

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back of each register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 8.61.404 and ) ON PROPOSED AMENDMENT  
8.61.1203, pertaining to fees )

TO: All Concerned Persons

1. On February 7, 2003, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry 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 Social Work Examiners and Professional Counselors no later than 5:00 p.m., on January 31, 2003, to advise us of the nature of the accommodation that you need. Please contact Mary Hainlin, Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2369; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdswp@state.mt.us.

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

8.61.404 FEE SCHEDULE

- (1) and (2) remain the same.
- (3) Renewal fee (based on annual renewal) 50 100
- (4) Renewal fee (inactive to active) 50 100

AUTH: ~~37-1-134~~, 37-22-201, 37-22-302, 37-22-304, MCA  
IMP: 37-1-134, 37-22-301, 37-22-302, 37-22-303, 37-22-304, MCA

8.61.1203 FEE SCHEDULE

- (1) and (2) remain the same.
- (3) Renewal fee 50 100
- (4) Renewal fee (inactive to active) 50 100

AUTH: ~~37-1-134~~, 37-23-103, MCA  
IMP: 37-1-134, 37-23-206, MCA

REASON: There is reasonable necessity to amend ARM 8.61.404 and 8.61.1203 in order to set the Board's fees at a level commensurate with costs, as required by 37-1-134, MCA. The Board estimates that approximately 1253 persons (1,100 active licensees, 78 inactive status licensees, and 75 new applicants) will be affected by the proposed fee changes. The estimated

annual increase in revenue is approximately \$70,600. With the proposed fee increases, the Board's projected annual revenue is \$135,800. The Board's requested appropriation for fiscal year 2004 is \$119,251. A legislative audit of the Business Standards Division required that all boards pay their portion of the conversion to the Oracle database system. The Oracle reallocation for the Board of Social Work Examiners and Professional Counselors is \$17,800 and is in addition to the appropriation for the Board. The reallocation is required to be paid in fiscal year 2003. The Board's recharge will be increased by \$11,471 in fiscal year 2004 and by \$14,399 in fiscal year 2005. The recharge calculation was based on the board-allocated FTE, the time distribution sheet, personnel services charges for the Health Care Licensing Bureau, personnel allocation without investigator (4 FTE), HCLB Bureau budget, Business Standards Division recharge, and BSD legal allocation. The BSD has implemented the alternative pay plan with those increases reflected in the Board's recharge. The Board last raised its fees in fiscal year 1990.

In addition, there is reasonable necessity to amend the authorization citations for both rules. Although section 37-1-134, MCA, requires that boards set fees commensurate with costs, it does not provide express rulemaking authority to the Board.

4. 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 Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [dlibsdswp@state.mt.us](mailto:dlibsdswp@state.mt.us) and must be received no later than 5:00 p.m., February 14, 2003.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/swp> under the Board of Social Work Examiners and Professional Counselors rule notice section. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address does not excuse late submission of comments.

6. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

7. The Board of Social Work Examiners and Professional Counselors 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 which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Social Work Examiners and Professional Counselors administrative rulemaking proceedings or other administrative proceedings. Such written requests may be mailed or delivered to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdswp@state.mt.us or may be made by completing a request form at any rules hearing held by the department.

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

9. The Board of Social Work Examiners and Professional Counselors will meet to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments at the Board's next regularly scheduled meeting on February 20-21, 2003, in Billings. Members of the public are welcome to listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed amendments beyond the February 14, 2003, deadline.

BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
RICHARD SIMONTON, CHAIR

/s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

/s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

Certified to the Secretary of State January 6, 2003.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 37.50.320	)	AMENDMENT
pertaining to foster care	)	
facility contracts	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On February 15, 2003, the Department of Public Health and Human Services proposes to amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on February 3, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.50.320 FOSTER CARE FACILITY CONTRACTS (1) Facilities that have been classified may apply for a contract with the department on a form provided by the department. ~~Contracts shall be for 1 year.~~

(2) ~~Within~~ At least 30 days prior to the expiration of the contract, each facility wishing to contract with the department shall submit an application for a new ~~annual~~ contract.

(3) The department shall select contractors on the basis of the department's need for the services provided by the facility ~~after consideration of the approved local youth services plans developed pursuant to 52-1-203, MCA.~~ The selection process may include information regarding the contractor's history of providing services to children. The selection process shall include:

(a) a review of the department's access to similar services currently provided in the state or region;

(b) an overview of the children placed by the department requiring these services;

(c) a review of the cost for the service compared with available funding sources and appropriations; and

(d) a determination regarding the appropriateness of the service for children placed by the department.

(4) Each facility shall retain its classification and daily rate until the expiration of the current ~~year's~~ contract, unless written consent is provided by the department. Any

facility wishing to change its reclassification classification at the expiration of the contract or during a contract period must request reclassification in writing within 60 at least 90 days prior to the expiration of the current yearly contract proposed effective date for the reclassification. The written request shall present the justification for the reclassification. The justification document shall include a discussion of the financial impact on the department, the impact on the children currently placed at the facility, and the anticipated results of the change for the department and the facility. Upon receipt of a request for reclassification, the department will follow the procedures set forth in ARM 37.50.316 and 37.50.320 to reclassify and assign a daily rate to the facility.

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-603, MCA  
IMP: Sec. 41-3-1103, 41-3-1122, 52-1-103, 52-2-603 and 52-2-611, MCA

3. ARM 37.50.320 establishes the process for application for a foster care contract from Department of Public Health and Human Services (DPHHS), the procedure utilized for the facility to be reclassified on the classification model used by DPHHS, and establishes the term of the contracts at one year. The rule also establishes that the Department will select contractors on the basis of the department's need. DPHHS proposes to modify the selection process, the reclassification process and the term of the contract.

This rule amendment is necessary because the current rule, adopted in 1989, no longer corresponds with current practice and fails to meet the needs of the department and the foster care contractors.

One-year contracts are requiring contractors and department staff to exert a significant amount of effort toward the contracting process. Current state law allows contracts for a period of up to seven years.

The proposed rule change to alter the manner of selection of contractors is necessary because the process described in the rule was developed pursuant to 52-1-203, MCA, which was repealed in 1997. The proposed rule amendment allows the department to establish a selection process according to the department's resources and needs.

The proposed rule change to alter the process for reclassification of a facility is necessary because the current process does not allow for facilities to change classification during the contracting period. The proposed process would allow contractors to submit for reclassification of a facility to the department during the contract term, and the department would then fully review the request based on needs of the department and the contractor.

The alternative is to not amend the rule. If the rule remains the same, an unjustified burden would continue to be placed on both contractors and departmental staff for the contracting process. The lack of flexibility for facility reclassification also creates undue financial stress on foster care contractors across the state, potentially causing the closure of some facilities.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on February 13, 2003. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on February 13, 2003.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 9 based on the 88 programs affected by rules covering foster care facility contracts.

Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State January 6, 2003.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT  
of ARM 4.12.1405 relating to )  
plant inspection fees )

TO: All Concerned Persons

1. On November 27, 2002, the Department of Agriculture published MAR Notice No. 4-14-132 regarding the proposed amendment to ARM 4.12.1405 relating to plant inspection fees at page 3187 of the 2002 Montana Administrative Register, Issue Number 22.

2. The department has amended ARM 4.12.1405 exactly as proposed.

3. No comments or testimony were received.

/s/ W. Ralph Peck

Ralph Peck  
Director

/s/ Tim Meloy

Tim Meloy, Attorney  
Rule Reviewer

Certified to the Secretary of State January 6, 2003.

BEFORE THE MONTANA STATE LIBRARY  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 10.101.201, 10.101.206, ) AND REPEAL  
and 10.102.5102 and the repeal )  
of ARM 10.101.204, 10.101.205, )  
10.102.5103, 10.102.5104, )  
10.102.5201 through 10.102.5207,) )  
and 10.102.8001 pertaining to )  
the rules for the Montana State )  
Library Commission )

TO: All Concerned Persons

1. On November 27, 2002, the Montana State Library published MAR Notice No. 10-100-7 regarding the public hearing on the proposed amendment and repeal of the above-stated rules at page 3192, 2002 Montana Administrative Register, issue number 22.

2. A public hearing was held at the Montana State Library on December 17, 2002.

3. The Library has amended ARM 10.101.201, 10.101.206, and 10.102.5102 and repealed ARM 10.101.204, 10.101.205, 10.102.5103, 10.102.5104, 10.102.5201 through 10.102.5207 and 10.102.8001 exactly as proposed.

4. No comments or testimony were received.

By: /s/ Ralph Atchley  
Ralph Atchley, Chairperson  
State Library Commission

By: /s/ Karen Strege  
Karen Strege, State Librarian  
Montana State Library

Certified to the Secretary of State January 6, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )  
of ARM 17.8.302 pertaining to )  
incorporation by reference of )  
hazardous air pollutants )  
emission standards )

CORRECTED NOTICE OF  
AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On August 15, 2002, the Board of Environmental Review published MAR Notice No. 17-167 regarding the proposed amendment of the above-stated rule at page 2124, 2002 Montana Administrative Register, issue number 15. On December 26, 2002, the Board published the notice of amendment of the rule at page 3585, 2002 Montana Administrative Register, issue number 24.

2. This corrected notice of amendment is being published to reflect that the language "including the final rules published at" should have been underlined in the original proposal. In addition, the text interlined in the proposal had previously been removed from the rule and should not have been included at all. The amendment is shown below.

17.8.302 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) through (e) remain as proposed.

(f) 40 CFR Part 63, specifying emission standards for hazardous air pollutant source categories including the final rules published at 67 FR 16581 on April 5, 2002, "National Emissions Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)", to be codified at 40 CFR 63, subparts A and B.

(2) through (4) remain as proposed.

3. The replacement pages for this corrected notice of amendment were filed with the Secretary of State's office on December 31, 2002.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

David Rusoff By: Joseph W. Russell  
DAVID RUSOFF JOSEPH W. RUSSELL, M.P.H.,  
Rule Reviewer Chairman

Certified to the Secretary of State, January 6, 2003.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment )  
of ARM 17.40.201, 17.40.202, )  
17.40.206, 17.40.207, )  
17.40.208, 17.40.212, )  
17.40.213, 17.40.214 and )  
17.40.215 pertaining to )  
wastewater treatment operators )

CORRECTED NOTICE OF  
AMENDMENT

(WASTEWATER OPERATORS)

TO: All Concerned Persons

1. On July 11, 2002, the Department of Environmental Quality published MAR Notice No. 17-162 regarding the proposed amendment of the above-stated rules at page 1839, 2002 Montana Administrative Register, issue number 13. On November 14, 2002, the Department published the notice of amendment of the rules at page 3148, 2002 Montana Administrative Register, issue number 21.

2. This corrected notice of amendment is being published to reflect language that should have been underlined in ARM 17.40.202(1)(c)(i) in the original proposal. The amendments are shown below.

17.40.202 CLASSIFICATION OF SYSTEMS (1) All water supply systems and wastewater treatment systems are classified according to population served and type of treatment as shown below:

(a) through (b)(v) remain as proposed.

(c) Wastewater treatment systems:

(i) eClass 1--conventional, high rate, or biological nutrient removal activated sludge systems or any treatment system with ~~or~~ without mechanical tertiary (advanced) treatment processes;

(ii) through (3) remain as proposed.

3. The replacement pages for this corrected notice of amendment were filed with the Secretary of State's office on December 31, 2002.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL  
QUALITY

John F. North By: Jan P. Sensibaugh  
JOHN F. NORTH JAN P. SENSIBAUGH  
Rule Reviewer Director

Certified to the Secretary of State, January 6, 2003.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 17.58.311 and 17.58.342 )  
pertaining to reimbursable )  
expenses from the Petroleum ) (PETROLEUM BOARD)  
Tank Release Compensation Fund )

TO: All Concerned Persons

1. On November 27, 2002, the Petroleum Tank Release Compensation Board published MAR Notice No. 17-184 regarding the public hearing on the proposed amendment of the above-stated rules at page 3204, 2002 Montana Administrative Register, issue number 22.

2. The Board has amended the rules exactly as proposed.

3. No public comments or testimony were received.

Reviewed by: PETROLEUM TANK RELEASE COMPENSATION BOARD

James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

By: Tim Hornbacher  
TIM HORNBACHER  
Chairman

Certified to the Secretary of State January 6, 2003.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 8.54.802, )  
8.54.815, 8.54.816, and 8.54.901, )  
pertaining to basic requirements )  
and credit for formal study )  
programs, and professional )  
monitoring )

TO: All Concerned Persons

1. On August 15, 2002, the Board of Public Accountants published MAR Notice No. 8-54-37 regarding the proposed amendment of the above-stated rules at page 2141, 2002 Montana Administrative Register, issue number 15.

2. The Board conducted a public hearing on September 12, 2002, in Helena. Members of the public made written comments during the comment period.

3. After considering the comments, the Board has amended ARM 8.54.802, 8.54.815 and 8.54.901 exactly as proposed.

4. After considering the comments, the Board has amended ARM 8.54.816 with the following changes, stricken matter interlined, new matter underlined:

8.54.816 CREDIT FOR FORMAL INDIVIDUAL STUDY PROGRAMS

(1) remains the same.

(a) Interactive self-study programs shall receive continuing education credit equal to the average completion time, if the sponsor is recognized and approved by NASBA's CPE quality assurance service (referred to as a NASBA QAS sponsor). An interactive self-study program is designed to use interactive learning methodologies that simulate a classroom learning process that provides significant ongoing, interactive feedback to the participant regarding his or her learning progress.

(b) and (2) remain as proposed.

AUTH: Sec. 37-1-319, 37-50-201, 37-50-203, MCA

IMP: Sec. 37-1-306, 37-50-203, MCA

5. The following comments were received and appear with the Board's responses:

Comment 1: A commenter stated that it was unfair to allow only half credit for "non-interactive" self-study courses. The commenter stated that he found non-interactive self-study courses to be superior to seminars, and that self-study courses provided greater depth of understanding. The commenter urged the Board to allow full credit for self-study courses.

Response 1: The Board notes that pursuant to ARM 8.54.816(1)(b), it has historically allowed only half credit for non-interactive self-study courses. The Board concludes that while non-interactive self-study courses may provide more in-depth information, the format does not allow the individual an opportunity to determine whether the individual's understanding of the material is correct. Interactive courses and live seminars both offer the individual an opportunity to obtain feedback regarding whether the individual understands the materials presented. The Board concludes that the most feasible solution to the issue, and the solution that provides for the greatest protection of the public, is to essentially require twice the amount of non-interactive self-study as is otherwise required for live or interactive courses.

Comment 2: A commenter asked whether the full credit (of average completion time) for self-study course applies to any course offered by a NASBA-registered course sponsor, or only for courses offered by a NASBA QAS sponsor. The commenter noted that as of January 1, 2004, every course offered by a NASBA-registered sponsor will be deemed "interactive". The same commenter suggested that interactive courses offered by a regular NASBA sponsor count for full credit, in addition to interactive courses offered by a NASBA QAS sponsor.

Response 2: The full credit will be allowed only for interactive courses offered by a NASBA QAS sponsor. In response to this comment, and to a lesser extent the previous comment, the Board has amended the rule to further clarify that qualifying courses must be approved by the QAS program operated by NASBA. The Board will consider amending ARM 8.54.816 in the future if in fact all courses offered by NASBA registered sponsors truly become "interactive".

Comment 3: A commenter stated he appreciated notice of the proposed rule change and being offered the opportunity to comment. The commenter supported the proposed changes.

Response 3: The Board acknowledges the comment. The Board is committed to obtaining public input with regards to its rule-making activities.

BOARD OF PUBLIC ACCOUNTANTS  
BERYL ARGALL STOVER, CPA,  
CHAIR

/s/ KEVIN BRAUN  
Kevin Braun,  
Rule Reviewer

/s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State January 6, 2003

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS AND  
PROFESSIONAL COUNSELORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment ) CORRECTED NOTICE OF  
of ARM 8.61.1201, pertaining to ) AMENDMENT  
licensure requirements )

TO: All Concerned Persons

1. On May 16, 2002, the Board of Social Work Examiners and Professional Counselors published MAR Notice No. 8-61-16 regarding the proposed amendment of the above-stated rule at page 1388, 2002 Montana Administrative Register, Issue Number 9. On October 17, 2002, the Board published a notice of the amendment of ARM 8.61.1201 at page 2906 of the 2002 Montana Administrative Register, Issue Number 19.

2. The reason for the correction is that the Notice inadvertently failed to correct a citation error in the authority for ARM 8.61.1201. The text of the rule remains exactly as proposed. The corrected citation is shown with the new material underlined, deleted material stricken.

8.61.1201 LICENSURE REQUIREMENTS (1) through (5) remain the same as adopted.

AUTH: 37-1-131, ~~37-23-101~~, 37-23-103, MCA  
IMP: 37-23-202, MCA

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on December 31, 2002.

BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
RICHARD SIMONTON, PRESIDENT

/s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

/s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State January 6, 2003.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF ADOPTION,
of new rule I, the amendment	)	AMENDMENT AND REPEAL
of ARM 37.78.101, 37.78.102,	)	
37.78.106, 37.78.215,	)	
37.78.220, 37.78.221,	)	
37.78.222, 37.78.226,	)	
37.78.227, 37.78.228,	)	
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37.78.817, 37.78.830,	)	
37.78.832, 37.82.101,	)	
37.82.102 and 37.82.201 and	)	
the repeal of ARM 37.78.831,	)	
37.78.836, 37.78.837 and	)	
37.78.838 pertaining to	)	
recipient overpayments and	)	
medical assistance	)	
definitions in medical	)	
assistance and pertaining to	)	
the temporary assistance for	)	
needy families (TANF) program	)	

TO: All Interested Persons

1. On November 27, 2002, the Department of Public Health and Human Services published MAR Notice No. 37-257 regarding the proposed adoption, amendment and repeal of the above-stated rules at page 3229 of the 2002 Montana Administrative Register, issue number 22.

2. The Department has adopted rule I [37.82.207] and amended ARM 37.78.101, 37.78.102, 37.78.106, 37.78.215, 37.78.220, 37.78.221, 37.78.222, 37.78.226, 37.78.227, 37.78.228, 37.78.401, 37.78.402, 37.78.406, 37.78.407, 37.78.415, 37.78.416, 37.78.421, 37.78.423, 37.78.424, 37.78.430, 37.78.505, 37.78.507, 37.78.508, 37.78.601, 37.78.602, 37.78.606, 37.78.801, 37.78.806, 37.78.810, 37.78.811, 37.78.817, 37.78.830, 37.78.832, 37.82.101, 37.82.102 and 37.82.201 as proposed and repealed ARM 37.78.831, 37.78.836, 37.78.837 and 37.78.838 as proposed.

3. No comments or testimony were received.

Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State January 6, 2003.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption	)	CORRECTED NOTICE OF
of new rules I through XLVIII	)	ADOPTION
and the repeal of ARM	)	
37.106.2701, 37.106.2702,	)	
37.106.2703, 37.106.2708	)	
through 37.106.2711,	)	
37.106.2715 through	)	
37.106.2719, 37.106.2725	)	
through 37.106.2731,	)	
37.106.2740 through	)	
37.106.2742 and 37.106.2750	)	
pertaining to personal care	)	
facilities	)	

TO: All Interested Persons

1. On October 17, 2002, the Department of Public Health and Human Services published MAR Notice No. 37-262 regarding the proposed adoption and repeal of the above-stated rules at page 2839 of the 2002 Montana Administrative Register, issue number 19, and on December 26, 2002 published notice of the adoption and repeal on page 3638 of the 2002 Montana Administrative Register, issue number 24.

2. This corrected notice is being filed to correct errors in the adoption notice in Rule V (37.106.2805), Rule X (37.106.2816) and Rule XV (37.106.2824). The corrections are as shown in paragraph 3 below.

3. The rules are corrected as follows, new matter underlined, deleted matter interlined:

RULE V [37.106.2805] DEFINITIONS The following definitions apply in this subchapter:

(1) through (10) remain as adopted.

(11) "Involuntary transfer or discharge" means the involuntary discharge of a resident from the licensed facility or the involuntary transfer of a resident to a bed outside of the licensed facility. The term does not include the transfer of a resident from one bed to another within the same licensed facility, or the temporary transfer or relocation of the resident outside the licensed facility for medical treatment.

(11) through (25) remain as adopted but are renumbered (12) through (26).

~~(26)~~ (27) "Significant event" means a change in health status that requires care from a licensed health care professional:

- (a) a change in resident services;
- (b) explained or unexplained injuries to the resident that require medical intervention or first aid; or

(c) resident on resident, resident on staff or staff on resident aggression.

(27) through (29) remain as adopted but are renumbered (28) through (30).

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

RULE X [37.106.2816] PERSONAL CARE FACILITY STAFFING

(1) and (2) remain as adopted.

(3) New employees shall receive orientation and training in areas relevant to the employee's duties and responsibilities, including:

(a) an overview of the facility's policies and procedures manual in areas relevant to the employee's job responsibilities;

(b) a review of the employee's job description;

(c) services provided by the facility;

(d) the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act found at 52-3-801, MCA; and

(e) the Montana Long-Term Care Resident Bill of Rights Act found at 50-5-1101, MCA.

(4) through (9) remain as adopted.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

RULE XV (37.106.2824) INVOLUNTARY DISCHARGE CRITERIA

(1) Residents shall be given a written 30 day notice when they are requested to move-out. The administrator or designee shall initiate transfer of a resident through the resident's physician or practitioner, appropriate agencies, or the resident, resident's personal representative or responsible party when:

(a) and (b)(i) remain as adopted.

(c) the resident, due to severe cognitive decline, is not able to respond to verbal instructions, recognize danger, make basic care decisions, express needs or summon assistance, except as permitted by ~~{Rule LXI}~~ [Rule XLV] ARM 37.106.2884;

(d) through (4)(f) remain as adopted.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

4. Due to problems with the Department's computer servers which experienced a failure on the day of electronically filing the notice of adoption with the Secretary of State, the changes shown in paragraph 3 above disappeared from the electronic copy of the notice being submitted. The Department is now filing this notice to correct the rule text as it was intended to be filed.

Rule V (37.106.2805), the definitions rule was intended to have the definition for involuntary transfer and adoption to remain in the definitions rule, while RULE XV(5)(a) (37.106.2824)

concerning involuntary discharge criteria was amended to remove the definition for involuntary transfer and refer to the definitions rule in response to the comment received noting that the definition was unnecessarily provided in both rules. While the change to Rule XV(5)(a) (37.106.2824) was retained in the notice, the change to Rule V (37.106.2805) was lost during the server failure. This notice corrects that error.

The corrections to Rule V(27)(a) (37.106.2805), and Rule X(3)(d) and (e) (37.106.2816) are to reinsert the articles 'a' and 'the' that were lost during the server failure. While not substantive corrections, they do make the subsections more readable.

Finally, RULE XV(1)(c) (37.106.2824) had a typo referring to Rule LXI, which is a non-existent rule, and it should have referred to RULE XLV (37.106.2884) instead. The typo is being fixed to refer to the correct rule.

5. All other rule changes adopted and repealed remain the as adopted and repealed.

6. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on December 31, 2002.

Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State January 6, 2003.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 37.110.101 )  
pertaining to food standards )

TO: All Interested Persons

1. On September 26, 2002, the Department of Public Health and Human Services published MAR Notice No. 37-248 regarding the proposed amendment of the above-stated rule at page 2593 of the 2002 Montana Administrative Register, issue number 18.

2. The Department has amended ARM 37.110.101 as proposed.

3. No comments or testimony were received.

Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State January 6, 2003.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION,  
New Rule I (42.12.133); ) AMENDMENT, AND REPEAL  
amendment of ARM 42.12.104, )  
42.12.106, 42.12.108, 42.12.109,) )  
42.12.111, 42.12.115, 42.12.116,) )  
42.12.122, 42.12.126, 42.12.128,) )  
42.12.129, 42.12.131, 42.12.132,) )  
42.12.144, 42.12.204, 42.12.205,) )  
42.12.208, 42.12.209, 42.12.210,) )  
42.12.211, 42.12.212, 42.12.222,) )  
42.12.401, 42.12.404, 42.12.405,) )  
42.12.406, and 42.12.412; and )  
repeal of ARM 42.13.403 relating) )  
to liquor licenses and permits )

TO: All Concerned Persons

1. On November 27, 2002, the department published MAR Notice No. 42-2-704 regarding the proposed adoption, amendment and repeal of the above-stated rules relating to liquor licenses and permits at page 3282 of the 2002 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 20, 2002, where oral comments were received.

3. Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the department:

COMMENT NO. 1: Diana Koon, Executive Director for Montana Tavern Association (MTA), asked about the definitions shown in ARM 42.12.106(1) and (6). Under section (1) the rule refers to associated businesses and then under (6) the rule refers to a business that is directly related to the liquor operation. She asked if the term "directly related" goes back to the definition of an "associated business" - meaning that would be the only kind of business that would be directly related?

RESPONSE NO. 1: Yes, that is correct. Most concession agreements are between a licensee and a restaurant or hotel.

COMMENT NO. 2: Ms. Koon asked about concurrent applications as they are referenced in ARM 42.12.115. She was concerned about a defaulting third party, such as a bank having to file an application that would then need to be transferred, approved and put on non-use status before a formal application could be received.

RESPONSE NO. 2: The example provided by Ms. Koon would not happen because 16-4-801, MCA, sets out the steps necessary for

handling a foreclosure action and with regard to institutional lenders, there is no application required. They just need to meet the conditions of the statute which are: a letter from the licensee voluntarily giving up their right to any interest in the license; or have a court order. Also, banks are not entities that could operate the license and that is why the license would be put on non-use status. An application process does not exist for those entities. The only time an application would be required would be when an institutional lender sells a license to a new owner.

In the event of non-institutional lenders, in other words an individual that holds a contract for deed on the license, the department could transfer that license pursuant to 16-4-801, MCA, back to the person holding the contract for deed without an application, if they don't intend to operate. If they intend to operate, they must submit an application.

COMMENT NO. 3: Ms. Koon questioned the amendment to ARM 42.12.128(4) regarding the catering endorsement. She stated that she didn't think there would be any concern about providing the monthly report. However, the caterer only has to list the date, time and place of the event on the report. This is reported after the event has already taken place. Local law enforcement are the ones to approve the event prior to it taking place, so what happens if it is reported to the department and the department disagrees with the fact that it was a special event? What happens to the licensee who received prior approval from the local law enforcement agency to conduct this event? There might be cases where the local law enforcement approves something that the department would not consider qualifies for a special event.

RESPONSE NO. 3: Part of the concern that led up to amending this rule was instances where licensees were catering the same location repeatedly. In other words, using an area as an extension of a premise. In some instances, local law enforcement may or may not be aware of the requirements for a special event. It will be necessary for the licensees and local law enforcement to be aware of the rules and what qualifies. If the department becomes aware of possible misuse of a catering endorsement we would request an investigation by the department of justice to verify the circumstances.

COMMENT NO. 4: Ms. Koon asked if that would be the licensee's problem, if the local law enforcement had approved the event.

RESPONSE NO. 4: Potentially that would be the licensee's concern. The department will provide more information to the licensees when the rules become effective explaining the department's definition of a "special event". It will be important for the licensee to understand how the department will view the special event under these rules rather than how local law enforcement might view it.

COMMENT NO. 5: Ms. Koon questioned the amendment to ARM 42.12.132(4) dealing with management agreements. The rule states in general that the deficiencies have to be corrected by the time set by the department. What is that time frame?

RESPONSE NO. 5: The department sends a letter to the licensee advising them of the deficiencies and they have 30 days from the date of the letter to correct the deficiencies stated in the letter.

COMMENT NO. 6: Ms. Koon asked about the definition shown in ARM 42.12.401(1)(e) regarding "lottery application", and the department's statement that based on the legislative audit report there is no longer any need to have a location requirement on the lottery application. She stated that MTA had voiced their concerns about this practice at an earlier meeting because they believe it could increase the number of applications received by the department and these might not be serious applicants. Also, there is some concern that this would allow for speculation. She questioned whether an individual could apply for more than one license in any way shape or form. In other words, could they apply as an individual and then turn around and apply as a stockholder?

RESPONSE NO. 6: The department does not believe it will increase the number of applicants and further, believes that this process will eliminate the potential to have non-serious applicants. No they could not apply on behalf of themselves and then as a stockholder. ARM 42.12.404 states that only one lottery application per person will be accepted and ARM 42.12.401(1)(f) defines person, which will restrict the applicants.

COMMENT NO. 7: Ms. Koon also questioned the amendment to ARM 42.12.405 dealing with the restaurant beer and wine license. She stated that, section (4) of that rule says "the balance of the initial licensing fee and any interest would be returned" - when someone applies for a restaurant beer and wine license application do they pay the \$5,000, \$10,000, or \$20,000 plus \$100? If the application is denied or withdrawn do they get it all back?

RESPONSE NO. 7: The applicant would get everything except the \$100 processing fee back.

4. The department has adopted, amended and repealed the rules as proposed.

5. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at [http://www.state.mt.us/revenue/rules\\_home\\_page.htm](http://www.state.mt.us/revenue/rules_home_page.htm), under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana

Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Kurt G. Alme  
KURT G. ALME  
Director of Revenue

Certified to Secretary of State January 6, 2003

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT AND  
of ARM 42.31.501, 42.31.505, ) REPEAL  
and 42.31.510 and repeal )  
of ARM 42.31.601, 42.31.602, )  
and 42.31.604 relating to )  
telephone license and )  
telecommunication excise tax )  
and universal access fund )  
surcharges )

TO: All Concerned Persons

1. On November 27, 2002, the department published MAR Notice No. 42-2-705 regarding the proposed amendment and repeal of the above-stated rules relating to telephone license and telecommunication excise tax and universal access fund surcharges at page 3306 of the 2002 Montana Administrative Register, issue no. 22.

2. No comments were received regarding these rules.

3. The department has amended and repealed the rules as proposed.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at [http://www.state.mt.us/revenue/rules\\_home\\_page.htm](http://www.state.mt.us/revenue/rules_home_page.htm), under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Kurt G. Alme  
KURT G. ALME  
Director of Revenue

Certified to Secretary of State January 6, 2003

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

In the matter of the petition for )       DECLARATORY RULING  
declaratory ruling on the issue of )  
whether the act of administering )  
and monitoring a patient during )  
IV conscious sedation is within )  
the scope of practice of a )  
respiratory care practitioner )

1. On February 14, 2002, the Board of Respiratory Care Practitioners, (Board) published a petition for Declaratory Ruling in the above-entitled matter at page 407, 2002 Montana Administrative Register, issue number 3.

2. On March 28, 2002, the Board published a Notice of Continuance of Hearing on Petition for Declaratory Ruling at page 961, 2002 Montana Administrative Register, issue number 6.

3. On April 22, 2002, the Board presided over a hearing in this matter to consider written and oral testimony from interested individuals. Written commentary was allowed until 5:00 PM on April 30, 2002. On July 8, 2002, the Board made a motion to issue this declaratory ruling. Then subsequent questions came in and the Board determined to have further deliberations regarding comments and testimony on December 6, 2002.

Issue

4. Petitioner requested a ruling on whether the act of administering and monitoring a patient during IV conscious sedation is within the scope of a respiratory care practitioner.

Summary of Comments

5. The Board received numerous written comments as well as testimony supported by demonstrative and written evidence during the hearing held on April 22, 2002.

6. Petitioner indicated that the Board of Nursing believed that Respiratory Care Practitioners (RCPs) should not be actively administering intravenous medication to conscious patients and monitoring them during its use. She indicated that the Board of Nursing would offer a specific definition of intravenous conscious sedation before close of the written comment period.

7. One commenter presented written documentation of a course curriculum and advocated RCPs administering IV conscious sedation. The Board was appreciative of the commentary.

8. One commenter submitted written testimony on behalf of the Montana Nurses' Association that RCPs should not administer conscious IV sedation and monitor the patient without training beyond their licensure. The Board accepted the commentary and in its response determined that training of RCPs was at least as comprehensive as training for RNs.

9. One commenter testified in favor of multi-skilling, multi-credentialing and cross-training of licensed respiratory and medical personnel. The Board appreciated the comment and expressed a similar desire on behalf of the public and its expectations in treatment.

10. Another commenter testified that facility trained RCPs in the hospital have been performing IV conscious sedation since 1997 and administer conscious sedation more often than any other nursing department except endoscopy. He went on to state that he believes RCPs have the training necessary to perform conscious sedation. The Board agreed and expressed its appreciation for this comment.

11. One commenter filed letters in support of RCPs performing conscious IV sedation from physicians in Great Falls and Bozeman. The Board expressed its appreciation for the input.

12. Another commenter stated that RCPs coming out of school are not prepared to do conscious sedation without first receiving advanced training but that Montana's continuing professional education requirement for RCPs exceeds the national requirements for current certification. The Board agreed.

13. One commenter submitted a comprehensive study done from Indiana University Center for Survey and Research which concluded that respiratory care instruction is very limited in nursing programs when compared to respiratory therapy programs. The Board was again appreciative of the input.

14. A commenter stated that RCP schools provided the necessary training and competency for new graduates and that RCP professional organizations, as well as other physician organizations, recognized and supported administration of sedatives in analgesic occasions by properly trained RCPs. The board was appreciative of the input.

15. The Executive Director for the Montana Board of Nursing testified that the concern of the Board of Nursing was not that RCPs be prohibited from administering and monitoring conscious IV sedation, but rather that the Board give a declaratory ruling, based on the evidence presented, about the scope of the license regarding such procedures, not whether or not the individual competencies or basic education met certain requirements. In response, the Board determined that it would propose a new rule requiring that RCPs who perform conscious

sedation procedures must have Advanced Cardiac Life Support (ACLS) accreditation.

16. Another commenter testified that it is in the best interests of the Montana public for the health care professions to seek and endorse cross-over practice rather than exclusive areas of practice for such procedures as administering and monitoring conscious IV sedation. The Board agreed.

17. The Board also received a Statement on Physician Authority to Delegate Tasks and Responsibilities from the Board of Medical Examiners which stated in pertinent part that "Those who assist physicians in the practice of medicine, including physical therapists, technicians, or other paramedical specialists, are exempted from licensing requirements if they render services under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine." In its response, the Board stated that RCPs are always under the supervision of physicians when they perform their professional duties.

#### Analysis

18. Early in the proceedings, the Board defined the question to which it sought answers. Clearly, a registered nurse can administer conscious IV sedation. The question before the Board is whether RCPs can, too, and the Board wanted sufficient facts to be able to compare the minimum pertinent requirements for RN training with the current minimum training requirements for RCPs. The majority of the witnesses felt that graduation and licensure as an RCP qualified the individual for advance training necessary to administer IV sedation to a conscious patient and monitor the patient during the treatment, suggesting that the same approach applied in nursing. The minority did not necessarily disagree about the need for individual training on the job to master the particular protocols in a facility, but emphasized that licensure should serve as proof of qualification to administer conscious IV sedation and monitor the patient, within the dictates of the individual practitioner's employment facility. Virtually every witness requested that the Board define with precision the prerequisites for proper administration and monitoring of conscious IV sedation by RCPs and/or scope of authority conferred by licensure.

19. Mont. Code Ann. §2-15-1750 creates the Montana Board of Respiratory Care Practitioners, sets forth the composition of the Board, the term served, and that the Board is allocated to the Department of Labor and Industry for administrative purposes pursuant to Mont. Code Ann. §2-15-124.

20. Mont. Code Ann. §2-15-121 defines "allocation for administrative purposes" to include the exercise of quasi-judicial, quasi-legislative, licensing, and policy making

functions.

21. Mont. Code Ann. §2-15-102(9) defines "quasi-judicial function" as "an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes but is not limited to the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing facts; awarding compensation; fixing prices; ordering action or abatement of action; adopting procedural rules, holding hearings, and any other act necessary to the performance of a quasi-judicial function."

22. Mont. Code Ann. §2-15-102(10) defines "quasi-legislative function" as "making or having the power to make rules or set rates and all other acts connected or essential to the proper exercise of a quasi-legislative function".

23. Mont. Code Ann. §37-28-101 states "The legislature finds and declares that the practice of respiratory care in the state affects the public health, safety and welfare. To protect the public from the unqualified practice of respiratory care or unprofessional conduct by qualified practitioners, respiratory care is subject to regulation and control. The purpose of this chapter is to regulate the practice of respiratory care. The legislature recognizes that the practice of respiratory care is a dynamic and changing art and science that is continually evolving to include new ideas and more sophisticated techniques in patient care."

24. Mont. Code Ann. §37-28-102(3)(a) states "Respiratory Care means the care provided by a member of the allied health profession responsible for the treatment, management, diagnostic testing, and control of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The term includes but is not limited to:

(i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures that are necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a physician."

25. The Legislature is presumed to know what it is doing.

26. Evidence and testimony received amply demonstrated that the training RCPs receive meets or exceeds that received by Registered Nurses. Position Statements received from physicians, nurses and hospital administrators were of the opinion that Mont. Code Ann. § 37-28-102(3)(a)(i) does include medication for conscious sedation.

Conclusion

27. After consideration of the comments presented in this matter and the testimony and exhibits submitted by the Petitioner and other interested persons, the Board makes the following declaratory ruling.

28. Petitioner is a Nurse Practice Manager for the Montana Board of Nursing and has standing to petition the Board for a declaratory ruling.

29. The Board determined that the act of monitoring a patient during IV conscious sedation is within the scope of practice of a respiratory care practitioner but that the Board would also propose a new rule requiring that RCPs who perform IV conscious sedation must have Advanced Cardiac Life Support accreditation.

DATED this 6th day of January, 2003.

/s/ GREGORY PAULASKIS  
Gregory Paulauskis, Chairman  
BOARD OF RESPIRATORY CARE PRACTITIONERS

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education and Local Government Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Transportation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA  
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject                    | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2002. This table includes those rules adopted during the period October 1, 2002 through December 31, 2002 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2002, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2001 and 2002 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

GENERAL PROVISIONS, Title 1

1.2.419 and other rule - Scheduled Dates for the Montana Administrative Register - Official Version of the Administrative Rules of Montana, p. 3041, 3429

ADMINISTRATION, Department of, Title 2

2.5.120 and other rules - State Procurement of Supplies and Services, p. 2037, 2651

8.94.4104 and other rules - Transfer from the Department of Commerce - Single Audit Act, p. 2045, 2649

(Public Employees' Retirement Board)

I Family Law Orders for the Public Employees' Retirement System Defined Contribution Retirement Plan Administered by the Public Employees' Retirement Board, p. 2052, 2653

I Purchase of Service Credit through Direct Trustee-to-Trustee Transfers, p. 1154, 1889

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