

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of NEW RULES I - IX,) ON PROPOSED ADOPTION AND
pertaining to delegation, and) REPEAL
the proposed 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, 8.32.1712,)
and 8.32.1713, pertaining)
to delegation)

TO: All Concerned Persons

1. On February 3, 2005, at 10:00 a.m., a public hearing will be held in room B-07, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption and repeal 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 of Nursing no later than 5:00 p.m., January 28, 2005, to advise us of the nature of the accommodation that you need. Please contact Joan Bowers, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2342; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnur@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: It is reasonable and necessary to repeal ARM 8.32.1701 through 8.32.1713 and adopt new rules I through IX because the Board received numerous requests in the past year that it revisit and rewrite the rules relating to delegation and assignment. The requests were grounded on one of three general contentions: 1) that the existing rules are redundant and difficult to understand; 2) that the existing rules are outdated and do not reflect changing needs and practices in the workplace; 3) that UAPs with specific skill sets and certifications should be able to receive delegation of certain advanced nursing tasks in the acute care setting where delegation is currently prohibited by rule. In addition, one commentor had discovered that a Board rule relating to delegation and residential treatment facilities conflicted with a DPHHS rule.

The other catalyst for these proposed new rules was that within the past year, the Board drafted some proposed amendments to its delegation rules for the purpose of allowing delegation of nursing tasks in the acute care setting to UAPs who were currently enrolled nursing students. The Board had chosen the term "nurse apprentice" to distinguish nursing students working as UAPs in facilities from nursing students obtaining their clinical experience in facilities as part of their education program. The board had also proposed to set standards of practice (expectations relating to performance) for the nurse apprentice-UAPs. Those proposed rules did not get noticed for hearing because they were deemed to create a new category of regulated allied health care worker over which the Board of Nursing was assuming jurisdiction and against whom standards would be enforced, all in excess of the Board's legislative authority.

These proposed new rules incorporate some of the same work product developed earlier relating to delegation of nursing tasks to nursing students but the defects of the earlier drafts have been rectified. These proposed new rules properly set standards for and regulate the licensed nurses involved in the delegation process rather than setting standards for and regulating the students.

The Board's work on the student nurse issue evolved into the more global issue of delegating advanced nursing tasks to other UAPs with other special skill sets/certifications without regard to setting. The Board termed that principle "advanced delegation" in New Rule IX. The Board formed a task force to review the delegation rules and bring its recommendation to the Board. The proposed new rules are a product of the task force as revised by the Board.

4. The proposed new rules provide as follows:

NEW RULE I PURPOSE (1) The purpose of these rules relating to delegation and assignment is:

(a) to serve as a standard for nurses who hire, supervise, and/or serve as a delegator to unlicensed assistive personnel (UAP); and

(b) to establish minimal acceptable levels of safe and effective delegation.

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

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

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

(1) "Accountability" means the responsibility of the delegating nurse for the decision to delegate, for verifying the competency of the UAP delegatee, and for supervising the performance of the delegated task.

(2) "Acute care" means health care received in response to a particular episode of illness or injury, delivered in a licensed healthcare facility that has an organized medical staff, which may include advanced practice registered nurse (APRN) providers, and provides care by licensed registered nurses.

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

(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 or licensee's area of accountability or scope of practice.

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

- (a) directs the facility's nursing services;
- (b) establishes nursing policies and procedures; and
- (c) establishes nursing standards of patient care, treatment, and services specific to the facility.

(6) "Community based residential setting" means a setting in which the client lives in the client's own home or apartment, home of a relative, foster home, or group home.

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

(8) "Delegatee" means the UAP receiving the delegation.

(9) "Delegation" means the act of authorizing and directing a UAP to perform a specific nursing task in a specific situation in accordance with these rules.

(10) "Delegator" means the nurse who makes the decision to delegate and thereby assumes accountability as defined in this rule. The term "delegator" has the same meaning as the term "delegating nurse".

(11) "Direct supervision" means the nurse delegator is on the premises, and is quickly and easily available to the UAP.

(12) "Immediate supervision" means the nurse delegator is on the premises and is within audible and visual range of the patient that the UAP is attending.

(13) "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.

(14) "Nursing assessment" means an ongoing process of determining nursing care needs based upon collection and interpretation of data relevant to the health status of the patient.

(15) "Nursing judgment" means the intellectual process that a nurse exercises in forming an opinion and reaching a clinical decision based upon analysis of the evidence or data.

(16) "Nursing student" means a person currently enrolled and studying in a state nursing board-approved or state nursing commission-approved nursing education program.

(a) Enrollment includes all periods of regularly planned educational programs and all school scheduled vacations and holidays.

(b) Enrollment does not include any leaves of absence or withdrawals from the nursing program, or enrollment solely in academic non-nursing course work.

(17) "Nursing task" means an activity that requires judgment, analysis, or decision-making based on nursing knowledge or expertise and one that may change based on the individual client or situation.

(18) "Stable" means a state of health in which the prognosis indicates little, if any, immediate change.

(19) "Supervision" means the provision of guidance or direction, evaluation and follow-up by the licensed nurse for accomplishment of a nursing task delegated to a UAP.

(20) "Unlicensed assistive person" or "UAP" means any person, regardless of title, who is not a licensed nurse and who functions in an assistive role to the nurse and receives delegation of nursing tasks and assignment of other tasks from a nurse.

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

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

NEW RULE III ACCOUNTABILITY (1) The delegating nurse retains accountability for:

- (a) the decision to delegate;
- (b) the delegated task;
- (c) verifying the delegatee's competency to perform the task; and
- (d) providing supervision.

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

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

NEW RULE IV CRITERIA FOR DELEGATION OF NURSING TASKS

(1) A licensed nurse may only delegate nursing tasks to UAPs in accordance with these rules. Delegation of a nursing task to a UAP shall be based solely on the determination of the patient's nurse, who has personally assessed the patient's condition, that delegation can be performed without jeopardizing the patient's welfare. Delegation shall be task-specific, patient-specific, and UAP-delegatee specific.

(2) The delegating nurse must:

- (a) personally make a nursing assessment of the patient's care needs before delegating;
- (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].

(3) The nursing task to be delegated must be:

- (a) within the area of responsibility, scope of practice, and competency of the nurse delegating the task;
- (b) one which does not require complex observations, critical decision-making, exercise of nursing judgment, or repeated nursing assessments;
- (c) one which is frequently performed and is generally considered technical in nature;
- (d) one for which results are reasonably predictable and which has minimal potential for risks; and
- (e) one which can be safely performed according to exact, unchanging directions.

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

NEW RULE V STANDARDS RELATED TO THE FACILITY'S CHIEF NURSING OFFICER REGARDING DELEGATION PRACTICES (1) The facility's chief nursing officer is responsible for ensuring that:

- (a) the UAP is oriented to the facility and specific role;
- (b) the UAP's skills are observed, evaluated and documented;
- (c) a written UAP job description, specific to setting, is provided to the UAP and to the delegator;
- (d) with respect to advanced delegation as provided in [NEW RULE IX], the UAP's satisfactory completion of education and maintenance of certification is verified;
- (e) verification is performed of a nursing student's:
 - (i) current enrollment in a nursing education program approved by a state nursing board or a state nursing commission;
 - (ii) satisfactory completion of each academic period; and
 - (iii) current level of educational preparation as documented in writing by the nursing education program;
- (f) a name badge which includes first and last name and specific title in standard, bold face font no less than 18 point is provided to the UAP and is worn at all times when on duty, with the exception of settings requiring sterile attire;
- (g) each nurse in the organization is educated on the process of delegation and the nurse's competency to delegate in accordance with these rules is assessed; and
- (h) policy and procedures concerning delegation of nursing tasks are developed and implemented consistent with this subchapter.

(2) A violation of any rule in this subchapter constitutes unprofessional conduct under ARM 8.32.413.

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

NEW RULE VI STANDARDS RELATED TO THE NURSE FUNCTIONING AS A DELEGATOR (1) The degree of required supervision of the

UAP by the delegating nurse shall be determined by the delegating nurse after evaluation of factors described in this subchapter including, but not limited to, the following:

- (a) stability of the patient's condition;
- (b) training and capability of the specific UAP delegatee;
- (c) nature of the nursing task being delegated;
- (d) proximity and availability of the nurse to the UAP when the nursing task will be performed; and
- (e) setting.

(i) In an acute care or skilled nursing facility setting, the delegating nurse shall provide, at a minimum, direct supervision for any delegated nursing task.

(ii) For advanced delegation as authorized in [NEW RULE IX], the delegating nurse shall provide immediate supervision for any delegated nursing task.

(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) The delegating nurse shall retain accountability for the:

- (a) safety of the patient;
- (b) nursing process;
- (c) patient assessment; and
- (d) delegation of nursing tasks appropriate to the UAP's documented knowledge, skills, and abilities.

(3) In nonacute settings, unless otherwise provided in this rule or indicated by the situation, the delegating nurse shall make a supervisory visit at least monthly to:

- (a) evaluate the patient's health status;
- (b) evaluate the performance of the delegated nursing task;
- (c) determine whether goals are being met; and
- (d) determine the appropriateness of continuing delegation of the task.

(4) Violation of any rule in this subchapter constitutes unprofessional conduct under ARM 8.32.413.

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

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

NEW RULE VII NURSING TASKS RELATED TO MEDICATIONS THAT MAY BE DELEGATED (1) Administration of medication may only be delegated by the nurse in the following settings:

- (a) schools;
- (b) hospice residential facilities;
- (c) Montana state prison;
- (d) women's correctional center; and
- (e) community based residential settings not defined as health care facilities in Title 50, chapter 5, MCA, except as otherwise provided herein.

(2) Medications administered pursuant to (1) are limited to the following types of medications and routes:

- (a) pharmacy-prepared or authorized prescriber-prepared medications introduced into the body by inhalant dispenser or nebulizer;
- (b) oral medication taken from:
 - (i) a prefilled, labeled medication holder;
 - (ii) a labeled unit dose container; or
 - (iii) an original marked and labeled pharmacy container;
- (c) oral medication, either in liquid form which must be measured or in tablet form which must be broken, provided the nurse has calculated the dose and amount to be administered;
- (d) suppository medication taken from:
 - (i) a prefilled, labeled medication holder;
 - (ii) a labeled unit dose container; or
 - (iii) an original marked and labeled pharmacy container;
- (e) topical ointments, except as provided in [NEW RULE VIII]; and
- (f) ear drops and eye drops taken from:
 - (i) a prefilled, labeled medication holder;
 - (ii) a labeled unit dose container; or
 - (iii) an original marked and labeled pharmacy container.
- (3) In advanced delegation, administration of medication is restricted as specified in [NEW RULE IX].

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

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

NEW RULE VIII 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) the nursing assessment;
- (b) development of the nursing diagnosis;
- (c) establishment of the nursing care goal;
- (d) development of the nursing care plan; and
- (e) evaluation of the patient's progress, or lack of progress, toward goal achievement.

(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 IX]:

- (a) medication administration and related activities including:
 - (i) calculation of any medication dose;
 - (ii) administration of medications:
 - (A) by mouth;
 - (B) sublingually;
 - (C) by subcutaneous injection;
 - (D) by intramuscular injection;
 - (E) per tube, by aerosol/inhalation; or
 - (F) by suppository;
 - (iii) intravenous injection or drip;
 - (iv) administration of:
 - (A) topical opiates;
 - (B) topical cardiovascular medications;

- (C) topical anesthetic medications; or
 - (D) topical systemic medications;
 - (v) administration of blood products;
 - (vi) administration of chemotherapeutic agents; and
 - (vii) administration of total parenteral nutrition (TPN), hypertonic solutions, or IV additives;
 - (b) insertion of peripheral or central IV catheters;
 - (c) insertion of nasogastric or other feeding tubes;
 - (d) removal of:
 - (i) endotracheal tubes;
 - (ii) chest tubes;
 - (iii) Jackson-Pratt drain tubes (JP tubes);
 - (iv) arterial or central catheters; and
 - (v) epidural catheters; and
 - (e) triage.
- (3) A nurse may not delegate to a UAP the authority to receive verbal orders from providers.
- (4) A nurse may not delegate to a UAP the task of teaching or counseling patients 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

NEW RULE IX ADVANCED DELEGATION (1) The board recognizes that the following UAP technicians are prepared by education, training, and certification, to receive delegation of the advanced nursing tasks specified in this rule. The delegation must be from a nurse authorized to delegate the specified advanced nursing tasks, in settings and populations congruent with the technicians' respective education and certification.

(2) A nurse may delegate the advanced nursing tasks specified in (3) to an emergency department technician only when the delegation:

- (a) is made in the emergency department;
- (b) is for an emergency department patient; and
- (c) the delegatee:
 - (i) is under the immediate supervision of the delegating nurse; and
 - (ii) is both:
 - (A) a graduate of a nationally recognized EMT program; and
 - (B) certified as a nationally registered EMT-I or EMT-P.

(3) The advanced nursing tasks that may be delegated pursuant to (2) are:

- (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).

(4) A nurse may delegate the advanced nursing tasks specified in (5) to a dialysis technician only when the delegation:

(a) is made in an out-patient dialysis unit;

(b) is for a stable adult dialysis patient who has been on dialysis for more than 30 days; and

(c) the delegatee 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).

(5) The advanced nursing tasks that may be delegated pursuant to (4) are:

(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 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.

(6) A nurse may delegate the advanced nursing tasks specified in (7) to a nursing student only when the delegation:

(a) 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 an approved nursing education program;

(ii) in good academic standing; and

(iii) whose satisfactory completion of a course in the fundamentals of nursing has been verified.

(7) The advanced nursing tasks that may be delegated pursuant to (6) are:

- (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, by aerosol/inhalation; or
 - (vi) by suppository;
- (c) administration of:
 - (i) topical opiates;
 - (ii) topical cardiovascular medications;
 - (iii) topical anesthetic medications; and
 - (iv) topical systemic medications;
- (d) insertion of peripheral IV catheters; and
- (e) any other nursing tasks within the level of education preparation, if confirmed by the nursing education program and allowed by facility job description.

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

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

5. The Board of Nursing proposes to repeal the following rules:

8.32.1701 PURPOSE found at ARM page 8-1025.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1702 NURSING TASKS THAT MAY BE DELEGATED found at ARM page 8-1025.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1703 DEFINITIONS found at ARM page 8-1025.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1704 SETTINGS WHERE DELEGATING IS APPROPRIATE found at ARM page 8-1025.1.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1705 CRITERIA FOR DELEGATION - DELEGATION OF NURSING TASKS TO UNLICENSED PERSONS SHALL COMPLY WITH THE FOLLOWING CRITERIA found at ARM page 8-1025.1.

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

8.32.1706 SUPERVISION found at ARM page 8-1025.2.

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

8.32.1707 NURSING FUNCTIONS found at ARM page 8-1025.3.

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

8.32.1708 NURSING TASKS RELATED TO ADMINISTRATION OF MEDICATIONS THAT MAY BE DELEGATED found at ARM page 8-1025.3.

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

8.32.1709 GENERAL NURSING TASKS THAT MAY NOT BE DELEGATED found at ARM page 8-1025.4.

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

8.32.1710 PATIENT HEALTH TEACHING AND HEALTH COUNSELING found at ARM page 8-1025.4.

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

8.32.1711 LIABILITY found at ARM page 8-1025.4.

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

8.32.1712 TASKS WHICH MAY BE ROUTINELY ASSIGNED TO AN UNLICENSED PERSON IN ANY SETTING WHEN A NURSE-PATIENT RELATIONSHIP EXISTS found at ARM page 8-1025.5.

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

8.32.1713 NURSING TASKS RELATED TO GASTROSTOMY FEEDING THAT MAY BE DELEGATED found ARM page 8-1025.6.

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

6. 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 the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-

mail to dlibsdnur@mt.gov, and must be received no later than 5:00 p.m., February 10, 2005.

7. 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/nur>. The Department 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. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Board of Nursing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the 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 all Board of Nursing administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdnur@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

10. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
KAREN POLLINGTON, RN, CHAIRMAN

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State January 3, 2005