

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of ARM 8.32.303,) PROPOSED AMENDMENT
8.32.307, 8.32.411, 8.32.425,)
8.32.1503, 8.32.1504, and)
8.32.1508 pertaining to)
nursing licensure matters)

TO: All Concerned Persons

1. On July 3, 2002, at 10:00 a.m. a public hearing will be held in the Fourth Floor Conference Room, 301 South Park, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry 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 by not later than 5:00 p.m., June 26, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board of Nursing, Attn: Ms. Jill Caldwell, 301 South Park, P.O. Box 200513, Helena, MT 59620-0513; telephone (406)841-2340; fax (406)841-2343 or e-mail dlibsdnur@state.mt.us.

3. The rules proposed to be amended provide as follows: (new matter underlined, deleted matter stricken)

8.32.303 NURSE ANESTHETIST PRACTICE (1) Nurse anesthetist practice is the independent and/or interdependent performance of or the assistance in any act involving the determination, preparation, administration or monitoring of any drug used in the administration of anesthesia or related services for surgical and other therapeutic procedures which require the presence of persons educated in the administration of anesthetics.

(2) A nurse anesthetist is required to have prescriptive authority.

(3) A nurse anesthetist is authorized to perform procedures delineated in the American association of nurse anesthetists guidelines for nurse anesthesia practice. Copies of the guidelines may be obtained from the American association of nurse anesthetists, 216 Higgins Road, Park Ridge, Illinois 60068, (708) 692 7050 www.aana.com.

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

REASON: Section 37-8-202, MCA, gives the Board the authority to "define the educational requirements and other qualifications

applicable to recognition of advanced practice registered nurses." The rule is implementing the same statute. The Board proposed the rule amendment because of a meeting between the Boards of Nursing and Pharmacy. The Board of Pharmacy believes that when an anesthetist performs anesthesia, s/he is prescribing an anesthetic. Because the nurse anesthetist is prescribing, the CRNA must have prescriptive privileges for the Board of Nursing to assure the public safety. Prescribing involves choosing the appropriate drug for the individual patient, determining the therapeutic dose, administering the drug, and being alert for complications or adverse reactions while the patient is under the influence of the drug. Additionally, many CRNAs practice in areas other than anesthesia, such as pain control. The current rule for CRNAs makes prescriptive authority optional. Approximately 20% of all CRNAs have prescriptive privileges in Montana. For the last two years, the Board encouraged all CRNAs to apply for prescriptive privileges voluntarily. The rule will affect all CRNAs and future CRNAs in Montana. Currently, Montana has 141 CRNAs, and approximately 116 of them will need to apply for prescriptive authority when the rule is adopted. The Board will allow a period of nine months for those who do not have prescriptive authority to apply and receive approval.

8.32.307 CLINICAL NURSE SPECIALIST PRACTICE (1) Clinical nurse specialist practice means the interdependent and collaborative delivery and management of expert level nursing care to individuals or groups, including the ability to:

(a) assess the health status of individuals and families using methods appropriate to the client population and area of practice;

(b) diagnose human responses to actual or potential health problems using the nursing process;

(c) plan for health promotion, disease prevention and/or therapeutic intervention in collaboration with the client. The goal is to enhance the problem-solving and self-care abilities of the client whenever and to whatever extent possible. The clinical nurse specialist works with other health care providers to maximize resources available to the client and family;

(d) implement therapeutic interventions based on the clinical nurse specialist's area(s) of expertise, including, but not limited to:

(i) direct nursing care, ~~performing,~~

(ii) ordering durable medical equipment;

(iii) ordering non-pharmacological treatment;

(iv) providing medications or treatments according to protocol;

(v) receiving and ~~interpreting~~ monitoring diagnostic procedures according to protocols; and

(vi) counseling and/or teaching;

(e) refer for additional health care as necessary and appropriate;

(f) coordinate health care as necessary and appropriate;

- (g) evaluate, with the client, the effectiveness of care;
- (h) educate clients, families, other health care professionals and the public;
- (i) engage in research activities; and
- (j) provide consultation to other health care providers.
- (2) For the psychiatric clinical nurse specialist certified before July 1, 2005, the practice of that clinical nurse specialist also includes the independent, interdependent, and collaborative practice of psychiatric nursing and management of expert level psychiatric nursing care to individuals or groups of individuals. The practice requires the integration of clinical knowledge with clinical practice, and may include pharmacological management.

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

REASON: Section 37-8-202, MCA, gives the Board the authority to "define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses." The rule is implementing the same statute. The Board has been criticized for not clearly defining scopes of practice. Since the establishment of the clinical nurse specialist role in Montana, the profession has changed. The Board is proposing this rule change to define the Clinical Nurse Specialist practice. The rule also matches the educational and clinical preparation to the limits of licensure. Because the psychiatric Clinical Nurse Specialist has educational and clinical preparation to diagnose and treat medical conditions, the scope of that practice has been separated from the other clinical nurse specialists. There are currently 28 clinical nurse specialists, and 16 of them are psychiatric clinical nurse specialists. None of the non-psychiatric clinical nurse specialists have prescriptive authority, and this is not expected to impact the non-psychiatric clinical nurse specialist practice. The rule will affect those APRNs who choose to practice in the area of psychiatry. After July 1, 2005, those individuals will need to obtain certification as a psychiatric nurse practitioner if they choose to practice independently and prescribe medications.

8.32.411 RENEWALS (1) In November of each even-numbered year, the board of nursing shall mail an application for renewal of license to all ~~persons~~ currently licensed registered nurses and licensed practical nurses. The licensee must fill out the application and return it to the board BEFORE January 1 of the next year, together with the renewal fee. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the current year beginning January 1 of the odd-numbered year, and expiring December 31 of the even-numbered year. If the renewal application is postmarked subsequent to December 31 of the renewal year, it is subject to a late fee of two times the renewal fee.

(2) A license shall be renewed by January 1 of the odd-

numbered years. Any person practicing nursing during the time a license has elapsed shall be considered an unlicensed person illegal practitioner and may be subjected to the penalties provided for violators under the provisions of this chapter.

(3) In November of even-numbered years, the board shall mail an application for renewal of license to all currently licensed advanced practice registered nurses (APRNs). The licensee shall complete the application and return it, the proof of continuing education required by ARM 8.32.411, and the renewal fee to the board before January 1. Upon receiving the completed renewal application and fee, the board shall issue a certificate of renewal for the current two-year period beginning January 1 and expiring December 31. If the renewal application is postmarked subsequent to December 31, it is subject to a late fee of two times the renewal fee. Any person practicing during the time a license has lapsed shall be considered an illegal practitioner and may be subject to the penalties provided for violators under the provisions of this chapter.

(a) The renewal application includes a declaration made under penalty of perjury of the laws of Montana. The declaration must include:

(i) a description of how the individual will implement the plan of quality assurance, including identification of the reviewer(s);

(ii) an acknowledgement of the scope of the individual's practice;

(iii) a description of the continuing education units earned or applicable to the renewal period;

(iv) the location of practice site(s); and

(v) the individual's current DEA registration number, if applicable.

(4) All APRNs shall complete 20 continuing education units per year, or 40 units per renewal period, pertaining to the areas of the individual's certification. APRNs who practice in a subspecialty setting shall complete the majority of the required continuing education credits in the area of the individual's subspecialty.

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

IMP: 37-1-134, 37-8-202, 37-8-431, MCA

REASON: Section 37-8-202, MCA, gives the Board the authority to "define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses." The rule is implementing the same statute.

The change in (1) is necessary to differentiate between registered and licensed practical nurses and the advanced practice registered nurses. The latter must meet different renewal requirements. This change is a clarification of language and will not affect any licensees. The proposed language will change licensure renewals to every other year. This is a request of many licensees for the sake of convenience.

Section 37-8-431, MCA, defines license renewals and the change in (2) is necessary because hearing examiners have asked the Board to differentiate among:

- licensees who continue to practice when they have not renewed their licenses,
 - individuals who are licensed in another state and never apply for a Montana license but work in Montana, and
 - individuals who have never been educated as a nurse but hold themselves out to the public as a nurse.
- This change affects all nurses who do not renew their licenses on time.

New subsection (3) is necessary to streamline the current quality assurance process for APRNs. This change will require a declaration made under penalty of perjury to assure the licensure requirements are met, but it will eliminate some of the paperwork that currently passes between the licensee and the Board office. This change brings a reduction in paperwork for both licensees and the Board office. The change also facilitates the ability of this category of licensee to renew on line. Previously, only RNs and LPNs could renew on line because the APRNs needed to submit hard copy documents to the Board office. Many APRNs requested this change so that they could participate in on-line renewals. This rule affects all 538 advanced practice registered nurses.

Section 37-1-306, MCA, allows the Board to "require licensees to participate in flexible, cost-effective, and geographically accessible continuing education." The new (4) is the Board's way of insuring that all advanced practice registered nurses maintain a level of competency by completing continuing education in their area of certification. This rule affects all 538 advanced practice registered nurses.

8.32.425 FEES (1) through (3) Remain the same.

(4) The application fee for specialty area recognition (APRN) ~~shall be \$50~~ is \$75, and a fee of ~~\$25~~ \$50 for each ~~annual~~ renewal period thereafter.

(5) The license (RN or LPN) renewal fee is ~~\$50~~ \$100 per ~~year~~ renewal period.

(6) The fee to reactivate a license (RN or LPN) is ~~\$50~~ \$100.

(7) Remains the same.

(8) The prescriptive authority application fee is ~~\$75~~ \$100.

(9) The renewal fee for prescriptive authority is ~~\$50~~ \$75 per renewal period.

(10) and (11) Remain the same.

(12) The fee for inactive RN or LPN status is \$20 per year or \$40 per renewal period.

(13) The fee for the board resending a duplicate renewal application is \$20.

(14) and (15) Remain the same.

(16) The fee for inactive APRN status is \$30 per renewal

period.

AUTH: 37-1-319, 37-8-202, MCA
IMP: 37-1-134, 37-8-202, and 37-8-431, MCA

REASON: Section 37-1-134, MCA, requires that the Board set fees commensurate with costs. The rule will implement Section 37-8-431, MCA, which allows the Board to set fees. The apparent 100% increase in various renewal fees for RNs, LPNs and specialty practice recognition is not a fee increase, but rather a reflection of collecting the same fee for a two-year license, rather than an annual license. Accordingly, there is no economic impact as a result of the renewal fee amendments.

Section 37-1-319, MCA, allows the Board to establish rules for inactive status. A fee increase for both initial and renewal of prescriptive authority will support the increased workload on the part of the staff. Because the process is changing, the Board office staff will be reviewing most of the information, and the Committee will review very little. Approximately 30 nurses per renewal cycle are expected to apply for, or renew their prescriptive authority. The \$25 increase in the application fee is offset by the lowered renewal fee of \$75 for a two-year period. (Application fee of \$100 plus \$75 for a two-year renewal equals \$175, the same as the former \$75 application fee and two annual renewals of \$50 each.) The fees have not changed since they were initiated in 1994.

The fee for the inactive APRN status is a new fee which is anticipated to affect 10 to 13 APRNs per renewal period. Assuming that an APRN would elect to become inactive for a renewal period, rather than maintaining full licensure, that results in a savings of \$20 over the two-year period for the APRN status. The estimated economic impact of the proposed fee is a decrease of \$200 to \$260 revenue for the Board over a two-year period. The Board notes that because a nurse is inactive as an APRN, that does not necessarily mean that the nurse will also be inactive as an RN, too.

8.32.1503 ~~PRESCRIPTIVE AUTHORITY~~ ADVANCED PRACTICE NURSING COMMITTEE (1) ~~There will be a prescriptive authority is an advanced practice nursing committee. The committee is composed of at least three members of the board of nursing, two of whom will shall be RNs.~~

- ~~(a) The committee may retain consultants as necessary.~~
- ~~(b) The committee members will select a chairman.~~
- ~~(c) Meetings will be conducted according to Roberts Rules of Order. Minutes will be recorded and maintained by the board of nursing.~~
- ~~(d) Meetings will be conducted in a fashion which protects the applicants' constitutional right to privacy.~~

(2) The committee or its designee will review all applications for prescriptive authority and will recommend action to the board of nursing. and approve complete, typed or

word processed applications from individuals seeking advanced practice and/or prescriptive authority. The committee will recommend action to the full board of nursing. The application must describe the individual's proposed:

- (a) referral process;
- (b) scope of practice;
- (c) method of documentation;
- (d) method of quality assurance; and
- (e) modifications, if any, with regards to advanced practice and/or prescriptive authority.

~~(3) The committee will review the referral process, method of documentation, quality assurance, and any modifications. all non-routine, complete, typed or word processed applications for advanced practice licensure and will recommend action to the full board of nursing.~~

~~(4) The committee will review all complaints charging inappropriate use of prescriptive authority and will recommend action to the board of nursing.~~

~~(5) The committee's recommendations may be adopted or rejected by the board of nursing.~~

~~(a) If the recommendation is adopted by the board of nursing, the board will use the advisory committee's findings and recommendations in determining appropriate action, in accordance with ARM 8.32.1509.~~

~~(b) If the recommendation is rejected by the board of nursing, the reasons for rejection will be given in writing to the committee.~~

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

REASON: Section 37-8-202(5)(a), MCA, gives the Board the authority to make rules to administer the program. The rule is implementing the same statute. The change in (1) is necessary because the Committee would like more members to assist in the evaluation of applications. The Board of Nursing plans to ask the next legislative session to increase the Board membership to 11 members. At that time, one additional member would be available for the prescriptive authority committee. The Board wants to change the prescriptive authority committee to the APRN Committee so that one committee handles all APRN issues. Section 2 is not necessary since it appears in general board rules. The Board's Screening Committee addresses section (5). Section (6) is redundant; Subchapter 6, Board of Nursing Organization covers these rules.

8.32.1504 INITIAL APPLICATION REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY (1) The advanced practice registered nurse ~~will~~ shall submit a completed application provided by the board of nursing, and a non-refundable fee. The application ~~will~~ must include:

- (a) evidence of completion of a minimum of 15 ~~continuing~~ education hours in pharmacology and/or the clinical management of drug therapy from an accredited body which ~~has~~ have been

obtained within a three-year period immediately prior to the date the application is received at the board office. ~~The majority of the course work must~~ No more than two hours may concern the study of ~~pharmaceutical medications and not herbal or complementary~~ therapies. ~~This requirement is in addition to the education necessary for an advanced practice registered nurse to obtain original certification.~~ Six of the 15 continuing education hours must have been obtained within one year immediately prior to the date the application is received at the board office. One-third of all ~~continuing~~ education hours must be face-to-face meetings or interaction;i

(b) a copy of the original certification document from the advanced practice registered nurse's certifying body;i

(c) a ~~brief~~ description of the proposed practice,i ~~including proposed sites;~~

(d) a description of the method of referral and documentation in client records, in accordance with ARM 8.32.1507;i and

(e) a description of the method of quality assurance used to evaluate the advanced practice registered nurse, in accordance with ARM 8.32.1508.

(2) The committee will make a recommendation only with respect to completed, typed or word processed applications. The board of nursing may deny ~~or delay~~ the application if the applicant has a license which is encumbered. ~~on one or more of the following grounds:~~

~~(a) the applicant is not recognized as an advanced practice registered nurse,~~

~~(b) the applicant submitted an incomplete application,~~

~~(c) the applicant has not met the requirements contained in (1)(a),~~

~~(d) the applicant's license has been impaired by or is under investigation for disciplinary action,~~

~~(e) the applicant is a party to legal action related to the propriety of his or her practice or fitness to practice.~~

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: Section 37-8-202(5)(a), MCA, gives the Board the authority to "define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses." The rule is implementing the same statute. Additionally, Section 37-1-306, MCA, gives the Board the power to require continuing education. The changes are necessary to define the requirements for prescriptive authority. The changes will expedite the process since they will outline the application requirements, making the Committee's work and issuance of applications more efficient.

8.32.1508 QUALITY ASSURANCE OF ADVANCED PRACTICE REGISTERED NURSE PRACTICE (1) An advanced practice registered nurse ~~with prescriptive authority will~~ performing direct patient care shall submit a method of quality assurance for evaluation

of the advanced practice registered nurse's practice. The quality assurance method must be approved by the board of nursing prior to ~~issuance of prescriptive authority licensure.~~

(2) The quality assurance method ~~will~~ must include the following elements:

(a) ~~30~~ 15 charts or 5% of all charts handled by the advanced practice nurse, whichever is less, must be reviewed quarterly. ~~Review shall be accomplished through the use of a mixture of peer review and review by a physician of the same specialty, as appropriate. The charts being reviewed must be evaluated by a peer review, by a physician of the same practice specialty, or by others as approved by the board. Each evaluator shall hold an unencumbered license;~~

(b) use of standards which apply to the advanced practice registered nurse's area of practice-~~i~~

(c) concurrent or retrospective review of the practice-~~i~~

(d) use of pre-established patient outcome criteria specific to the APRN's specific patient population-~~i~~ and

(e) written evaluation of review with steps for corrective action if indicated and follow-up.

(3) An advanced practice registered nurse ~~will~~ shall immediately file with the board of nursing any proposed change in the quality assurance method. Any change ~~will be~~ is subject to prior approval by the board of nursing.

(4) Proof of quality assurance reviews must be maintained by the licensee for five years.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: Section 37-8-202(5)(a), MCA, gives the Board the authority to "define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses." The rule is implementing the same statute. This rule has been changed to reflect the change in requirements for all APRN practice. In the past, only those APRNs with prescriptive privileges were required to perform quality assurance. The new language will require that all APRNs in direct practice perform quality assurance. The Board believes this is one way to assure the public's safety. The rule will affect all 213 APRNs who currently do not engage in a quality assurance program.

4. 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:

Jill Caldwell
Board of Nursing
Department of Labor and Industry
P.O. Box 200513
Helena, Montana 59620-0513

or by e-mail to dlibsdnur@state.mt.us, and must be received by no later than 5:00 p.m., July 11, 2002. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at http://www.discoveringmontana.com.dli/bsd/license/bsd_boards/nur_board/rules.htm. The Board strives to make the electronic copy of this Notice of Public Hearing 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.

6. The Board of Nursing maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Board has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. Darcee Moe has been designated to preside over and conduct the hearing.

BOARD OF NURSING
JACK BURKE, RN, Chair

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ WENDY KEATING
Wendy Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 3, 2002.