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

In the matter of the amendment of ARM 8.32.303, pertaining to nursing licensure matters	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 13, 2002, the Department of Labor and Industry published notice of the proposed amendment of the above-stated rule at page 1621 of the 2002 Montana Administrative Register, Issue Number 11.

2. On July 3, 2002, a public hearing on the proposed amendment of the above-stated rule was conducted in Helena, and members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on July 11, 2002.

3. On August 29, 2002, the Department of Labor and Industry published notice of the amendment of several rules related to nursing at page 2315 of the 2002 Montana Administrative Register, Issue Number 16. In paragraph 6 of that notice, the Board announced that it was not taking action on the proposed amendments to ARM 8.32.303 at that time.

4. The Board of Nursing (Board) has thoroughly considered all of the comments made regarding proposed amendments to ARM 8.32.303. A summary of the comments received and the Board's responses are as follows:

Comment 1: Opponents to this amendment (Susan Good, for the Montana Society of Anesthesiologists, Montana Neurosurgeons, and the Montana Orthopedic Society; and Mona Jamison, for the Montana Society of Anesthesiologists) argued that the Board of Nursing (Board) may not define Certified Registered Nurse Anesthetist (CRNA) practice as independent and/or interdependent. The opponents believe that the Board does not have the statutory authority to amend this rule in this way. The opponents believe that because the Medicare Conditions of Participation currently have language requiring physician supervision, the rule would not be valid.

Response 1: The Board acknowledges the commenters' statements and notes that section 37-8-409, MCA, allows the Board to grant Advanced Practice Registered Nurse (APRN) status to a nurse who provides proof of qualifications in the respective specialty area. The CRNA practice involves the independent and interdependent practice of administering anesthesia. The Board has the authority to define the scope of practice of its licensees. Following deliberations, the Board decided to change

"interdependent" to "collaborative", in ARM 8.32.803(1), and has amended the rule accordingly.

Comment 2: Opponents (Susan Good, for the Montana Society of Anesthesiologists, Montana Neurosurgeons, and the Montana Orthopedic Society; and Patrick Melby, for the Montana Medical Association) argued that this is a major policy issue resulting in "scope creep", and must be addressed by the legislature. The opponents also stated that the rule language carries grave consequences for the "opt-out" issue currently before the governor.

Response 2: The Board has the authority under 37-8-202, MCA, to define scope of practice for nurses. Medicare or any other payment source may define stricter rules for reimbursement.

Comment 3: Susan Good, on behalf of the Montana Society of Anesthesiologists, Montana Neurosurgeons, and the Montana Orthopedic Society, and Patrick Melby, for the Montana Medical Association, stated that the Board failed to provide a statement of reasonable necessity for amending this rule at this time. Opponents do not accept the statement of reasonable necessity as adequate.

Response 3: The Board believes the statement of reasonable necessity for ARM 8.32.303 is adequate. The statement outlines the change in substance of the rule. Because all CRNAs, Nurse Practitioners (NPs), and Certified Nurse Midwives (CNMs) in Montana have independent practice, the change was not noted in the statement of reasonable necessity. This independent status has always been implied for all APRNs and this rule change was meant to unify the definition of all APRNs. As well, this was a clarification of existing rule ARM 8.32.303 which states, "nurse anesthetist practice is the performance 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." The Board's regulation of advanced practice nursing is, as expressed in the statement of reasonable necessity, exercised in the interests of protecting the health, safety and welfare of Montanans.

Comment 4: Lauri Baptie, an opponent, stated that the administering of anesthetics (prescribed substances) is inherent in the practice of CRNAs and therefore a separate requirement of prescriptive authority is not necessary. As well, the surgeon is the one who orders post-operative pain medications.

Response 4: The Board agrees with the comment and will eliminate the requirement for prescriptive authority except when the CRNA is writing prescriptions to be filled at a pharmacy and to be taken when not under the direct care of the CRNA.

Comment 5: Commenters (Thomas Schulz, CRNA, for the Montana Association of Nurse Anesthetists, and Ron Freund, CRNA) stated that Montana would be the only state to require prescriptive authority for CRNAs.

Response 5: The Board agrees and will eliminate the requirement for prescriptive authority except when the CRNA is writing a prescription to be filled at a pharmacy and to be taken when not under the direct care of a CRNA.

Comment 6: Thomas Schulz, CRNA, for the Montana Association of Nurse Anesthetists, expressed a concern that when a CRNA orders a pre-operative drug for a Registered Nurse (RN) to administer, this is not considered delegation of nursing duties.

Response 6: The Board acknowledges this comment. The concern appears to be that CRNAs with prescriptive authority will no longer be able to assign the administration of pre-operative drugs to an RN. ARM 8.32.1505 states that the APRN with prescriptive authority cannot delegate the prescribing or dispensing of drugs, or the choice of pre-operative medication, which is prescribing. The APRN with prescriptive authority may write an order for the RN to administer a drug, which is assigning. This is not a change from existing rules.

The Board will eliminate the requirement for prescriptive authority except when the CRNA is writing prescriptions to be filled at a pharmacy and to be taken when not under the direct care of the CRNA.

Comment 7: Sami Butler, of the Montana Nurses Association (MNA), opposes including "interdependent" in the proposed rules. The MNA believes that "interdependent" is inherent in the practice of all health care providers.

Response 7: The Board agrees and has voted to delete "interdependent" and add "collaborative" in ARM 8.32.303(1), and has amended the rule accordingly.

Comment 8: G. Brian Zins, of the Montana Medical Association, expressed concerns that this language would expand the scope of nursing practice. The opponent is also concerned that adding the word "independent" is posturing in light of the governor's impending "opt-out" decision.

Response 8: The Board began reviewing and revising the APRN rules more than 18 months ago. The governor's "opt-out" decision affects reimbursement only. The Board is not concerned with issues of reimbursement and is amending the rule in an effort to clarify and unify all APRN scopes of practice.

Comment 9: Mona Jamison, for the Montana Society of Anesthesiologists, argued that scope of practice issues must be decided by the legislature.

Response 9: The Board has the authority under 37-8-202, MCA, to define scope of practice for nurses. Medicare or any other payment source may define stricter rules for reimbursement.

Comment 10: Patrick Melby, for the Montana Medical Association, argued that adding "independent" to the CRNA definition will be in conflict with Medicare "Conditions of Participation", and would be inaccurate and misleading to the public.

Response 10: The Medicare rules and regulations concern reimbursement. The Board is not concerned with matters of reimbursement, but is concerned with clarifying and defining issues of scope of practice for all nurses in Montana.

Comment 11: Lauri Baptie argued that requiring prescriptive authority for CRNAs will not enhance the care rendered and may drive CRNAs away from practicing in Montana.

Response 11: The Board will eliminate the requirement for prescriptive authority except when the CRNA is writing prescriptions to be filled at a pharmacy and to be taken when not under the direct care of the CRNA. The Board has not concluded that a requirement for prescriptive authority would necessarily drive CRNAs away from practicing in Montana.

Comment 12: Kim Hackl, CRNA, objected to the additional continuing education requirements since it will be in addition to what the credentialing organization requires for recertification.

Response 12: The Board will not require additional continuing education unless the CRNA has prescriptive authority and chooses to write prescriptions which are taken after the patient leaves the direct care of the CRNA.

Comment 13: Nelson Benson, CRNA, argued that the federal Drug Enforcement Agency (DEA) does not consider the act of administering anesthesia as prescribing.

Response 13: The Board agrees and will eliminate the requirement for prescriptive authority except when the CRNA is writing prescriptions to be filled at a pharmacy and to be taken when not under the direct care of the CRNA.

Comment 14: Thomas Schulz, CRNA, for the Montana Association of Nurse Anesthetists, argued that if a CRNA was under probation or another disciplinary action by the Board, the CRNA’s license would be encumbered and the CRNA would be prohibited from practicing. Mr. Schulz also stated the prescriptive authority requirement might create problems with continuing education for some CRNAs. Locum tenens CRNAs have a difficult time meeting this criterion and thus using locum tenens for vacation relief will be difficult. Lastly, Mr. Schulz stated that writing prescriptions for pain management is not something the typical

CRNA does in practice.

Response 14: The Board will eliminate the requirement for prescriptive authority except if the CRNA is writing prescriptions to be filled at a pharmacy and to be taken when not under the direct care of the CRNA. The Board has not concluded that continuing education requirements are necessarily a burden on CRNAs.

Comment 15: Kim Hackl, CRNA, stated that Montana would be the only state requiring prescriptive authority for CRNAs.

Response 15: The Board agrees and will eliminate the requirement for prescriptive authority except when the CRNA is writing prescriptions to be filled at a pharmacy and to be taken when not under the direct care of the CRNA.

5. After consideration of the comments, the Board has amended the rule as proposed, with the following changes, stricken matter interlined, new matter underlined:

8.32.303 NURSE ANESTHETIST PRACTICE (1) Nurse anesthetist practice is the independent and/or ~~interdependent~~ collaborative 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) remains as proposed, but is renumbered (2).

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

BOARD OF NURSING
KIM POWELL, RN, Chair

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

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State: November 18, 2002.