

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 8.32.402 ) ON PROPOSED AMENDMENT  
licensure by examination, )  
ARM 8.32.403 reexamination - )  
registered nurse, ARM 8.32.404 )  
reexamination - practical nurse, )  
and ARM 8.32.413 conduct of nurses )

TO: All Concerned Persons

1. On, May 5, 2005 at 1:00 p.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 amendment of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing no later than 5:00 p.m., April 29, 2005, to advise us of the nature of the accommodation that you need. Please contact Andy Verbanac, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2340; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnur@mt.gov.

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

8.32.402 LICENSURE BY EXAMINATION (1) through (9) remain the same.

(10) Candidates who fail shall receive the results of the examination and are not eligible to re-test for ~~90~~ 45 days.

(11) Each school of nursing in Montana shall receive a quarterly statistical summary reports of ~~the test results from that school its NCLEX results as well as state and national NCLEX results.~~

(12) and (13) remain the same.

AUTH: 37-8-202, MCA  
IMP: 37-8-406, 37-8-416, MCA

REASON: The Board of Nursing finds it necessary to amend this rule because the National Council of State Boards of Nursing has recently revised its rules to allow an individual to retest after only 45 days. The previous waiting period was 90 days. Amending this rule will allow those who fail the exam to retest within 45 days instead of waiting 90 days. The

Board believes that the sooner an individual passes the exam and begins working as a nurse, the less likely the individual is to lose clinical competency skills.

The amendment will affect all license applicants who fail the NCLEX examination. Approximately 12 practical nursing applicants and 15 registered nursing applicants fail the NCLEX each year in Montana.

This amendment presents no fiscal impact.

8.32.403 REEXAMINATION - REGISTERED NURSE

(1) Candidates who fail the licensing examination will be permitted to retake the examination after ~~90~~ 45 days. Effective October 1, 2000, a candidate may retake the examination one time. If a candidate does not pass the retake, the candidate will be required to present a plan of study to the board before becoming eligible to take the examination again. A candidate may take the test a maximum of five times in three years. If a candidate does not pass the examination within three years, the individual will be required to complete a school of nursing program before being able to test a sixth time.

AUTH: 37-8-202, MCA

IMP: 37-8-202, 37-8-406, MCA

REASON: The Board of Nursing finds it necessary to amend this rule because the National Council of State Boards of Nursing has recently revised its rules to allow an individual to retest after only 45 days. The previous waiting period was 90 days. Amending this rule will allow those who fail the exam to retest within 45 days instead of waiting 90 days. The Board believes that the sooner an individual passes the exam and begins working as a nurse, the less likely the individual is to lose clinical competency skills.

The amendment will affect all license applicants who fail the NCLEX examination. Approximately 15 registered nursing applicants fail the NCLEX each year in Montana.

This amendment presents no fiscal impact.

8.32.404 REEXAMINATION - PRACTICAL NURSE

(1) Candidates who fail the licensing examination will be permitted to retake the examination after ~~90~~ 45 days. Effective October 1, 2000, a candidate may retake the examination one time. If a candidate does not pass the retake, the candidate will be required to present a plan of study to the board before becoming eligible to take the examination again. A candidate may take the test a maximum of five times in three years. If a candidate does not pass the examination within three years, the individual will be

required to complete a school of nursing program before being able to test a sixth time.

AUTH: 37-8-202, MCA  
IMP: 37-8-202, 37-8-416, MCA

REASON: The Board of Nursing finds it necessary to amend this rule because the National Council of State Boards of Nursing has recently revised its rules to allow an individual to retest after only 45 days. The previous waiting period was 90 days. Amending this rule will allow those who fail the exam to retest, and hopefully pass within 45 days instead of waiting 90 days. The Board believes that the sooner an individual passes the exam and begins working as a nurse, the less likely the individual is to lose clinical competency skills.

The amendment will affect all license applicants who fail the NCLEX examination. Approximately 12 practical nursing applicants fail the NCLEX each year in Montana.

This amendment presents no fiscal impact.

8.32.413 CONDUCT OF NURSES (1) through (2)(s) remain the same.

(t) failing to participate and cooperate in a professional and occupational licensing division investigation; and

(u) failing to report to the board office within 30 days of the date of the final judgment, order, or agency action, any malpractice, professional misconduct, criminal, or disciplinary action in which the nurse or the nurse's employer, on account of the nurse's conduct, is a named party.

AUTH: 37-1-105, 37-1-319, 37-8-202, MCA  
IMP: 37-1-316, 37-1-319, 37-8-202, MCA

REASON: Presently, nurses are required to disclose on their license renewal applications, any malpractice-related or criminal or disciplinary actions against them since their last renewal. Because licenses are renewed every 2 years, grounds for discipline including license suspension or revocation may exist for nearly that long before the Board office becomes aware of such information. That circumstance poses a risk to public safety. This proposed rule amendment would help ensure that license discipline and appropriate interventions are undertaken in a more timely manner.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to 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](mailto:dlibsdnur@mt.gov), and must be received no later than 5:00 p.m., May 13, 2005.

5. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at <http://www.nurse.mt.gov>. The Department strives to make the electronic copy of this Notice 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.

6. 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](mailto:dlibsdnur@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF NURSING  
KAREN POLLINGTON, RN, CHAIRPERSON

/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 April 4, 2005.