

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 24.213.301 and 24.213.401, ) AND ADOPTION  
and the adoption of NEW RULES I, )  
II, and III, pertaining to )  
definitions, the fee schedule, )  
guidelines for conscious sedation, )  
the abatement of fees, and )  
qualifications to perform certain )  
procedures )

TO: All Concerned Persons

1. On November 13, 2003, the Department of Labor and Industry published MAR Notice No. 24-213-13 regarding the public hearing on the proposed amendment and adoption of the above-stated rules relating to definitions, fee schedule, guidelines for conscious sedation, abatement of fees, and qualifications to perform certain procedures at page 2492 of the 2003 Montana Administrative Register, issue no. 21.

2. On December 19, 2003, a public hearing on the proposed amendment and adoption of the above-stated rules was conducted in Helena. One extensive written comment was received from Sami Butler of the Montana Nurses' Association.

3. The comment and the Board's responses are as follows:

COMMENT 1: Ms. Butler wrote "In [ARM] 24.213.301(4) it states pulse oximetry, pulmonary function testing and spirometry as diagnostic procedures may be performed only by, or under clinical supervision of, a licensed respiratory care practitioner and/or other licensed health care provider who has met the minimum competency standards referred to in NEW RULE III." She stated the proposed amendments are unclear whether this includes the use of oximetry and spirometry as screening tools. Ms. Butler stated that registered nurses have the education, knowledge, skills and ability to use oximetry and spirometry and should not be excluded.

RESPONSE 1: The board was appreciative of Ms. Butler's comment and then addressed it by stating that most nursing schools do not teach much in terms of spirometry and oximetry. In fact, many schools do not even have that in their curriculum. As such, it is necessary for the board to address this rule change in the interests of public safety, health and welfare.

COMMENT 2: Ms. Butler went on to state "MNA has grave concerns regarding proposed language in NEW RULE I. In subsection (2) moderate or deep sedation is not defined. In subsections (2) through (5), the board 'recommends' a variety of

actions." Ms. Butler stated that the function of administrative rules is to provide mandated guidelines for the safety of the public, not recommendations that may or may not be followed.

RESPONSE 2: The Board agrees that the term "moderate or deep sedation" is not defined in proposed NEW RULE I, and agrees that the term should not be used in the rule. In light of the various comments made concerning proposed NEW RULE I, the Board has decided not to adopt NEW RULE I.

The Board disagrees with the comment that the only appropriate use of an administrative rule is to provide mandates. The Board believes that advisory provisions, such as recommendations for use of "best practices" are permitted by the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

COMMENT 3: Ms. Butler continued "The MNA has a position statement on IV conscious sedation, which includes the statement; 'the registered nurse managing the care of the patient receiving IV conscious sedation shall have no other responsibilities that would leave the patient unattended or compromise continuous monitoring.' In (2)(a), the proposed rules state that at least one qualified individual trained in basic life support skills should be present. Will the respiratory care practitioner (RCP) be administering the sedation and performing airway management simultaneously? Will the RCP role be limited to administering only the sedation, or additional pharmacological agents such as reversal agents or emergency medications? Who is scrutinizing the cardiac monitor?"

RESPONSE 3: As noted in Response 2, the Board has decided not to adopt NEW RULE I. In the event the Board proposes a revised version of NEW RULE I at a future date, the Board will keep the comment in mind when revising the rule.

COMMENT 4: Additionally, Ms. Butler stated "MNA strongly urges ACLS certification for the protection of patients. MCA 37-28-102(3)(a)(i) allows administration of pharmacological agents related to respiratory care procedures. IV conscious sedation however, is a separate procedure from a respiratory care procedure. Significant knowledge and assessment of all body systems and the effects of medications on those systems is required to monitor and safely manage the patient receiving IV conscious sedation. We do not see evidence respiratory care practitioners are tested in the certification process to provide this broad level of care. Since the board has deemed IV conscious sedation is within the scope of respiratory care practitioners, we urge the board to limit this to specific settings for respiratory procedures to ensure quality, safe patient care."

RESPONSE 4: Pursuant to this comment the Board concludes that more thought is necessary on its part. The Board stated

that information that had been researched in the preparation of these proposed new rules indicated that nursing students did not receive training, skills, knowledge or testing in pulmonary function testing in the nursing department of MSU-Bozeman and the Great Falls nursing program does not even teach pulmonary function. The board also commented that 'pulse oximetry' does not need the level of education, skill, training and experience as pulmonary function testing requires. The Board of Medical Examiners has issued a physician's delegation of tasks policy statement and Board of Respiratory Care Practitioners would assume that a physician would not delegate a duty to an individual who was not properly trained and qualified to perform the tasks. As a safety issue, pulmonary function testing should be performed by licensed respiratory care practitioners. The board again stated that it recommends ACLS accreditation. However, since the points raised by Ms. Butler go to the heart of the proposed NEW RULES I AND III the board determined that it would not adopt them at this time. Instead, it decided more thought and input was necessary.

4. The Board amends ARM 24.213.401 and adopts New Rule II (ARM 24.213.403) exactly as proposed.

5. After due consideration of the comments received the board has chosen not to amend ARM 24.213.301 or adopt NEW RULES I and III at this time. These may be noticed at a later date.

BOARD OF RESPIRATORY CARE PRACTITIONERS  
GREGORY PAULAUSKIS, PRESIDENT

/s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State March 1, 2004.