

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.159.301 definitions, ) PROPOSED AMENDMENT  
24.159.403 nonroutine applications, )  
24.159.606 educational facilities for )  
programs, 24.159.612 program annual )  
report, 24.159.655 program faculty, )  
24.159.670 curriculum goals and )  
general requirements for programs, )  
24.159.1037 and 24.159.1237 )  
renewals, 24.159.2020 alternative )  
monitoring track, 24.159.2102 biennial )  
continuing education requirements, )  
24.159.2106 auditing of contact hours )

TO: All Concerned Persons

1. On July 2, 2019, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment 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 June 25, 2019, to advise us of the nature of the accommodation that you need. Please contact Missy Poortenga, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; 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: Following a 2014 National Council of State Boards of Nursing study published by the Journal of Nursing Regulation, several Montana nursing education programs approached the board in early 2018 to establish regulatory oversight of simulation in the clinical setting. The study demonstrated that up to 50 percent of clinical hours may be replaced with simulation hours without a difference in outcomes for NCLEX results or new graduates' initial clinical practice. An initial task force was established to consider the requests.

In October 2018, the board created a rules task force to review and recommend updates to the current administrative rules. At the same time, the board reconvened the simulation task force to consider any rule changes necessary to define and regulate clinical simulation in prelicensure education programs. The

simulation task forces met several times and made final recommendations that the full board reviewed and discussed at the April 2019 meeting.

Therefore, the board determined it is reasonably necessary to amend several rules to incorporate task force suggestions including defining "simulation" and adding requirements to faculty, curriculum, and annual report rules regarding simulation to better ensure the adequate clinical preparation of Montana licensed nurses. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.159.301 DEFINITIONS (1) remains the same.

(2) "Advanced Practice Registered Nurse" or "APRN" means a registered nurse licensed by the board to practice as an advanced practice registered nurse pursuant to 37-8-202, MCA, ~~and ARM 24.159.1414~~. Four APRN roles are recognized by Montana law:

(a) through (38) remain the same.

(39) "Simulation" means instructional techniques designed to replace or amplify real clinical nursing experiences with guided experiences that evoke or replicate substantial aspects of the real world in a fully interactive manner. The evidence-based learning shall replicate patient care scenarios and are designed to foster clinical decision-making and critical thinking. Scenarios may include the use of medium or high-fidelity mannequins, standardized patients, role playing, and computer-based critical thinking simulations. An instructional simulation scenario shall include the elements of pre-briefing, replication of a patient care scenario, and debriefing. Skill acquisition and task training alone, as in the traditional use of a skills laboratory, do not qualify as simulated client care and therefore do not meet the requirements for direct client care hours.

(39) through (46) remain the same but are renumbered (40) through (47).

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

IMP: 37-1-131, 37-8-101, 37-8-102, 37-8-202, 37-8-422, MCA

REASON: The board is amending (2) to remove a reference to a repealed rule. The board is adding a definition for "simulation" to give structure and clarity to the simulation task force-recommended changes to ARM 24.159.612, 24.159.655, and 24.159.670 in this notice. This definition is consistent with national trends and best practice definitions.

24.159.403 NONROUTINE APPLICATIONS (1) through (2)(e) remain the same.

(f) the applicant's conviction of:

(i) a felony crime, unless the conviction occurred more than ten years prior to the date of application and all court-ordered conditions have been fully satisfied or discharged;

(ii) through (4) remain the same.

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

IMP: 37-1-101, 37-1-131, 37-8-405, 37-8-406, 37-8-415, 37-8-416, 37-8-421, MCA

REASON: The board is amending this rule to limit those felony convictions that classify an application as nonroutine that requires board review prior to licensure. Recently, board staff noticed several applications deemed nonroutine solely due to 20+ year-old felony convictions. Because most very old felonies do not provide any basis for denying or issuing a conditional license, the board concluded this provision unnecessarily delayed applicants' ability to test or gain employment. Many states and other Montana professional licensing boards limit how a resolved felony conviction can impact an application for licensure, consistent with the legislature's policy to contribute to the rehabilitation of criminal offenders. The board determined that this amendment will continue ensuring qualified licensees while allowing the board to be more consistent with that policy.

24.159.606 EDUCATIONAL FACILITIES FOR PROGRAMS (1) through (4) remain the same.

(a) Cooperative agreements between nursing programs and clinical agencies must be current, in writing, signed by the responsible officers of each, and must set forth the following:

(i) and (ii) remain the same.

(iii) agency's roles and responsibilities for student oversight and communication with faculty; and

~~(iv) student responsibilities; and~~

(v) remains the same but is renumbered (iv).

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

REASON: During several school site visits, staff noted that the student responsibilities section was missing from the contracts between clinical agencies and nursing education programs. It was discovered that the clinical sites, usually hospitals, utilize a standard template for all clinical arrangements and the standard language does not include student responsibilities. Following suggestions by the rules task force, the board concluded that the nursing education programs adequately address student responsibilities within the student handbooks and is striking this requirement from the cooperative agreements.

24.159.612 PROGRAM ANNUAL REPORT (1) remains the same.

(2) The purpose of the annual report is to provide current data for ongoing program evaluation by the board. The report must include:

(a) through (e) remain the same.

(f) description of progress made by program on improvements recommended by the board or program's accrediting body; ~~and~~

(g) use of clinical simulation; and

(g) remains the same but is renumbered (h).

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, 37-8-302, MCA

24.159.655 PROGRAM FACULTY (1) through (4) remain the same.

(5) Faculty involved in simulations, both didactic and clinical, shall have training in best practices in the use of simulation.

(5) through (9) remain the same but are renumbered (6) through (10).

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.670 CURRICULUM GOALS AND GENERAL REQUIREMENTS FOR PROGRAMS (1) remains the same.

(2) The faculty shall develop, review, and update the curriculum on an ongoing basis. The curriculum must meet the following general criteria:

(a) remains the same.

(b) contain content, clinical experiences, and strategies of active learning directly related to program or course goals and objectives, in order to develop safe and effective nursing practice; and

(c) demonstrate that simulation activities are linked to programmatic outcomes; and

(c) remains the same but is renumbered (d).

(3) through (5) remain the same.

(6) For each course utilizing simulation, no more than 50 percent of clinical hours shall be replaced with simulation hours.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.1037 RENEWALS (1) ~~Renewal notices will be sent as specified in ARM 24.101.414.~~ The licensee must fill out the renewal application and return it to the board by the date set by ARM 24.101.413, together with the renewal fee. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the two-year period following the renewal date set by ARM 24.101.413. If the renewal application is postmarked after the renewal deadline, it is subject to the late penalty fee specified in ARM 24.101.403.

(2) remains the same.

AUTH: 37-1-131, 37-1-141, 37-8-202, MCA

IMP: 37-1-134, 37-1-141, 37-8-202, MCA

REASON: The board is amending this rule and ARM 24.159.1237 to remove the references to a repealed division rule.

24.159.1237 RENEWALS (1) ~~Renewal notices will be sent as specified in ARM 24.101.414.~~ The licensee must fill out the renewal application and return it to the board by the date set by ARM 24.101.413, together with the renewal fee. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the two-year period following the renewal date set by ARM 24.101.413. If the renewal application is postmarked after the renewal deadline, it is subject to the late penalty fee specified in ARM 24.101.403.

(2) remains the same.

AUTH: 37-1-131, 37-1-141, 37-8-202, MCA

IMP: 37-1-134, 37-1-141, 37-8-202, MCA

24.159.2020 ALTERNATIVE MONITORING TRACK (1) remains the same.

(2) With the exception of criminal charges and convictions, licensees may be reported by employers directly to the NAP in lieu of a formal complaint to the board. Failure to enroll or ~~comply~~ with the NAP will result in a formal complaint to the board by the NAP. Failure to comply with the assistance program may result in a formal complaint to the board by the assistance program.

(3) remains the same.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: Following suggestions from the board's screening panel, the board is amending (2) to no longer require the assistance program submit a complaint to the board for every failure to comply. After reviewing complaints and dismissing several for very minor compliance violations, the screening panel members concluded the current reporting requirement is unnecessarily restrictive. The board determined this amendment will allow the assistance program some reasonable discretion in reporting compliance with the alternative monitoring track.

24.159.2102 BIENNIAL CONTINUING EDUCATION REQUIREMENTS

(1) All licensees must ~~verify on the renewal application the completion of continuing education contact hours during the two-year license renewal period;~~ affirm an understanding of their recurring duty to comply with CE requirements as part of license renewal.

(a) ~~practical~~ Practical nurses must complete a minimum of 24 contact hours during the two-year renewal period; ~~and~~

(b) ~~registered~~ Registered nurses must complete a minimum of 24 contact hours during the two-year renewal period; ~~and~~

(c) through (5) remain the same.

(6) Licensees may submit a written request prior to the renewal deadline for a ~~waiver or time extension for all or a portion of continuing education requirements on the grounds of extreme~~ an exemption from CE requirements due to hardship. Requests will be considered by the board.

AUTH: 37-1-131, 37-1-319, ~~37-8-202~~, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: Following a recommendation by department legal staff, the board is amending (1) to align the affirmation of CE required at renewal with 37-1-306, MCA. The changes align with standardized department procedures and forms by having licensees with mandatory CE affirm an understanding of the requirement and the potential of being audited for compliance.

The board is amending (6) by removing licensees' ability to request CE extensions to align CE provisions with standardized department procedures. Under the standardized audit processes, licensees are provided with adequate time to cure any audit deficiencies and additional extensions are no longer necessary.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.159.2106 AUDITING OF CONTACT HOURS (1) The board may ~~conduct a retrospective random audit of the completion of continuing education by licensees during each two-year renewal period~~ randomly audit up to 50 percent of renewed licensees.

~~(2) The board shall notify licensees of the audit by U.S. mail.~~

~~(3) Licensees shall respond to the notice of audit by the date specified in the notice by submitting proof of completion of continuing education for the renewal period specified by the board. Proof may consist of copies of the continuing education certificates issued by the continuing education provider, transcripts with course descriptions or other verified documentation of course completion.~~

~~(4) (2) Licensees must retain proof of completion of continuing education for the period of no less than two years following the last day of the renewal period during which the continuing education was obtained. All CE must be documented to show proof of completion. Licensees are responsible for maintaining these records for two years following the renewal cycle reporting period and making the records available upon board request. Documentation must include the following:~~

~~(a) licensee name;~~

~~(b) course title and description of content;~~

~~(c) presenter or sponsor;~~

~~(d) course date(s); and~~

~~(e) number of CE hours earned.~~

~~(5) The audit may include five percent of each license category during each renewal period.~~

~~(6) (3) Failure to respond to a board notice of audit may result in disciplinary action against the licensee. Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.~~

AUTH: 37-1-131, 37-1-319, ~~37-8-202~~, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is amending this rule and striking outdated provisions to align with and further facilitate the department's standardized renewal, administrative

suspension, and audit procedures. The amendments will further streamline the rule for better organization and ease of use for the reader.

The board is amending (1) to allow flexibility in conducting random CE audits. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

It is reasonably necessary to amend (2) and specify the CE documentation requirements for responding to a random audit. The clarification is necessary to address licensee questions and provide needed guidance to audit personnel.

The board is clarifying in (3) that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

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., July 5, 2019.

6. An electronic copy of this notice of public hearing is available at <http://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 amendment of ARM 24.159.301, 24.159.403, 24.159.606, 24.159.612, 24.159.655, 24.159.670, 24.159.1037, 24.159.1237, 24.159.2020, 24.159.2102, and 24.159.2106 will not significantly and directly impact small businesses.

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; telephone (406) 841-2380; facsimile (406) 841-2305; or to nurse@mt.gov.

10. Missy Poortenga, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF NURSING  
SHARON SWEENEY FEE, PHD, RN, CNE  
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 May 28, 2019.