

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.159.670, 24.159.1468, and) REPEAL
24.159.1469 and the repeal of ARM)
24.159.2101, 24.159.2102,)
24.159.2104, and 24.159.2106)
pertaining to continuing education)

TO: All Concerned Persons

1. On June 23, 2023, the Board of Nursing (agency) published MAR Notice No. 24-159-93 regarding the public hearing on the proposed changes to the above-stated rules, at page 560 of the 2023 Montana Administrative Register, Issue No. 12.

2. On July 21, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

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

COMMENTS RELATING TO ARM 24.159.670:

COMMENT 1: One commenter opposed the rule change to allow for simulation-based learning, noting that dummies are not human beings, and stated that learning to communicate is part of good nursing care.

RESPONSE 1: The board recognizes that face to face clinical experiences remain crucial to the development of nursing students and concluded that simulation can augment their critical thinking skills.

COMMENT 2: Several commenters suggested the board utilize a longer monitoring period for simulation to ensure competency in graduates of nursing programs.

RESPONSE 2: The board monitors this closely.

COMMENT 3: One commenter supported the proposed simulation changes.

RESPONSE 3: The board appreciates all comments received during the rulemaking process.

COMMENT 4: One commenter believed the simulation changes will help advanced nursing practice.

RESPONSE 4: The board appreciates all comments received during the rulemaking process.

COMMENTS RELATING TO CONTINUING EDUCATION CHANGES:

COMMENT 5: One commenter supported the proposed changes but questioned the continuing education (CE) requirements for APRNs with prescriptive authority if the changes are adopted.

RESPONSE 5: The board is repealing the specific CE requirements for license renewal but that will not affect or change the CE required by accrediting bodies or employers.

COMMENT 6: One commenter asked whether RN licenses require CE on top of the requirements for an APRN, or if the APRN CE is sufficient to renew an RN license as well.

RESPONSE 6: The board is removing all CE requirements for renewal of LPN, RN, and APRN licensure.

COMMENT 7: Several commenters opposed the changes, stating that new drugs and changes to existing drugs require education to maintain a knowledge base.

RESPONSE 7: The board agrees that APRNs with prescriptive authority are expected to maintain a level of competence, including a knowledge base of the drugs they are prescribing. However, the board disagrees that this needs to be a separate requirement from licensees maintaining the minimum competency level expected of APRNs in Montana. Removal of CE requirements will allow all board licensees more flexibility in seeking educational opportunities.

COMMENT 8: Three commenters supported removing the pharmaceutical specific CE requirements, as pharmacology education credits are often embedded in other CE courses and stated that it was an administrative burden on APRNs to extract the specific number of pharmacology courses.

RESPONSE 8: The board agrees with the commenters.

COMMENT 9: Several commenters noted that APRNs are regularly researching and educating themselves on pharmaceuticals as part of their practice and supported the board removing the requirement.

RESPONSE 9: The board agrees with the commenters.

COMMENT 10: One commenter noted the importance of pharmacology specific education for nurse practitioners, believing it central to patient safety, and stated the board should not rely on the fact that there was no increase in bad outcomes while CE requirements were waived.

RESPONSE 10: The board believes licensees who engage in prescribing have an obligation to be competent, regardless of whether it maintains a CE reporting requirement, and concluded that if there was not an increase in bad outcomes for patients during a global pandemic, nurses did continue to practice at a high rate of competence.

COMMENT 11: One commenter suggested NPs should receive more yearly education.

RESPONSE 11: This comment is outside the scope of the proposed rulemaking.

COMMENT 12: Several commenters supported the repeal of the CE rules, as the board's stated rationale is sound, and the rules are superfluous at this point.

RESPONSE 12: The board appreciates all comments received during the rulemaking process.

COMMENT 13: One commenter did not support CE, since the commenter receives continuing medical education every day and through their employer.

RESPONSE 13: The board agrees CE should occur every day as a continuum and through the employer as recognized by the article attached to the comment.

COMMENT 14: Numerous commenters expressed appreciation that CE can be of a topic of interest to the individual.

RESPONSE 14: The board appreciates all comments received during the rulemaking process.

COMMENT 15: Numerous commenters supported the proposed changes, noting that nurses spend hours completing education as a requirement for their employing organizations.

RESPONSE 15: The board agrees with the commenter.

COMMENT 16: One commenter noted that proving CE hours to the board is an annoying and tedious task and interferes with license obtainability.

RESPONSE 16: The board appreciates all comments received during the rulemaking process.

COMMENT 17: One commenter supported the proposal, noting that CE often does not help nurses grow professionally because they are often unrelated to the nurse's current job or interest.

RESPONSE 17: The board appreciates all comments received during the rulemaking process.

COMMENT 18: One commenter believed CE is important but noted that CE credits are a poor measure of competence. The commenter stated that if the board is going to require CEs, they should specifically relate to a licensee's practice, which is not something the board currently tracks.

RESPONSE 18: The board agrees that CE credits do not always translate into competent nursing skills. The statute allowing the board to require CE also requires that it be easily obtainable, and requiring CE specific to a professional practice could limit the availability and ease of gaining CE. The department also does not track practice areas of licensees, and would have no way to measure whether a licensee's CE related to the licensee's practice.

COMMENT 19: One commenter supported the CE changes, noting that the commenter keeps current on areas required to render competent patient care, and has done so since before Montana required CE for nurses.

RESPONSE 19: The board agrees and notes professional accountability requires nurses to maintain competence, even without a specific CE requirement.

COMMENT 20: One commenter opined that the board is removing the CE requirement in an effort to suppress the voice of science.

RESPONSE 20: The board points out that CE has never required a scientific basis and that "science" is not a specific requirement in gaining CE approval from accrediting organizations. The board further notes that many accredited topics are not based in science, such as leadership-related CE.

COMMENT 21: Several commenters stated the proposal will delegitimize the nursing profession.

RESPONSE 21: The board disagrees. The board's removal of a specified CE renewal requirement does not remove the requirement for a licensee to maintain competence.

COMMENT 22: Several commenters opposed the changes, stating that the profession should maintain CE requirements to aid in motivation with learning.

RESPONSE 22: The board disagrees that CE needs to be a licensure requirement to motivate nurses to maintain a minimum level of competence and believes that removing the CE requirement allows for nurses to explore topics relevant to their practice. The board acknowledges there is a wide variation of CE available, and not all CE promotes competency. The board also notes that nurses obtain education and training as part of their employment that does not qualify for CE under current board rules, but that is still vital to ongoing competence of the nurse. In addition to

employer standards for competence, there are federal regulations requiring ongoing training and education for nurses.

COMMENT 23: Numerous commenters opined that removing CE requirements will lead to lowered professional standards in nursing and to patient harm.

RESPONSE 23: See RESPONSE 22.

COMMENT 24: One commenter supported the CE changes, stating that actual time in patient care is a more valuable use of a nurse's time, and that hours spent on the job contribute to nursing skills.

RESPONSE 24: The board agrees with the commenter.

COMMENT 25: One commenter noted that many conferences and educational opportunities rely on the host's ability to pay for having the event approved for CE, not the content of the event.

RESPONSE 25: The board appreciates all comments received during the rulemaking process. See also RESPONSE 22.

COMMENT 26: One commenter supported the CE changes, stating that the burden for maintaining best practice within a facility should be on the facility, not the nurse.

RESPONSE 26: The board agrees and notes that many facilities already have CE requirements for employees.

COMMENT 27: One commenter, who has practiced in states with and without CE requirements, stated that there is no difference in the quality of nurses between states. The commenter further noted that a state requirement is not necessary to require CE, as it's a duty as a professional and required for a board certification.

RESPONSE 27: The board agrees with the commenter.

COMMENT 28: One commenter believed CE requirements should be more detailed and expect learning throughout the year.

RESPONSE 28: This comment is outside the scope of the proposed rulemaking.

COMMENT 29: One commenter believed that a free access library should be created to motivate nurses to study and to upgrade their skills.

RESPONSE 29: The board appreciates all comments received during the rulemaking process, but this comment is outside the scope of this rulemaking.

COMMENT 30: Numerous commenters stated that 42 of 50 states require nurses to complete CE.

RESPONSE 30: The board found that some states require CE only for nurses who are not currently practicing and that nurses who are actively working are considered to have met the CE requirements in those states.

COMMENT 31: Numerous commenters opposed the CE changes, noting that the American Nurses Association's code of ethics indicates it is a nurse's professional responsibility to maintain competence practice.

RESPONSE 31: The board agrees nurses have a professional responsibility to maintain competence practice but disagrees that a board requirement to complete CE is necessary to achieve that end. See RESPONSE 22.

COMMENT 32: Numerous commenters stated that removing the CE requirement and associated random audit is averse to the board's mission to protect the public.

RESPONSE 32: The board disagrees, noting that nurses have an ongoing competency obligation whether the board requires CE or not. CE reporting is not necessarily related to each licensee's practice, and not all education received by licensees counts under the board's current requirements.

COMMENT 33: One commenter stated that CE is necessary to maintain equal footing with other medical professionals.

RESPONSE 33: The board notes that the Board of Medical Examiners does not require CE for physicians or physician assistants.

COMMENT 34: Numerous commenters disagreed with the idea that CE presents a burden on nurses.

RESPONSE 34: The board believes the burden is on finding specific CE that meets the board's requirements and reporting it to the board.

COMMENT 35: Numerous commenters opposed the proposed CE changes believing CE is an important part of nursing.

RESPONSE 35: See RESPONSE 22.

COMMENT 36: Multiple commenters stated that CE is important to maintain a high level of competence in a rapidly changing field, citing human immunodeficiency virus, acquired immunodeficiency syndrome, and hepatitis C as examples of diseases where treatment has changed rapidly over a short period of time.

RESPONSE 36: The board notes these rapidly changing fields are often addressed in the practice location and that accredited CE as required by the board is often general in nature and not specific to a particular specialty.

COMMENT 37: One commenter believed CE renews interest in the profession and prevents burnout.

RESPONSE 37: The board acknowledges that this may be the case for this commenter, but another nurse who is already burned out may suffer additional stress as a result of having to obtain the 24 CE required. Eliminating the CE requirement will not preclude licensees from obtaining CE.

COMMENT 38: One commenter stated the board should keep CE requirements so CE courses must be certified and based in true science driven evidence-based care.

RESPONSE 38: The board notes that accredited CE is not required to be based in science. See RESPONSE 20.

COMMENT 39: One commenter noted that facilities may stop offering CE if it is not a requirement of licensure.

RESPONSE 39: The board is not removing requirements for maintaining competence and has no jurisdiction over facilities. The board maintains that repealing the CE renewal requirement may lift administrative burdens for employers to offer professional development activities. See also RESPONSE 22.

COMMENT 40: Several commenters believed that without the requirement, nurses will not have an incentive to seek out CE opportunities.

RESPONSE 40: See RESPONSE 22.

COMMENT 41: Multiple commenters suggested the board's task force resume work on evaluating nursing CE.

RESPONSE 41: The board considered the work of the task force in proposing to repeal CE requirements and does not believe it is necessary to further evaluate CE.

COMMENT 42: Multiple commenters supported the rule changes to allow a variety of options to demonstrate maintaining competence.

RESPONSE 42: The board agrees that removing the board requirements will allow for nurses to choose education and training that advances the individual nurse's profession.

COMMENT 43: One commenter stated the board enacted CE requirements because licensees were failing to stay current in education.

RESPONSE 43: The board originally enacted CE as a result of other states requiring CE, and the board's published reason for enacting the rules does not speak to licensees not staying current. In 2010, when the board adopted the

requirement, licensees did not have access to the same information and the practice of nursing was not nearly as connected to real-time information as it is today.

COMMENT 44: One commenter stated that research data has consistently shown that it can take up to 10 years to implement practice changes because individuals do not stay current.

RESPONSE 44: See RESPONSE 43.

COMMENT 45: One commenter provided the article "Lifelong learning and nurses' continuing professional development, a metasynthesis of the literature" to the board to support the commenter's opposition.

RESPONSE 45: The board believes this article supports their reasoning in repealing CE requirements as it refers to organizational and incremental learning, which the board believes is best achieved in the facility and in collaboration with other professionals.

COMMENT 46: Several commenters believed the board should maintain CE requirements, noting that the legislature may dig into APRN practice authority if the board does not advocate for the profession and keep it solid and evidence-based.

RESPONSE 46: The board notes that the scope of practice of APRNs is the purview of the legislature and does not believe that it should or could prevent the legislature from examining whether statutes setting scopes of practice should be amended. The board notes that physicians do not have CE requirements.

COMMENT 47: One commenter noted that the mobile population of nurses moving in and out of Montana could be harmed by the lack of CE requirements.

RESPONSE 47: Nurses who practice in Montana on a compact license are required to comply with their home state license requirements. Licensees are required to know, understand, and comply with the practice laws of the jurisdictions in which they practice. There are other compact states that do not require CE as part of maintaining a nursing license, and the board does not foresee difficulty for licensees in understanding requirements.

COMMENT 48: One commenter noted that a lack of CE accredited by the board may decrease the credibility of CE offered in Montana.

RESPONSE 48: See previous responses that indicate plenty of opportunities for CE beyond the board's requirements.

COMMENT 49: Many commenters opposed the CE rule changes.

RESPONSE 49: The board appreciates all comments received during the rulemaking process.

COMMENT 50: Many commenters supported the proposed CE rule changes.

RESPONSE 50: The board appreciates all comments received during the rulemaking process.

COMMENT 51: Several commenters did not believe the board should rely on the lack of increase of complaints during the pandemic as a reliable data source for repealing the CE requirements.

RESPONSE 51: The board is not solely relying on the lack of increase of complaints during the CE waiver period. The board believes that no increase in complaints during a horrifically stressful period in nursing speaks to licensees' abilities to remain competent without the board requiring CE.

COMMENT 52: Several commenters suggested this proposal is an attempt by the current administration to silence the voices of nurses.

RESPONSE 52: While the current administration has highlighted the need to remove unnecessary and overly burdensome regulations, it has not directed these rule changes, which come at the board's request after reviewing the task force's work and in conjunction with the CE reporting waiver over the past two years.

COMMENT 53: Several commenters disagreed with the board's determination that the repeal of CE will not significantly and directly impact Montana's small businesses, especially regarding patient outcomes and sentinel events as well as the professional development organization of the Montana Nurses Association.

RESPONSE 53: In voting to propose the rule changes, the board considered whether the proposal would significantly and directly impact Montana small businesses. The board considered whether the proposal would impose a new or extended regulatory burden on Montana small businesses and determined that no new regulatory burden would be imposed. The proposed rules do not have an effect on the ability of any Montana small business to offer CE opportunities.

COMMENT 54: One commenter urged the board not to defund educational opportunities for nurses.

RESPONSE 54: The board does not fund CE courses.

COMMENT 55: Multiple commenters asked what effect this proposal would have on the board's compact status.

RESPONSE 55: The rule changes will not affect the board's compact status. There are other compact states that do not require CE as a condition for licensure.

GENERAL COMMENTS:

COMMENT 56: One commenter believed prescriptive authority should be more regulated, not less.

RESPONSE 56: This comment is outside the scope of the proposed rulemaking.

COMMENT 57: One commenter noted the commenter did not receive notice of the board's rulemaking proposal.

RESPONSE 57: In addition to the MAPA required publishing and notification, the board emailed every board licensee to notify them of this proposal and to encourage public participation. The board's records indicate that the notice of board action did go to the commenter's email address on file with the board, and suggests all licensees ensure they are receiving communications from the board by checking spam filters and maintaining up to date contact information with the board.

COMMENT 58: One commenter suggested that international nurses with a specialty in midwifery be considered to work as obstetric nurses in rural and urban areas.

RESPONSE 58: The board notes this is outside the scope of this rulemaking.

COMMENT 59: One commenter suggested that nursing should be ranked like health care providers as "junior reg," "senior reg," and "consultant."

RESPONSE 59: The board notes this is outside the scope of this rulemaking.

4. The agency has amended ARM 24.159.670, 24.159.1468, and 24.159.1469 as proposed.

5. The agency has repealed ARM 24.159.2101, 24.159.2102, 24.159.2104, and 24.159.2106 as proposed.

BOARD OF NURSING
SARAH SPANGLER, RN, PRESIDENT

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

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 7, 2023.