

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

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

TO: All Concerned Persons

1. On December 19, 2003, at 10:00 a.m., a public hearing will be held in room 438, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment and adoption 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 Respiratory Care Practitioners no later than 5:00 p.m. on December 12, 2003, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Respiratory Care Practitioners, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrpc@state.mt.us.

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

24.213.301 DEFINITIONS (1) through (3) remain the same.
(4) The board defines "pulse oximetry," "pulmonary function testing" and "spirometry" as diagnostic procedures that, pursuant to the orders of a physician, 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. ~~The individual performing pulmonary function testing and spirometry must meet minimum competency standards, as they currently exist, as established by the national institute for occupational safety and health (NIOSH) or the national board for respiratory care (NBRC) certification examination for entry level respiratory therapist, certification examination for entry level pulmonary function technologist (CPFT) credential or registry examination for advanced pulmonary~~

~~function technologists (RPFT) specific to pulmonary function testing.~~

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-28-101, 37-28-102, MCA

REASON: The Board has determined there is reasonable necessity to amend the rule to clarify that an entry-level respiratory therapist (CRT) or an advanced level respiratory therapist (RRT) may perform pulse oximetry, pulmonary function testing and spirometry in response to questions from licensees. The Board believes that removing the practitioner qualifications from the "definitions" rule and placing those qualifications into a separate rule (see NEW RULE III) will make it easier for licensees, staff and the public to find the information. There is also reasonable necessity to amend the AUTH citations to include an additional applicable statute while otherwise amending the rule.

24.213.401 FEE SCHEDULE (1) The following fees are hereby adopted:

(a) Application fee	\$ 20 <u>50</u>
(b) License fee	40 <u>50</u>
(c) Renewal fee	50 <u>100</u>
(d) Temporary permit	30 <u>50</u>
(e) Late renewal fee	20 <u>40</u>
(f) Inactive license fee	10 <u>30</u>

AUTH: 37-1-134, 37-28-104, MCA
IMP: 37-28-104, 37-28-202, 37-28-203, MCA

REASON: The Board of Respiratory Care Practitioners has determined that there is reasonable necessity to amend ARM 24.213.401 in order to set the Board's fees at a level commensurate with program costs, as required by 37-1-134, MCA. The Board estimates that approximately 540 persons (500 active licensees, 20 inactive status licensees, and 20 new applicants) will be affected by the proposed fee changes. The Board's licenses are issued on a two-year renewal cycle, with renewals coming due in even-numbered years. The estimated biennial increase in revenue is approximately \$26,800. With the proposed fee increases, the Board's projected annual revenue is \$54,000 during the even-numbered years and \$3,200.00 during the odd-numbered years. The Board's appropriation for fiscal year 2004 is \$27,147.00 and for fiscal year 2005 is \$25,563. The Board's Departmental recharge has been increased by \$10,621 in fiscal year 2004 and by \$11,104 in fiscal year 2005. The increase is the result of the recharge now being calculated and based on the percentage of FTE needed to provide administrative support to the Board. The Board last raised its fees in fiscal year 2001.

4. The proposed new rules provide as follows:

NEW RULE I INSTITUTIONAL GUIDELINES CONCERNING EDUCATION AND CERTIFICATION -- WHEN REQUIRED

(1) Institutions that use or employ respiratory care practitioners who administer intravenous (IV) conscious sedation may do so only if the institution has adopted specific guidelines regarding the education and training of those respiratory care practitioners.

(2) The board recommends the following be incorporated as minimum standards into an institution's guidelines regarding moderate or deep sedation:

(a) at least one qualified individual trained in basic life support skills, such as CPR and bag-valve-mask ventilation, should be present in the procedure room; and

(b) there must be immediate availability (not more than five minutes away) of an individual with advanced life support skills training and equipment, such as tracheal intubation, defibrillation, and resuscitation medications.

(3) The board recommends regarding deep sedation that an individual with advanced life support skills training and equipment, such as tracheal intubation, defibrillation, and resuscitation medications, be present in the procedure room.

(4) The board recommends, but does not require, that all respiratory care practitioners performing IV conscious sedation have ACLS accreditation.

(5) The board recommends that individuals responsible for patients receiving sedation or analgesia should understand the pharmacology of the agents that are administered, as well as the role of pharmacologic antagonists for opioids and benzo-diazepines. Individuals monitoring patients receiving sedation or analgesia should be able to recognize the associated complications.

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-28-101, 37-28-102, MCA

REASON: The Board believes it is reasonable and necessary to adopt NEW RULE I to clarify and establish the meaning of that certain Declaratory Ruling dated January 6, 2003, published at page 26 of the 2003 Montana Administrative Register, Issue Number 1, wherein it was stated that the Board would establish the prerequisites for proper administration and monitoring of conscious intravenous (IV) sedation and the scope of authority. This NEW RULE I will set the standard and require that an individual with advanced life support skills be immediately available (within five minutes) for moderate sedation. Based upon the concerns raised by the Montana Board of Nursing, the Board of Respiratory Care Practitioners believes NEW RULE I will serve to help protect the public health, safety and welfare.

NEW RULE II ABATEMENT OF RENEWAL FEES (1) This rule is intended to provide a process whereby the board may reduce its cash balance when the board's cash balance is excessive. This

rule provides for an abatement of certain fees when that cash balance is excessive.

(2) Except as provided by (3), when the board has an excessive cash balance, the department may abate the renewal fees for its licensees or registrants for one or more renewal cycles until the board's cash balance does not exceed allowable maximums.

(a) The abatement of renewal fees may be the total amount of the renewal fee or a specified portion of that fee.

(b) If the board has more than one category of renewals, the abatement must be made on a roughly proportional basis to fairly, equitably, reasonably and economically distribute the abatement among the program's licensees or registrants. The department may, for good cause, completely abate the renewal fee for certain classes of licensees or registrants and not for other classes, if the administrative cost of processing a reduced renewal for all classes is disproportionately high. In such case, the department must attempt in any future abatements to equitably treat those classes of renewals which have borne a relatively higher proportion of renewal fees.

(c) The fact that a renewal fee is abated for any given renewal cycle does not excuse the licensee or registrant from otherwise fulfilling renewal requirements, including submission of a renewal application and any continuing education documentation. The board, to the extent it provides by rule, may impose a late fee on untimely submissions of renewal applications or other required documentation.

(3) This rule will not apply when an exception to 17-2-302, MCA, exists and is applicable to the board's cash balance. (As an example, if the board adopts a three-year renewal cycle, the board will have an apparent excess cash balance during the first year of the renewal cycle, based upon a collection of three years worth of fees for operational expense.)

(4) This rule does not relieve the board from the duty of establishing fees at a level commensurate with costs.

AUTH: 37-1-101, 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-101, 37-1-131, 37-1-134,
MCA

REASON: The Board has determined that it is reasonably necessary to adopt NEW RULE II to ensure that the Board of Respiratory Care Practitioners and the Department have a methodology in place to promptly address any potential future excess cash accumulations that might be generated by the board's licensing programs. Excess cash accumulations are generally prohibited in 17-2-302, MCA, and a reduction in fees is required pursuant to 17-2-303, MCA. NEW RULE II is designed to be proactive in nature. The Board and the Department note that there needs to be a fee abatement rule in effect before the Board could decide on a waiver of fees, if such a decision becomes necessary in the future. The Department notes that at least one of the administratively

attached boards has an excessive cash balance, and has had to propose and adopt a similar rule in order to address the issue. The Department has prepared a model rule for fee abatements, which it is urging the various boards adopt in advance so that each board can promptly remedy any such excess cash accumulation that might arise. Accordingly, there is reasonable necessity to adopt NEW RULE II at this time, even though the Board does not currently have an accumulation of excess cash.

NEW RULE III AUTHORIZATION TO PERFORM PULMONARY FUNCTION TESTING AND SPIROMETRY (1) A licensee performing pulmonary function testing or spirometry must meet minimum competency standards as established by the national institute for occupational safety and health (NIOSH) or the national board for respiratory care (NBRC).

(2) A licensee is authorized to perform pulmonary function testing and spirometry if the individual has passed any one of the following certification or registry examinations:

- (a) entry level respiratory therapist (CRT);
- (b) advanced level respiratory therapist (RRT);
- (c) entry level pulmonary function technologist (CPFT);

or

- (d) advanced pulmonary function technologist (RPFT).

AUTH: 37-1-131, 37-28-104, MCA

IMP: 37-1-131, 37-28-102, 37-28-104, MCA

REASON: There is reasonable necessity to adopt NEW RULE III to clarify what credentials are required to perform pulmonary function testing and spirometry, based on recent questions posed by licensees. The new rule clarifies information currently found in ARM 24.213.301(4), above, and presents it in a more user-friendly format.

5. 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 Respiratory Care Practitioners, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrpc@state.mt.us and must be received no later than 5:00 p.m., December 19, 2003.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd> under the Board of Respiratory Care Practitioner's rule notice section. 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, 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 comment forum do not excuse late submission of comments.

7. The Board of Respiratory Care Practitioners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name included on the list shall make a written request that 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 Respiratory Care Practitioners administrative rulemaking proceedings. Such written request may be mailed or delivered to the Board of Respiratory Care Practitioners, 301 S. Park, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdrpc@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

9. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF RESPIRATORY CARE PRACTITIONERS
GREGORY PAULAUSKIS, PRESIDENT

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State November 3, 2003.