

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

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

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On March 19, 2009, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing (board) no later than 5:00 p.m., on March 13, 2009, to advise us of the nature of the accommodation that you need. Please contact Barbara Swehla, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2342; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnur@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.159.1006 STANDARDS RELATED TO THE PRACTICAL NURSE'S ROLE IN COSMETIC PROCEDURES (1) The practical nurse who has the proper training and on-going competency and while under the direct supervision of a physician or APRN may perform procedures using the following technologies:

(a) through (f) remain the same.

(2) The practical nurse who has the proper training and on-going competency and while under the direct supervision of a physician or APRN may inject or insert the following:

(a) through (e) remain the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-102, ~~37-8-202~~, MCA

REASON: The board determined it is reasonably necessary to amend ARM 24.159.1006 and 24.159.1206 to clarify that advanced practice registered nurses (APRNs) having the appropriate training and competence are qualified to supervise both registered nurses (RNs) and licensed practice nurses (LPNs) in the performance of nonsurgical cosmetic procedures. RNs and LPNs performing

nonsurgical cosmetic procedures, in turn, must be trained and competent to perform such procedures and work only under the required supervision of a physician or APRN. This issue came up late in the board's 2008 APRN rules project but the board decided to hold the amendment of these two rules for separate notice and hearing.

Implementation and authority cites are amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority.

24.159.1206 STANDARDS RELATED TO THE REGISTERED NURSE'S ROLE IN COSMETIC PROCEDURES (1) A licensed registered nurse who has the proper training and on-going competency may perform the following tasks and procedures only under the on-site supervision of a physician or APRN:

(a) through (g) remain the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-102, MCA

4. The proposed new rule provides as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) A nonroutine application means an application submitted to the board in which the applicant has one or more of the following:

(a) a pending or completed disciplinary action involving licensure in this state, another state, territory, or jurisdiction;

(b) voluntarily or involuntarily surrendered or had restrictions placed on hospital privileges, health maintenance organization participation, or Medicaid/Medicare privileges;

(c) voluntarily or involuntarily surrendered or restrictions placed on the privilege to prescribe or dispense medications;

(d) a physical or mental condition, including chemical dependency, that may adversely affect the applicant's ability to practice nursing;

(e) conviction for a crime directly related to or committed during the course of the applicant's licensed practice;

(f) a total of two or more misdemeanor convictions, one of which occurred within five years of the date of application;

(g) a conviction or a deferred prosecution for a felony crime;

(h) an incomplete term of probation for a criminal conviction;

(i) loss of documentation due to natural disaster or national emergency;

(j) completed nursing education in a foreign nation;

(k) completed nursing education in a branch of the U.S. military; or

(l) inconsistencies in the information contained in the application or supporting documentation for the application.

(2) The department shall review all nonroutine applications and request additional information or documentation of the applicant, as necessary.

(3) The department, in consultation with the legal staff and in accord with board policies, shall determine whether to issue the applicant a temporary practice permit.

(4) The board may review nonroutine applications to make the final licensing decisions.

(5) An applicant whose application for licensure is denied by the board may request, in writing within 20 days of the denial, a contested case hearing before an impartial hearings examiner, in accord with the provisions of the Administrative Procedures Act, Title 2, chapter 4, part 6, MCA.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-101; 37-1-131; 37-8-405; 37-8-406; 37-8-415; 37-8-416; 37-8-421, MCA

REASON: It is reasonable and necessary to adopt this new rule to further implement 37-1-101, MCA, which states the department shall process routine licensure applications on behalf of the professional and occupational licensing boards. Nonroutine applications requiring board review and approval are generally defined in department rule at ARM 24.101.402(13). The board is proposing this new rule to identify additional criteria determined by the board to characterize nonroutine applications which require the board's consideration for processing.

In proposing this new rule, the board seeks to further delineate the general definition of nonroutine applications to include applicants who have surrendered any nursing related privileges, applicants educated in the U.S. military, and applicants with certain prior criminal convictions. Following adoption of this new rule, the board will develop policies relating to nonroutine application review to improve licensing efficiency and respond to healthcare employers' needs to get nurses to work. With these changes, the board ensures that licensing processes and decisions are based on sound principles and ensure adequate protection of the public.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdnur@mt.gov, and must be received no later than 5:00 p.m., March 27, 2009.

6. An electronic copy of this Notice of Public Hearing is available through the department and board site on the World Wide Web at www.nurse.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdnur@mt.gov, or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. Patricia Bik, attorney, has been designated to preside over and conduct this hearing.

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 February 17, 2009