

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

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 24.159.1006 and 24.159.1206 ) ADOPTION  
cosmetic procedure standards, and )  
adoption of NEW RULE I nonroutine )  
applications pertaining to nursing )

TO: All Concerned Persons

1. On February 26, 2009, the Board of Nursing (board) published MAR Notice No. 24-159-73 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 252 of the 2009 Montana Administrative Register, issue no. 4.

2. On March 19, 2009, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the March 27, 2009, 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: One commenter opined that the proposed amendments to ARM 24.159.1006 and 24.159.1206 unnecessarily jeopardize patient safety by allowing advanced practice registered nurses (APRNs) to supervise licensed practical (LPNs) or registered nurses (RNs) in cosmetic procedures. The commenter stated that an APRN's education does not include the appropriate training to supervise cosmetic procedures and that cosmetic procedures should only be performed by licensed physicians or under a licensed physician's direct, on-site supervision.

RESPONSE 1: APRNs are allowed by law and administrative rule to supervise RNs and LPNs in all circumstances. Since certain APRNs possess the knowledge, skills and abilities to perform cosmetic procedures independently, it is within the APRN's scope of practice to supervise RNs and LPNs in performing these procedures. The board notes that APRNs and dermatologists both implement patient safety as a primary concern.

COMMENT 2: A commenter stated that the curriculum goals of the LPN education programs do not prepare the LPN to understand the complexity of cosmetic medical procedures and potential adverse events or complications.

RESPONSE 2: APRN education and training vastly exceeds that of LPNs. APRNs who have had the proper training and who maintain ongoing competency in the performance of specific cosmetic procedures are qualified to provide on-site

supervision of LPNs working within the APRNs' scope of practice. The board acknowledges that medical doctors may be trained and qualified to perform certain cosmetic procedures that are outside the APRN scope of practice.

COMMENT 3: One commenter suggested amendments to several sections of New Rule I, but offered no rationale for the suggested changes.

RESPONSE 3: The board concluded that the rule as proposed succinctly and clearly described the conditions under which a licensure application would be classified as nonroutine.

COMMENT 4: A commenter suggested replacing (1)(d) in New Rule I with a more narrow description of applicants whose use of alcohol or other mood-altering substances adversely affected the applicant's ability to practice a profession.

RESPONSE 4: Following discussion and noting that chemical dependency is a disorder requiring diagnosis, the board decided to amend (1)(d) to address applicants with physical or mental conditions or having used alcohol or mood-altering substances to the detriment of their nursing practice.

4. The board has amended ARM 24.159.1006 and 24.159.1206 exactly as proposed.

5. The board has adopted NEW RULE I (24.159.403), with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.159.403) NONROUTINE APPLICATIONS (1) through (c) remain as proposed.

(d) a physical or mental condition, ~~including chemical dependency,~~ or the use of alcohol or other mood-altering substances that may adversely affect the applicant's ability to practice nursing;

(e) through (5) remain as proposed.

BOARD OF NURSING  
KATHY HAYDEN, LPN, 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 August 3, 2009