

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

In the matter of the repeal of ARM) NOTICE OF PUBLIC HEARING ON
24.159.1006 and 24.159.1206) PROPOSED REPEAL
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 25, 2017, at 1:30 p.m., a public hearing will be held in the basement conference room #B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed repeal of the above-stated rules.

2. The Department of Labor and Industry (department) 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 Nursing (board) no later than 5:00 p.m., on August 18, 2017, to advise us of the nature of the accommodation that you need. Please contact the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2300; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or nurse@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: On April 12, 2017, the board formed a subcommittee to review ARM 24.159.1006 and 24.159.1206 per a request from a Billings medical spa owner. The subcommittee met on May 10, 2017, and recommended the board repeal the rules.

The board determined it is reasonably necessary to repeal these two administrative rules to align with current industry standards and current rules. These rules are the only board rules addressing specific types of procedures that LPNs and RNs perform and the only ones with a requirement for direct supervision by a physician or an APRN to be on the premises at the time the procedures are performed. No other board rules have this specificity for supervision or detail in description of allowable techniques.

To perform these cosmetic procedures, an RN or LPN would need an order from a prescriber to access the medications named. In any setting or type of intervention a nurse performs, the nurse is held accountable per ARM 24.159.2301(2) to have the proper knowledge, skills, and abilities and to report unsafe patient care. This is also reflected in ARM 24.159.1005 Standards Related to the Practical Nurse's Responsibilities as a Member of the Health Team and ARM 24.159.1205 Standards Related to the Registered Nurse's Responsibilities as a Member of the Nursing Profession.

Owners of outpatient medical spa facilities that provide cosmetic procedures to patients, under the current rule, were required to have a physician or APRN on-site whenever RNs or LPNs performed these procedures. RNs and LPNs are held accountable for any interventions performed and in many settings are not required to have direct on-site supervision for patient safety.

4. The board proposes to repeal the following rules:

24.159.1006 STANDARDS RELATED TO THE PRACTICAL NURSE'S
ROLE IN COSMETIC PROCEDURES

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-102, MCA

24.159.1206 STANDARDS RELATED TO THE REGISTERED NURSE'S
ROLE IN COSMETIC PROCEDURES

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-102, MCA

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 Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

6. An electronic copy of this notice of public hearing is available at www.nurse.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to nurse@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.159.1006 and 24.159.1206 will significantly and directly impact small businesses.

The group of small businesses likely affected are independently owned and operated medical spas, dermatology clinics, and outpatient settings that offer cosmetic procedures and have fewer than 50 full-time employees. The probable significant direct effect is an estimated 30% increase in revenues for small medical spas when there is no need for on-site supervision by APRNs or physicians of qualified LPNs or RNs when providing these procedures. The board does not know of any potential adverse effects to small businesses due to the repeal of these rules.

Documentation of the board's above-stated determination is available upon request to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; facsimile (406) 841-2305; or to nurse@mt.gov.

10. L'Joy Griebenow has been designated to preside over and conduct this hearing.

BOARD OF NURSING
N. GREG KOHN, PRESIDENT

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 24, 2017.