

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  
definitions, ARM 24.213.402 ) AMENDMENT AND ADOPTION  
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 November 8, 2004, at 10:00 a.m., a public hearing will be held in room 471, Park Avenue Building, 301 South Park Avenue, 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 November 1, 2004, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Respiratory Care Practitioners, 301 South Park Avenue, 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 proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

- 24.213.301 DEFINITIONS (1) through (4) remain the same.
- (5) The board defines "formal pulmonary function testing" to include, but not be limited to:
  - (a) diffusion capacity studies; and
  - (b) complete lung volumes and flows.
- (6) The board defines "informal screening spirometry" to include, but not be limited to:
  - (a) peak expiration flow rate;
  - (b) screening spirometry forced expiration volume for one second;
  - (c) forced vital capacity; and
  - (d) simple vital capacity.

AUTH: Sections (2) and (3) are advisory only, but may be a correct interpretation of the statute, 37-28-104, MCA  
IMP: 37-28-101, 37-28-102, MCA

REASON: There is reasonable necessity to adopt new (5) and (6) to clarify information currently found in New Rule II, to differentiate a formal study from a basic screening tool.

24.213.402 APPLICATION FOR LICENSURE (1) through (7) remain the same.

~~(8) An applicant who presents from an unlicensed state must provide documentation of active employment. An applicant who has not worked in the profession of respiratory care for a period of up to three years must provide documentation of having acquired continuing education equivalent to that which would have been required had the applicant been a licensee in this state. An applicant who has not worked in the profession of respiratory care for over three years shall provide evidence that they have successfully passed the NBRC certification or registration examination within one year prior to application for licensure. An applicant who has been away from the practice of the profession of respiratory care for more than three years shall provide evidence of competency. The applicant may demonstrate competency by:~~

(a) providing proof of completion (within the last 60 months) of a minimum of 30 hours of continuing education acceptable to the board;

(b) retaking the respective examination(s) for the credential being renewed and achieving a passing score; or

(c) passing another national board for respiratory care (NBRC) credentialing examination, not previously completed.

AUTH: 37-28-104, MCA  
IMP: 37-28-201, 37-28-202, MCA

REASON: The Board finds it reasonable and necessary to amend ARM 24.213.402 in order to maintain a competency level for individuals who have been away from practice in the field for more than three years. This language provides the standard to ensure competency of those who are reentering the field after an absence of more than 36 months.

24.213.405 TEMPORARY PERMIT (1) An applicant for a temporary practice permit ~~must~~ shall have graduated within the ~~12 months immediately~~ 30 days prior to the date of application for the temporary practice permit.

(a) A temporary practice permit will only be issued if the applicant is scheduled to take the NBRC examination within 30 days of applying for the temporary practice permit.

(b) A temporary practice permit expires not later than 45 days after it is issued.

(2) The application fee for a temporary practice permit may be applied to the application fee for a licensed respiratory care practitioner if that temporary permit holder applies for

the licensed respiratory care practitioner's license within ~~six months~~ 45 days from the issuance of the temporary practice permit.

(3) remains the same.

AUTH: ~~37-1-305,~~ 37-28-104, MCA

IMP: 37-1-305, 37-28-206, MCA

REASON: There is reasonable necessity to amend ARM 24.213.405 to shorten the time in which a recent respiratory therapy school graduate may practice before having taken the license examination. Several respiratory department managers have recently requested that the Board amend its rule. In addition, the Board notes that the NBRC, the national testing entity, is in the process of implementing a rule that will require students to take and pass the examination prior to graduation. That NBRC rule is expected to go into effect January 1, 2005.

The Board notes that the NBRC examination is now conducted via electronic means, and can be scheduled and taken in a very short time. Examination results are available within seven days of taking the examination. The Board therefore concludes that the reduction of time a temporary practice permit is valid is appropriate in light of the new, speedier test administration, and will serve to protect the public health and safety by minimizing the amount of time a recent graduate can practice without having passed the examination, which provides an objective demonstration of the graduate's competency.

The Board notes that 15 individuals currently have an active temporary practice permit, and 6 individuals have a lapsed temporary practice permit. Individuals with an active temporary practice permit will not be affected by the proposed change to the Board's rule.

24.213.408 EXAMINATION (1) remains the same.

(2) ~~Except as provided in ARM 24.213.402(8), applicants~~ Applicants for original licensure shall provide evidence that they have successfully passed the examination ~~within one year prior to application for licensure.~~

AUTH: 37-28-104, MCA

IMP: 37-28-104, 37-28-202, MCA

REASON: There is reasonable necessity to amend ARM 24.213.408 to shorten the time in which a recent respiratory therapy school graduate may practice before having taken the license examination. Several respiratory department managers have recently requested that the Board amend its rule. In addition, the Board notes that the NBRC, the national testing entity, is in the process of implementing a rule that will require students to take and pass the examination prior to graduation. That NBRC rule is expected to go into effect January 1, 2005.

The Board notes that the NBRC examination is now conducted via electronic means, and can be scheduled and taken in a very short time. Examination results are available within seven days of taking the examination. The Board therefore concludes that the reduction of time a temporary practice permit is valid is appropriate in light of the new, speedier test administration, and will serve to protect the public health and safety by minimizing the amount of time a recent graduate can practice without having passed the examination, which provides an objective demonstration of the graduate's competency.

The Board notes that 15 individuals currently have an active temporary practice permit, and 6 individuals have a lapsed temporary practice permit. Individuals with an active temporary practice permit will not be affected by the proposed change to the Board's rule.

4. The proposed new rules provide as follows:

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

(1) Respiratory care practitioners shall meet the adopted specific guidelines regarding education and training of those institutions that use or employ respiratory care practitioners who administer intravenous (IV) conscious sedation.

(2) The board recommends the following be incorporated as minimum standards into an institution's guidelines regarding conscious 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 conscious 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 advanced cardiac life support (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 benzodiazepines. 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 the 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. NEW RULE I(1) clarifies that a licensee must abide by the specific procedures and protocols adopted by the licensee's employer in use at the particular facility where conscious IV sedation is being performed. NEW RULE I further recommends minimum standards and proposes that an individual with advanced life support skills be immediately available (within five minutes) for conscious 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 AUTHORIZATION TO PERFORM FORMAL PULMONARY FUNCTION TESTING AND INFORMAL, BASIC SCREENING SPIROMETRY

(1) Properly licensed health care providers performing informal pulmonary function testing or spirometry should 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 formal 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 II to clarify what credentials are required to perform formal 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 Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdrpc@state.mt.us](mailto:dlibsdrpc@state.mt.us) and must be received no later than 5:00 p.m., November 17, 2004.

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 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsdrpc@state.mt.us](mailto: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 September 27, 2004