

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 24.159.2001, 24.159.2002,) REPEAL
24.159.2003, 24.159.2004,)
24.159.2010, 24.159.2011,)
24.159.2012, 24.159.2013,)
24.159.2020, 24.159.2021, and the)
repeal of ARM 24.159.2022 and)
24.159.2023, all related to the nurses')
assistance program)

TO: All Concerned Persons

1. On November 10, 2011, the Board of Nursing (board) published MAR notice no. 24-159-76 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 2338 of the 2011 Montana Administrative Register, issue no. 21.

2. On December 5, 2011, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the December 13, 2011, deadline.

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

COMMENT 1: One commenter suggested that references to "nurses" in ARM 24.159.2001 should be changed to "licensees," so that it is clear to the reader that medication aides are served by and subject to the Nurses' Assistance Program (NAP).

RESPONSE 1: Noting that it is the board's intention for all licensees subject to the board's jurisdiction to be served by and subject to the NAP, the board acknowledges that current statutory language in 37-8-202, MCA, limits the program's applicability to licensed nurses only. The board is unable to broaden the applicability through rulemaking, but must consider amending the statute which would be consistent with similar laws regarding assistance programs under the jurisdiction of other boards.

COMMENT 2: A commenter suggested the board amend ARM 24.159.2001 to standardize language among statutes and rules, be more inclusive as to the bases of impairment, and clarify that only impaired licensees are subject to the NAP.

RESPONSE 2: The board is incorporating most of the suggested language as it is consistent with the proposed rule or improves the consistency of language used within the board's rules. However, the board is neither altering the order of the

sentences, nor including the commenter's phrase "whose judgment or ability to practice is impaired." The board is amending the rule to include "who are found to be physically or mentally impaired" to be consistent with the implemented statute.

COMMENT 3: A commenter suggested adding "and who has experience treating healthcare professionals," to ARM 24.159.2003(3)(e) to make the language consistent with that in (3)(b) through (d) of the rule.

RESPONSE 3: The board agrees with the commenter and is amending the rule accordingly.

COMMENT 4: A commenter suggested the board amend ARM 24.159.2020(1) to include "mental illness," and language to require proof of one's inability to practice with reasonable skill and safety as a prerequisite to admission into the alternative monitoring track of NAP.

RESPONSE 4: The board agrees with the commenter's suggestion to add "mental illness" and is amending the rule accordingly. However, the board concluded that adding the language regarding inability to practice may improperly interfere with the board's capacity to provide help to licensees before the inability to safely practice and the resulting harm occur. The board is also concerned that such language may be interpreted as a limitation that would unintentionally narrow the board's ability to address complaints that deal with issues other than "practice issues," and is not making the suggested amendment at this time.

COMMENT 5: One commenter suggested the board amend ARM 24.159.2020(2) to clarify that alternative monitoring track participants are known only to the board's screening panel instead of the full board.

RESPONSE 5: As provided in 37-1-307(1)(d), MCA, the board has established a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. Because all complaints against licensees are reviewed by the screening panel, and not the full board, the board determined the suggested language is not necessary to protect participants' anonymity.

The board notes that the screening panel is not a substitute for the board in relation to the board's responsibility to establish and administer the NAP. The board is not adding the suggested language, but retaining the current reporting process, as it provides the necessary transparency and accountability sought by the legislature through the recent passage of the assistance program legislation.

COMMENT 6: One commenter suggested the board strike "such as diverting drugs by replacing the drug with another drug," from ARM 24.159.2021(2)(d), because the rule's current language regarding behavior with high potential to cause patient harm is sufficient.

RESPONSE 6: The board's only concern with the suggested deletion is that the board does not intend to be prohibited from determining what amounts to behavior with high potential to cause patient harm. Being advised by legal counsel that the rule language as proposed does not create an exclusive list, but only provides an example and benchmark for behavior the board may consider having "high potential to cause patient harm," the board is not deleting the language as suggested.

COMMENT 7: A commenter offered general support for various parts of the notice, with respect to the rules being amended or repealed.

RESPONSE 7: The board appreciates all public input received through the rulemaking process.

4. The board has amended ARM 24.159.2002, 24.159.2004, 24.159.2010, 24.159.2011, 24.159.2012, 24.159.2013, and 24.159.2021 exactly as proposed.

5. The board has repealed ARM 24.159.2022 and 24.159.2023 exactly as proposed.

6. The board has amended ARM 24.159.2001, 24.159.2003, and 24.159.2020 with the following changes, stricken matter interlined, new matter underlined:

24.159.2001 INTRODUCTION OF THE NURSES' ASSISTANCE PROGRAM

(1) The Board of Nursing's medical assistance program shall be called the Nurses' Assistance Program (NAP), also referred to as the program. The program shall be based upon the concept that early identification, intervention, and referral to treatment are paramount to promoting public health, safety, and welfare in that it decreases the time between the nurse's acknowledgement of a substance use disorder or mental health problem or chronic physical illness and the time treatment is received. The NAP is a specially designed program that shall be available to assist all licensed nurses under the jurisdiction of the board ~~whose judgment or ability to practice may be~~ who are found to be physically or mentally impaired due to ~~by~~ habitual intemperance; ~~;~~ excessive use of addictive drugs, alcohol, or any other drug or substance; ~~;~~ by mental illness; ~~;~~ or chronic physical illness. The purpose of the program is to protect the public by putting appropriate monitoring processes in place for nurses ~~with problems with substance use or mental illness to maintain an ongoing recovery and to provide monitoring of nurses in the program~~ with impairments that result in the inability to practice with reasonable skill and safety.

(2) and (3) remain as proposed.

24.159.2003 PROGRAM DIRECTOR REQUIREMENTS (1) through (3)(d) remain as proposed.

(e) a medical doctor with a current and active license with no pending or current discipline and who has experience treating healthcare professionals; and

(f) remains as proposed.

24.159.2020 ALTERNATIVE MONITORING TRACK (1) remains as proposed.

(a) any licensee who identifies a substance use disorder or mental ~~health problem~~ illness or chronic physical illness and requests admission to the NAP and meets the admission criteria of ARM 24.159.2021; or

(b) through (3) 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 April 30, 2012