

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

In the matter of the amendment of)	NOTICE OF AMENDMENT,
ARM 8.32.403, reexamination -)	ADOPTION AND REPEAL
registered nurse, ARM 8.32.404)	
reexamination - practical nurse,)	
ARM 8.32.405 licensure by)	
endorsement, and ARM 8.32.408)	
temporary practice permit, the)	
adoption of NEW RULE I)	
pertaining to abatement of fees,)	
NEW RULE II and NEW RULE III)	
pertaining to foreign educated)	
applicants, and the repeal of)	
ARM 8.32.406 licensure for foreign)	
nurses)	

TO: All Concerned Persons

1. On June 16, 2005, the Board published MAR Notice No. 8-32-67 regarding the public hearing on the proposed amendment, adoption and repeal of the above-stated rules relating to reexamination - registered nurse, reexamination - practical nurse, licensure by endorsement, temporary practice permit, abatement of fees, foreign educated applicants and licensure for foreign nurses at page 866 of the 2005 Montana Administrative Register, issue no. 11.

2. A public hearing on the notice of the proposed amendment, adoption and repeal on the above-stated rules was held on July 8, 2005.

3. The Board of Nursing (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:

8.32.408 TEMPORARY PRACTICE PERMIT

Comment 1: Section (3) of ARM 8.32.408 should be amended to read as follows [new material underlined]: "An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice professional or practical nursing provided the applicant has submitted a completed application as described in ARM 8.32.405(1) (c) and (d) and that the initial screening of the application by board staff shows no current discipline as identified in ARM 8.32.405(2) in the last two years". The commenter believes that unless (c) and (d) are added, endorsement applicants may believe they are entitled to a license without having their initial and subsequent license(s) and license status(es) verified by Board staff or

without having their education program verified by Board staff.

Response 1: The proposal/recommendation is a substantive one relating to a part of the rule that was not noticed for proposed amendment. The Board believes the recommendation would need to be included in a hearing notice to give the public at large an opportunity to comment on the recommended change. The Board also believes it may be appropriate for it to review its rules in the future, including ARM 8.32.408, to determine whether the rules contain staff duties relating to the processing of applications (e.g., verifying information provided by the applicant on the application form) that would be more appropriately included in an office policy and procedure manual than in rule. It is not necessary for the rules to contain the internal office procedures by which license applications are processed. The Board elects to amend ARM 8.32.408 exactly as published at this time.

NEW RULE II (ARM 8.32.429) FOREIGN EDUCATED APPLICANTS FOR REGISTERED NURSE LICENSURE

Comment 2: Subsection (3)(a) should be changed to read: "...fulfill the requirements of ARM 8.32.405" (instead of 8.32.405(1)(a)(b)(c)). Also, subsections (3)(b) and (c) of New Rule II should be deleted because the requirements would be covered by the reference to ARM 8.32.405, in total. The commenter stated that the rule, as written, does not provide for verification of licensure and exam results by staff or payment of the application fee.

Response 2: Including a reference to ARM 8.32.405, in total, in New Rule II could be confusing because ARM 8.32.405 includes provisions relating to applicants for practical nurse licensure. New Rule II only relates to applicants for registered nurse licensure. In addition, ARM 8.32.405 includes other provisions that are not applicable to New Rule II. Application fees are set by ARM 8.32.425. The rules are cumulative so there is no need for additional reference to fees in New Rule II. The Board also believes it may be appropriate for it to review its rules in the future, including ARM 8.32.405, to determine whether the rules contain staff duties relating to the processing of applications (e.g., verifying information provided by the applicant on the application form) that would be more appropriately included in an office policy and procedure manual than in rule. It is not necessary for the rules to contain the internal office procedures by which license applications are processed. The Board elects to adopt New Rule II exactly as published.

Comment 3: During preparation of the Notice of Amendment, Adoption, and Repeal, staff noticed a typographical error in the acronym for the Commission on Graduates from Foreign Nursing Schools (CGFNS), in New Rule II(2)(c)(iii).

Response 3: The typographical error has been corrected.

NEW RULE III (ARM 8.32.430) FOREIGN EDUCATED APPLICANTS FOR PRACTICAL NURSE LICENSURE

Comment 4: Subsection (3)(b) should be deleted because the requirements are covered by the reference to ARM 8.32.405, in total. The board is repealing ARM 8.32.406 so the reference to it in ARM 8.32.405(1)(h) should be changed to New Rules II and III or the numbers assigned to the new rules.

Response 4: The comment stating that ARM 8.32.405(1)(h) contains a reference to the rule being repealed, is well-taken. Rule ARM 8.32.405(1)(h) will be amended in this notice to make it consistent with New Rules II and III. The internal reference to ARM 8.32.405, in total, is overly broad. The Board believes that rather than delete (3)(b) from the rule, the better approach is to review its rules further with the objective of proposing amendments to delete references to staff duties such as verifying information provided by applicants and other duties relating to the processing of applications and recommend to the department that such information be included instead in a policy and procedure manual for staff. It is not necessary for the rules to contain the internal office procedures by which license applications are processed. The Board elects not to make the requested changes at this time.

Comment 5: The second sentence in (1) should be amended to read: ". . . . The term includes, but is not limited to, applicants or candidates who studied nursing in the United States through either a distance learning program offered by or through a foreign educational institution or whose nursing education involved a collaboration between a foreign educational institution and an educational institution ~~or program~~ in the United States, so long as the credential was conferred by the foreign educational institution". Certain text was mistakenly omitted and as a result, the sentence makes no sense as written.

Response 5: The Board agrees that text was omitted and elects to adopt New Rule III as amended to correct the error.

4. After consideration of the comments, the Board amends ARM 8.32.403, ARM 8.32.404, ARM 8.32.408 and adopts NEW RULE I (ARM 8.32.428) exactly as proposed.

5. After consideration of the comments, the Board has amended ARM 8.32.405, NEW RULE II (ARM 8.32.429), and NEW III (ARM 8.32.430), with the following changes, stricken matter interlined, new matter underlined:

8.32.405 LICENSURE BY ENDORSEMENT (1) through (1)(g) remain the same.

(h) if the applicant's education was obtained in a foreign country, the applicant must also meet the conditions of ~~ARM 8.32.406~~ ARM 8.32.429 and 8.32.430.

(2) through (4) remain the same.

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

IMP: 37-1-304, MCA

NEW RULE II (ARM 8.32.429) FOREIGN EDUCATED APPLICANTS FOR REGISTERED NURSE LICENSURE (1) through (2)(c)(ii) remain as proposed.

(iii) a credentials review verifying the applicant's nursing education credentials and comparing the applicant's foreign nursing education with the U.S. nursing education standards. The board may deny licensure to a foreign educated applicant if denial is deemed by the board to be warranted by the ~~CCFNA~~ CGFNS credentials evaluation service (CES) report.

(3) and (4) remain as proposed.

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

IMP: 37-8-101, 37-8-405, 37-8-415, MCA

NEW RULE III (ARM 8.32.430) FOREIGN EDUCATED APPLICANTS FOR PRACTICAL NURSE LICENSURE (1) For purposes of this rule, "foreign educated" applicants are those individuals whose nursing education credential was conferred by an educational institution located outside the United States or its jurisdictions. The term includes, but is not limited to, applicants or candidates who studied nursing in the United States through either a distance learning program offered by or through a foreign educational institution or whose nursing education involved a collaboration between a foreign educational institution and an educational institution ~~or program~~ in the United States, so long as the credential was conferred by the foreign educational institution.

(2) through (4) remain as proposed.

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

IMP: 37-8-101, 37-8-405, 37-8-415, MCA

6. After consideration of the comments, the Board has repealed ARM 8.32.406 exactly as proposed.

BOARD OF NURSING
KAREN POLLINGTON, RN, CHAIRPERSON

/s/ MARK CADWALLADER
Mark Cadwallader
Rule Reviewer

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

Certified to the Secretary of State August 29, 2005