

BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
24.159.1006 and 24.159.1206)
pertaining to direct supervision and)
standards related to the practical)
nurse's and registered nurse's role in)
cosmetic procedures)

TO: All Concerned Persons

1. On August 4, 2017, the Board of Nursing (board) published MAR Notice No. 24-159-84 regarding the public hearing on the proposed repeal of the above-stated rules, at page 1232 of the 2017 Montana Administrative Register, Issue No. 15.

2. On August 25, 2017, a public hearing was held on the proposed repeal of the above-stated rules in Helena. Several comments were received by the September 1, 2017, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Several commenters opposed the repeal of ARM 24.159.1006 and 24.159.1206, stating that repealing these rules will allow LPNs and RNs to perform surgical procedures, not just nonsurgical medical procedures, without the direct supervision of more highly trained healthcare providers. The commenters were concerned that such action would jeopardize the quality of patient care in Montana.

RESPONSE 1: The rule repeal does not change the scope of practice for nurses in cosmetic medical procedures. Specifically, the rule repeal does not allow LPNs or RNs to perform surgical procedures in a way that conflicts with the general rules of the board. Further, nothing in this repeal implies that it is proper to have a facility that is operating in violation of the Board of Medical Examiners rules. Therefore, any procedure that required direct supervision under the general board rules still currently requires direct supervision. Nor does the repeal change the requirement that any medical procedure must be ordered by a qualified prescriber after an examination, who must exercise proper supervision of that procedure. Removing the laundry list of cosmetic-type procedures a nurse may perform under direct supervision does not mean that nurses may perform procedures without direct supervision at facilities that are in violation of the Board of Nursing or Board of Medical Examiners rules. Rather, nurses must continue to follow supervision and delegation rules applicable to nurses in all practice settings.

The board has formed a committee to meet with other boards and interested parties to further clarify the requirements for supervision in facility settings that are not in a licensed medical facility that are set up as for-profit businesses.

COMMENT 2: Numerous commenters opposed the repeal of ARM 24.159.1006 and 24.159.1206, encouraging the board instead to amend the rules to require direct supervision of RNs and LPNs for all ablative procedures. The commenters discussed several specific cosmetic procedures and how the procedures could adversely affect patients. They asserted that RNs, LPNs, and APRNs do not have sufficient education or experience to perform these procedures. Some commenters argued that only physicians are appropriately trained to evaluate a patient's needs and current condition, and select an appropriate course of treatment and follow-up care in these situations.

RESPONSE 2: As stated above, the broadly applicable supervision and delegation nursing rules accomplish the goal of requiring nurses to only perform procedures without direct supervision if permitted.

COMMENT 3: Several commenters questioned the validity of the board's finding that repealing ARM 24.159.1006 and 24.159.1206 would result in a 30% increase in revenues for small medical spas, expressing concern that the board's analysis assumes these repeals will result in rampant proliferation of elective procedures in an unsafe environment.

RESPONSE 3: Although repealing these rules may result in increased revenues for small businesses, the board concluded that the repeals neither alter the scope of practice of nurses assisting with cosmetic medical procedures, nor change the requirement that a qualified prescriber must oversee all medical procedures in compliance with the Board of Nursing and Board of Medical Examiners rules. The board further notes that the small business impact statement is not binding and does not mean that nurses can practice without direct supervision when required.

COMMENT 4: Several commenters requested the board retain ARM 24.159.1006 and 24.159.1206, and expressed concern that the board may be conferring authority to practice medicine, surgery, or a combination of medicine or surgery in violation of 37-8-103(2), MCA.

RESPONSE 4: Repealing ARM 24.159.1006 and 24.159.1206 does not violate 37-8-103(2), MCA, because licensees remain subject to the current statutes and rules, including 37-1-103, MCA. Repealing these rules may bring the board further into compliance with statutory limitations by removing rules that arguably confer upon nurses the ability to perform medical or surgical procedures without a supervisor determining, on a case-by-case basis, whether the nurse is appropriately supervised, and whether the nurse has the appropriate training and experience necessary to perform such procedures safely.

COMMENT 5: Several commenters expressed concern that the board's repeal of ARM 24.159.1006 and 24.159.1206 came at the request of a single medical spa owner and not for reasons of protecting the public.

RESPONSE 5: Although a medical spa owner initially approached the board to discuss amending ARM 24.159.1006 and 24.159.1206, the board independently determined to repeal these rules. The board first reviewed this issue at its April 12, 2017, full board meeting and referred the issue to a subcommittee of the board, which met on May 10, 2017. After the subcommittee determined to repeal these rules, the issue was again brought to the full board at its July 12, 2017 meeting. At this meeting, the full board considered the subcommittee's recommendation, and determined to propose the rule repeals. All meetings were open to the public, and the board encouraged input from all interested parties.

COMMENT 6: One commenter supported the repeal of ARM 24.159.1006 and 24.159.1206, stating the rules are outdated in today's health care environment. The commenter stated that repealing the rules will not impact patient safety because all nurses are still required to maintain the correct knowledge, skills, and abilities to perform any ordered procedure.

RESPONSE 6: The board has determined to repeal the rules, but is clarifying by response to this comment that the repeal does not mean direct supervision is not required for procedures where a qualified prescriber determines direct supervision is required, and does not mean a facility where the practice of medicine occurs can be operated in violation of the Board of Medical Examiners rules.

4. The board has repealed ARM 24.159.1006 and 24.159.1206 exactly as proposed.

BOARD OF NURSING
N. GREG KOHN, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 16, 2018.