

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 24.159.301 definitions,)	ADOPTION
24.159.401 fees, 24.159.601 through)	
24.159.680 nursing education)	
programs, 24.159.1021 LPN practice)	
permit, 24.159.1028 LPN licensure,)	
24.159.1029 LPN foreign)	
requirements, 24.159.1221 RN)	
practice permit, 24.159.1228 RN)	
licensure, 24.159.1229 RN foreign)	
requirements, 24.159.1605)	
delegation practices, 24.159.2020)	
and 24.159.2021 nondisciplinary)	
track, 24.159.2301 conduct of nurses,)	
and the adoption of NEW RULES I)	
and II program standards, NEW)	
RULES III through VI continuing)	
education, and NEW RULE VII)	
clinical practice settings)	

TO: All Concerned Persons

1. On September 9, 2010, the Board of Nursing (board) published MAR notice no. 24-159-74 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1930 of the 2010 Montana Administrative Register, issue no. 17.

2. On September 30, 2010, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the October 8, 2010, deadline.

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

ARM 24.159.301 (definitions):

COMMENT 1: A commenter opposed calculating contact hours in half-hour increments because the language is inconsistent with many continuing education accrediting body standards as well as language proposed elsewhere in this notice.

RESPONSE 1: The board agrees and is amending ARM 24.159.301(7) accordingly.

COMMENT 2: A commenter suggested the board amend ARM 24.159.301(9) and New Rule III so that a continuing education provider is "an entity that is approved by an accredited or approved organization to provide continuing education programs."

RESPONSE 2: The board concluded that it is not necessary to add "approved" to the rule since accrediting organization is already defined in in this rule as a professional organization, which has been approved by the board. Moreover, the commenter's proposed amendment would allow any "accredited or approved" organization to, in turn, approve another accrediting organization, bypassing direct board approval of accrediting organizations.

COMMENT 3: A commenter asked the board to clarify the meaning of "national accreditation" in (18), stating that it is unclear whether regional accreditation bodies listed in ARM 24.159.615(2) have any role in the approval of nursing education programs. The commenter suggested that it would be helpful to define regional accreditation as it relates to colleges, universities, and nursing education programs.

RESPONSE 3: The board agrees and is amending ARM 24.159.615(2) to clarify the purpose of regional accreditation programs in relation to colleges, universities, and nursing education programs.

ARM 24.159.401 (fees):

COMMENT 4: A commenter agreed with the reduced fee in (2) for subsequent applications to take the NCLEX, but asked the board to clarify that the NCSBN sets the examination fees and suggested that if a previous application lapsed after the first 12-month period of time, then a new application would need to be submitted.

RESPONSE 4: The board agrees that the NCSBN sets NCLEX exam fees, and notes that some applicants mistakenly send NCLEX exam fees to the board office. The board is therefore amending ARM 24.159.401(2) to clarify that the fee is an application fee for approval to retake the NCLEX exam, not the fee charged by the NCSBN for administering the exam. As to the commenter's suggestion about a new application after the first 12-month period, the board notes that current rules state that a new application must be submitted if an applicant fails to meet application requirements within one year, and this rule already requires an application fee. The board declined to further amend this rule.

COMMENT 5: A commenter stated that the board does not certify APRNs and recommended language changes to (4) of this rule. The commenter also asked how many fees are due if multiple APRN specialties are obtained.

RESPONSE 5: The board agrees that it does not certify APRNs, but the suggested language fails to address the perceived problem. The board points out that an APRN's practice within the scope of a specialty certification requires that the APRN first pay an application fee to the board for each specialty certification and then renew each specialty certification with the board. An APRN must consult the

specific rules addressing application and renewal of APRN licenses, but the board concluded that the proposed language in (4) adequately explains the requirements.

ARM 24.159.609 (program evaluation):

COMMENT 6: One commenter suggested that (2)(e) should require evidence of the incorporation of quality improvement initiatives and that the language is outdated.

RESPONSE 6: Presumably, the commenter's suggested language is intended to either raise the bar for nursing education programs or more clearly describe what the appropriate standard should be. The board fails to see how the suggested language accomplishes either of those ends and is amending ARM 24.159.609 exactly as proposed.

COMMENT 7: A commenter suggested amending (2)(g), (3)(c) and (d) to require that nursing education programs explain why particular methods for measuring student attrition and employer satisfaction were chosen.

RESPONSE 7: At the time of the annual report, the board may ask for an explanation of why a particular measurement was used, if that appears to be an issue. Moreover, the board is more interested in how each particular program explains the results, than in micromanaging how programs present their reports.

COMMENT 8: A commenter suggested the board should calculate the five-year data that is required in (3)(a) by using NCLEX data, rather than having the nursing education programs provide the data as part of their reports.

RESPONSE 8: The board notes that the current process keeps the board from controlling the minutia of program reports. In addition, the board monitors the NCLEX data and the programs are accountable to the board, so there is no tangible risk of being provided unreliable data by the programs.

ARM 24.159.640 (change in approval status of program):

COMMENT 9: One commenter suggested the board change "achieved" to "demonstrated" in (7).

RESPONSE 9: If a program fails to demonstrate compliance, the board will be unable to determine that the program has achieved compliance, so demonstration of the program's compliance is already incumbent upon the program. The board is amending ARM 24.159.640(7) exactly as proposed.

ARM 24.159.666 (use of CRRNs in nursing education programs):

COMMENT 10: A few commenters suggested that restricting the number of CRRNs and students that a program's faculty may supervise does not protect the public. One commenter said that it makes more sense to limit the number of students

supervised by a CRRN, rather than the number of CRRNs that a faculty member may supervise. Another commenter did not oppose limiting faculty supervision to no more than 20 students, but agreed with the other commenters that restricting total CRRNs makes no sense.

RESPONSE 10: The board agrees with the commenters' rationale and is amending ARM 24.159.666 accordingly. The board notes that a program's failure to place necessary controls on the number of students or CRRNs under the particular circumstances of that program may place the program's approval at risk, so that a meaningful incentive is already in place to discourage abuse.

COMMENT 11: One commenter asserted that the amendments to this rule place a burden on rural facilities by prohibiting CRRNs from having clinical responsibilities concurrent with the supervision of students.

RESPONSE 11: The board notes that the commenter's suggestion may make CRRNs virtually indistinguishable from preceptors. Moreover, either the supervision of students or the care of patients could potentially be compromised if both functions were allowed to be performed simultaneously, creating a risk to the public.

ARM 24.159.677 (professional nursing curriculum specific to Associate degrees):

COMMENT 12: One commenter asked how structured vs. unstructured settings in (1) will be monitored in the Associate degree role, which prepares nurses for "structured" settings, only, while the Baccalaureate degree role would prepare nurses for both structured and unstructured settings. The commenter pointed out that this distinction is not made with NCLEX-RN licensure and said that (5) denies an Associate degree nurse a leadership role within the interdisciplinary health care delivery system, which could be very limiting considering that NCLEX-RN licensure focuses on management of care and leadership to verify competency in this area, regardless of the type of degree obtained.

RESPONSE 12: The board notes that ARM 24.159.677 addresses curriculum, not practice, and therefore, the practice of a RN nurse prepared through an Associate degree program is not necessarily limited by this rule. The board is amending this rule exactly as proposed.

ARM 24.159.1021 and 1221 (temporary practice permit):

COMMENT 13: One commenter stated that requiring direct supervision of every temporary practice permit holder serves no practical purpose. The commenter opined that, following amendment, a permit holder would be unable to practice in home health care while waiting on a delayed CGFNS report.

RESPONSE 13: The proposed amendments to require supervision pending licensure will adequately protect both the license applicant and the public. Before direct supervision can end, all qualifications of the applicant must be confirmed and

the application must be approved prior to licensure. The board is amending ARM 24.159.1021 and 24.159.1221 exactly as proposed.

ARM 24.159.1029 and 1229 (foreign-educated applicants):

COMMENT 14: A commenter stated that the board lacks the expertise to determine which other education evaluation services, other than CGFNS, could be used to provide the "very necessary barrier to licensure of foreign educated applicants."

RESPONSE 14: The board notes that if the board is capable of determining that CGFNS is an appropriate education evaluation service, it is also able to determine the appropriateness of other evaluation services. The board concluded that the current rules hinder applicants with an unnecessary barrier to licensure and is amending ARM 24.159.1029 and 24.159.1229 exactly as proposed.

COMMENT 15: One commenter approved allowing entities other than CGFNS to evaluate foreign education and suggested that the board establish a vetting process for these companies to ensure that Montana's residents receive safe care that is equivalent to that provided by domestically educated nurses.

RESPONSE 15: The board may consider establishing a vetting process in a future meeting, but is unable to address that suggestion in the current rule notice.

ARM 24.159.1605 and 2301 (name badges):

COMMENT 16: A few commenters approved having just the nurse's first name and first initial of the last name on a name badge, since a nurse's identity is known to the employer, and the requirement will not compromise the public's protection.

RESPONSE 16: The board agrees with the commenters' reasoning and is amending ARM 24.159.1605 and 2301 exactly as proposed.

COMMENT 17: One commenter stated that to accomplish the board's duty of protecting the public health, safety, and welfare, both first and last names of must be on nurses' name badges. The commenter asserted that the public has a right to know the identity of the nurses treating them and the board has not provided any reliable collaboration between name badges and violence against nurses. The commenter also opined that the statement of reasonable necessity is inadequate, the board is unable to change the current name badge requirements unless doing so would enhance the protection of the public, nicknames are used in some facilities, and that many states require public identification of licensees.

RESPONSE 17: The board points out that the proposed name badge amendments reflect only the minimum information required and that individual facilities or employers may require more. Because employers know each nurse, failing to print the full last name on a name badge or using a preferred first name does not hide the identity of nurses from the public. The board has received numerous complaints

from nurses – who are also members of the public – in which the nurses link the use of full names on name badges to harm or threat of harm to the nurses. The board does not believe that the change will compromise the public's protection, and rejects the assertion that the board is only able to amend rules to enhance public protection. The board concluded that the proposed amendments will likely enhance protection for nurses and will harm no other members of the public.

New Rules III through VI (continuing education):

COMMENT 18: One commenter asked if the board would notify licensees of approved continuing education (CE) courses. The commenter further stated that the board should consider all licensees, including those who have limited access to computers for online courses, that CE will be a financial burden on nurses, especially in a state as large as Montana, and that education required by employers would not be counted as CE under the proposed rules.

RESPONSE 18: The board points out that CE is considered an important requirement for the protection of the public and that there are many resources available for obtaining qualified continuing education.

COMMENT 19: One commenter, who is dually licensed as an LPN and a nursing home administrator, noted that a nursing home administrator license requires 25 hours of CE annually, and suggested giving nurses in management positions credit for "management criteria" since many CE hours relate back to care issues.

RESPONSE 19: The board notes that, regardless of CE requirements for other licenses, a nurse is required to obtain 24 hours of CE every two years. New Rules III through VI will allow a licensee to use CE obtained for another license, if it also qualifies as CE within the new rules.

COMMENT 20: A commenter suggested amending New Rule III(1)(b) to accept CE that provides education in nursing roles or practice, stating that there are many nursing roles today that might not be traditionally considered nursing practice, but the roles themselves may require nursing education, experience, and licensure.

RESPONSE 20: The board agrees and is amending New Rule III accordingly.

COMMENT 21: A commenter suggested that proposed New Rule III(2), defining how CE is qualified as contact hours, is too limiting.

RESPONSE 21: The board determined that (2) is inconsistently restrictive in relation to ARM 24.159.301(8), since it omits "continuing education provider" from the list of entities that may approve continuing education, and is amending this rule accordingly.

COMMENT 22: One commenter suggested amending New Rule IV(3) to better direct staff in prorating new licensees' CE by requiring that licensees submit

requests to the board office, instead of the board. The commenter also suggested changing the language from "licensed less than 2 years" to "issued an original Montana nursing license during the course of the two year renewal period."

RESPONSE 22: The board concluded that the concern about prorating CE is sufficiently addressed in proposed New Rule IV without further amendments, and the board maintains appropriate control over CE proration. The proposed language in New Rule IV does not prevent the board from directing staff to handle proration requests, as this may be accomplished by motion during a board meeting. The board determined that the proposed language more clearly expresses the intent of the board than does the commenter's suggested change.

COMMENT 23: A commenter suggested deleting the commas after "two-year period" in New Rule IV(5), and after "setting" in New Rule VII(2)(h).

RESPONSE 23: The board agrees and is amending the new rules accordingly.

COMMENT 24: A commenter suggested amending New Rule V(1)(b) to add "or class for college credit" as such classes may be used to satisfy CE requirements.

RESPONSE 24: The board points out that, as stated by the commenter, the rules already provide for CE credit for college classes. The board is adopting New Rule V exactly as proposed.

COMMENT 25: A commenter suggested amending New Rule VI(3) for clarity by replacing "within 30 days" with "by the date specified in the notice."

RESPONSE 25: The board agrees and is amending New Rule VI accordingly.

COMMENT 26: One commenter said that New Rule VI(4) should be amended to require licensees to maintain records beyond two years, stating that a strict application of the rule may hinder the board's ability to audit even the immediately prior renewal period.

RESPONSE 26: The board agrees and is amending (4) of New Rule VI to clarify that proof of CE must be maintained for the period that is no less than two years following the last day of the renewal period during which the CE was obtained.

COMMENT 27: A commenter suggested the board amend New Rule VI(6) and ARM 24.159.2301 to specify that failure to respond to a board notice of audit may be considered unprofessional conduct and be subject to board sanctions. The commenter opined that disciplinary actions are taken against licenses, not licensees.

RESPONSE 27: The board disagrees that disciplinary actions are not taken against licensees, because the licensee is named as a respondent in the action and may end up being personally liable for fines, being personally prohibited from practicing nursing, being subject to personal supervision, or being personally required to report

to the board on a regular basis, among other sanctions that personally affect the licensee. The board notes that the suggested language that a "failure" may be subject to board sanctions is nonsensical, and is not making the suggested change.

COMMENT 28: One commenter expressed general approval of the effort put into the rule amendments and adoptions, and listed the commenter's concerns.

RESPONSE 28: The board appreciates all comments made during the rulemaking process. The board noted the stated areas of concern and will entertain any ideas presented that address the concerns at a future meeting.

4. The board has amended ARM 24.159.601 through 24.159.614, 24.159.616 through 24.159.665, 24.159.667 through 24.159.680, 24.159.1021, 24.159.1028, 24.159.1029, 24.159.1221, 24.159.1228, 24.159.1229, 24.159.1605, 24.159.2020, 24.159.2021, and 24.159.2301 exactly as proposed.

5. The board has amended ARM 24.159.301, 24.159.401, 24.159.615, and 24.159.666 with the following changes, stricken matter interlined, new matter underlined:

24.159.301 DEFINITIONS (1) through (6) remain as proposed.

(7) "Contact hours" means the time period of instruction determined by the continuing education provider and indicated on the participant's certificate of completion. ~~Contact hours may be calculated in half-hour increments.~~ One academic semester credit equals 15 contact hours; one academic quarter credit equals 12.5 contact hours.

(8) through (38) remain as proposed.

24.159.401 FEES (1) remains as proposed.

(2) The application fee required for requesting board approval to retake fee ~~for repeating the examination (NCLEX) for RN or LPN is \$50.~~

(3) through (19) remain as proposed.

24.159.615 RECOGNIZED ACCREDITATION BODIES (1) remains as proposed.

(2) The board recognizes the following regional accreditation bodies ~~for purposes of approving nursing education programs:~~

(a) through (f) remain as proposed.

24.159.666 USE OF CLINICAL RESOURCE REGISTERED NURSES (CRRNS) IN NURSING EDUCATION PROGRAMS (1) remains as proposed.

(2) The supervising faculty member is responsible for all students in the clinical setting, including those supervised by the CRRNs. ~~The faculty may supervise no more than two CRRNs. One faculty member cannot have responsibility for more than 20 students at one time.~~ The maximum number of nursing students a CRRN may supervise at any one time is ten.

(3) through (4)(d) remain as proposed.

6. The board has adopted NEW RULES I (24.159.632), II (24.159.611), and V (24.159.2104) exactly as proposed.

7. The board has adopted NEW RULES III (24.159.2101), IV (24.159.2102), VI (24.159.2106), and VII (24.159.608) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE III STANDARDS FOR CONTINUING EDUCATION

(1) through (1)(a) remain as proposed.

(b) offers greater depth of knowledge and skills in a particular area of nursing role or practice;

(c) through (h) remain as proposed.

(2) To qualify as contact hours, continuing education courses must be approved by an accrediting organization or provided by an academic institution of higher learning, a continuing education provider, or an APRN certifying body.

NEW RULE IV BIENNIAL CONTINUING EDUCATION REQUIREMENTS

(1) through (4) remain as proposed.

(5) Licensees seeking reactivation or reinstatement of an inactive license must complete 24 contact hours of continuing education during the two-year period, immediately preceding application for reinstatement.

(6) remains as proposed.

NEW RULE VI AUDITING OF CONTACT HOURS (1) and (2) remain as proposed.

(3) Licensees shall respond to the notice of audit ~~within 30 days~~ by the date specified in the notice by submitting proof of completion of continuing education for the renewal period specified by the board. Proof may consist of copies of the continuing education certificates issued by the continuing education provider, transcripts with course descriptions or other verified documentation of course completion.

(4) Licensees must retain proof of completion of continuing education ~~during the next~~ for the period of no less than two years following the last day of the renewal period during which the continuing education was obtained.

(5) and (6) remain as proposed.

NEW RULE VII PLACEMENT OF AN OUT-OF-STATE NURSING STUDENT IN A MONTANA CLINICAL PRACTICE SETTING (1) through (2)(g) remain as proposed.

(h) verification from relevant directors of Montana nursing education programs that placement of the out-of-state student in the identified Montana clinical practice setting, will not displace a Montana nursing student;

(i) through (5) remain as proposed.

BOARD OF NURSING
KATHY HAYDEN, LPN

/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 November 1, 2010