

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.213.301, 24.213.401,)
24.213.408, and 24.213.504, the)
adoption of NEW RULES I through III,)
and the repeal of ARM 24.213.402,)
24.213.410, 24.213.415, 24.213.502,)
24.213.2101, 24.213.2104,)
24.213.2121, and 24.213.2301)
pertaining to the board of respiratory)
care practitioners)

TO: All Concerned Persons

1. On May 3, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/87320778205>
Meeting ID: 873 2077 8205, Passcode: 295967
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 873 2077 8205, Passcode: 295967

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 department no later than 5:00 p.m., on April 26, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL REASONABLE NECESSITY: In support of the Governor's Red Tape Relief Initiative, the Department of Labor and Industry (department) is conducting comprehensive reviews of the administrative rules of the professional licensing boards administratively attached to the department. This review focuses on updating rules to current standards and procedures, and eliminating unnecessary, redundant, and overburdensome regulations and those duplicated in statute. Other changes replace out-of-date terminology for current language and processes, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for customers and staff.

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

Following consideration of the department's suggested changes, the Board of Respiratory Care Practitioners (board) determined it is reasonably necessary to amend four rules, repeal eight rules, and adopt three new rules to align with the Red Tape Relief Initiative. The streamlined rules will increase department efficiencies by further standardizing procedures used among all licensing boards and programs. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following the specific rule.

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

24.213.301 DEFINITIONS (1) remains the same.

~~(2) "Conscious sedation" means the administration of a pharmacological agent by a respiratory care provider as prescribed by a physician.~~

~~(3)~~ (2) "Emergency procedures" ~~as that term is used in per~~ 37-28-102, MCA, includes, but is not limited to, physician-approved protocols relating to life-sustaining procedures in emergency situations in the absence of the immediate direction of a physician. Emergency respiratory care may also be provided during transportation of a patient and under any circumstances where an epidemic, public disaster, or other emergency necessitates respiratory care.

~~(4) "Formal pulmonary function testing" includes, but is not limited to:~~

~~(a) diffusion capacity studies; and~~

~~(b) complete lung volumes and flows.~~

~~(5) "Informal screening spirometry" includes, but is not 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.~~

~~(6) remains the same but is renumbered (3).~~

~~(7)~~ (4) "Pulse oximetry," "pulmonary Pulmonary function testing," and "spirometry" mean means diagnostic procedures that, pursuant to the orders of a physician, may be performed only by or under clinical supervision of a licensed respiratory care practitioner and/or other licensed health care provider who has met the minimum competency standards. ~~The individual performing pulmonary function testing and spirometry must meet minimum competency standards, as they currently exist, as established by the National Institute for Occupational Safety and Health (NIOSH) or the National Board for Respiratory Care (NBRC) certification examination for entry level respiratory therapist, certification examination for entry level pulmonary function technologist (CPFT) credential, or registry examination for Advanced Pulmonary Function Technologists (RPFT) specific to pulmonary function testing.~~

~~(8) For the purposes of 37-28-102(3)(a), MCA, "respiratory care" does not include the delivery, assembly, testing, simulated demonstration of the operation, or demonstration of safety and maintenance of respiratory therapy equipment by home medical equipment (HME) personnel to a client's home, pursuant to the written prescription of a physician. "Respiratory care" does include any instruction to the~~

~~client regarding clinical use of the equipment, or any monitoring, assessment, or other evaluation of therapeutic effects.~~

~~(Sections (8) and (1) are advisory only, but may be a correct interpretation of the law)~~

AUTH: 37-28-104, MCA
IMP: ~~37-28-101~~, 37-28-102, MCA

REASON: The board is striking the definition of "conscious sedation" as overly broad and ineffective. Respiratory care practitioners are required to perform all services within their scope and training, pursuant to a physician's order and under qualified medical direction, including from medical directors of respiratory care services and departments or home-care agencies. This direction includes conscious sedation protocols and guidelines of employing facilities. Removing this definition aligns with the proposed repeal of ARM 24.213.502.

The board is striking (4) and (5) and amending (7) to align with amendments to ARM 24.213.504. The definition of "pulmonary function testing" applies to licensees performing such tests after qualifying under ARM 24.213.504. It is unnecessary to repeat the qualifications in the definition rule.

The board determined that it is reasonably necessary to remove (8) regarding delivery, assembly, and demonstration of respiratory therapy equipment by home medical equipment personnel. It is long known and accepted that these actions by home health personnel do not require an RCP license to perform. The board is striking the advisory designation to align with the repeal of (8). It is also reasonably necessary to strike the advisory designation for (1) as the board concluded that the definition of "clinical supervision" is not simply advisory in nature.

24.213.401 FEE SCHEDULE (1) The following fees are adopted:

(a) through (c) remain the same.

~~(d) Inactive license fee~~ _____ 50

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

AUTH: 37-1-131, 37-1-134, 37-28-104, MCA
IMP: 37-1-134, 37-1-141, 37-28-104, 37-28-202, MCA

REASON: It is reasonably necessary to strike (1)(d) to align with the elimination of inactive status and the repeal of ARM 24.213.415 in this notice. The elimination of this fee will affect approximately seven licensees and result in a \$350 decrease in annual revenue.

24.213.408 EXAMINATION (1) ~~The Respiratory care practitioner applicants must pass the National Board for Respiratory Care certification examination for entry-level respiratory therapy practitioners offered by the NBRC shall be the exam prescribed for licensing in this state.~~

~~(2) Applicants for original licensure shall provide evidence that they have successfully passed the examination.~~

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-1-131, 37-28-202, MCA

REASON: It is reasonably necessary to rewrite this rule for clarity and to remove unnecessary duplication of statutory requirements.

24.213.504 AUTHORIZATION TO PERFORM FORMAL PULMONARY FUNCTION TESTING AND INFORMAL, BASIC SCREENING SPIROMETRY (1) ~~A licensee is authorized to~~ Licensees may perform formal pulmonary function testing and spirometry if the individual has passed any one of the following certification or registry examinations:

(a) through (d) remain the same.

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-1-131, 37-28-102, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address a licensee's request for clarification. Following discussion, the board is amending this rule and its catchphrase since spirometry is simply a type of pulmonary function testing and it is not necessary to list it specifically.

5. The proposed new rules are as follows:

NEW RULE I CONTINUING EDUCATION (1) Each respiratory care practitioner must obtain 12 continuing education (CE) units in the preceding 12 months, by the renewal deadline in ARM 24.101.413. One CE unit is equal to 50 minutes of instruction or coursework or as designated by the CE provider.

(2) Licensees affirm an understanding of their duty to comply with CE requirements as a part of license renewal.

(3) The CE requirements do not apply until a licensee's first full year of licensure.

(4) The board/staff does not preapprove CE programs or sponsors. Licensees must select quality programs that focus on protecting the health, safety, and welfare of the public and contribute to licensees' professional knowledge and competence. Acceptable CE activities:

(a) contribute to the licensee's knowledge and professional competence;

(b) contain significant intellectual or practical content; and

(c) are germane to the profession of a respiratory care practitioner.

(5) Acceptable CE activities include:

(a) seminars;

(b) workshops;

(c) conferences;

(d) college course work:

(i) one semester credit equals 15 CE units; and

(ii) one quarter credit equals ten CE units;

(e) teaching:

- (i) eight credits maximum; and
- (ii) two credits for each hour of presentation;
- (f) papers, publications, journals, exhibits, videos, and independent study (eight credits maximum);
- (g) in-service programs; and
- (h) online courses, webinars, and correspondence courses.
- (6) The department may randomly audit up to 50 percent of renewed licensees.
- (7) Licensees must maintain CE records for one year following the reporting period and make the records available upon request. Documentation must include:
 - (a) licensee name;
 - (b) course title and description of content;
 - (c) presenter or sponsor;
 - (d) course completion date(s); and
 - (e) number of CE hours earned.
- (8) Licensees found noncompliant with CE requirements may be subject to administrative suspension.
- (9) Licensees may request exemption from CE requirements.
- (10) The department, with respect to any CE audit it performs, shall determine the percentage to audit based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits.

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is simplifying and reorganizing all continuing education (CE) provisions into this single rule. Additionally, CE reporting is being changed to a one-year period to sync with licensee's renewal period. This will simplify CE reporting for licensees, as well as further standardize the procedures used by the department's audit unit. The amount of required CE is not changing.

The board is specifying that an hour of CE credit may be either 50 minutes of instruction or as designated by the provider. This is to address questions and situations that have arisen and to provide direction to the audit unit staff.

It is reasonably necessary to relocate (5) from ARM 24.213.2104 as that rule is being repealed. The board is relocating and simplifying the exemption provision of ARM 24.213.2121 to (10) as that rule is being repealed. Also, due to today's widespread availability of CE, it is reasonable to no longer give credit for repeating identical courses.

Because the department audit unit conducts audits for all professional licensing boards and programs, it is reasonably necessary to clarify the process with (6) and (10).

NEW RULE II UNPROFESSIONAL CONDUCT (1) In addition to the provisions of 37-1-316, MCA, it is unprofessional conduct for respiratory care practitioners to:

- (a) violate a federal, state, or local law or rule relating to the conduct of the profession;

- (b) fail to cooperate with or respond to a department request or investigation;
- (c) fail to adequately supervise according to generally accepted standards of practice;
- (d) engage in abusive billing practices;
- (e) fail to report an incident of unsafe practice or unethical conduct of another licensee to the licensing authority;
- (f) fail to maintain and secure appropriate patient records as required by state and federal regulations;
- (g) fail to provide records when requested to do so by the patient or legal representative;
- (h) practice under unsanitary or unsafe conditions;
- (i) discontinue professional services, unless:
 - (i) services are completed;
 - (ii) the person requests the discontinuation;
 - (iii) alternative or replacement services are arranged; or
 - (iv) the person is given reasonable opportunity to arrange alternative or replacement services; and
- (j) commit any act of sexual abuse, misconduct, or exploitation whether or not it is related to the licensee's practice.

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, MCA

REASON: The department is repealing ARM 24.213.2301 and replacing it with this rule to replace overly specific language with more broadly applicable statements to facilitate use and eliminate more detailed "laundry lists." These amendments will facilitate the board's disciplinary processes by utilizing standard language among the licensing boards and programs.

This new rule further eliminates unnecessary duplication with the unprofessional conduct statute, 37-1-316, MCA. Instead of stating specific state or federal regulations to follow, the department is including (1)(a) to require licensees comply with all applicable laws and regulations. It is reasonably necessary to strike several provisions regarding prescriptions as prescribing medications is outside the scope of care for respiratory care practitioners. Provisions for delegation to unlicensed persons are stricken as exceeding statutory authority. The board is eliminating failure to comply with continuing education requirements as this is addressed under administrative suspension procedure, rule, and law.

NEW RULE III ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) though (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations

implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA

IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. It is reasonably necessary to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

6. The rules proposed to be repealed are as follows:

24.213.402 APPLICATION FOR LICENSURE

AUTH: 37-1-131, 37-28-104, MCA

IMP: 37-1-101, 37-1-104, 37-1-131, 37-1-134, 37-1-141, 37-28-201, 37-28-202, MCA

REASON: It is reasonably necessary to repeal this rule as it unnecessarily duplicates statutory requirements and standardized application procedures utilized for all licensing boards.

24.213.410 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2023 Montana Legislature enacted Chapter 390, Laws of 2023 (HB 583), an act generally revising licensing and certification laws for military members, military spouses, and veterans. The bill will become effective July 1, 2024.

It is reasonably necessary to repeal this rule to align with the bill's amendments to 37-1-145, MCA. The amended statute provides for all boards and programs to accept relevant military education, training, or service toward license qualifications. Specific board or program rules are no longer needed.

24.213.415 INACTIVE STATUS

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA

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

REASON: It is reasonably necessary to repeal this rule and eliminate inactive status for respiratory care practitioners. The historically consistent small number of inactive RCP licensees (currently less than a half a percent of total active licensees) does not justify the staffing and costs associated with monitoring and renewing them.

24.213.502 TRAINING–CONSCIOUS SEDATION

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-1-131, 37-28-101, 37-28-102, MCA

REASON: It is reasonably necessary to repeal this rule as it unnecessarily duplicates statutory provisions. Section 37-28-102, MCA, requires that respiratory care practitioners provide services pursuant to a physician's order and under qualified medical direction, including from medical directors of respiratory care services and departments or home-care agencies. This direction includes protocols and guidelines of employing facilities.

24.213.2101 CONTINUING EDUCATION REQUIREMENTS

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE I. See the REASON for NEW RULE I.

24.213.2104 ACCEPTABLE CONTINUING EDUCATION

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

REASON: The board is repealing this rule to no longer provide a list of acceptable CE offerings. Since 2019, the board no longer preapproves CE courses or providers, and instead provided guidance in ARM 24.213.2101 for licensees to select appropriate, quality courses. It is unnecessary and nonsensical to continue to maintain a "preapproved" list. For simplicity and ease of use, ARM 24.213.2101 is being repealed and replaced with NEW RULE I. Additionally, relevant guidance provisions in (2) are being incorporated into NEW RULE I.

24.213.2121 WAIVER OF CONTINUING EDUCATION REQUIREMENT

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

REASON: The provisions in this rule are relocated to NEW RULE I.

24.213.2301 UNPROFESSIONAL CONDUCT

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA
IMP: 37-1-131, 37-1-316, 37-1-319, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE II. See the REASON for NEW RULE II.

7. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., May 10, 2024.

8. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

9. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

11. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

12. Department staff has been designated to preside over and conduct this hearing.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
BRIAN CAYKO, PRESIDING OFFICER

/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 April 2, 2024.