

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

In the matter of the amendment of)
ARM 24.159.1010 standards related)
to intravenous (IV) therapy, and the)
adoption of NEW RULES I through IV)
related to nurse licensure compact)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On June 5, 2015, at 1:00 p.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, 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 May 29, 2015, to advise us of the nature of the accommodation that you need. Please contact Cynthia Gustafson, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or nurse@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY: The 2015 Montana Legislature enacted House Bill 147, an act adopting the nurse licensure compact (Compact). The bill was signed by the governor February 27, 2015, and the Compact will become effective on October 1, 2015. Article VIII of the Compact requires the board to adopt uniform rules developed by the Compact administrators, and the board is proposing New Rules I through IV to comply with that requirement. The board is proposing these new rules to further implement the Compact legislation and to be consistent with other states that are Compact parties. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.159.1010 STANDARDS RELATED TO INTRAVENOUS (IV) THERAPY

(1) through (2)(i) remain the same.

(j) initiate and administer IV medications and fluids ~~that are commercially prepared or mixed and properly labeled by a registered nurse, pharmacist, physician, podiatrist, APRN, or dentist, in accordance with ARM 24.174.514~~ with the exception of the medications specifically prohibited in ARM 24.159.1011;

(k) through (3) remain the same.

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

REASON: The board is amending this rule to address ongoing confusion regarding LPN scope of practice relative to intravenous (IV) therapy. In October 2011, the board amended ARM 24.159.1011 to remove "mix unit dose IV medication solutions" from those IV therapy procedures that LPNs are prohibited from performing. The board intended for the amendment to clarify for LPNs their ability to mix IV medications.

However, the board has continued to receive questions because (2)(j) of this rule seems to limit LPNs to mixing only those IV medications and fluids that are commercially prepared or mixed and properly labeled by another health care professional. The board is now amending (2)(j) to clarify that LPNs can mix and administer IV medications not otherwise specifically prohibited by ARM 24.159.1011.

5. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) For the purpose of the Compact:

(a) "Board" means the Montana Board of Nursing.

(b) "Information system" means the coordinated licensure information system.

(c) "Primary state of residence" means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

(d) "Public" means any individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc.

AUTH: Chapter 65, Laws of 2015, MCA

IMP: Chapter 65, Laws of 2015, MCA

NEW RULE II ISSUANCE OF A LICENSE BY A COMPACT STATE

(1) For the purposes of this Compact:

(a) No applicant for initial licensure will be issued a compact license granting a multistate privilege to practice, unless the applicant first obtains a passing score on the applicable NCLEX examination or any predecessor examination used for licensure.

(b) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include, but is not limited to:

(i) driver's license with a home address;

(ii) voter registration card displaying a home address;

(iii) federal income tax return declaring the primary state of residence;

(iv) Military Form No. 2058 - state of legal residence certificate; or

(v) W2 form U.S. Government or any bureau, division, or agency thereof indicating the declared state of residence.

(c) A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued.

(d) A license issued by a party state is valid for practice in all other party states, unless clearly designated as valid only in the state which issued the license.

(e) When the board issues a license authorizing practice only in Montana and not authorizing practice in other party states, the license shall be clearly marked with words indicating that it is valid only in Montana as the state of issuance.

(f) A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed 90 days.

(g) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the 90-day period in (f) shall be stayed until resolution of the pending investigation.

(h) The former home state license shall no longer be valid upon the issuance of a new home state license.

(i) If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten business days, and the former home state may take action in accordance with that state's laws and rules.

AUTH: Chapter 65, Laws of 2015, MCA

IMP: Chapter 65, Laws of 2015, MCA

NEW RULE III LIMITATIONS ON MULTISTATE LICENSURE PRIVILEGE - DISCIPLINE (1) Home state boards shall include in all licensure disciplinary orders and/or agreements that limit practice and/or require monitoring the requirement that the licensee subject to said order and/or agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order and/or agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state boards.

(2) An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued.

AUTH: Chapter 65, Laws of 2015, MCA

IMP: Chapter 65, Laws of 2015, MCA

NEW RULE IV INFORMATION SYSTEM (1) Levels of access:

(a) The public shall have access to nurse licensure information limited to:

(i) the licensee's name;

(ii) jurisdiction(s) of licensure;

- (iii) licensure expiration date(s);
 - (iv) licensure classification(s) and status(es);
 - (v) public emergency and final disciplinary actions, as defined by contributing state authority; and
 - (vi) the status of multistate licensure privileges.
- (b) Nonparty state boards shall have access to all information system data except current significant investigative information and other information as limited by contributing party state authority.
- (c) Party state boards shall have access to all information system data contributed by the party states and other information as limited by contributing nonparty state authority.
- (2) The licensee may request in writing to the home state board to review the data relating to the licensee in the information system. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The board shall verify and within ten business days correct inaccurate data to the information system.
- (3) The board shall report to the information system within ten business days:
- (a) disciplinary action, agreement, or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority);
 - (b) dismissal of complaint; and
 - (c) changes in status of disciplinary action or licensure encumbrance.
- (4) Current significant investigative information shall be deleted from the information system within ten business days upon report of disciplinary action, agreement, or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint.
- (5) Changes to licensure information in the information system shall be completed within ten business days upon notification by a board.

AUTH: Chapter 65, Laws of 2015, MCA
IMP: Chapter 65, Laws of 2015, MCA

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 e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., June 12, 2015.

7. An electronic copy of this notice of public hearing is available at www.nurse.mt.gov (department and board's web site). 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 that 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 April 15, 2015, by electronic mail.

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.159.1010 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES I through IV will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to nurse@mt.gov.

11. Cynthia Gustafson, executive officer, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
HEATHER O'HARA, RN, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 4, 2015