

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 definitions, ) AND ADOPTION  
ARM 24.213.402 application for )  
licensure, ARM 24.213.405 )  
temporary permit, ARM 24.213.408 )  
examination and adoption of )  
NEW RULES I and II pertaining )  
to institutional guidelines )  
concerning education and )  
certification and authorization )  
to perform pulmonary function )  
testing and spirometry )

TO: All Concerned Persons

1. On October 7, 2004, the Board of Respiratory Care Practitioners published MAR Notice No. 24-213-14 regarding the public hearing on the proposed amendment and adoption of the above-stated rules relating to definitions, application for licensure, temporary permit, examination, institutional guidelines concerning education and certification and authorization to perform pulmonary function testing and spirometry at page 2352, 2004 Montana Administrative Register, issue no. 19.

2. A public hearing on the notice of proposed amendment and adoption was held on November 8, 2004. Members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on November 17, 2004.

3. The Board of Respiratory Care Practitioners (Board) has thoroughly considered all of the comments made. A summary of the comments received and the Board's responses are as follows:

Comment 1: The American Association of Respiratory Care (AARC) supports the Board's proposed rules and has written a position paper in support of respiratory care practitioners performing conscious sedation.

Response 1: The Board thanks the AARC for their support and their position paper.

NEW RULE I (ARM 24.213.501) INSTITUTIONAL GUIDELINES  
CONCERNING EDUCATION AND CERTIFICATION -- WHEN REQUIRED

Comment 2: Mr. Chad Green is in support of the proposed rule.

Response 2: The Board thanks Mr. Green for his comments.

Comment 3: Lorraine Schneider, Board Counsel for the Montana Board of Nursing provided both written and verbal comments on behalf of the Board of Nursing. The Board of Nursing is proposing that the proposed rule delegates to institutions the functions of establishing the education and training required for respiratory care practitioners.

Response 3: The Board of Respiratory Care Practitioners (RCP) is not delegating authority to the institutions. It is merely regulating RCP licensees. Each institution has the right to choose the education and training of its employees. However, licensees still must meet the licensing guidelines established by the Board of Respiratory Care Practitioners. Hospitals are accredited and standards are set by the Joint Commission on Accreditation of Health Care Organizations (JACO).

Comment 4: The Board of Nursing noted that the new rule is inconsistent with the final paragraph of the declaratory ruling dated January 6, 2003. The new rule only recommends Advanced Cardiac Life Support (ACLS) certification. The Board of Nursing proposes that the rule require ACLS certification.

Response 4: The Board of Respiratory Care Practitioners appreciates and agrees with Board of Nursing comment and will change section (4) of NEW RULE I to read: "The board requires that all respiratory care practitioners performing IV conscious sedation have advanced cardiac life support (ACLS) certification."

Comment 5: The Board of Nursing feels that IV conscious sedation is used for many purposes other than respiratory care procedures. The Board of Nursing was concerned that this rule authorizes licensees to administer IV conscious sedation for purposes other than respiratory care procedures and that it would be an expansion of the scope of practice set by the legislature.

Response 5: The Board of Respiratory Care Practitioners reminds the Board of Nursing there is a scope of practice for licensees. If that scope is exceeded in any way, the Board will take appropriate action against that licensee but the Board of Respiratory Care Practitioners does not control assignments of duties by institutions and also recognizes that it only has authority over the licensee. As a result, it would hope that institutions would not ask licensees to exceed their authorized scope of practice and would expect licensees to know exactly what their scope of practice entails.

Comment 6: The Board of Nursing has requested that the Board of Respiratory Care Practitioners adopt an authoritative definition of conscious sedation to distinguish it clearly from deep and moderate sedation and to make clear that the

rule does not authorize licensees to perform anesthesia services requiring a medical or CRNA license.

Response 6: The Board of Respiratory Care Practitioners states that facilities that perform conscious sedation have their own guidelines for using qualified individuals. Conscious sedation is conscious sedation and there is no reason to isolate an individual to just a pulmonary procedure. Conscious sedation is not organ or system specific. When an individual is qualified to perform conscious sedation he or she is not limited to a procedure. As for an authoritative definition of conscious sedation, there is a nationally recognized definition which all licensees are aware of. The Board of Respiratory Care Practitioners recognizes that it has not adopted that definition and will begin the process of rulemaking to adopt that definition.

Comment 7: One commenter stated that the American Society of Respiratory Care recognizes the fact that respiratory therapists are called upon to assist physicians with the administration of sedatives and analgesic medications during diagnostic and therapeutic procedures.

Response 7: The Board agrees with the comment and with the amendment to New Rule I(4) that the Board's requirements will exceed the American Society of Anesthesiologists' (ASA) guideline.

Comment 8: One commenter is concerned that conscious sedation was not included in school programs or board examinations.

Response 8: The National Board for Respiratory Care (NBRC) examination matrix was identified by the Board to include on page 8, Section E.1.L, conscious sedation, as well as page 15, section F.1.L, showing that the respiratory care practitioner is tested on the national exam in the area of conscious sedation.

Comment 9: Robert Wafstet is the director of the respiratory care program at the University of Montana, Missoula, College of Technology and teaches a patient care and assessment class. He stated that students also take an advanced assessment class. When they graduate, students are ACLS certified, they are pediatric advanced life support certified and they are neonatal resuscitation program certified. He stated that there is always a physician present when RCPs are performing conscious sedation.

Response 9: The Board thanks Mr. Wafstet for his comments.

Comment 10: Linda Henderson, MN, RN, C commented that New Rule I allows the discretion of the facility the regulation of respiratory therapy care practitioners. It is her understanding that this is the function of the Board of

Respiratory Care Practitioners and this rule would abrogate this responsibility.

Response 10: The Board of Respiratory Care Practitioners authorizes licensees to perform particular procedures, but does not try to regulate the clinical context in which those procedures are performed.

4. The Board of Respiratory Care Practitioners specifically wants to thank all those individuals who testified and submitted written commentary. Their suggestions were invaluable to this determination.

5. After consideration of the comments, the Board has amended ARM 24.213.301, ARM 24.213.402, ARM 24.213.405, ARM 24.213.408 and adopted NEW RULE II (ARM 24.213.504) exactly as proposed.

6. After consideration of the comments, the Board has adopted NEW RULE I as proposed with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (ARM 24.213.501) INSTITUTIONAL GUIDELINES CONCERNING EDUCATION AND CERTIFICATION -- WHEN REQUIRED

(1) through (3) remain as proposed.

(4) The board ~~recommends, but does not require,~~ requires that all respiratory care practitioners performing IV conscious sedation have advanced cardiac life support (ACLS) ~~accreditation~~ certification.

(5) remains as proposed.

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

BOARD OF RESPIRATORY CARE PRACTITIONERS  
GREGORY PAULAUSKIS, PRESIDENT

/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 March 21, 2005.