

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

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
8.32.405, licensure by endorsement, ) AND ADOPTION  
ARM 8.32.406, licensure for foreign )  
nurses, ARM 8.32.412, inactive status, )  
ARM 8.32.425, fees, ARM 8.32.501, )  
grounds for denial of license, ARM )  
8.32.502, license probation or )  
reprimand of a licensee, and ARM )  
8.32.1401, definitions, and the )  
adoption of NEW RULES I (ARM 8.32.1413), )  
II (ARM 8.32.1414), III (ARM 8.32.426), )  
and IV (ARM 8.32.427), regarding )  
licensure of medication aides )

TO: All Concerned Persons

1. On June 3, 2004, the Board of Nursing (Board) published MAR Notice No. 8-32-62 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 1277 of the 2004 Montana Administrative Register, issue no. 11.

2. A public hearing on the proposed amendment and adoption was held on July 1, 2004. Members of the public testified at the hearing. Written comments were also received prior to the end of the comment period on July 9, 2004.

3. The Board has thoroughly considered all of the comments made. A summary of the comments received (grouped by rule) and the Board's responses are as follows:

ARM 8.32.405 LICENSURE BY ENDORSEMENT

Comment 1: The Montana Nurses' Association and Montana Hospital Association support the amendments relating to foreign educated nurses.

Response 1: The Board thanked the commenters for their comments.

Comment 2: One commenter noted that there was an error in the authority citation for this rule.

Response 2: A typographical error was made in the rulemaking authority citation in the rule notice. The correct citation should be 37-1-131 instead of 31-1-131.

ARM 8.32.406 LICENSURE OF FOREIGN NURSES

Comment 1: The Montana Nurses' Association and the Montana Hospital Association supported the proposed amendments relating to foreign educated nurses.

Response 1: The Board thanked the commenters for their comments.

Comment 2: Montana Hospital Association (MHA) believes that if a foreign educated nurse has passed NCLEX, it is reasonable to presume that the nurse has a functional level of English proficiency. MHA opposes requiring completion of the commission on graduates of foreign nursing schools (CGFNS) screening examination by nurses who were educated in countries other than those listed in the proposed amendment where the applicants have passed NCLEX, particularly if they have been practicing nursing in the United States for a number of years. MHA notes that English is broadly taught and spoken in Sweden and in other European countries, South Africa, parts of the Caribbean, and islands in the South Pacific. MHA notes that CGFNS is a slower and more complicated testing process than NCLEX.

MHA proposes the following language modification to ARM 8.32.406(2)(b): "...those applicants who have passed the NCLEX or the state board test pool examination or who have graduated from a college...". MHA further recommends that the board add to the rule other countries where college level education is provided in English and require verification that the applicant's education was provided in English.

In light of ARM 8.32.406 being applicable to both initial licensure and licensure by endorsement, MHA believes its proposed language modification is a more reasonable approach for streamlining the licensure process for those endorsement applicants who have already shown they meet safe practice requirements.

MHA recommends that (3) of the rule be eliminated and that LPNs be included in ARM 8.32.406(1) and (2) in order to make the process consistent for RNs and LPNs.

Response 2: Regardless of an applicant's work experience, the Board does not have the expertise or the means to objectively measure the person's English proficiency except by relying on CGFNS, which is a nationally recognized program that performs that function for the Board. The Board notes that a person could pass NCLEX and hold a license in another state for a number of years without having actually worked in the nursing profession there. In addition, the Board points out that English is not necessarily the sole language or even the primary language spoken in some health care facilities in the United States, so work experience acquired in such facilities is not necessarily indicative of English proficiency.

The Board agrees that other countries where nursing education is conducted in English should be considered for exemption from the CGFNS requirements. While the proposed rule amendment was under consideration, CGFNS recommended the addition of Trinidad and Tobago to the list of foreign countries whose nursing program graduates are exempted from the CGFNS process. The National Council of State Boards of Nursing (NCSBN) adopted the CGFNS recommendation. Therefore, the Board deems inclusion of Trinidad and Tobago in its own list of foreign country exemptions in this rule to be appropriate.

CGFNS does not have an LPN NCLEX predictor exam and so the board has adopted separate processes for licensure of foreign LPNs.

Comment 3: To make the rule more user-friendly, the Department of Labor and Industry recommends that the list of foreign countries in ARM 8.32.406(2)(b) be alphabetized and set out in an earmarked format as follows:

(b) those applicants who have passed the NCLEX or the state board test pool examination and who have graduated from a college, university or professional training school located in:

- (i) Australia;
- (ii) Canada (except Quebec);
- (iii) Ireland;
- (iv) New Zealand; or
- (v) United Kingdom.

Response 3: The Board agrees that listing the foreign countries in this rule in alphabetical order in an earmarked format would make the rule easier to use and to later amend if appropriate.

Comment 4: Nancy Heyer, RN, notes that the NCSBN recently added Trinidad and Tobago to the list of countries whose nursing school graduates are eligible to take the NCLEX without completing the CGFNS exam and she recommends that Trinidad and Tobago be added to the list of foreign countries in ARM 8.32.406(2)(b). Ms. Heyer states that historically the CGFNS requirement has been deemed obstructive to the licensure endorsements of persons outside the United States and she is happy to see progress made in the rules.

Response 4: The Board agrees that other countries where nursing education is conducted in English should be considered for exemption from the CGFNS requirements. While the proposed rule amendment was under consideration, CGFNS recommended the addition of Trinidad and Tobago to the list of foreign countries whose nursing program graduates are exempted from the CGFNS process. The NCSBN adopted the CGFNS recommendation. Therefore, the Board deems inclusion of

Trinidad and Tobago in its own list of foreign country exemptions in this rule to be appropriate.

ARM 8.32.412 INACTIVE STATUS

Comment 1: The Montana Nurses' Association and the Montana Hospital Association supported the proposed amendment.

Response 1: The Board thanked the commenters for their comments.

8.32.1401 DEFINITIONS, NEW RULE I (ARM 8.32.1413) PURPOSE OF STANDARDS OF PRACTICE FOR THE LICENSED MEDICATION AIDE, NEW RULE II (ARM 8.32.1414) STANDARDS RELATED TO THE MEDICATION AIDE'S RESPONSIBILITIES AS A MEMBER OF HEALTH TEAM, NEW RULE III (ARM 8.32.426) GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION AIDE and NEW RULE IV (ARM 8.32.427) GENERAL REQUIREMENTS FOR MEDICATION AIDE TRAINING PROGRAMS AND INSTRUCTORS

Comment 1: The Montana Nurses' Association (MNA) supports the proposed amendment and new rules and appreciates that the Board worked with a variety of groups on the medication aide issue and rules. MNA is pleased that the Board was given the regulatory oversight of medication aides because the Board understands the role of nurses in assuring patient safety. MNA believes that the rules reflect an effort to assure optimum patient care by putting safeguards in place, which are important due to the significant number of medication errors that occur in the health care system. The MNA reiterates its position that while medication aides may be appropriate in assisted living facilities, the MNA continues to oppose allowing the administration of medication by this type of worker in nursing homes and acute care facilities due to the fragile condition of patients in those settings.

Comment 2: The Montana Hospital Association (MHA) supports the new rules relating to medication aides and appreciates having been invited by the Board to collaborate in the drafting of these rules.

Comment 3: The Montana Health Care Association (MHCA) supports the proposed New Rules I through IV and all other rules relating to the medication aides. Assisted living is the service of choice for many and it is a cost-effective service. The proposed new rules that allow for administration of medication by medication aides in assisted living facilities provide strong protection to residents and keep more options regarding their care open to the residents. The rules also allow assisted living facilities to continue to provide cost-effective services.

MHCA expressed appreciation for the collaborative approach in the drafting of the rules that allowed for input from many sources. MHCA had no suggestions for changes.

Comment 4: Balaly Richardson expressed concern that the language used in the exam for medication aides not be so complicated that people without college educations would have difficulty understanding it. She also expressed concern about the number of aides that would be required per shift.

Response 1-4: The committee that reviewed and recommended a medication aide education program and exam for Board approval noted that the selected program and exam are in wider use than others around the country. The committee determined the selected exam was superior to some others because the content was more thorough relating to drug interactions and reactions. Committee members recalled that the exam is written to be understood by persons with a sixth grade education.

The Board has no jurisdiction over staffing issues and the new rule does not address staffing issues.

Comment 5: One commenter noted that "ophthalmic" was spelled incorrectly as it should be spelled "ophthalmic".

Response 5: The Board thanked the commenter for the notification of the incorrect spelling and the rule will be changed accordingly.

4. After consideration of the comments, the Board has amended ARM 8.32.412, ARM 8.32.425, ARM 8.32.501 and ARM 8.32.502, and has adopted NEW RULES I (ARM 8.32.1413), II (ARM 8.32.1414), III (ARM 8.32.426) and IV (ARM 8.32.427), exactly as proposed.

5. After consideration of the comments, the Board has amended ARM 8.32.405, ARM 8.32.406 and ARM 8.32.1401 as proposed, with the following changes (stricken matter interlined, new matter underlined):

8.32.405 LICENSURE BY ENDORSEMENT (1) through (4) remain as proposed.

AUTH: ~~31-1-131~~, 37-1-131, 37-8-202, MCA  
IMP: 37-1-304, MCA

8.32.406 LICENSURE FOR FOREIGN NURSES (1) through (2) (a) remain as proposed.

(b) those applicants who have passed the NCLEX or the state board test pool examination and who have graduated from a college, university or professional school located in ~~Australia, Ireland, New Zealand, Canada, (except Quebec) or the United Kingdom.~~

(i) Australia;

- (ii) Canada (except Quebec);
  - (iii) Ireland;
  - (iv) New Zealand;
  - (v) Tobago;
  - (vi) Trinidad; or
  - (vii) United Kingdom.
- (3) remains as proposed.

AUTH: 37-1-131, 37-8-202, MCA  
IMP: 37-8-101, 37-8-406, 37-8-416, MCA

8.32.1401 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Allowable routes" means oral, sublingual, topical, ~~ophthalmic,~~ ophthalmic, otic, nasal, and inhalant methods of administration, except as otherwise provided by rule.

(2) through (13) remain as proposed.

AUTH: 37-1-131, 37-8-202, MCA  
IMP: 37-1-131, 37-8-101, 37-8-102, 37-8-202, 37-8-422, MCA

BOARD OF NURSING  
KAREN POLLINGTON, RN, CHAIRMAN

/s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
Department of Labor and Industry

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

Certified to the Secretary of State September 27, 2004