montana.

RESPONSE 9: Similar to the consultant for the graduate APRN, all supervisors for licensees on probation who are working in Montana will also be licensed in Montana, with the exception of those working in federal enclaves pursuant to 37-8-103, MCA. However, when an APRN on probation moves to another jurisdiction, the APRN's supervisor may only be licensed in the new jurisdiction and not in Montana. Therefore, the board concluded that the proposed amendment to ARM 24.159.1436 will address the full range of probationary circumstances.

COMMENT 10: Several commenters recommended the board establish an APRN advisory committee to include a representative of each APRN specialty. The commenters stated that the committee could offer invaluable service to the board on APRN education, professional standards, and current clinical practice in Montana.

RESPONSE 10: The board notes that it is the responsibility of APRN professional organizations to ensure that APRN concerns are brought to the board's attention. The board advises APRNs to add their names to the board's list of interested parties

to ensure that they receive information regarding board meeting agendas and proposed rule changes. The board urges APRNs to make use of the opportunities for public comment both in the rulemaking process and the board's public meetings.

COMMENT 11: Numerous commenters noted that most APRN educational programs take three years to complete and pharmacology courses often occur during the first year. The commenters stated that the proposed amendment to ARM 24.159.1463 requiring 45 graduate level contact hours in pharmacology, pharmacotherapeutics, and clinical management of drug therapies within two years of initial application for prescriptive authority will bar most graduate APRNs from attaining that authority. Although the total hours of pharmacology course work in many APRN programs exceeds the 45 contact hour requirement, the coursework may not occur within two years of application. The commenters suggested maintaining the current rule to allow three years to complete the course work.

RESPONSE 11: The board concurs and is amending ARM 24.159.1463 accordingly.

COMMENT 12: One commenter noted that the proposed amendments to ARM 24.159.1463 will require out of state licensed APRNs with prescriptive authority to have earned 45 hours of graduate level pharmacology course work within two years of applying for Montana licensure by endorsement. The commenter urged the board to amend the rule to allow practicing APRNs with prescriptive authority in another state to qualify for prescriptive authority in Montana without having to meet the 45 contact hour requirement.

RESPONSE 12: The board recognizes that no special provision was made in the proposed amendment for APRN endorsement candidates and the proposed amendment to ARM 24.159.1463 presents a strong disincentive for out of state APRNs with prescriptive authority to seek Montana licensure. The board notes that out of state APRNs with prescriptive authority have completed the minimum 45 graduate level contact hours of pharmacology course work earlier in their careers. The board is amending ARM 24.159.1418 to specify that these out of state APRNs with prescriptive authority may qualify for Montana prescriptive authority by meeting the APRN prescriptive authority renewal requirements of ten contact hours of accredited pharmacology education during the two years preceding application.

COMMENT 13: Several commenters stated that it is impractical for many practicing CRNAs to attain graduate level course work in a university or academic setting and requested the board adopt a special rule to address the unique circumstances of practicing CRNAs seeking prescriptive authority.

RESPONSE 13: The board acknowledges that practicing CRNAs are involved with pharmacology, pharmacotherapeutics, and clinical management of drug therapies on a daily basis in their practice as nurse anesthetists. Therefore, the board is amending ARM 24.159.1463 to allow practicing CRNAs to attain prescriptive

authority in the same way as endorsement candidates holding prescriptive authority in another state.

COMMENT 14: Numerous commenters opposed the amendment to ARM 24.159.1464 requiring for the existence of a valid prescriber-patient relationship stating that the rule merely restates state and federal law. The commenters pointed out that 37-2-104, MCA, allows the dispensing of factory prepackaged contraceptives, other than mifepristone, by an APRN employed by a family planning clinic under contract with the Montana Department of Public Health and Human Services when the dispensing is done according to either a physician's written protocol or the drug-labeling, storage, and record keeping requirements of the Montana Board of Pharmacy. The commenters stated that requiring the relationship in the board rules will present another obstacle to establishing the protocol for patient-delivered partner treatment (P-DPT) and may adversely impact public health.

RESPONSE 14: The board supports P-DPT as an effective way to improve control of sexually transmitted infections. Because the proposed language would prohibit APRNs from participating in P-DPT in any setting and because state and federal law already requires a valid prescriber-patient relationship, the board is amending ARM 24.159.1464 to delete the redundant requirement.

COMMENT 15: A commenter stated that when an APRN covers for another APRN without a valid prescriber-patient relationship with the other's patients, the proposed requirement in ARM 24.159.1464 may result in patient abandonment if the covering APRN is barred from prescribing medication refills after reviewing the patient's chart.

RESPONSE 15: The board notes that all licensed APRNs must comply with state and federal laws when prescribing medications and current board rules do not prohibit an APRN form providing coverage for another APRN. The board is amending ARM 24.159.1464 to delete the redundant requirement.

COMMENT 16: Numerous commenters requested clarification on the provision in ARM 24.159.1464 prohibiting APRNs from delegating the dispensing of drugs to any other person.

RESPONSE 16: The board notes that because the dispensing of drugs is the function of pharmacists, an APRN is not allowed to dispense drugs except in certain limited circumstances such as those set forth by the Board of Pharmacy at ARM 24.174.813. While an APRN at a properly licensed family planning clinic may not delegate the dispensing of prescribed medications, an APRN may delegate the administration of medications to another nurse as appropriate. The board further refers commenters to the July 2008 joint position statement of the Montana Boards of Pharmacy, Medical Examiners, and Nursing on "Dispensing of Outpatient Medication in Emergency Department by Licensed Nurses."

COMMENT 17: Several commenters suggested that the APRN's quality assurance plan should include specific, measurable criteria that reflect the standards of practice

and guidelines of the APRN's national professional organization, rather than just requiring the APRN to submit a copy of those standards and guidelines as part of the APRN's quality assurance plan.

RESPONSE 17: The board notes that ARM 24.159.1466 requires the APRN to include a copy of the standards of practice set by the APRN's national professional organization in the quality assurance plan, which will ensure that all APRNs are aware of the existence of these standards of practice. If an APRN chooses to establish additional measurable criteria for peer review purposes, nothing in the rule prevents this greater specificity.

COMMENT 18: Numerous commenters opposed the terms "corrective action" and "practice deficiency" as punitive and professionally disrespectful. The commenters stated that the proposed amendment to ARM 24.159.1466 requiring APRNs to describe corrective action taken sets up a mandate for overly detailed and invasive reporting.

RESPONSE 18: The board is amending ARM 24.159.1466 by substituting "areas in need of attention or improvement" for the objectionable language. The board is also amending the rule to clarify the board's intent for APRNs to verify completion of peer review rather than to require that APRNs prepare detailed biennial reports on the peer review process.

COMMENT 19: A commenter opposed deleting the requirement from ARM 24.159.1475 that all CNMs be enrolled in either the certification maintenance program or the continued competency program of their national professional organization. The commenters stated that unlike other APRN categories, the continued competency and certification programs for CNMs are voluntary at this time and public safety would be best assured by requiring CNM participation.

RESPONSE 19: The board concurs and is amending the rule accordingly.

COMMENT 20: One commenter suggested the board clearly define "comprehensive nursing assessment" and "focused nursing assessment" in rule. The commenter stated that APRNs do not undertake comprehensive assessments on all patients and may conduct focused assessments when circumstances warrant.

RESPONSE 20: The board previously added the requested definitions to ARM 24.159.301 as part of the LPN rule amendments in MAR Notice No. 24-159-70 which became effective on August 15, 2008.

4. The board has amended ARM 24.159.301, 24.159.1229, 24.159.1404, 24.159.1412, 24.159.1413, 24.159.1416, 24.159.1427, 24.159.1428, 24.159.1430, 24.159.1431, 24.159.1436, 24.159.1443, 24.159.1461, 24.159.1462, 24.159.1467, and 24.159.1468 exactly as proposed.

5. The board has repealed ARM 24.159.1401, 24.159.1415, 24.159.1417, 24.159.1426, 24.159.1442, and 24.159.1465 exactly as proposed.

6. The board has amended ARM 24.159.1405, 24.159.1411, 24.159.1414, 24.159.1418, 24.159.1463, 24.159.1464, 24.159.1466, 24.159.1470, 24.159.1475, 24.159.1480, 24.159.1485, and 24.159.1490 with the following changes, stricken matter interlined, new matter underlined:

24.159.1405 STANDARDS RELATED TO THE ADVANCED PRACTICE REGISTERED NURSE'S RESPONSIBILITIES AS A MEMBER OF THE NURSING PROFESSION (1) The APRN shall:

(a) remains as proposed.

(b) abide by the current practice standards and ~~scope of practice~~ guidelines established by a national professional organization for the APRN's specialty area of practice as identified by the APRN;

(c) possess the knowledge, judgment, and skill to safely and competently perform ~~any~~ an APRN function;

(d) and (e) remain as proposed.

24.159.1411 TEMPORARY PERMITS FOR GRADUATE APRNS

(1) through (4) remain as proposed.

(5) The graduate APRN working with a temporary APRN permit must have a consultant. The consultant must possess an unencumbered Montana license, except as provided by 37-1-103, and be either an APRN or a physician whose practice encompasses the scope of the graduate APRN's practice. The consultant must be available to ~~and directly supervise~~ the graduate APRN at all times.

24.159.1414 EDUCATIONAL REQUIREMENTS AND QUALIFICATIONS FOR APRN (1) remains as proposed.

(a) for those licensed in 2008 or after, a master's degree or post-graduate certificate from an accredited APRN program that provided a minimum of 250 hours of didactic instruction and a minimum of 500 hours of preceptorship;

(b) through (4) remain as proposed.

24.159.1418 LICENSURE BY ENDORSEMENT (1) through (1)(b) remain as proposed.

(c) verification of APRN licensure status from all jurisdictions for preceding two years; ~~and~~

(d) completed application for prescriptive authority, if applicable;

(e) verification of prescriptive authority from all jurisdictions for preceding two years, if applicable;

(f) proof of completion of a minimum of 10 contact hours of continuing education within the preceding two years that meets the requirements of ARM 24.159.1468;

~~(d)~~ (g) the required fees for APRN licensure by endorsement and prescriptive authority, if applicable, as specified by ARM 24.159.401.

(2) and (3) remain as proposed.

24.159.1463 INITIAL APPLICATION FOR PRESCRIPTIVE AUTHORITY

(1) The APRN shall submit a completed application for prescriptive authority and a nonrefundable fee as specified in ARM 24.159.401. The application for all APRNs except practicing CRNAs must include:

(a) evidence of successful completion of a graduate level course that provides a minimum of the equivalent of three academic semester credit hours (equaling a minimum of 45 contact hours) from an accredited program in pharmacology, pharmacotherapeutics, and the clinical management of drug therapy related to the applicant's area of specialty. The academic credits must be obtained within a ~~two-year~~ three-year period immediately prior to the date the application is received at the board office and must meet the following requirements:

(i) through (e) remain as proposed.

(2) Practicing CRNAs may qualify for prescriptive authority by meeting the continuing education requirements of ARM 24.159.1418.

(2) and (3) remain as proposed but are renumbered (3) and (4).

24.159.1464 PRESCRIBING PRACTICES (1) Prescriptions must comply with all applicable state and federal laws.

(2) All written prescriptions must include the following information:

(a) name, title, address, and phone number of the APRN who is prescribing;

(b) through (d) remain the same.

(e) Drug Enforcement Administration (DEA) number of the prescriber on all scheduled drugs; and

(f) all requirements of state and federal regulations regarding prescriptions.

(3) ~~An APRN with prescriptive authority may prescribe drugs only when a valid prescriber-patient relationship exists.~~ Records of all prescriptions must be documented in client records.

(4) through (7) remain as proposed.

24.159.1466 QUALITY ASSURANCE OF APRN PRACTICE (1) through (2)(d) remain as proposed.

(e) description of the method the peer-reviewer will use to address ~~corrective action~~ areas in need of attention or improvement, if indicated, and to ensure follow-up evaluation.

(3) and (3)(a) remain as proposed.

(b) ~~describe the corrective action taken by the APRN to address each identified practice deficiency~~ provide verification that area(s) identified by the peer reviewer as needing attention and improvement have been appropriately addressed according to the APRN's stated plan; and

(c) remains as proposed.

24.159.1470 NURSE PRACTITIONER PRACTICE (1) remains as proposed.

(2) Every licensed NP shall abide by the ~~scope and~~ practice standards and guidelines ~~of practice~~ established by a NP national professional organization as identified by the NP.

24.159.1475 CERTIFIED NURSE MIDWIFERY PRACTICE (1) remains as proposed.

(2) All licensed CNMs shall be enrolled in either the certification maintenance program or the continuing competency assessment program through the American College of Nurse Midwives.

~~(2)~~ (3) Every licensed CNM shall abide by the ~~scope and~~ practice standards and guidelines ~~of practice~~ established by a CNM national professional organization as identified by the CNM.

24.159.1480 CERTIFIED REGISTERED NURSE ANESTHETIST PRACTICE (1) remains as proposed.

(2) Every licensed CRNA shall abide by the ~~scope and~~ practice standards and guidelines ~~of practice~~ established by a CRNA national professional organization as identified by the CRNA.

24.159.1485 CLINICAL NURSE SPECIALIST PRACTICE (1) remains as proposed.

(2) Every licensed CNS shall abide by the ~~scope and~~ practice standards and guidelines ~~of practice~~ established by a CNS national professional organization as identified by the CNS.

24.159.1490 PSYCHIATRIC-MENTAL HEALTH PRACTITIONER PRACTICE (1) remains as proposed.

(2) Every licensed psychiatric NP and CNS shall abide by the ~~scope and~~ practice standards and guidelines ~~of practice~~ established by a national professional organization as identified by the NP or CNS.

7. The board has adopted New Rule I (24.159.1424), exactly as proposed.

BOARD OF NURSING
SUSAN RAPH, RN, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 27, 2008