

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

In the matter of the adoption) NOTICE OF ADOPTION,
of NEW RULES I through XIII,) AMENDMENT AND TRANSFER, AND
the amendment and transfer of) REPEAL
ARM 8.32.1712, and the repeal)
of ARM 8.32.1701, 8.32.1702,)
8.32.1703, 8.32.1704,)
8.32.1705, 8.32.1706,)
8.32.1707, 8.32.1708,)
8.32.1709, 8.32.1710,)
8.32.1711, and 8.32.1713,)
pertaining to delegation)

TO: All Concerned Persons

1. On January 13, 2005 the Board of Nursing published MAR Notice No. 8-32-64 regarding the public hearing on the proposed adoption and repeal of the above-stated rules relating to delegation, at page 30, of the 2005 Montana Administrative Register, issue no. 1.

2. A public hearing on the notice of proposed adoption and repeal on the above-stated rules was held on February 3, 2005.

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

Comment 1: The proponents of the adoption of the proposed new delegation rules and repeal of the current ones generally commented that the changes were long overdue, that the current delegation rules are redundant and confusing, and that the new rules preserve the essential role and function of nurses to assess, plan, implement and evaluate care and to coordinate and supervise the delivery of nursing care. Proponents further commented that the proposed New Rules recognize that unlicensed assistive personnel (UAPs) complement and do not replace licensed nurses. The commenters stated that the New Rules would help meet the public's increasing need for accessible, affordable and quality health care, especially in Montana's rural communities. The commenters further stated that the role functions that separate nursing from other disciplines are not delegable and that delegable routine, technical tasks do not rise to the level of nursing.

Response 1: The Board agrees and has determined that the proposed rule changes will address the issues as presented.

Comment 2: A commenter stated that training of nurse-delegators is needed relating to the New Rules and that the Board needs to be instrumental in that training process.

Response 2: The Board will be involved in training nurses relative to the new delegation rules but the Board's contribution will not relieve chief nursing officers of their individual training responsibilities.

Comment 3: A number of opponents to the proposed new delegation rules expressed concern that facility administrators will coerce nurses to delegate nursing tasks to UAPs for budgetary and staffing reasons even when the nurses do not believe it is safe and appropriate to do so. The commenters asserted that the rules should be clear that delegation is patient specific, task specific and UAP specific.

Response 3: Delegation of nursing tasks to UAPs is never mandatory under the proposed New Rules. Rather, delegation is allowed only when done in conformity with the rules. Only a nurse who has personally assessed a patient may delegate and only when the nurse has determined it can be done safely. New Rule IV already mandates that delegation be task-specific, patient-specific and UAP-specific, so there can be no blanket delegation policy. The rule defines "delegator" as the nurse who makes the decision to delegate and thereby assumes accountability. It is unprofessional conduct pursuant to ARM 8.32.413(2)(1), for a nurse to delegate contrary to Board rules. Therefore, the Board concluded that the rules appropriately address concerns of coercion. The Board will affirmatively survey nurses (including floor nurses) both six months and 12 months after the effective date of the rules, to determine what problems, if any, nurses have had in applying the rules to the safe and effective care of patients.

Comment 4: Several opponents objected to the delegating nurses being liable for the performance of nursing tasks by untrained UAPs.

Response 4: The Board has no authority to make nurses legally liable (e.g., in tort for money damages) for harm caused by a UAP performing a delegated nursing task and the rules do not purport to create such a liability. Nor does the Board have authority to make nurses immune from tort liability or otherwise limit their legal liability. The Board only sets standards for nursing practice and defines what constitutes unprofessional conduct for license discipline purposes. Retention of accountability by the delegating nurse has always been a part of the delegation rules and that principle is being carried forward into the new delegation rules.

Comment 5: A commenter objected that floor nurses were under-represented on the task force that was formed to review the

current delegation rules and draft recommended changes for the Board's consideration.

Response 5: The Montana Nurses' Association, whose members include floor nurses, was represented on the task force. A Board member is a floor nurse, the nurse administrators on the task force had prior experience in bedside nursing, and nurses representing rural and metropolitan areas were also task force members. Floor nurses also had the same opportunity as others to participate in the rulemaking process by submitting comments to the Board during the comment period.

Comment 6: Numerous commenters opposed allowing delegation in all settings on the grounds that no other state allows it. In particular, the commenters objected to allowing delegation of nursing tasks to UAPs in acute care and long-term care settings. The commenters recommended the Board take a slower or incremental approach by expanding delegation to home health and community based settings first and assessing the impact before considering expansion of delegation to acute care and long-term care settings.

Response 6: Montana is not the first or only state to allow delegation of specific nursing tasks to UAPs without regard to setting. The Board reviewed the nursing rules in more than 40 states as well as other professional resources in drafting these rules. There were 18 states that had delegation rules relating to all settings or specifically to acute and long-term care settings. Some states expressly allow delegation in all settings while others are silent as to settings, i.e., neither expressly allowing nor prohibiting delegation in acute care and long-term care settings. Unlike Montana, some states do not limit the type of tasks that can be delegated and in that respect, Montana's delegation rules are more conservative than other states' rules. The Board deems its rules in general and, in particular, those rules providing for varying levels of supervision of UAPs based on setting, as recognition of the different acuity levels of patients in each setting. The Board notes that acute care and long-term care settings provide greater opportunity for UAPs to obtain immediate nursing assistance than do home health and community based settings.

Comment 7: Some commenters expressed concern that the new delegation rules effectively render LPN education and licensure obsolete.

Response 7: The Board disagrees with the comment, but also recognizes that current Board rules relating to LPN practice need to be reviewed and updated in recognition of the superior skills, training and abilities of LPNs as contrasted with unlicensed UAPs. A task force is in place for that purpose.

Comment 8: Some nurse educators and others commented that nursing students working as UAPs are not prepared to receive delegation of medication administration after having completed a "fundamentals of nursing" course. The commenters stated that there is no uniformity in the content of fundamentals of nursing courses from program to program. The commenters suggested that the rules need a definition of "good academic standing" and clarification of what is meant by "level of educational preparation" as relates to verification of nursing students' eligibility to receive delegation.

Response 8: The Board deems the comment well taken and has amended the rules accordingly. The Board is adding definitions of "fundamentals of nursing course" and "good academic standing" to New Rule II. Further, the Board is including in New Rule XIII the requirement that, before medication administration can be delegated to nursing students working as UAPs, the students must have satisfactorily completed a pharmacology course. The new definition of pharmacology course includes clinical application of the principles of pharmacology and demonstrated skills. New Rule V is being amended to clarify the verification of nursing students' level of educational preparation.

Comment 9: Several comments were received from nursing educators objecting to having to verify the competency of nursing student UAPs.

Response 9: The rules do not require nurse educators to verify the competency of nursing students working as UAPs to perform delegated tasks. Educators need only verify that the nursing student is currently enrolled in a nursing program and is not on academic probation. Verifying completion of the fundamentals of nursing and/or pharmacology courses by review of transcript and curriculum is a function of the chief nursing officer. Verifying competency of nursing students to perform delegated tasks is the responsibility of the delegating nurse.

Comment 10: Citing public safety considerations, several commenters opposed delegation of additional responsibilities to nursing students working as certified nurses' assistants (CNAs) because CNAs' workloads are already heavy.

Response 10: The comment reflects that there may be a misconception that was not anticipated. A nursing student may not simultaneously fulfill the role of a CNA and the role of a UAP receiving delegation of nursing tasks from licensed nurses as the roles are mutually exclusive. The Board has no authority or intent to expand or change the scope of a CNA's certification granted by the Department of Public Health and Human Services (DPHHS). Both the employer and the nursing student who happens to be certified by DPHHS as a CNA, must be clear and in agreement as to which role the student is being

hired to fulfill. The delegation rules require a facility's chief nursing officer to provide a written job description for the student nurse working as a UAP and to assure that the student is oriented to his/her role. The rules are intended to create an opportunity for nursing students to work as UAPs instead of CNAs and to perform delegated nursing tasks that CNAs cannot perform. The comment prompts the Board to further clarify the nursing student UAP role from the role of a nursing student fulfilling his/her education program's clinical experience requirements. Nursing students will not receive academic credit for their work as UAPs nor will they have faculty supervision while serving in the UAP role contemplated by these rules. Delegation must be consistent with the nursing students' level of preparation, i.e., a nursing student may not perform functions that have not been taught in their education program. Delegation is not contemplated by the Board to be "on the job training".

Comment 11: Numerous comments were received in opposition to published New Rule IX on the following grounds: 1) the rule represents an unlawful exercise of authority by the Board over EMTs who, by law, are under the jurisdiction of the Montana Board of Medical Examiners (BOME); 2) the rule unlawfully alters, restricts or diminishes the scope of practice of EMTs; and 3) the rule purports to make EMTs accountable to nurses instead of to physicians as contrary to Montana law. In addition, commenters stated the reference in the rule to "national certification" is erroneous.

Response 11: The Board readily acknowledges that the BOME has exclusive jurisdiction over EMTs. The New Rule does not represent an exercise of jurisdiction by the Board over EMTs and is not intended to usurp the authority of the BOME relative to EMTs. Pursuant to sections 50-6-201 and 50-6-302(4), MCA, and ARM 24.156.2701(9) and (10), the certification granted by the BOME to EMTs in this state is for pre-hospital and inter-hospital practice only. Thus, within the emergency department of a facility, an EMT has no certification/license and no scope of practice. Rather, in the emergency department setting, an EMT (unless dually licensed) is functioning as a UAP. Section 37-8-202(8), MCA, expressly authorizes the Board to adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons. The Board acknowledges that there is no "national certification" of EMTs and has written New Rule XI accordingly.

Comment 12: One commenter objected to the Board allowing unlimited nursing functions to be performed by UAPs.

Response 12: The proposed rules do not allow unlimited nursing functions to be performed by UAP delegates, but instead specify what nursing functions are delegable in specific situations and settings.

Comment 13: A comment was received that UAPs should not perform functions that require complex knowledge and expert judgment and skill. The commenter asserted that nursing should be done by licensed professionals, not by UAPs.

Response 13: The rules do not allow UAPs to perform functions that require complex knowledge and expert judgment and skill. UAPs complement the nursing staff but they are not nurses. The Board determined that properly regulated delegation can be effective in accomplishing the objective of safe patient care.

Comment 14: One commenter stated that unless UAPs become licensed and regulated, the UAPs' actions are subject to questioning at the bedside and in the courts.

Response 14: The Board has no legislative authority to license and regulate UAPs. The proposed delegation rules serve to regulate delegating nurses and chief nursing officers only.

Comment 15: A commenter suggested that the Board establish standardized educational requirements for UAPs because the Board previously insisted that another health care licensing board do the same for a different category of UAP.

Response 15: The Board has no legislative authority to establish or enforce educational standards for UAPs. The Board's position with respect to standardized education in the other matter to which the commenter referred, is consistent with the Board's understanding of the legislative authorization and direction in that instance.

Comment 16: Some school nurses objected to mandatory delegation in the school setting, stating that a nurse should exercise professional judgment in determining whether to delegate.

Response 16: The proposed rules do not mandate delegation in any situation or setting. The Board agrees that nurses must exercise professional judgment, consistent with the rules, in determining whether or not to delegate.

Comment 17: One commenter expressed concern that errors made by a nursing student working as a UAP would affect the student's subsequent nursing licensure.

Response 17: Qualifications for licensure are set by Board statutes and rules and candidates meeting the requirements receive licensure. Successful completion of an approved nursing program and passage of the national council licensing examination (NCLEX) are acceptable evidence of minimum competency to practice.

Comment 18: One commenter pointed out that if ARM 8.32.1712 is repealed, a definition of assignment will appear in the new rules but no substantive rule relating to assignment will remain. The commenter stated that the examples in current rule ARM 8.32.1712 are helpful for purposes of distinguishing delegation from assignment as it relates to self-administration of medication.

Response 18: The Board agrees and has amended the rule accordingly to not repeal, but retain the rule without substantive change and renumber ARM 8.32.1712.

Comment 19: Several commenters stated that consumers would be misled into believing they are receiving nursing care when care is being provided by UAPs. The commenters suggested that patient consent be required before a nursing task can be delegated to a UAP.

Response 19: The Board acknowledges the concern but declines to require patient consent. Following consideration of the comment, the Board has amended New Rule IV to require that patients are informed of the delegation decision.

Comment 20: Several commenters observed that some facilities may not have a designated chief nursing officer or may have a person in charge of nursing who is not a nurse.

Response 20: The designated chief nursing officer (regardless of position title) has an indispensable role in implementing safe delegation practices that are in conformity with these rules. The Board notes that delegation cannot occur in a facility that does not have a designated chief nursing officer and the Board has clarified that by amending both New Rules II and IV accordingly.

Comment 21: Comments were received that determining whether a patient is stable involves a diagnosis and assessing expected patient outcomes is a prognosis, which are functions outside the scope of a nursing license.

Response 21: The rules as proposed do not require that a patient be "stable" as a condition of delegating. The Board is amending the rules to allow delegation to a dialysis technician only when the adult patient is established, not stable. The condition of acute care patients is often unstable, but the Board has determined that once the delegating nurse has personally assessed a patient's nursing care needs, the delegating nurse may determine it is safe and appropriate to delegate certain tasks. Applying the nursing process involves an assessment of the patient that nurses are trained to perform and which is within the scope of professional nursing practice.

Comment 22: The Board members and other commenters stated that the configuration of New Rule IX as published is not user friendly and is difficult to follow and comprehend.

Response 22: Following consideration of the comments, the Board decided to not adopt New Rule IX. The text formerly included in New Rule IX has been divided into New Rules X, XI, XII and XIII as set forth in this notice. The separate rules provide the same substance as was previously included in New Rule IX, but in a much clearer and more user-friendly format. This amendment reduces the risk of misunderstanding the rule requirements and error in rule application, while preserving the essential character and content of the rule as published.

Comment 23: A commenter stated that the additional work required for delegating nurses to supervise UAPs creates an unsafe situation and a risk to patients.

Response 23: Delegation is not mandated in any setting by the proposed rules. The Board stresses that if delegation is unsafe because a delegating nurse does not have sufficient time to supervise the performance of the task by the UAP, then delegation in that instance must not occur.

Comment 24: One commenter requested clarification of whether a patient with dialysis-induced hypotension is "stable" for purposes of delegation to a dialysis technician under the proposed rules.

Response 24: The nurse who personally assesses the dialysis patient must make the determination of whether delegation can be done safely in accordance with the rules. Dialysis educators and available professional literature recognize and use the standards incorporated in the applicable New Rules regarding stability of dialysis patients as it relates to delegation to certified dialysis technicians. The Board has considered the comment and is writing New Rule XII accordingly, to require that delegation to a dialysis technician be for an "established" patient and not a "stable" patient.

Comment 25: A few commenters stated that employers should not be responsible for educating staff regarding delegation because the Board has no jurisdiction over the employers or ability to enforce such responsibilities.

Response 25: The Board would like to point out that the proposed rules impose no responsibilities or requirements on employers but only upon licensed nurses, i.e., chief nursing officers and nurse delegators. The Board and staff anticipate participating in the education process relating to the proposed rules.

Comment 26: Commenters stated that the phrase "within the level of education preparation" was unclear, in relation to advanced delegation to nursing students working as UAPs. The commenters questioned whether the Board intended that the delegated tasks be consistent with the scope of practice for which the nursing student is being educated, i.e., practical nursing or professional nursing, or that the types of delegable tasks would change as the student progressed through his/her education program?

Response 26: The Board intended to specify in the rules that the student may only receive delegation of tasks that he/she has been instructed in his/her education program to perform as confirmed by the chief nursing officer. The level of educational preparation would include tasks specific to the student's educational track and would necessarily change as the student's education progressed.

Comment 27: Commenters expressed concern that the terms EMT-I and EMT-P, as used in the proposed rule on advanced delegation, are names of licenses issued by the Board of Medical Examiners (BOME). The commenters stated that the Board cannot require that UAPs be licensed by the BOME as EMT-I or EMT-P, then purport to make those licensees answerable to nurses rather than physicians or to limit the scope of their EMT licenses. Further, the commenters opined that licensees may function in an unlicensed capacity, but not if the unlicensed capacity is dependent upon licensure as proposed by the Board.

Response 27: The Board agrees with the comments as summarized herein. The Board's intent was to identify training, not required licensure, which would prepare certain individuals to receive delegation from a nurse of specific advanced nursing tasks in the emergency department. The Board has modified the language of the advanced delegation rule to address the commenters' concern by deleting terms that refer to licenses issued by the BOME. The modifications are not intended to substantively change the parameters or the effect of the rule as initially proposed and published.

Comment 28: Commenters suggested that the standards of practice for UAPs should be increased commensurate with the increased scope of the UAPs' duties. Commenters stated that decisions relating to regulation of delegation should be based on empirical evidence correlating delegation with improved patient outcomes and suggested that the use of delegation in acute care facilities is ill defined.

Response 28: The Board has no authority to set or enforce standards of practice for UAPs, but can only do so for nurses. In settings where delegation has been allowed under the current delegation rules, the Board observed no correlation between delegation and adverse patient outcomes. The Board

will affirmatively survey nurses both six months and 12 months after the proposed delegation rules become effective. The surveys will evaluate the nurses' experiences during the implementation of the rules and will monitor disciplinary actions for violations of the delegation rules. The Board has concluded that the proposed rules will protect patients through careful regulation of the delegation processes. The Board disagrees that the use of delegation in acute care is ill defined and asserts that it is clearly outlined in New Rule VI and published New Rule IX.

Comment 29: Two comments were received that the proposed requirements for supervision of the performance of delegated tasks in non-acute (home health) settings are inadequate and the rules are unclear what the standard for supervision is in acute care.

Response 29: The Board has determined that the requirement for supervision of delegation in non-acute (home-health) care settings is the regulatory standard for home health. The standard for supervision of delegation in acute care is clearly set out in New Rule VI.

Comment 30: Several commenters stated that the phrase "aerosol/inhalation" is a different route of medication administration than "per tube" (NG tube) and should therefore be listed separately in the rules.

Response 30: The Board agrees with the comment and has amended New Rule VIII and written XIII accordingly.

Comment 31: One commenter stated that the advanced delegation rule (proposed New Rule IX) should be clarified to reflect that the general criteria for delegation as stated in the other proposed New Rules also applies to delegation.

Response 31: The Board's rules on delegation are cumulative. The Board notes that it is implicit that the general delegation rules apply to acts of advanced delegation.

Comment 32: One commenter requested that the definition of "assignment" in New Rule II be clarified to show that UAPs have an area of responsibility and licensees have an area of accountability and scope of practice.

Response 32: The Board agrees with the comment and has amended the rule accordingly. The amendment comports with the Board's intent for licensee accountability and merely provides clarification.

Comment 33: Several commenters requested that the Board commit to seeking legislation in the next legislative session.

Response 33: The Board notes that the comments are not responsive to the proposed rule notice and the Board declines to address them as such at this time.

Comment 34: One commenter stated that the Board is breaching the Board's legal duty to protect nursing titles by allowing advanced delegation and its duty to protect nurses' practices (role and scope). The commenter asserted that the Board is allowing unlicensed persons to practice nursing and suggested that the rules should require immediate supervision of nursing students acting as UAPs.

Response 34: The Board rules do not allow any unlicensed person to use a title reserved to licensed nurses. Section 37-8-202(8), MCA, expressly authorizes the Board to adopt rules for the delegation of nursing tasks by licensed nurses to unlicensed persons. The Board's duty is to protect the public and the Board has concluded that the delegation rules do accomplish that protection. The proposed rules do require immediate supervision of nursing students performing advanced delegation.

Comment 35: Commenters expressed concern that hospitals may use delegation to staff fewer nurses thereby increasing patient to RN ratios. The commenters stated that there is no need for BON to open doors to litigation over patient safety and nurses' responsibility. The commenters asserted that chief nursing officers should be required to have a policy stating that UAPs cannot take the place of licensed nurses.

Response 35: The Board has no authority or control over facility staffing issues. It is not the Board's intent that nurses be replaced by UAPs and the proposed rules do not facilitate that outcome. For public safety purposes, delegation requires that the delegating nurse first assess the patient. Delegation continues to be patient specific, task specific and UAP specific, so there can be no blanket delegation of any nursing task to a UAP. The Board has concluded there is a need for greater flexibility in the ways nurses provide excellent care to patients. The proposed delegation rules provide greater flexibility without compromising patient safety. The Board determined the litigation comment is speculative and therefore declines to address the comment.

Comment 36: One commenter provided several comments relating primarily to formatting and organization of the proposed rules. Such comments included: 1) add to the definition of "indirect supervision" in New Rule II, that the delegating nurse must be readily available to the UAP in person or by telecommunication to make the definition consistent with other definitions of supervision in the rule and consistent with New Rule VI; 2) consolidate New Rule V and New Rule VI or put the content of both in New Rule IV(4); 3) reverse the order of

sections (2) and (3) in New Rule VI to maintain consistency between acute and non-acute settings; 4) clarify New Rule VIII (1) to refer to nursing specific knowledge and delete the duplicate reference in (1) to "assessment"; and 5) reformat New Rules VIII(2) and IX to be more user friendly and understandable. The commenter stated favorably that the New Rules require nurses to use the nursing process relating to delegation, which appropriately precludes development of a list of tasks that can uniformly be delegated for all patients. The commenter also noted that facilities could make delegation more restrictive than the Board rules allow.

Response 36: The Board agrees that the referenced language should be taken out of New Rule VI(1)(e)(iii) and inserted instead in the definition of "indirect supervision" in New Rule II, to make the definitions of supervision levels more consistent. The Board declines to consolidate New Rules V and VI or move the information to New Rule IV. The Board agrees to reverse the order of sections (2) and (3) in New Rule VI for clarity. The Board agrees that the requested change to New Rule VIII(1) would clarify the rule. The Board agrees that reformatting section (2) of New Rule VIII and New Rule IX will enhance clarity and ease of use without substantively changing the content as proposed. The Board has amended the rules accordingly. See also Comment and Response 22.

Comment 37: A proponent of the New Rules stated that the current delegation rules no longer serve to protect the public and that the New Rules provide nurses with the greater flexibility needed to coordinate safe, appropriate, high quality and cost effective care. The commenter stated that application of the nursing process, which requires nursing knowledge and the judgment and skills of a licensed nurse, cannot be delegated and that workers in some other disciplines can be integrated safely under the rules into many settings as task-based and technical assistants.

Response 37: The Board agrees with the comment except the Board disagrees with the assertion that the current rules no longer serve to protect the public. The Board determined that the current delegation rules needed to be updated and clarified and promulgated the proposed rules as such.

Comment 38: One person commented that dialysis technicians are the predominant caregivers in most outpatient dialysis facilities. The commenter stated that the New Rules relating to advanced delegation to dialysis technicians are consistent with The American Nephrology Nurses' Association position statements.

Response 38: The Board agrees with the comments and has determined that nurses' ability to delegate to dialysis technicians in dialysis facilities will increase or at least

maintain the patients' access to safe and appropriate dialysis care in rural Montana.

Comment 39: Several commenters stated that the New Rules seem to meet the interests of facilities but not necessarily the interests of nurses. The commenter questioned whether the Board has the infrastructure to administer and implement the proposed rules or to provide essential education relating to them.

Response 39: The Board did not propose the adoption of the New Rules relating to delegation and the repeal of the current delegation rules in order to promote the interests of facilities. Adoption of the New Rules will provide nurses flexibility to utilize delegation where appropriate while carefully regulating delegation for the public's protection. During the rulemaking process, the vacant position of Board Executive Director was filled and the Board believes it is now positioned to assist in the education process relating to the New Rules and to evaluate the impact of the rules on public safety as they are implemented in settings where delegation was not previously allowed.

Comment 40: Two commenters stated that the rules should require that all patients be stable before delegation is permissible.

Response 40: The Board notes that patients in an emergency department are rarely "stable", but if a patient arrests there, it can be helpful to have a competent UAP available to do technical tasks so nurses can readily perform their non-delegable nursing functions. New Rule VI(1)(a) requires that a nurse consider the stability of the patient in making delegation decisions but does not require that the patient be stable.

Comment 41: One person commented that the rules would place another work responsibility (verification of competency and supervision) on nurses that may affect quality of patient care. The commenter also opined that the rules would result in more nurses leaving the acute care setting.

Response 41: The Board contends that if the time involved in the nurse's verification and supervision of a UAP would adversely affect patients' care, delegation should not occur. The Board has determined that only time will tell whether the expansion of delegation to acute care has the adverse impact of nurses leaving the acute care setting. The Board has found no evidence of a correlation between delegation and nurses leaving the profession or leaving a particular practice setting.

Comment 42: A comment was received that the New Rules create another category of nursing personnel without the protection

of a license. The commenter stated that the Board is wrongfully shifting its responsibility for educating the UAPs to RNs and suggested that all references to UAPs in New Rule IV should be changed to "nursing personnel". The commenter suggested that the rule requirement of the delegating nurse needing to visit a patient only monthly in community settings is inadequate. The commenter stated an opposition to the increased responsibility on nursing students under the New Rules and suggested that supervision rests on faculty as those legally responsible.

Response 42: The Board has no jurisdiction over UAPs. UAPs are not nurses, but within the rules, UAPs may perform limited delegated tasks. Education of nursing students must come from their education program and not from on-the-job training and the rules incorporate that principle. The Board will assist in the education of delegating nurses and chief nursing officers relating to the New Rules. Nurses must verify the UAPs' competency to perform tasks before delegating consistent with established practice standards and in accordance with the rules. The references to UAPs in New Rule IV are correct and appropriate. The frequency of nurse visits in community-based settings is a recognized standard for reimbursement purposes and is not a change from the current rule, although facilities can require more frequent visits. Nursing program faculty has no responsibility, legally or otherwise, over nursing students working as UAPs. Such work is performed in the context of an employer-employee relationship independent of the students' nursing education program.

Comment 43: Commenters stated that the New Rules are unclear as to how a staff nurse is to verify competency of a UAP. The commenters suggested that the definition of "competency" is confusing and should refer to demonstrated skills. The commenters additionally stressed the importance of retaining the phrase "and thereby assumes accountability" in the definition of "delegator" in New Rule II, as the commenters are concerned that nurses will be coerced by administrators to delegate when inappropriate. The commenters stated that the above language makes clear it is the delegating nurse who accepts accountability. Lastly, the commenters stated that the rules should require the nurse to assess the patient "immediately" before making the decision to delegate.

Response 43: The Board notes that verification of staff competency is part of generally accepted practice standards and is performed routinely by nurses. Verifying competency differs for every task and the Board believes inclusion in the rules of specific directions for verifying competency is not necessary. The Board agrees that the definition of "competency" should refer to demonstrated skills and has amended New Rule II accordingly. The Board agrees that the definition of "delegator" should not be changed and further agrees that the nurse who makes the decision to delegate is

accountable. The Board declines to require that the patient assessment be done immediately before the decision to delegate as that could create potential problems in the home health context and is overly cumbersome if, for example, a nurse had to re-assess a patient in order to delegate the administration of ibuprofen twice during that shift. The Board notes that the delegating nurse must exercise judgment with respect to the immediacy of the assessment that is necessary or advisable.

Comment 44: A commenter stated support of delegation to UAPs in the emergency department. The commenter stated that the proposed New Rules are not drafted tightly enough to prevent facilities from abusing the delegation concept.

Response 44: The Board does not believe nurses will delegate when in his/her assessment, delegation would not be in the patient's interest to do so. The Board concluded that the proposed rules are drafted to adequately regulate delegation and to prevent the abuse of delegation.

Comment 45: One commenter cautioned that a patient's stability can change quickly and UAPs do not have the knowledge to understand when presenting evidence requires an immediate change of action.

Response 45: The delegating nurse is required to perform a patient assessment prior to delegating. In the acute care setting, immediate supervision of the UAP in the performance of advanced delegation is required by the rules. Supervision is differentiated in the rules based on setting, which in turn relates to the acuity level of patients. The Board has determined that the proposed delegation rules adequately protect the public.

Comment 46: One commenter stated that there appears to be an inconsistency between New Rule VIII, nursing functions and tasks that may not be delegated, and New Rule IX(7)(e), tasks which may be within the nursing student's level of educational preparation.

Response 46: The Board agrees with the comment and is amending New Rule XIII to clarify what tasks cannot be delegated to a nursing student working as a UAP. See also Comment and Response 22.

Comment 47: One commenter stated that the definition of "assignment" in New Rule II is confusing because a UAP does not have an "area of accountability" or a "scope of practice."

Response 47: The Board agrees that the proposed definition could result in confusion and has amended the rule accordingly.

Comment 48: One commenter asserted that the proposed rules do not address RN to LPN delegation, but only nurse to UAP delegation.

Response 48: The new delegation rules implement section 37-8-202(8), MCA, authorizing the Board to adopt rules for the delegation of nursing tasks by licensed nurses to unlicensed persons. The proposed delegation rules do not allow delegation of any task to unlicensed UAPs that LPNs cannot already perform.

4. After consideration of the comments, the Board adopts NEW RULE I (ARM 8.32.1721), NEW RULE III (ARM 8.32.1723), and NEW RULE VII (ARM 8.32.1727) exactly as proposed.

5. After consideration of the comments, the Board has adopted NEW RULE II (ARM 8.32.1722), NEW IV (ARM 8.32.1724), NEW RULE V (ARM 8.32.1725), NEW RULE VI (ARM 8.32.1726), and NEW RULE VIII (ARM 8.32.1728), with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II (ARM 8.32.1722) DEFINITIONS The following words and terms as used in this sub-chapter have the following meanings:

(1) and (2) remain as proposed.

(3) "Advanced delegation" means delegation of specified advanced nursing tasks to specified UAPs only as allowed in [NEW RULE ~~IX~~] and under immediate supervision.

(4) "Assignment" means giving to a UAP or licensee a specific task that the UAP or licensee is competent to perform and which is within the UAP's area of responsibility or a licensee's area of accountability or scope of practice.

(5) "Chief nursing officer" means the nurse ~~executive~~ who:

(a) through (6) remain as proposed.

(7) "Competency" means performance standards including demonstrated skills, knowledge, abilities and understanding of specific tasks that are required in a specific role and setting.

(8) through (11) remain as proposed.

(12) "Fundamentals of nursing course" means a nursing course that provides an introduction to the art and science of nursing practice and human care. Introduction to the concepts of clinical judgment, nursing principles, nursing process, communication skills, and the role of the nurse are included.

(13) "Good academic standing" means a student nurse who is currently enrolled and not on academic probation.

(12) remains as proposed but is renumbered (14).

~~(13)~~ (15) "Indirect supervision" means the nurse delegator is not on the premises but has previously given written instructions to the UAP for the care and treatment of the patient and is readily available to the delegatee either in person or by telecommunication.

(14) through (17) remain as proposed but are renumbered (16) through (19).

(20) "Pharmacology course" means a nursing course that introduces the student to the basic principles of pharmacology in nursing practice and the skills necessary to safely administer medications. Students will be able to demonstrate accurate dosage calculations, correct medication administration, knowledge of drug classifications and therapeutic and nursing implications of medication administration.

(18) through (20) remain as proposed but are renumbered (21) through (23).

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

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

NEW RULE IV (ARM 8.32.1724) CRITERIA FOR DELEGATION OF NURSING TASKS

(1) remains as proposed.

(2) Delegation may only be performed in settings which have a designated chief nursing officer.

(2) remains as proposed but is renumbered (3).

(a) remains as proposed.

(b) verify the UAP's competency to perform the specific task for the specific patient and provide instruction as necessary followed by reverification of competency before delegating; ~~and~~

(c) provide supervision in accordance with [NEW RULE VI]-; ~~and~~

(d) inform the patient of the decision to delegate.

(3) remains as proposed but is renumbered (4).

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

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

NEW RULE V (ARM 8.32.1725) STANDARDS RELATED TO THE FACILITY'S CHIEF NURSING OFFICER REGARDING DELEGATION PRACTICES (1) through (1)(e) remain as proposed.

(i) current enrollment and good academic standing in a nursing education program approved by a state nursing board or a state nursing commission;

(ii) remains as proposed.

(iii) current level of educational preparation, with a minimum of satisfactory completion of a course in the fundamentals of nursing as documented by official educational institution transcript and by course description in writing by the nursing education program;

(f) through (2) remain as proposed.

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

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

NEW RULE VI (ARM 8.32.1726) STANDARDS RELATED TO THE NURSE FUNCTIONING AS A DELEGATOR (1) through (1)(d) remain as proposed.

(e) ~~setting-;~~

(i) and (ii) remain as proposed.

(iii) In nonacute settings, the delegating nurse shall provide, at a minimum, indirect supervision for any delegated nursing task, ~~while still remaining readily available to the delegatee either in person or by telecommunication.~~

~~(2) (3)~~ The delegating nurse is accountable ~~shall retain accountability~~ for the:

(a) through (d) remain as proposed.

(3) remains as proposed but is renumbered (2).

(4) remains as proposed.

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

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

NEW RULE VIII (ARM 8.32.1728) GENERAL NURSING FUNCTIONS AND TASKS THAT MAY NOT BE DELEGATED (1) The following nursing functions require nursing ~~assessment,~~ knowledge, judgment, and skill and may not be delegated:

(a) through (e) remain as proposed.

(2) Nursing interventions, including but not limited to the following, require nursing knowledge, judgment, and skill and may not be delegated except as provided in [NEW RULES VII and X]:

~~(a) medication administration and related activities including-~~

(i) and (ii) remain as proposed but are renumbered (a) and (b).

(A) through (D) remain as proposed but are renumbered (i) through (iv).

~~(E) (vi) per tube-;~~

(vii) by aerosol/inhalation; or

(F) remains as proposed but is renumbered (viii).

(iii) remains as proposed but is renumbered (v).

~~(iv) (c) administration of topical:~~

~~(A) (i) topical opiates;~~

~~(B) (ii) topical cardiovascular medications;~~

~~(C) (iii) topical anesthetic medications; or~~

~~(D) (iv) topical systemic medications;~~

(v) through (vii) remain as proposed but are renumbered (d) through (f).

~~(b) (g) insertion of peripheral ~~or central~~ IV catheters;~~

(h) insertion of central IV catheters;

(c) and (d) remain as proposed but are renumbered (i) and (j).

(i) through (v) remain as proposed.

~~(e) (k) patient triage.~~

(3) and (4) remain as proposed.

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

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

6. After consideration of the comments, the Board has chosen not to repeal but amend and transfer ARM 8.32.1712, with the following changes, stricken matter interlined, new matter underlined:

~~8.32.1712~~ 8.32.1733 TASKS WHICH MAY BE ROUTINELY ASSIGNED TO AN UNLICENSED PERSON IN ANY SETTING WHEN A NURSE-PATIENT RELATIONSHIP EXISTS (1) The following are tasks that are not within the exclusive scope of a licensed nurse's practice and may be within the scope of sound nursing practice to be assigned to ~~an unlicensed person. a UAP: Assignment is defined at ARM 8.32.1703, and is determined by the licensed nurse if in her/his nursing judgment the health and welfare of the patient would be protected and the task could safely be assigned to an unlicensed person. Changes in the patient's condition may require that tasks assigned may need to be changed when they can no longer be safely performed by an unlicensed person.~~

- (a) non-invasive and non-sterile treatments unless otherwise prohibited ~~in this section by these rules;~~
- (b) through (h) (ii) remain the same.
- (iii) opening the lid of the above-referenced container for the patient;
- (iv) through (vi) remain the same.

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

7. The Board is not adopting New Rule IX as proposed based on comments from the public that the structure of the proposed rule as published was difficult to follow. The Board concurred and deemed that the risk of error arising from the structure of the rule warranted dividing it into four separate rules for purposes of clarity and ease of understanding. The division was done without substantively changing the text of the published and noticed rule. The restructuring of the rule does not represent a change in the Board's intent with respect to the published version of the rule.

NEW RULE X (ARM 8.32.1729) ADVANCED DELEGATION, GENERALLY (1) The board recognizes that certain UAPs are prepared by specialized education and training to receive delegation of advanced nursing tasks as provided in [NEW RULES XI, XII, and XIII.] Delegation of advanced nursing tasks must be from a nurse authorized to delegate the specified advanced nursing tasks, in settings and populations congruent with the UAPs' respective specialized education and training.

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

NEW RULE XI (ARM 8.32.1730) ADVANCED DELEGATION TO UAPS WORKING IN THE EMERGENCY DEPARTMENT (1) A UAP working in a

facility's emergency department may receive delegation of the advanced nursing tasks identified in this rule if:

- (a) the delegation is made in the emergency department;
- (b) the delegation is for a patient seeking emergency health care services; and
- (c) the UAP:
 - (i) is under the immediate supervision of the delegating nurse;
 - (ii) possesses current national registry of emergency medical technicians (NREMT) registration at the intermediate or paramedic level; and
 - (iii) is competent to perform the advanced nursing tasks identified in this rule.

(2) A UAP working in the facility's emergency department may receive delegation of the following nursing tasks:

- (a) insertion of peripheral IV catheters; and
- (b) hanging, without additives, initial IV fluids including:
 - (i) lactated Ringer's (LR);
 - (ii) normal saline (NS);
 - (iii) 5% dextrose in sterile water (D5W);
 - (iv) 5% dextrose in normal saline (D5NS);
 - (v) 5% dextrose in .45% saline (D5 1/2NS); and
 - (vi) 5% dextrose in lactated Ringer's (D5LR).

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

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

NEW RULE XII (ARM 8.32.1731) ADVANCED DELEGATION TO UAPS WORKING IN THE DIALYSIS UNIT (1) A UAP working in a dialysis unit may receive delegation of advanced nursing tasks identified in this rule if:

- (a) the delegation is made in an out-patient dialysis unit;
 - (b) the delegation is for an established adult dialysis patient who has been on dialysis for more than 30 days; and
 - (c) the UAP is:
 - (i) under the immediate supervision of the delegating nurse; and
 - (ii) is currently certified as a certified dialysis technician by either the:
 - (A) nephrology nursing certification commission (NNCC);
- or
- (B) board of nephrology examiners - nursing and technology (BONENT).

(2) The UAP working in the dialysis unit may receive delegation of the following advanced nursing tasks:

- (a) preparing dialysate according to established procedures and the dialysis prescription;
- (b) assembling and preparing the dialysis extracorporeal circuit according to protocol and dialysis prescription;
- (c) preparing and cannulating of mature fistula/graft. Maturity/stability of the graft will be established by a nurse prior to cannulation;

- (d) initiating, delivering or discontinuing the dialysis treatment;
- (e) obtaining a blood specimen via a dialysis line or a fistula/graft site; and
- (f) administering the following medications under the immediate supervision of an RN:
 - (i) heparin, only in concentrations of 1:1000 units or less, in an amount prescribed by an individual authorized by Montana statute to so prescribe:
 - (A) to prime the extracorporeal circuit;
 - (B) to initiate treatment; and/or
 - (C) for routine administration throughout the treatment;
 - (ii) normal saline via the dialysis machine to correct dialysis-induced hypotension;
 - (iii) intradermal anesthetics, in an amount prescribed by an individual authorized by Montana statute to so prescribe, as an integral part of the vascular access cannulation procedure; and
 - (iv) oxygen by nasal cannula.

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

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

NEW RULE XIII (8.32.1732) ADVANCED DELEGATION TO UAP NURSING STUDENTS (1) A nursing student who is working as a UAP in any setting may receive delegation of the advanced nursing tasks identified in this rule if:

- (a) the UAP nursing student is supervised at the level determined by the delegating nurse in accordance with these rules; and
- (b) the nursing student is:
 - (i) currently enrolled in a state nursing board-approved nursing education program or a state nursing commission-approved nursing education program;
 - (ii) in good academic standing; and
 - (iii) whose satisfactory completion of a course in the fundamentals of nursing, as defined in [NEW RULE II], has been verified by the facility's chief nursing officer; and
 - (iv) as a condition of receiving delegation of medication administration, has satisfactorily completed a pharmacology course, as defined in [NEW RULE II] and completion has been verified by the facility's chief nursing officer.

(2) A UAP nursing student may receive delegation of the following advanced nursing tasks:

- (a) calculation of medication dose;
- (b) administration of medications:
 - (i) by mouth;
 - (ii) sublingually;
 - (iii) by subcutaneous injection;
 - (iv) by intramuscular injection;
 - (v) per tube;
 - (vi) by aerosol/inhalation; and
 - (vii) by suppository;

- (c) administration of topical:
 - (i) opiates;
 - (ii) cardiovascular medications;
 - (iii) anesthetic medications; and
 - (iv) systemic medications;
 - (d) insertion of peripheral IV catheters;
 - (e) hanging, without additives, IV fluids including:
 - (i) lactated Ringer's (LR);
 - (ii) normal saline (NS);
 - (iii) 5% dextrose in sterile water (D5W);
 - (iv) 5% dextrose in normal saline (D5NS);
 - (v) 5% dextrose in .45 saline (D51/2NS); and
 - (vi) 5% dextrose in lactated Ringer's (D5LR);
 - (f) adjusting IV flow rates; and
 - (g) any other nursing tasks for which the student has received instruction within the nursing program, as confirmed by official transcript and course description, and allowed by facility job description.
- (3) A UAP nursing student may not receive delegation of:
- (a) the nursing assessment;
 - (b) development of the nursing diagnosis;
 - (c) establishment of the nursing care plan;
 - (d) development of the nursing care plan;
 - (e) evaluation of the patient's progress, or lack of progress, toward goal achievement;
 - (f) patient triage;
 - (g) medication administration by intravenous injection or drip;
 - (h) administration of:
 - (i) blood products;
 - (ii) chemotherapeutic agents; or
 - (iii) total parenteral nutrition (TPN), hypertonic solutions, or IV additives;
 - (i) insertion of:
 - (i) central IV catheters; or
 - (ii) nasogastric or other feeding tubes;
 - (j) removal of:
 - (i) endotracheal tubes;
 - (ii) chest tubes;
 - (iii) Jackson-Pratt drain tubes (JP tubes);
 - (iv) arterial or central catheters; or
 - (v) epidural catheters;
 - (k) ability to receive verbal orders from providers; and
 - (l) teaching or counseling a patient or a patient's family relating to nursing and nursing services.

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

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

8. After consideration of the comments, the Board has repealed ARM 8.32.1701, 8.32.1702, 8.32.1703, 8.32.1704, 8.32.1705, 8.32.1706, 8.32.1707, 8.32.1708, 8.32.1709, 8.32.1710, 8.32.1711, and 8.32.1713 exactly as proposed.

BOARD OF NURSING
KAREN POLLINGTON, RN,
CHAIRPERSON

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

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

Certified to the Secretary of State June 20, 2005