

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 8.32.403)	ON PROPOSED AMENDMENT,
reexamination - registered nurse,)	ADOPTION AND REPEAL
ARM 8.32.404 reexamination -)	
practical nurse, and ARM 8.32.408)	
temporary practice permit, the)	
proposed adoption of NEW RULE I)	
pertaining to abatement of fees,)	
NEW RULE II and NEW RULE III)	
pertaining to foreign educated)	
applicants, and the proposed repeal))	
of ARM 8.32.406 licensure for)	
foreign nurses)	

TO: All Concerned Persons

1. On July 8, 2005, at 2:00 p.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, 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., July 1, 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 as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

8.32.403 REEXAMINATION - REGISTERED NURSE

(1) Candidates who fail the licensing examination will be permitted to retake the examination after 90 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~~ The individual will be required to complete a school of nursing program before being able to test a sixth time.

AUTH: 37-1-131, 37-8-202, 37-8-406, MCA

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

8.32.404 REEXAMINATION - PRACTICAL NURSE

(1) Candidates who fail the licensing examination will be permitted to retake the examination after 90 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~~ The individual will be required to complete a school of nursing program before being able to test a sixth time.

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

REASON: It is reasonable and necessary to amend ARM 8.32.403 and ARM 8.32.404 because the Board staff finds them to be confusing as written. License applicants might be confused by them as well. The proposed amendment makes clear that applicants who have taken the NCLEX a total of five times must complete another school of nursing program before s/he will be allowed to sit for the exam a sixth time. Applicants are not required, however, to complete another school of nursing program solely because they have not passed the exam within three years of some event. The amendment also supplements the citations to the Board's rulemaking authority.

8.32.408 TEMPORARY PRACTICE PERMIT (1) through (1)(b) remain the same.

~~(2) The temporary permit shall remain valid until the graduate is notified of the results of the licensing examination scheduled by the applicant under (1)(b). If the graduate fails the examination, the temporary practice permit is null and void and must be immediately returned to the board.~~

(2) The temporary permit issued to a graduate who fails the exam referred to in (1)(b) becomes null, void and invalid three days after the board mails notification to the graduate of the said exam result. Mailing is completed when said notification is deposited in the U.S. mail. The graduate shall immediately return the temporary permit to the board office upon receipt of the notice that s/he failed the exam referred to in (1)(b). Failure to do so is grounds for denial of a subsequent license application from the graduate and such other remedies as are provided by law.

(3) The temporary permit issued to a graduate who passes the exam referred to in (1)(b) remains valid until the license is granted or until two weeks after the board mails notification to the graduate of the said exam result, whichever occurs first. Mailing is completed when said notification is deposited in the U.S. mail.

~~(3)~~ (4) 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)(a) and that the initial screening by board staff shows no current discipline as identified in ARM 8.32.405(2) in the last two years. The temporary permit will remain valid until a license is granted or until notice of proposal to deny license is served, whichever occurs first. In the event that neither contingency has occurred within 90 days of issuance of the temporary permit to the endorsement applicant, the temporary permit shall expire on the 90th day following its issuance unless an extension is granted by the board. ~~the applicant completes the endorsement process, but shall not exceed 90 days without board approval.~~

(4) remains the same but is renumbered (5).

AUTH: 37-8-202, MCA
IMP: 37-1-305, 37-8-103, MCA

REASON: It is necessary to amend this rule to make it consistent with 37-1-305, MCA. Board staff members have delayed notifying temporary permit holders that they passed the exam referred to in (1)(b) because, pursuant to (2), unless the license could be issued simultaneously, the notification resulted in the automatic expiration of the temporary permit and a gap in the successful examinee's authority to practice. Successful examinees were not pleased about the delay in notification of their exam results. Expiration of a successful examinee's temporary permit upon notification of the exam result but before issuance of the license serves no purpose. The proposed amendment would also clarify when the temporary permit of an unsuccessful examinee expires.

4. The proposed new rules provide as follows:

NEW RULE I FEE ABATEMENT (1) The board of nursing adopts and incorporates by reference the September 24, 2004, fee abatement rule of the department of labor and industry found at ARM 24.101.301.

(2) A copy of ARM 24.101.301 is available by contacting the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513.

AUTH: 37-1-131, MCA
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The Board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the Board to authorize the Department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the Board. The Department recently adopted ARM 24.101.301 to implement a

means for the prompt elimination of excess cash accumulations in the licensing programs operated by the Department.

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing levels or other non-typical events. Abatement in such instances will allow the licensees who have paid fees into the Board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

NEW RULE II FOREIGN EDUCATED APPLICANTS FOR REGISTERED 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 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 in the United States, so long as the credential was conferred by the foreign educational institution.

(2) Foreign educated applicants for registered nurse licensure by examination must:

(a) fulfill the requirements of ARM 8.32.402;

(b) pass the Montana licensing examination (i.e., NCLEX); and

(c) be certified by the commission on graduates of foreign nursing schools (CGFNS) as having successfully completed its certification program (CP) consisting of:

(i) an English language proficiency examination, except as provided under (4);

(ii) the CGFNS qualifying examination (also referred to as NCLEX predictor exam or screening exam); and

(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 CGFNA credentials evaluation service (CES) report.

(3) Foreign educated applicants for registered nurse licensure by endorsement from another state of the United States must:

(a) fulfill the requirements of ARM 8.32.405(1)(a), (b), and (c);

(b) have passed the NCLEX or state board test pool exam in the other state;

(c) provide verification of licensure in good standing in the other state;

(d) complete the CGFNS CES healthcare profession and science course-by-course evaluation 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 warranted by the CES report; and

(e) successfully complete an English proficiency examination recognized by CGFNS.

(4) The provisions of (2)(c)(i) and (3)(d) do not apply if the foreign educated applicant graduated from a nursing program at a college, university or professional nurses' training school in one of the following countries:

- (a) Australia;
- (b) Canada (except Quebec);
- (c) Ireland;
- (d) New Zealand;
- (e) Tobago;
- (f) Trinidad; or
- (g) United Kingdom.

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

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

NEW RULE III 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 or program in the United States, so long as the credential was conferred by the foreign educational institution.

(2) Foreign educated applicants for practical nurse licensure by examination must:

- (a) fulfill the requirements of ARM 8.32.402;
- (b) pass the Montana licensing examination (i.e., NCLEX);

(c) provide a CGFNS credentials evaluation service (CES) report based on the CGFNS's healthcare profession and science course-by-course evaluation, verifying the applicant's nursing education credentials and comparing the applicant's 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 CES report; and

(d) successfully complete an English proficiency examination recognized by CGFNS, except as provided in (4).

(3) Foreign educated applicants for practical nurse licensure by endorsement from another state of the United States must:

- (a) fulfill the requirements of ARM 8.32.405;
 - (b) provide verification of licensure in good standing in the other state;
 - (c) provide a CGFNS CES report based on the CGFNS's healthcare profession and science course-by-course evaluation, verifying the applicant's nursing education credentials and comparing the applicant's nursing education with the U.S. nursing education standards. The board may deny licensure to a foreign educated applicant if denial is warranted by the CES report; and
 - (d) successfully complete an English proficiency examination recognized by CGFNS, except as provided in (4).
- (4) The provisions of (2)(d) and (3)(d) do not apply if the foreign educated applicant graduated from a college, university or professional nurses' training school in one of the following countries:
- (a) Australia;
 - (b) Canada (except Quebec);
 - (c) Ireland;
 - (d) New Zealand;
 - (e) Tobago;
 - (f) Trinidad; or
 - (g) United Kingdom.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-8-101, 37-8-405, 37-8-415, MCA

REASON: There is reasonable necessity to repeal ARM 8.32.406 and adopt NEW RULES II and III relating to foreign educated applicants for LPN and RN licensure because the Board recently received a large influx of irregular-looking license applications from persons whose education credentials were purportedly conferred by foreign educational institutions. It became clear that ARM 8.32.406, especially with regard to LPN applicants, provided inadequate means for effectively evaluating foreign education credentials and needed to be repealed. Proposed NEW RULES II and III require evaluation of all foreign educated applicants' credentials by the Commission on Graduates of Foreign Nursing Schools (CGFNS) utilizing its various programs specific to the type of licensure being sought. CGFNS has long been recognized as having expertise in such matters.

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

8.32.406 LICENSURE FOR FOREIGN NURSES found at ARM page 8-976.2.

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

REASON: There is reasonable necessity to repeal ARM 8.32.406 as described in the statement of reasonable necessity provided for NEW RULES II and III.

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., July 18, 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 www.nurse.mt.gov. 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, CHAIRPERSON

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

/s/ MARK CADWALLADER
Mark Cadwallader
Rule Reviewer

Certified to the Secretary of State June 6, 2005