

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

In the matter of the amendment of)
ARM 24.159.2001, 24.159.2002,)
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)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On December 5, 2011, at 10:30 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and repeal 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 December 1, 2011, to advise us of the nature of the accommodation that you need. Please contact Cari Harris, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2340; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail nurse@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2011 Montana Legislature enacted Chapter 122, Laws of 2011 (House Bill 25), an act that revised laws relating to certain licensing boards' medical assistance programs. The bill was signed by the Governor on April 7, 2011, and became effective on October 1, 2011. Additionally, the National Council of State Boards of Nursing (NCSBN) recently published a manual and guidelines for nursing boards' alternative and disciplinary monitoring programs. The board established a committee that reviewed the nurses' assistance program rules. Following the committee's recommendations, the board determined it is reasonably necessary to amend the rules in subchapter 20 to align with the NCSBN publications and implement the new legislation.

The board is also amending the rules to eliminate outdated, redundant, and unnecessary provisions, and to align terminology with current national trends, curricula, industry usage, and standards. Other changes replace out-of-date terminology for current board and department processes, and amend both rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use. Punctuation and rule numbering is amended to comply with ARM formatting

requirements. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The rules proposed to be amended provide as follows, 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 nurses' assistance program (NAP)~~ NAP is a specially designed program that shall be available to assist Montana all licensed nurses under the jurisdiction of the board whose competency judgment or ability to practice may be impaired due to the abuse of habitual intemperance, excessive use of addictive drugs, or 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 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.

(2) The NAP will have two tracks:

(a) the disciplinary monitoring track; and

(b) the ~~nondisciplinary~~ alternative monitoring track.

~~(2)~~ (3) The NAP will monitor the nurses' rehabilitation process to ensure public safety safe practice. ~~Information that relates to the abuse of addictive drugs, alcohol, or any other drug or substance, may be reported by the licensee to the NAP in lieu of reporting to the board.~~

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: The board is amending this rule to set forth the program's purpose and underlying premise, as it was clear during the 2011 legislative session that many people are not familiar with the program.

The board is amending the rule to revise the names of the two tracks, after concluding that people do not realize that nurses are subject to the same requirements and level of monitoring regardless of the track they are in, and that participants in the alternative monitoring track could still be subject to discipline if the board felt it was necessary.

The board determined it is reasonably necessary to delete the provision for licensees reporting substance use issues to the program instead of the board. The board notes that while it is true that a licensee may self-report to the program, any and all criminal charges and convictions must be reported to the board and cannot be reported to the program in lieu of the board. Furthermore, with the changes to ARM 24.159.2020, the board will have access to all program participant information, so no participants are anonymous to the board.

24.159.2002 ADMINISTRATION OF THE PROGRAM (1) ~~The NAP will be under the jurisdiction of the board. The board may contract with a consultant to administer the NAP shall be administered so that it is transparent and accountable to the public.~~

(2) The NAP program director shall ensure that the program has adequate resources and staffing to implement policies and procedures and all requirements of the contracts the program has with the department and with each program participant.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: The board is amending (1) as it unnecessarily repeats 37-8-202, MCA, and to clarify that the department holds the authority to contract. The board is also amending (1) to specify the board's intent that the program is administered with transparency, as that was a concern raised during the 2011 Legislature. The board is adding (2) to clarify that the director must ensure there is adequate staff to administer the program to align with amendments proposed to ARM 24.159.2003.

24.159.2003 CONSULTANT PROGRAM DIRECTOR REQUIREMENTS

(1) The program director shall oversee the operation of the program and shall be responsible for ensuring that the program adheres to the contract entered into with the department.

(2) To be qualified, a consultant the program director must have be able to demonstrate the following:

~~(a) an unencumbered license as a registered nurse in Montana with a minimum of a baccalaureate degree in nursing;~~

~~(b) a state level certification appropriate for chemical dependency counseling;~~

~~(c) a minimum of three years nursing experience;~~

~~(d) two years previous experience related to monitoring health care professionals with substance abuse/dependency;~~

~~(e) education in identification, treatment, intervention, and rehabilitation of nurses with substance abuse/dependency; and~~

~~(f) two years employment experience in a recognized treatment program for chemical dependency.~~

(a) the education, experience, and knowledge necessary to gather, read, and understand reports from licensed professional staff, in order to sufficiently monitor the program participants;

(b) the ability to demonstrate an understanding of issues particular to licensed professional healthcare workers;

(c) the ability to identify participant noncompliance with the program participant contract and policies and procedures in a timely manner; and

(d) the ability to adhere to policies regarding reporting noncompliances to the board.

(3) The program director shall ensure that the individuals contracted or employed by the program must include, but are not limited to:

(a) the program director;

(i) the program director cannot directly assess nurse program participants without staff input.

(b) a RN or APRN who holds a current and active license with no pending or current discipline, and has experience treating healthcare professionals;

(c) a licensed addiction counselor who holds a current and active license with no pending or current discipline, and has experience treating healthcare professionals;

(d) a licensed mental health practitioner who holds a current and active license with no pending or current discipline, and has experience treating healthcare professionals;

(e) a medical doctor with a current and active license with no pending or current discipline; and

(f) a monitor who serves as the consultant to the board;

(i) the monitor cannot directly assess or treat nurse program participants; and

(ii) the program director can serve as the monitor.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: To coordinate with the department's recent request for bids for assistance programs, the board is amending the rule to clearly set forth the qualifications and responsibilities of the program director. The board concluded that since the program will employ a nurse and a licensed addiction counselor, it is not necessary for the director to have those credentials, and that the director may also serve as the program monitor. To avoid conflicts of interest, the board is clarifying that the program director cannot directly assess program participants without staff input, and the monitor cannot directly assess or treat program participants.

24.159.2004 CONSULTANT ACTIVITIES DIRECTOR DUTIES (1) A ~~consultant~~ director shall:

~~(a) carry out all decisions mandated by the board~~ develop a policy and procedure manual;

~~(b) submit quarterly activity/statistical reports as defined by the board to the board;~~

~~(c) submit quarterly progress reports on licensees enrolled in the disciplinary track of the NAP;~~

~~(d) report licensees in the nondisciplinary track of the NAP to the board who do not comply with the NAP requirements and/or for whom there is reasonable suspicion they may not be able to practice safe nursing;~~

~~(e) and (f) remain the same.~~

~~(g) recommend admissions and discharges of participants in the NAP to the board as appropriate; and~~

~~(h) provide documentation of the monitoring of all NAP participants;~~

~~(i) maintain complete and accurate participant files;~~

- (j) cooperate with board audits; and
- (k) abide by all provisions of the contract entered into with the department.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: In setting forth the program director's duties, the board is removing the differentiation between disciplinary and alternative monitoring participants, as the board concluded that the director must report all participants who are out of compliance with NAP requirements.

24.159.2010 DISCIPLINARY MONITORING TRACK (1) Participation in the NAP may be mandated as a part of disciplinary action by the board ~~or if a complaint against the licensee has been submitted to the board.~~

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: The board is striking unnecessary language from this rule, since the board cannot take disciplinary action until a complaint is filed.

24.159.2011 ADMISSION CRITERIA - DISCIPLINARY MONITORING TRACK (1) A licensee may be admitted to the NAP disciplinary monitoring track if:

~~(a) the licensee has violated the statutes or rules related to nursing practice which involved alcohol and/or drugs and/or a mental illness or chronic physical illness, and whom the board has stipulated the NAP ordered into the program as a part of disciplinary action;~~

~~(b) the licensee agrees to abide by the terms of the NAP; or~~

~~(c) the nurse is from another state, has applied for a nursing license in Montana, and is mandated by final order of that state board of nursing to attend a NAP program.~~

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

24.159.2012 PROGRAM REQUIREMENTS -DISCIPLINARY TRACK

(1) The program requirements of the NAP ~~disciplinary track~~ are that the licensee shall:

(a) agree to evaluations and testing necessary to determine treatment and monitoring needs while a part of the NAP;

(b) sign a contract with the NAP and comply with said contract and all requirements as indicated in the NAP participant handbook; and

(c) remains the same.

~~(2) The NAP shall be responsible for:~~

~~(a) submitting quarterly reports to the board;~~

~~(b) reporting to the board any violations of the NAP contract or any reasonable suspicion that the licensee may not be able to practice safe nursing.~~

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board is deleting the reference to the disciplinary track from (1), since the requirements for both program tracks are the same. The board is amending this rule to specify that participants must agree to recommended testing, because certain tests, such as urinalysis testing, are a primary component of monitoring. The board is deleting (2) as program responsibilities are set forth in ARM 24.159.2004.

24.159.2013 DISCHARGE CRITERIA -DISCIPLINARY TRACK (1) The licensee shall be discharged from the NAP ~~disciplinary track~~ when the licensee has:
(a) ~~successfully completed the NAP and complied with the final order of the board. The board will be notified of successful completion;~~
(b) failed to comply with the NAP contract. The NAP will submit a report of failure to comply ~~to the board~~ in the form of a complaint; or
(c) voluntarily withdrawn from the NAP. The NAP will submit a report in the form of a complaint to the board.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board is deleting the reference to the disciplinary track, because discharge criteria are the same for both program tracks. The board is deleting the requirement of compliance with a board order from (1)(a), because NAP participants may be discharged for fulfilling their NAP contract terms, but still have terms to meet pursuant to board order, that are outside the purview of the NAP. The board is deleting the provision on reporting successful completions to the board, as completions are included in the statistical reports mandated in ARM 24.159.2004. The board is specifying in (1)(b) and (c) that NAP must submit complaints when participants fail to comply with or voluntarily withdraw from the NAP, to avoid confusion that only statistical reports would be filed.

24.159.2020 NONDISCIPLINARY ALTERNATIVE MONITORING TRACK
(1) The ~~nondisciplinary alternative monitoring~~ track of the NAP is open to:
(a) any licensee who identifies a drug/alcohol problem substance use disorder or mental health problem or chronic physical illness and requests admission to the NAP and meets the admission criteria of ARM 24.159.2021; or
(b) those licensees referred by the board.
(2) Licensees With the exception of criminal charges and convictions, licensees may be reported by employers directly to the NAP in lieu of a formal complaint to the board. ~~The identity of participants in the nondisciplinary track of the NAP will remain unknown to the board unless there is a failure to enroll or comply with the requirements of the NAP.~~ Failure to enroll or comply with the NAP will result in a formal complaint to the board by the NAP.
(3) remains the same.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board is amending (2) to clarify that someone may be reported to the NAP in lieu of the board only if they have had no criminal charges or convictions. The board intends that this exception apply only to employers reporting their employee nurses, because employers would have to be involved in the employees' participation with the NAP.

Finally, the board is amending the rule to no longer keep participants in the alternative monitoring track unknown to the board. In an effort to establish and maintain full transparency between the program and the board, and to enhance public safety, the board concluded that names of all program participants should be known to the board, regardless of what track they are in.

24.159.2021 ADMISSION CRITERIA - NONDISCIPLINARY ALTERNATIVE MONITORING TRACK (1) A licensee may be admitted to the NAP ~~nondisciplinary alternative monitoring~~ track if the licensee is a:

~~(a) licensed nurse or previously licensed nurse in the state of Montana who requests admission;~~

~~(b) licensed nurse is from another state who and has applied for a nursing license in Montana and is enrolled in and compliant with a similar monitoring program in another state;~~

~~(c) licensee is without a previous disciplinary action from any licensing board;~~

~~(d) licensee against whom no notice of proposed board action or similar notice issued by a licensing board is does not have a disciplinary or other adverse action pending; or~~

~~(e) licensee who has successfully completed the NAP or similar monitoring program when enrolled.~~

(2) A licensee ~~whose nursing practice has involved death or significant harm to a patient is not eligible for the nondisciplinary track. is not eligible for admission to the alternative monitoring track without board review if the licensee:~~

~~(a) is not eligible for licensure in the jurisdiction;~~

~~(b) has previously been unsuccessfully discharged from a professional monitoring or assistance program;~~

~~(c) has caused known provable harm to a patient;~~

~~(d) has engaged in behavior that has high potential to cause patient harm such as diverting drugs by replacing the drug with another drug; or~~

~~(e) has diverted controlled substances; and~~

~~(f) has while under a NAP contract, returned to use of a prohibited or proscribed substance on three or more separate occasions.~~

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board is amending this rule to clarify that a nurse who is in another similar program in another state is eligible for alternative monitoring under Montana's program only if the nurse is and remains compliant with the other's state's program. The board is amending (2) to delineate various situations where an individual may be eligible for the alternative track, but would first require board review.

5. The rules proposed to be repealed are as follows:

24.159.2022 PROGRAM REQUIREMENTS - NONDISCIPLINARY TRACK
found at ARM page 24-16796.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board is repealing this rule since the requirements for both program tracks are the same and are specified in ARM 24.159.2012.

24.159.2023 DISCHARGE CRITERIA - NONDISCIPLINARY TRACK found
at ARM page 24-16796.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board is repealing this rule because the discharge criteria for both program tracks are the same and are set forth in ARM 24.159.2013.

6. 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 nurse@mt.gov, and must be received no later than 5:00 p.m., December 13, 2011.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's web 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.

8. 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 nurse@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 16, 2011, by regular mail.

10. Tyler Moss, 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 October 31, 2011