

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,) REPEAL
24.159.1601 purpose, 24.159.1611)
criteria for delegation of nursing)
tasks, 24.159.1625 general nursing)
functions, and the repeal of)
24.159.411 parliamentary authority,)
24.159.1036 and 24.159.1236)
preparation of licenses, 24.159.1040,)
24.159.1240, and 24.159.1430)
duplicate or lost licenses, and)
24.159.1602, 24.159.1604,)
24.159.1605, 24.159.1610,)
24.159.1612, 24.159.1616,)
24.159.1630, 24.159.1631,)
24.159.1636, and 24.159.1640 all)
relating to nursing delegation)

TO: All Concerned Persons

1. On March 18, 2016, the Board of Nursing (board) published MAR Notice No. 24-159-82 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 497 of the 2016 Montana Administrative Register, Issue No. 6.

2. On April 8, 2016, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the April 15, 2016 deadline.

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

COMMENT 1: One commenter appreciated the proposed changes regarding delegation and stated that current rules are confusing and complex and add to rigidity in health care delivery, where creativity and innovation are needed. The commenter pointed out there are various professionals and paraprofessionals educated in many functions that previously had been considered to be within the domain of nursing practice, creating an overlap of training and duties. The commenter stated the rule changes as simplifications to the delegation rules that grant nurses flexibility to optimize the utilization of educated, trained, and competent unlicensed persons in providing patient care.

RESPONSE 1: The board agrees with the substance of this comment. The board is amending and repealing the delegation rules exactly as proposed, with one clarifying amendment to ARM 24.159.1611.

COMMENT 2: A commenter expressed general support for the proposed delegation rule changes and asserted they will remove unnecessary restrictions against delegation in outpatient clinics.

RESPONSE 2: The board recognizes the rule changes provide generally applicable guidance for nurses in all practice settings to determine when a task may be delegated. In this way, the rule amendments and repeals remove the rigid, setting-specific prohibitions of the prior rules. The board wishes to emphasize, however, that the delegation rule amendments are not intended to have any particular meaning or application that is specific to any particular nursing practice setting.

COMMENT 3: Several commenters supported the delegation rule changes and particularly those changes impacting the school setting. The commenters stated that in schools, students with chronic health conditions such as diabetes, need routine as well as emergency nursing care, often in the absence of an onsite school nurse. By removing unnecessary restrictions on nursing delegation, the commenters believe the amended rules will allow nurses to use their professional judgment to provide more practical, higher quality care in the school setting. Specifically regarding diabetes treatment, most of the commenters believe the new rules will allow nurses to determine when to delegate the administration of glucagon and insulin, and the monitoring of glucose, among other tasks.

RESPONSE 3: See RESPONSE 2. Additionally, the board intends that the amended rules will expand the management of care through generally applicable standards of delegation. While the board agrees the rule changes simplify the language of the rules, application of delegation standards will still require careful critical thinking and nursing judgment.

COMMENT 4: Several commenters expressed support for the proposed delegation rule changes and either offered specific conclusions about what can be delegated or posed specific questions to the board, and requested setting-specific interpretations of the rules after amendment.

RESPONSE 4: See RESPONSE 2. In addition, the board declines to provide setting-specific interpretations of the amended rules because the standards set forth in ARM 24.159.1611(5)(a) through (m) will provide sufficient guidance to the nurse, regardless of practice setting.

COMMENT 5: One commenter stated that the proposed language of ARM 24.159.1611(3) is ambiguous and leaves open the question of whether a non-nurse might delegate.

RESPONSE 5: The board determined this rule language is clear and unambiguous in this regard. Delegation, as used in the board's rules, is a nursing act. The board is careful to point out that while its rules are based on Montana laws that define the practice of nursing, which requires a license, the board's rules do not purport to regulate any person other than nurses. These rules do not limit or apply to schools, facilities, parents, or anyone else.

COMMENT 6: Several commenters questioned the requirement in ARM 24.159.1611(5)(b) that the delegating nurse ensure the task delegated is consistent with the UAP's job description. One commenter suggested changing the proposed language to require consistency with a UAP's assigned and volunteered job duties. The commenters stated that some settings, such as the school nurse setting, will present circumstances where delegation should be permitted even though the job descriptions of those available as UAP's are not expected to include any mention of administering medications or performing health care tasks. The commenters stated that the issue is whether a UAP's job description must include the administration of medications, the performance of health care tasks, or similar descriptions.

RESPONSE 6: See RESPONSES 2 and 4. Further, the board notes that the responsibility falls on the various employers, institutions, and facilities to ensure they have policies, procedures, and job descriptions suitable to their practice settings so that a nurse may delegate in the appropriate circumstances.

Moreover, in the *Journal of Nursing Regulation*, Vol. 7, Issue 1, April 2016, the National Council of State Boards of Nursing published national guidelines for delegation based on current research and literature in order to facilitate and standardize the nursing delegation process nationwide. The summary of what delegation is, found on page 6, says: "a delegatee is allowed to perform a specific nursing activity, skill, or procedure that is outside the traditional role and basic responsibilities of the delegatee's current job." This suggests, and the board agrees, that a delegatee's job description need not specifically permit the performance of nursing tasks in order to be "consistent with the UAP's job description" as required by ARM 24.159.1611(5)(b).

COMMENT 7: A commenter noted that while ARM 24.159.1611(5)(e) requires the nurse to ensure "the task does not require assessment or independent decision making during its performance or at completion," in school settings it is impractical for a UAP to consult the nurse for each dosage administration of insulin, or even to determine whether to administer insulin at all based on a blood glucose test. The commenter suggested adding "except that the acts of administering medication and calculating medication dosage pursuant to medical instruction shall not constitute assessment or independent decision making."

RESPONSE 7: The board reiterates that the standards in ARM 24.159.1611(5)(a) through (m) provide sufficient guidance to each nurse to determine whether and how the nurse may delegate a particular task, to a particular UAP, for the benefit of a particular patient. These are not setting-specific nor task-specific rules. The board believes the rules provide standardized parameters within which a nurse may give

specific algorithms, orders, procedures, etc., for a UAP to follow without requiring the UAP to exercise clinical reasoning, nursing judgment, or critical decision making.

The National Council for State Boards of Nursing in the *Journal of Nursing Regulation*, Vol. 7, Issue 1, April 2016, offers the national standard as: "regardless of how the state defines delegation as compared to assignment, the practice pervasive functions of clinical reasoning, nursing judgment, or critical decision making cannot be delegated." That language very nearly matches the proposed language of ARM 24.159.1611(5)(e), but is more concise and clear. The board is now amending this rule to incorporate this language and more accurately and clearly capture the board's intended meaning.

COMMENT 8: One commenter suggested the board clarify the language of ARM 24.159.1611(5)(f) to acknowledge the role of follow up care in terms of minimizing ultimate risk from the task itself, using the example of diabetes treatment in the school setting. The commenter suggested adding "taking into account the availability of follow up care to address any changes in the patient's condition that may result from performing the task."

RESPONSE 8: The board believes this rule already provides adequate direction, affording broad and practical direction while requiring the delegator to be responsible for supervising and evaluating of the task. The suggested language is not inconsistent with the rule's direction, but the board gave careful thought to how the standards would be described in ARM 24.159.1611(5). In particular, the board suggests the standards described in ARM 24.159.1611(5)(i) through (k) adequately address this commenter's concerns without identifying any specific direction that might be tailored for a particular range of tasks or a particular type of setting.

COMMENT 9: Noting the proposed language of ARM 24.159.1611(5)(h) and the ARM 24.159.301 definition of "routine medication," one commenter suggested the amendments leave a question as to whether a nurse may delegate the administration of insulin in a school setting. The commenter stated more clarity is needed for settings where there may be a lack of policies on nurse delegation of insulin. The commenter offered an amendment to the proposed language.

RESPONSE 9: The board emphasizes it is the responsibility of the employers, institutions, and facilities to ensure they have policies and procedures suitable to their practice settings so that a nurse may delegate in the appropriate circumstances. The standards set forth in ARM 24.159.1611(5)(a) through (m) should provide sufficient guidance to the nurse, regardless of practice setting.

COMMENT 10: One commenter questioned the requirement in ARM 24.159.1611(5)(i), that nurses ensure that they delegate to UAPs who are properly supervised by monitoring. The commenter stated that it is not always possible to supervise emergency care tasks, due to their unpredictable nature. The commenter asked if a nurse teaching UAPs emergency care tasks, such as re-inserting a dislodged tube into a gastrostomy site or administering glucagon, is considered

delegation subject to supervision, or an act "distinct from delegation," per ARM 24.159.1611(1).

RESPONSE 10: The board notes that this question requires a fact-intensive analysis. Depending on the particulars of the situation, this may constitute teaching or it may be delegation, but the board cannot answer for every variable that may exist even in this one example. The board acknowledges there is no way to predict emergency care, but there is always a way to measure performance and outcome. The board points out that the nurse need not always provide direct supervision since the level of supervision appropriate for the circumstances must be determined by the delegating nurse, consistent with the standards set forth in ARM 24.159.1611(5).

COMMENT 11: One commenter stated that ARM 24.159.1611(5)(l) requires a nurse to observe and communicate the outcomes of the delegated task which, in a school setting, is not always practical. The commenter suggested the board amend the rule to specify that observation need not be in person or onsite.

RESPONSE 11: The board notes that the language of ARM 24.159.1611(5)(l) does not require the person to be on site and in person, but requires the nurse to evaluate the plan of care. While employers, institutions, and facilities may be more specific, the board's rule is purposefully designed to provide standardization without too much specificity, applicable to all situations, including those that may or may not require in-person and on-site observation and communication.

4. The board has amended ARM 24.159.301, 24.159.1601, and 24.159.1625 exactly as proposed.

5. The board has repealed ARM 24.159.411, 24.159.1036, 24.159.1040, 24.159.1236, 24.159.1240, 24.159.1430, 24.159.1602, 24.159.1604, 24.159.1605, 24.159.1610, 24.159.1612, 24.159.1616, 24.159.1630, 24.159.1631, 24.159.1636, and 24.159.1640 exactly as proposed.

6. The board has amended ARM 24.159.1611 with the following changes, stricken matter interlined, new matter underlined:

24.159.1611 CRITERIA FOR DELEGATION OF NURSING TASKS

(1) through (5)(d) remain as proposed.

(e) the task does not require ~~assessment or independent decision making during its performance or at completion~~ clinical reasoning, nursing judgment, or critical decision making;

(f) through (6) remain as proposed.

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 23, 2016