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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 inserted at the back of each register.

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF A PROPOSED AMEND-
of ARM 4.5.202 and 4.5.203) MENT of ARM 4.5.202 and
relating to noxious weeds.) 4.5.203 relating to
) Category 1 Noxious Weeds

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 28, 1994, the department of agriculture proposes to amend the above mentioned rules 4.5.202 and 4.5.203.

2. The rules, as proposed to be amended, appear as follows (new material is underlined, material to be deleted is interlined).

4.5.202 CATEGORY 1 (1) Remains the same.
(2) (a) thru (i) remain the same.
(i) Sulfur (erect) cinquefoil (Potentilla recta)

AUTH: 7-22-2101, MCA IMP: 7-22-2101

4.5.203 CATEGORY 2 (1) Remains the same.
(2) (a) thru (b) remain the same.
~~(c) Sulfur (erect) cinquefoil (Potentilla recta)~~

AUTH: 7-22-2101 & 80-7-802, MCA IMP: 7-22-2101


REASON: It was brought to the attention of the Department that Sulfur Cinquefoil infests 55,000 acres in 30 counties and infested acres may go as high as 500,000 in future years. With acreage in the numbers the state now has, the criteria for being placed in Category 1 Noxious Weed has now been met. The Montana Weed Control Association has requested to make this change from Category 2 to Category 1.

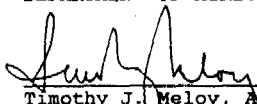
3. Interested persons may submit their written data, views, or arguments concerning these amendments to Gary Gingery, Department of Agriculture, Agricultural Science Division, P.O. Box 200201, Helena, MT 59620-0201, no later than February 24, 1994.

4. If a party who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Gary Gingery,

Department of Agriculture, P.O. Box 200201, Helena, MT
59620-0201, no later than February 24, 1994.

5. If the department receives requests for a public hearing on the proposed amendment, from either 10% or 25; whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.


Leo A. Giacometto, Director
DEPARTMENT OF AGRICULTURE

 1/13/94
Timothy J. Meloy, Attorney
Rule Reviewer
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State Office January 14, 1994.

BEFORE THE STATE AUDITOR AND SECURITIES COMMISSIONER
OF THE STATE OF MONTANA

In the Matter of the Proposed)	
Adoption and Amendment of Rules)	
to Exempt Certain Foreign	)	NOTICE OF PROPOSED
Securities from Registration and	)	AMENDMENT AND ADOPTION
to Require that Exempt Foreign)	
Savings and Loan Associations be	)	NO PUBLIC HEARING
Members of the Federal Deposit	)	CONTEMPLATED
Insurance Corporation and that)	
their Certificates of Deposit be)	
Fully Insured by the Federal)	
Deposit Insurance Corporation.)	

To: All Interested Persons.

1. On March 4, 1994, the State Auditor and Securities Commissioner of the state of Montana proposes to amend ARM 6.10.102 (Definitions) and 6.10.125 (Foreign Savings and Loan Association Exemption) and to adopt new rules exempting certain foreign securities from the registration requirements of the Securities Act of Montana and providing enforcement sanctions against fraud and deceit involving such securities or their dealers.

2. The rules as proposed to be amended are as follows, with matter to be omitted interlined and new matter added underlined:

6.10.102 DEFINITIONS As used in this sub-chapter, unless the context indicates otherwise:

(1) The definitions contained in 30-10-103, MCA, apply.

(2) "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

(3) "American depository receipt" is a negotiable certificate issued by a U.S. depository pursuant to an effective registration statement filed on form F-6 with the Securities and Exchange Commission, representing the securities of a non-U.S. company, which securities are held in custody by a custodian in the company's country of domicile or a similar type of receipt or instrument issued with respect to a security, which receipt or instrument has been approved for sale by order of the commissioner.

(34) "Branch office" means an office, other than a main office but including a corporate subsidiary and any place of business of one or more registered salesmen persons of a registered broker-dealer, which is located in this state, owned or controlled by the broker-dealer, and engaged in the securities business in this state.

(5) "Issuer of an American depository receipt" is the non-U.S. company that issued the securities represented by the American depository receipt.

(46) "Promoter"

(a) means a person who, acting alone or in conjunction with one or more persons, directly or indirectly, takes the initiative in founding and organizing the business or enterprise of an issuer or an officer, director or party owning, directly or indirectly, 5% or more of the outstanding shares of the corporation before or immediately following the public offering, or any affiliate of the aforesaid persons; and

(b) does not include an unaffiliated institutional purchaser who purchased its shares more than 1 year prior to the public offering.

(57) "Promotional security" means:

(a) a security issued within 3 years before the date of registration in return for:

(i) a price less than 85% of the consideration for which such securities are proposed to be sold to the public; or

(ii) services rendered, patents, copyrights, other intangibles, or real or personal property, the actual value of which has not been established to the satisfaction of the commissioner; or

(b) a security issued or to be issued to a promoter while a corporation is in a promotional or developmental stage.

(68) "Sales material" means an advertisement, display, pamphlet, brochure, form letter, article, or communication published in a newspaper, magazine, or periodical; or script, recording, radio or television announcement, broadcast, or commercial to be used or circulated in connection with the offer or sale of a security to a person in this state.

(9) "U.S. or Foreign GAAP" are the generally accepted accounting principles of the United States or of the foreign country in which the issuer is domiciled.

AUTH: 30-10-107, MCA

IMP: 30-10-104 and
30-10-107, MCA

6.10.125 FOREIGN SAVINGS AND LOAN ASSOCIATION EXEMPTION

(1) By authority delegated to the commissioner in 30-10-105, MCA, a transaction in a security issued by and representing an interest in or a debt of or guaranteed by a savings and loan association or a building and loan or similar association, the registration requirements of 30-10-202, MCA, if:

(a) it is sold through a registered broker-dealer and registered salesperson;

(b) the issuer is a member of the federal savings and loan deposit insurance corporation; and

(c) in the case of a certificate of deposit, the sums representing the certificate of deposit are fully insured by the federal ~~savings and loan~~ deposit insurance corporation.

AUTH: 30-10-105 and
30-10-107, MCA

IMP: 30-10-105, MCA

3. The proposed new rules provides as follows:

RULE I FOREIGN SECURITY EXEMPTION (1) Securities offered or sold in compliance with the following conditions are exempt from the registration requirements of 30-10-202 through 30-10-207, MCA:

(a) A nonissuer transaction, by or through a registered broker-dealer, in an outstanding security (including an American depository receipt representing such a security) of an issuer domiciled in a foreign country with which the United States is at the time of the transaction maintaining diplomatic relations, if the class of security has been outstanding in the hands of the public for not less than 90 days preceding the date of the transaction.

(i) This exemption is not available for sales of securities constituting an unsold allotment to or subscription by the broker-dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter.

(ii) This exemption is not available unless one of the following requirements is met:

(A) The most recent edition of Moody's International Manual or Standard & Poor's Corporation Records, or the periodic supplements to such publications, contains a description of the issuer's business or operations, the names of the issuer's officers and directors (or their corporate equivalents in the issuer's country of domicile), an externally audited balance sheet of the issuer as of a date within 18 months of the date of the transaction and audited profit and loss statements for each of the issuer's two fiscal years immediately preceding the date of such balance sheet (such statements to be prepared in accordance with U.S. or foreign GAAP); or

(B) The issuer of the security has a class of securities subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934, 15 U.S.C. 78m or Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(d) and is not delinquent in such reporting; or

(C) The security is exempted from the provisions of Section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78l(g) by Section 12(g)(3) of that Act, 15 U.S.C. 78l(g)(3), and the issuer is in compliance with all of the conditions of 17 CFR 240.12g3-2(b)(1).

(iii) This exemption is not available unless all of the following requirements are met:

(A) The issuer, including any predecessors, has been in continuous operation for at least the preceding two years, is a going concern actually engaged in business and is not in an

organizational or developmental stage, and is not in bankruptcy or receivership; and

(B) The issuer has net tangible assets of at least U.S. \$25,000,000 as of the date of its most recent externally audited financial statement prepared in accordance with U.S. or foreign GAAP. Such statement shall be dated as of a date within 18 months of the date of the transaction; and

(C) The issuer had an average gross income of at least U.S. \$5,000,000 over its most recent two consecutive years of operation according to audited profit and loss statements of the issuer prepared in accordance with U.S. or foreign GAAP for the issuer's two fiscal years immediately preceding the date of the financial statement referred to in (B); and

(D) The issuer has a class of securities listed or traded on a stock exchange or automated quotation system organized under the laws of its country of domicile; and

(E) For the issuer's securities in the United States, there are at least two market makers, who are registered broker-dealers under the Securities Exchange Act of 1934, or at least one market maker who is a registered broker-dealer under the Securities Exchange Act of 1934 and who has an excess net capital of at least U.S. \$10,000,000.

(b) A non-issuer transaction by or through a registered broker-dealer in an outstanding security, other than a revenue obligation, which is issued or guaranteed by any foreign government with which the United States is, at the time of sale, maintaining diplomatic relations, or by a political subdivision of Canada or Mexico which has the power of taxation, if the securities, when offered for sale in this state, are acknowledged by the foreign government or political subdivision as valid obligations, and none of the securities of the foreign government or political subdivision are in default either as to principal or interest.

AUTH: 30-10-107, MCA

IMP: 30-10-104 and
30-10-107, MCA

RULE II SANCTIONS AGAINST FRAUDULENT FOREIGN SECURITIES AND THEIR DEALERS

(1) The commissioner may by order revoke or suspend any foreign security exemption with respect to any such security or the use of such exemption by any dealer if he finds that the further sale in this state of such security, or sales by a broker-dealer, would work, or tend to work, a fraud or deceit on purchasers or prospective purchasers.

AUTH: 30-10-104, MCA

IMP: 30-10-104 and
30-10-107, MCA

4. REASONS: The proposed amendments to ARM 6.10.125 substitute references to the Federal Deposit Insurance Corporation (FDIC) for references to the Federal Savings and Loan Insurance Corporation, because the FSLIC no longer exists and its functions have been assumed by the FDIC.

The proposed amendments to ARM 6.10.102 and the proposed new rules are necessary, in the public interest and for the public protection to permit registered securities broker-dealers to offer securities of foreign issuers to their customers and thus to permit Montana investors to take advantage of securities in foreign and emerging markets, subject to appropriate customer protections. This will give Montana investors a broader range of investment opportunities similar to those available in other states.

5. Interested parties may submit their data, views, or arguments concerning the proposed rules and rule amendments in writing to Dave Hunter, Deputy State Auditor and Securities Commissioner, P.O. Box 4009, Helena, Montana 59604, to be received no later than March 1, 1994.

6. If a person who is directly affected by the proposed rule amendments and adoptions wishes to express his/her data, views, or arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request, along with any written comments he/she has, to Dave Hunter, Deputy State Auditor and Securities Commissioner, P.O. Box 59604. The request and comments must be received no later than February 28, 1994.

7. If the agency receives requests for a public hearing on the proposed amendments and adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments or adoptions, or any part thereof; from the Administrative Code Committee of the Legislature; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 83 persons, based on the 833 registered securities broker-dealers in Montana.

MARK O'KEEFE, State Auditor
and Securities Commissioner

By


Geoffrey L. Brazier,
Rule Reviewer

Certified to the Secretary of State this 14 day of January, 1994.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) THE PROPOSED AMENDMENT AND
to advanced practice regis-) ADOPTION OF RULES PERTAINING
tered nurses, executive) TO THE PRACTICE OF NURSING
director, examinations,)
inactive status, schools,)
prescriptive authority and the)
proposed adoption of new rules)
pertaining to clinical nurse)
specialists and delegation of)
nursing tasks)

TO: All Interested Persons:

1. On February 28, 1994, at 9:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment and adoption of rules pertaining to the practice of nursing.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.32.304 SPECIALTY ADVANCED PRACTICE NURSING TITLE

(1) Only a person holding approval by the board as an specialist advanced practice registered nurse shall have the right to use the appropriate title of nurse practitioner, nurse midwife, or nurse anesthetist or clinical nurse specialist, provided that the registered nurse:

- (a) will remain the same.
- (b) has submitted application with supporting credentials for specialty advanced practice nursing title and application has been approved by the board of nursing;
- (c) will remain the same.
- (d) holds an endorsement on the professional nursing license which recognizes the specialty advanced practice.

(2) Nurse specialists Advanced practice registered nurses who are recognized in the state of Montana may only practice as an specialist advanced practice registered nurse in the clinical area of specialty practice in which they have national certification according to the standards set by the following certifying bodies including, but not limited to:

- (a) American nurses association,
- (b) national board of pediatric nurse practitioners and associates,
- (c) nurses association of American college of obstetricians and gynecologists,
- (d) American association of nurse anesthetists,
- (e) American college of nurse-midwives, and
- (f) association of gerontological nurses."

Auth: Sec. 37-8-202, MCA; IMR, Sec. 37-8-202, MCA

"8.32.305 EDUCATIONAL REQUIREMENTS AND OTHER QUALIFICATIONS APPLICABLE TO SPECIALTY AREAS OF ADVANCED PRACTICE REGISTERED NURSING (1) Applicants for recognition in a specialty advanced practice registered nurse areas of certified nurse-midwife, nurse practitioner and certified registered nurse anesthetist nursing shall possess the following educational and certification qualifications:-

(a) Successful completion of a post-basic professional nursing education program in the specialty advanced practice registered nurse area of specialty with the minimum length of one academic year consisting of at least four months of didactic instruction and the remainder under a preceptor; and individual certification from a board approved certifying body for those recognized prior to July 1, 1995;

(b) For original recognition after June 30, 1995, a master's degree from an accredited nursing education program, as defined in subsection (1)(a), which prepares the nurse for the specialty advanced practice registered nurse recognition applied for; and individual certification from a board approved certifying body. Nurse specialists who completed an accredited nurse specialist advanced practice registered nurse program and obtained national certification prior to June 30, 1995, may be recognized in Montana.

(2) Applicants for recognition as a clinical nurse specialist shall possess a masters degree in nursing from an accredited nursing education program which prepares the nurse for a clinical nurse specialist practice, and individual certification from a board-approved certifying body.

(3) Applicants for recognition in any advanced practice registered nurse area, shall be subject to the provisions of section 37-8-441, MCA."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.306 APPLICATION FOR RECOGNITION (1) Upon application a person licensed under the provisions of section 37-8-406 or 37-8-407, MCA, and meeting the requirements set forth under the educational requirements and other qualifications applicable to specialty areas of advanced practice registered nursing shall be granted recognition and shall have his/her registered nurse renewal certificate also designate his/her area of specialty advanced practice."

Auth: Sec. 37-1-131, 37-8-202, MCA; IMP, Sec. 37-1-134, 37-8-202, 37-8-431, MCA

"8.32.402 LICENSURE BY EXAMINATION (1) will remain the same.

(2) The executive secretary director is authorized to negotiate the contract with the national council of state boards of nursing, inc. for licensing examination services.

(3) All candidates desiring to write take the licensing examination for registered nursing or practical nursing shall make application for licensure to the board on a form provided by the board and shall make application for the examination to the national council licensing examinations (NCLEX) on a form distributed by the board as provided by the national council of state boards of nursing.

- (4) through (7) will remain the same.
- (8) ~~Beginning in October, 1988,~~ The examination score will be reported to the applicant as pass or fail.
- (9) Candidates shall be notified, in writing only, regarding the examination results.
- (10) and (11) will remain the same.
- (12) Each school of nursing in Montana shall receive a statistical summary report of the test results ~~of candidates~~ from that school.
- (13) Results of the examination shall not be released to anyone unless release is ~~otherwise~~ authorized by the candidate in writing.
- (14) The candidate's examination results will be maintained in his/her application file in the ~~division~~ bureau of professional and occupational licensing, department of commerce."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-406, 37-8-416, MCA

"8.32.403 RE-EXAMINATION - REGISTERED NURSE

- (1) Candidates who fail the licensing examination will be permitted to ~~rewrite~~ retake the examination."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, 37-8-406, 37-8-416, MCA

"8.32.404 RE-EXAMINATION - PRACTICAL NURSE

- (1) Candidates who fail the licensing examination will be permitted to ~~rewrite~~ retake the examination."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, 37-8-406, 37-8-416, MCA

"8.32.408 TEMPORARY PERMIT (1) will remain the same.

- (a) application for Montana licensure, supporting credentials and fee have been submitted and approved by the executive ~~secretary~~ director of the Montana board of nursing by the appropriate date; and

(b) through (5) will remain the same.

- (a) a completed application for Montana licensure by endorsement and supporting credentials which have been approved by the executive ~~secretary~~ director, an application for a temporary permit, the required affidavit signed by the intended employer and the required fee.

(b) through (7) will remain the same."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-103, 37-8-430, MCA

"8.32.409 PREPARATION OF LICENSES (1) The executive ~~secretary~~ director and the president of the board shall sign the original licenses."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, 37-8-401, MCA

"8.32.410 DUPLICATE OR LOST LICENSES (1) and (2) will remain the same.

(3) Upon written request, and payment of the proper fee, the board may provide a duplicate renewal certificate."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.412 INACTIVE STATUS (1) Licensees who have not paid the renewal fee for the current year are automatically placed on inactive status on January 1 of each year and licenses are lapsed. Licenses of such individuals are considered lapsed for purposes of applying section 37-8-443, MCA."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-431, MCA

"8.32.413 CONDUCT OF NURSES (1) Professional conduct for nurses is nursing behavior including acts, knowledge, and practices, which through professional experience, has become established by practicing nurses as conduct which is reasonably necessary for the protection of the public interests.

(2) Unprofessional conduct, for purposes of defining subsection (5) of section 37-8-441, MCA, is determined by the board to mean nursing behavior (acts, knowledge, and practices) which fails to conform to the accepted standards of the nursing profession and which could jeopardize the health and welfare of the people and shall including include, but not be limited to, the following:

(a) through (o) will remain the same.

(p) delegating nursing care, functions, tasks and/or responsibilities to others contrary to the Montana laws and rules governing nursing and/or to the detriment of patient safety;

(q) failing to exercise appropriate supervision over persons who are authorized to practicing only under the supervision of the licensed professional;

(r) and (s) will remain the same.

(t) practicing professional or practical nursing as a registered or licensed practical nurse in this state without a current active Montana license or permit shall be grounds for refusing to license that individual if application is made subsequent to such conduct;

(u) through (w) will remain the same.

(x) having a nursing license denied, revoked, suspended, placed on probation or voluntarily surrendered in another state or jurisdiction for any one or more of the above reason that would constitute a basis for disciplinary action in this state;

(y) having a license or certificate in a related health care discipline in Montana, or another state or any jurisdiction denied, revoked, suspended, placed on probation or voluntarily surrendered for any one or more of the above reason that would constitute a basis for disciplinary action in this state;

(z) violation of a disciplinary final order from the board;

(aa) will remain the same.

(ab) failing to participate and cooperate in a professional and occupational licensing bureau investigation.
Auth: Sec. 37-1-136, 37-8-202, MCA; IMP, Sec. 37-8-136, 37-8-202, 37-8-441, MCA

"8.32.416 VERIFICATION OF LICENSE TO ANOTHER STATE

(1) Licensees requesting verification and documentation of Montana licensure status to another United States jurisdiction or foreign country shall submit a ~~fee of \$10.00~~ written, signed request with the request appropriate fee."

Auth: Sec. 37-1-131, 37-8-202, MCA; IMP, Sec. 37-1-134, 37-8-202, 37-8-431, MCA

"8.32.425 FEES (1) The fee for licensure (RN or LPN) by examination (NCLEX) is \$35.00, payable at the time the application is submitted. ~~Five dollars of~~ this fee is retained by the board if the application is withdrawn prior to the examination.

(2) will remain the same.

(3) The fee for licensure (RN or LPN) by endorsement is \$35.00, payable at the time the application is submitted. ~~Five dollars of~~ this fee is retained by the board if the application is withdrawn.

(4) through (9) will remain the same.

(10) The verification fee is \$10.00.

(11) The fee for a duplicate renewal certificate is \$10.00."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-1-134, 37-8-202, MCA

"8.32.603 OFFICERS (1) The term of office for each officer shall be for one year and shall begin ~~at the close of the annual meeting on July 1.~~"

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.604 MEETINGS (1) and (2) will remain the same.

(3) Meeting dates for the next calendar year ~~are shall~~ be approved by the board at its annual meeting in the year prior to its application.

(4) will remain the same."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.806 ANNUAL REPORT (1) through (2)(n) will remain the same.

(o) ~~one three~~ copies of the school catalog;

(p) will remain the same."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, 37-8-302, MCA

"8.32.1501 PRESCRIPTIVE AUTHORITY FOR NURSE SPECIALISTS
ADVANCED PRACTICE REGISTERED NURSES (1) This subchapter will be known and may be cited as the ~~nurse specialist advanced practice registered nurse~~ nurse prescriptive authority rules.

(2) An nurse specialist advanced practice registered nurse granted prescriptive authority by the board of nursing

may prescribe and dispense drugs pursuant to applicable state and federal laws.

(3) Prescriptive authority permits the ~~nurse-specialist~~ advanced practice registered nurse to prescribe, dispense and administer prescription drugs in the prevention of illness, the restoration of health and/or the maintenance of health in accordance with section 37-2-104, MCA.

(4) (a) The board of nursing will provide the boards of pharmacy and medical examiners with an annual list of ~~nurse specialists~~ advanced practice registered nurses with prescribing authority and their titles.

(b) The board of nursing will promptly forward to the boards of pharmacy and medical examiners the names and titles of ~~nurse specialists~~ advanced practice registered nurses added to or deleted from the annual list.

(c) The boards of pharmacy and medical examiners will be notified in a timely manner when the prescriptive authority of an ~~nurse-specialist~~ advanced practice registered nurse is terminated, suspended or reinstated."

Auth: Sec. 37-8-202, MCA: IMP, Sec. 37-8-202, MCA

"8.32.1502. DEFINITIONS The following definitions apply in and for this subchapter:-

(1) will remain the same.

(2) "Certifying body" is a national certifying organization which examines and validates credentials of ~~nurse specialists~~ advanced practice registered nurses and which has been approved by the board of nursing as a certifying agency for ~~nurse-specialist~~ advanced practice registered nurse recognition. A list of certifying agencies approved by the board of nursing is available from the board office.

(3) and (4) will remain the same.

(5) "~~Nurse-specialist~~ Advanced practice registered nurse" is a registered nurse recognized by the board to practice as an ~~nurse-specialist~~ advanced practice registered nurse pursuant to 37-8-202(5)(a), MCA, and ARM 8.32.305.

(6) will remain the same."

Auth: Sec. 37-8-202, MCA: IMP, Sec. 37-8-202, MCA

"8.32.1504. INITIAL APPLICATION REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY (1) The ~~nurse-specialist~~ advanced practice registered nurse will submit a completed application provided by the board of nursing, and a non-refundable fee. The application will include:

(a) evidence of completion of a minimum of 15 contact hours of education in pharmacology and/or the clinical management of drug therapy which has been obtained within a three-year period immediately prior to the date the application is received at the board office. Six of the 15 contact hours must have been obtained within one year immediately prior to the date the application is received at the board office. One third of all contact hours must be face-to-face meetings or interaction.

(b) a copy of the original certification document from the ~~nurse-specialist's~~ advanced practice registered nurse's certifying body.

(c) ~~The application will include, in accordance with ARM 8-32-1507,~~ a method of referral and documentation in client records, in accordance with ARM 8.32.1507.

(d) ~~in accordance with ARM 8-32-1508,~~ a method of quality assurance used to evaluate the ~~nurse specialist~~ advanced practice registered nurse, in accordance with ARM 8.32.1508.

(2) will remain the same.

(a) the applicant is not recognized as ~~an nurse specialist~~ advanced practice registered nurse.

(b) through (e) will remain the same."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

8.32.1505 PRESCRIBING PRACTICES (1) and (2) will remain the same.

(a) name, title, address and phone number of the nurse specialist advanced practice registered nurse who is prescribing,

(b) through (3) will remain the same.

(4) (a) The nurse specialist advanced practice registered nurse with prescriptive authority who wishes to prescribe schedule II-V drugs will comply with federal drug enforcement administration requirements prior to prescribing controlled substances.

(b) The nurse specialist advanced practice registered nurse will immediately file any and all of his or her DEA registrations and numbers with the board of nursing.

(c) The board of nursing will maintain current records of all nurse specialists advanced practice registered nurses with DEA registration and numbers.

(d) will remain the same.

(5) An nurse specialist advanced practice registered nurse with prescriptive authority will not delegate the prescribing or dispensing of drugs to any other person.

(6) An nurse specialist advanced practice registered nurse with prescriptive authority may administer local anesthetics.

(7) An nurse specialist advanced practice registered nurse with prescriptive authority who also possesses inpatient care privileges will practice pursuant to a written agreement between the agency and the nurse specialist advanced practice registered nurse which is consistent with the rules, regulations and guidelines set forth in 37-8-202(5) and 37-2-104, MCA, and ARM 8.32.301 through 8.32.303, and this subchapter. The nurse specialist advanced practice registered nurse will file the written agreement and revision thereof with the board of nursing.

(8) An nurse specialist advanced practice registered nurse with prescribing authority from the board of nursing will comply with the requirements of 37-2-104, MCA."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1506 SPECIAL LIMITATIONS RELATED TO THE PRESCRIBING OF CONTROLLED SUBSTANCES (1) An nurse specialist advanced practice registered nurse will not prescribe controlled substances for self or for members of the nurse specialist's advanced practice registered nurse's immediate family.

(2) An nurse specialist advanced practice registered nurse will not provide controlled substances or prescription drugs for other than therapeutic purposes.

(3) will remain the same.

(4) An nurse specialist advanced practice registered nurse will, within 30 days of the initial prescription, record

in the client record his or her evaluation of the effectiveness of controlled substances prescribed.

(5) An nurse specialist advanced practice registered nurse will not prescribe refills of controlled substances unless the refill prescription is in writing."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1507 METHOD OF REFERRAL (1) An nurse specialist advanced practice registered nurse with prescriptive authority will have a referral process to licensed physicians and a method for documentation of referral in the client records. Said referral method must be approved by the board of nursing prior to issuance of prescriptive authority.

(2) An nurse specialist advanced practice registered nurse will immediately file with the board of nursing any proposed change in the method for referral or client record documentation. Any change will be subject to approval by the board of nursing."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1508 QUALITY ASSURANCE OF NURSE SPECIALIST ADVANCED PRACTICE REGISTERED NURSE PRACTICE (1) An nurse specialist advanced practice registered nurse with prescriptive authority will submit a method of quality assurance for evaluation of the nurse specialist's advanced practice registered nurse's practice. The quality assurance method must be approved by the board of nursing prior to issuance of prescriptive authority.

(2) will remain the same.

(a) use of standards which apply to the nurse specialist's advanced practice registered nurse's area of practice,

(b) through (e) will remain the same.

(3) An nurse specialist advanced practice registered nurse will immediately file with the board of nursing any proposed change in the quality assurance method. Any change will be subject to approval by the board of nursing."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1509 TERMINATION OF PRESCRIPTIVE AUTHORITY"

(1) The board of nursing may impose discipline up to and including termination of an nurse specialist advanced practice registered nurse's prescriptive authority when one or more of the following criteria apply:

(a) the nurse specialist advanced practice registered nurse has not met the requirements for renewal of prescriptive authority in accordance with this chapter,

(b) the nurse specialist advanced practice registered nurse has not met requirements necessary to maintain nurse specialist advanced practice registered nurse recognition,

(c) the nurse specialist advanced practice registered nurse has not complied with the requirements for referral or quality assurance methods,

(d) The nurse specialist advanced practice registered nurse has prescribed outside the nurse specialist's advanced practice registered nurse's scope of practice, has prescribed

for other than therapeutic purposes, or has otherwise violated the provisions of the prescriptive authority rules contained in this subchapter.

(2) An nurse specialist advanced practice registered nurse whose prescriptive authority has terminated will not prescribe until the nurse specialist advanced practice registered nurse has received written notice from the board of nursing that his or her prescriptive authority has been reinstated by the board.

(3) will remain the same."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1510 RENEWAL OF PRESCRIPTIVE AUTHORITY (1) The nurse specialist's advanced practice registered nurse's prescriptive authority will expire on December 31st of even numbered years.

(2) To renew prescriptive authority, the nurse specialist advanced practice registered nurse will submit to the board of nursing:

(a) through (b)(ii) will remain the same.

(c) A minimum of six contact hours of continuing education in pharmacology or pharmacology management is required during the two year period immediately preceding the effective date of the prescriptive authority renewal. The continuing education will be by a professional accrediting organization approved by the board of nursing and a minimum of 2 hours will be face-to-face interaction.

(3) If an nurse specialist advanced practice registered nurse fails to renew prescriptive authority prior to the expiration date of that authority, the nurse specialist's the advanced practice registered nurse's prescriptive authority will be automatically suspended until renewal is completed and the nurse specialist will expire. The advanced practice registered nurse may not prescribe until renewal is completed and the advanced practice registered nurse has received written notice that the prescriptive authority has been reinstated.

~~(a) The nurse specialist whose prescriptive authority is suspended will not prescribe until the nurse specialist has received written notice from the board of nursing that his or her prescriptive authority has been reinstated by the board of nursing.~~

~~(b) (a) The board of nursing will promptly notify the board of pharmacy of any suspension expiration or other termination of prescriptive authority."~~

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1607 ADMISSION CRITERIA (1) through (5) will remain the same.

(6) Licensee has not had any previous, current or pending disciplinary action from a licensing board, except where approved by the board.

(7) and (8) will remain the same.

(9) Licensee has not been convicted of, plead guilty to, or plead nolo contendere to a felony crime under the Controlled

Substance, Drug, Device and Cosmetic Act involving a violation of state or federal laws relating to drugs.

(10) will remain the same.

(11) Licensee has not had evidence of diversion of controlled substances or caution legend drugs ~~for the purpose of sale or distribution.~~

(12) will remain the same."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"I CLINICAL NURSE SPECIALIST PRACTICE (1) Clinical nurse specialist practice means the delivery and management of expert level nursing care to individuals or groups, including the ability to:

(a) assess the health status of individuals and families using methods appropriate to the client population and area of practice;

(b) diagnose human responses to actual or potential health problems;

(c) plan for health promotion, disease prevention and/or therapeutic intervention in collaboration with the client. The goal is to enhance the problem-solving and self-care abilities of the client whenever and to whatever extent possible. The clinical nurse specialist works with other health care providers to maximize resources available to the client and family.

(d) implement therapeutic interventions based on the clinical nurse specialist's area(s) of expertise, including, but not limited to direct nursing care, diagnostic procedures, prescription of therapies, counseling and/or teaching;

(e) refer for additional health care as necessary and appropriate;

(f) coordinate health care as necessary and appropriate;

(g) evaluate, with the client, the effectiveness of care."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"II PURPOSE (1) Every nurse is accountable as an individual for practicing according to the statutes and rules for nursing in Montana. Each nurse is responsible and accountable for the nature and quality of all nursing care provided under her/his direction.

(2) A licensed nurse may delegate specific nursing tasks to unlicensed persons in accordance with these rules. Delegating of nursing tasks to unlicensed persons will be task specific, patient specific, and unlicensed person delegatee specific."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"III NURSING TASKS WHICH MAY BE DELEGATED

(1) Administration of medications as provided in this subchapter."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"IV DEFINITIONS The following words and terms as used in this chapter have the following meanings:

(1) "Activities of daily living" means the daily routine non-skilled activities performed for grooming, toileting, and ambulation such as bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer/ambulation, and assistance with self-administered medications.

(2) "Assign" means giving to another person a task within the person's area of service and activity.

(3) "Community based residential setting" means a setting in which the client lives in his/her own home or apartment, home of a relative, a foster home, a group home, or a retirement home.

(4) "Delegatee" means the person receiving the delegation.

(5) "Delegation" means the transfer of responsibility for the performance of a task from a licensed individual to a competent unlicensed individual while retaining accountability for the outcome.

(6) "Delegator" means the person making the delegation.

(7) "Judgment" means the intellectual process that a nurse exercises in forming an opinion and reaching a clinical decision based upon an analysis of the evidence or data.

(8) "Supervision" means the provision of guidance by a qualified nurse for the accomplishment of a nursing task or activity with initial direction of the task or activity and periodic inspection of the actual act of accomplishing the task or activity. Total nursing care of an individual remains the responsibility and accountability of the nurse.

(9) "Unlicensed person" means any individual who is not a currently licensed nurse or does not have a license to perform skills usually performed by nurses. These individuals function in a complimentary or assistive role to the licensed nurse in providing direct patient care or carrying out common nursing functions."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"V. SETTINGS WHERE DELEGATING IS APPROPRIATE"

(1) Delegation of nursing tasks by nurses to unlicensed persons are permitted in the following settings only:

- (a) schools;
- (b) Montana state prison (Conley Road, Deer Lodge campus), women's correctional center;
- (c) community based residential settings not subject to the licensure requirements of a health care facility as found in 50-5-101, MCA, except as specifically provided as follows:

- (i) personal care home,
- (ii) hospice residential facility.

(2) Delegation of nursing tasks by nurses to unlicensed persons is never appropriate in the following settings:

(a) acute care settings such as hospitals, clinics, physician offices, surgery centers, or other facility subject to 50-5-101, MCA, except as provided above.

(b) nursing home, skilled care facility or other long term care facility."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"VI CRITERIA FOR DELEGATION - DELEGATION OF NURSING TASKS TO UNLICENSED PERSONS SHALL COMPLY WITH THE FOLLOWING CRITERIA (1) The nursing task to be delegated must be within the area of responsibility and scope of practice of the nurse delegating the act.

(2) The nursing task must be one that a reasonable, prudent nurse would find is within the scope of sound nursing judgment to delegate.

(3) The nursing task must be one that can be properly and safely performed by the unlicensed person involved without jeopardizing the patient's welfare.

(4) The nursing task delegated by the nurse must not require the unlicensed person to exercise nursing judgment or intervention except in an emergency situation.

(5) When delegating a nursing task to an unlicensed individual the nurse shall:

(a) make an initial assessment of the patient's nursing care needs before delegating the task,

(b) either instruct the unlicensed person in the delegated task or verify the unlicensed person's competency to perform the nursing task for that patient,

(c) supervise the performance of the delegated nursing task in accordance with new rule VII,

(d) be accountable and responsible for the delegated task,

(e) evaluate the performance of the delegated task,

(f) Document the unlicensed person's competency in performing the task, teaching, supervision, evaluation, and outcome in the patient record.

(6) The nursing task delegated by the nurse must be a specific task for a specific patient to a specific unlicensed delegatee in the specific setting.

(7) Delegated nursing tasks may not be transferred from one unlicensed delegatee to another, from one patient to another, or from one nursing task to another. The entire process in this section must be carried out for each nursing task, patient and delegatee."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"VII SUPERVISION (1) The degree of required supervision by the nurse of the unlicensed person shall be determined by the nurse after an evaluation of appropriate factors involved including, but not limited to, the following:

(a) The stability of the condition of the patient;

(b) Training and capability of the unlicensed person to whom the nursing task is delegated;

(c) The nature of the nursing task being delegated;

(d) The proximity and availability of the nurse to the unlicensed person when the nursing task will be performed.

(2) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication.

(3) Unless otherwise provided in this section or indicated by the situation, the nurse responsible for nursing care of the patient shall make a supervisory visit at least monthly to:

- (a) evaluate the patient's health status;
- (b) evaluate the performance of the delegated nursing task;
- (c) determine whether goals are being met;
- (d) determine the appropriateness of continuing delegation of the task."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"VIII NURSING FUNCTIONS (1) The following nursing functions require nursing knowledge, judgment, and skill and may not be delegated:

- (a) the initial nursing assessment or intervention;
- (b) development of the nursing diagnosis;
- (c) the establishment of the nursing care goal;
- (d) development of the nursing care plan;
- (e) evaluation of the patient's progress, or lack of progress toward goal achievement;
- (f) any nursing intervention that requires nursing knowledge, judgment, and skill."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"IX NURSING TASKS RELATED TO ADMINISTRATION OF MEDICATIONS THAT MAY BE DELEGATED (1) Administration of medication is a nursing function. As such, the nurse retains full responsibility for medication administration.

(2) The nurse may delegate administration of medication tasks in accordance with this section.

(3) The following activities related to medication administration may not be delegated except as provided in new rule X of this chapter:

- (a) calculation of any medication dose;
- (b) administration of medications by injection route;
- (c) administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments;
- (d) administration of medications by way of a tube inserted in a cavity of the body.

(4) Administration of medication may only be delegated by the nurse as provided in new rules VI and VIII and when limited to:

- (a) pharmacy or authorized prescriber prepared medication via inhalant dispenser;
- (b) oral medication taken from a prefilled labeled medication holder, labeled unit dose container, or original marked and labeled container from the pharmacy for the patient;
- (c) oral medication from subsection (3)(a) above that needs to be measured for liquid medication or a tablet broken for administration provided the nurse has calculated the dose;
- (d) suppository medication taken from a prefilled labeled medication holder, labeled unit dose container, or original marked and labeled container from the pharmacy for the patient."

Auth: Sec. 37-8-202; IMP, Sec. 37-8-202, MCA

"X GENERAL NURSING TASKS THAT MAY NOT BE DELEGATED

(1) By way of example, but not in limitation, the following are nursing tasks that are not within the scope of nursing judgment to delegate to an unlicensed person:

(a) Sterile procedures involving a wound or an anatomical site which could potentially become infected.

(b) Non-sterile procedures such as dressing or cleansing penetrating wound or deep burns.

(c) Invasive procedures such as inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube.

(d) Care of broken skin other than minor abrasions or cuts generally classified as requiring only first aid treatment.

(e) Removing tubes or other foreign materials."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"XI PATIENT HEALTH TEACHING AND HEALTH COUNSELING

(1) It is the responsibility of the nurse to promote patient education and to involve the patient and significant others in implementation of health goals.

(2) Unlicensed individuals may provide information to the patient; however, ultimate responsibility for patient health teaching and health counseling resides with the professional nurse as it relates to nursing and nursing services."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"XII LIABILITY (1) The delegating nurse is responsible for delegating appropriately and to a competent delegatee. The delegating nurse will be liable for the act of delegating and for the supervision provided.

(2) Delegates are accountable for accepting the delegation and for his/her own actions in carrying out the act and may be liable for his/her actions."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"XIII TASKS WHICH MAY BE ROUTINELY ASSIGNED TO AN UNLICENSED PERSON IN ANY SETTING WHEN A NURSE-PATIENT RELATIONSHIP EXISTS

(1) The following are tasks that are not within the exclusive scope of a licensed nurse's practice and may be within the scope of sound nursing practice to be assigned to an unlicensed person. Assignment is defined at new rule II, and is determined by the licensed nurse if in her/his nursing judgment the health and welfare of the patient would be protected and the task could safely be assigned to an unlicensed person. Changes in the patient's condition may require that tasks assigned may need to be changed when they can no longer be safely performed by an unlicensed person.

(a) non-invasive and non-sterile treatments unless otherwise prohibited in this section,

(b) the collecting, reporting, and documentation of data including, but not limited to:

(i) vital signs, height, weight, intake and output;

(ii) changes from baseline data established by the nurse;

- (iii) environmental situations;
 - (iv) patient or family comments relating to the patient's care;
 - (v) behaviors related to the plan of care.
 - (c) ambulation, positioning, and turning,
 - (d) personal hygiene and elimination,
 - (e) feeding, cutting up food, or placing of meal trays,
 - (f) socialization activities,
 - (g) activities of daily living,
 - (h) assisting with self-administration of medications
- where the following acts are used:
- (i) verbal suggestions, prompting, reminding, gesturing, or providing a written guide for self-administering medications;
 - (ii) handing a prefilled, labeled medication holder, labeled unit dose container, syringe, or original marked, labeled container from the pharmacy to the patient;
 - (iii) opening the lid of the above container for the patient;
 - (iv) guiding the hand of the patient to self-administer the medication;
 - (v) holding and assisting the patient in drinking fluid to assist in the swallowing of oral medications."
- Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

REASON: The Board of Nursing is changing existing rules and adding new rules on clinical nurse specialists and delegation of nursing tasks pursuant to authority created by Senate Bill 121 of the 1993 general legislative session. The Board is also updating some of its unprofessional conduct rules to improve enforcement.

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, Arcade Building, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than February 24, 1994.

4. Lance L. Melton, attorney, has been designated to preside over and conduct the hearing.

BOARD OF NURSING
NANCY HEYER, RN, CNA, PRESIDENT

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of a rule pertaining) THE PROPOSED AMENDMENT OF
to definitions and adoption of) 8.35.402 DEFINITIONS AND
proposed new rules pertaining) ADOPTION OF NEW RULES
to the use of modalities) PERTAINING TO THE APPROVAL
) OF THE USE OF MODALITIES

TO: All Interested Persons:

1. On February 17, 1994, at 10:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.35.402. DEFINITIONS As used in these rules, unless the context requires otherwise, the following definitions apply:

(1) will remain the same.

(2) "Instruction" means, in reference to 37-24-105, MCA, and new rules I and II, 16 hours worth of continuing education unit course work which is approved and/or recognized by the American occupational therapy association, American physical therapy association or the American society of hand therapists, or graduate level education course work post occupational therapy degree needed to update and expand knowledge in skills required for competent performance beyond entry level in superficial physical agents.

(3) "Training" means, in reference to 37-24-105, MCA, and new rules I and II, at least 16 hours of training instructed by an occupational therapist, registered or certified hand therapist who has been given board approval to use superficial modalities before the therapist instructs others in their use of superficial modalities or by a licensed physical therapist. Training also includes inservice training conferences of up to 16 hours, workshops up to 16 hours, or seminars up to 16 hours.

(4) "Documentation" means the certificate of course attendance, completion, title of course, hours of program, signature of program official and syllabus, along with therapist notes supporting coverage of 37-24-105, MCA.

(a) documentation from a graduate level education would include a transcript with proof of a grade C or better in the course and a course syllabus, therapist notes and/or letter from the course instructor supporting the coverage of 37-24-105, or;

(b) successful completion of the Certified Hand Therapist Examination;

(c) documentation of completion of inservice training includes written proof of an inservice outline and or syllabus encompassing 37-24-105, MCA, 16 hours of direct supervision by the inservice training instructor who is approved by the board to use superficial modalities, and certificate of instructor providing stated proof of his/her qualifications to instruct/provide the training to the therapist they will be proctoring and therapist submittal of written documents and explanation of 37-24-105, MCA, for superficial modalities he/she is requesting board approval to use."

Auth: Sec. 37-24-202, MCA; IMP, Sec. 37-24-105, 37-24-106

REASON: The Board proposes the above definitions in order to flesh out the requirements that must be met for an occupational therapist to be allowed to perform techniques using physical agent modalities. Amendments passed by the 1993 Legislature provided the board with the authority to establish relevant standards. In developing such standards, the Board believes it is essential to define appropriate methods of instruction and training and to establish the means for documenting such instruction and training.

"I. APPROVAL TO USE MODALITIES (1) The licensee who is requesting to use modalities must receive unanimous approval of the board's committee reviewing the requests. In considering such requests, the committee shall consider whether the licensee has documented completion of 16 hours of instruction or training within the nine criteria established in section 37-24-105, MCA. The training required within these nine criteria may be obtained through educational programs, workshops or seminars offered at a college or university or approved for training of occupational therapists by the American occupational therapy association, the American physical therapy association, the American society of hand therapists, a physical therapist or offered by clinical facilities affiliated with such a college or university."

Auth: Sec. 37-24-202, MCA; IMP, 37-24-105, 37-24-106, MCA

REASON: This rule sets forth the manner by which the Board will determine whether an individual licensee desiring to use modalities has complied with the statute requiring completion of course work in subjects dealing with the uses, effects, physics, and contraindications of various modalities.

"II. PERMISSION TO USE ELECTRICAL OR SOUND PHYSICAL AGENTS (1) The instruction or training required by section 37-24-106, MCA, to use sound or electrical physical agent modalities may be obtained in either of the following manners:

(a) an individual who presents certification by the hand certification commission, inc., must complete forty hours of instruction or training. The board deems this requirement to mean that the licensee must document either:

(i) 15 hours of continuing education unit course work approved by the American occupational therapy association,

American physical therapy association or American society of hand therapists and 100 treatments or 25 hours of instructor proctoring of sound and electrical physical agent modalities performed with patients. In such instances, the instructor must be pre-approved by the Board and show certification in providing sound and electrical modalities; or

(ii) 40 hours of direct instructor proctoring, which shall include at least 100 treatments.

(b) an individual lacking the hand certification must complete 100 hours of instruction or training in sound and electrical physical agent modalities. The board deems this requirement to mean that the licensee must document either:

(i) 75 hours of continuing education unit course work approved by the American occupational therapy association, American physical therapy association, or American society of hand therapists and 100 treatments under instructor proctoring of sound and electrical physical agent modalities done on patients directly supervised by the instructor/proctor. The instructor must be pre-approved by the board and show certificate of proof of being a licensed physical therapist or an occupational therapist, registered and certified in providing sound and electrical modalities; or

(ii) 100 hours of proctoring under the direct supervision of a pre-approved instructor, which shall include at least 400 documented treatments. The licensee receiving the instruction shall present the board with written documentation of such proctoring. The proctor must be present when the trainee is providing such treatments.

(2) In any case, the licensee seeking permission to use sound or electrical physical agent modalities, pursuant to section 37-24-106, MCA, must document competency in the nine criteria set forth in section 37-24-105, MCA."

Auth: Sec. 37-24-202, MCA; IMP, Sec. 37-24-106

REASON: This rule establishes the means by which an individual wishing to perform sound or electrical modalities may qualify to do so. The regulation provides that such individuals, whether they have hand certification or not, must provide documentation of having completed course work in the nine criteria set up in section 37-24-105, MCA, regarding indications, uses, effects of and contraindications to treatment by use of modalities. The regulation provides means by which both those who already have hand certification and those that do not may qualify for use of such treatments.

"III QUALIFIED CONTINUING EDUCATION PROGRAMS

(1) Educational programs that would satisfy continuing education requirements must be approved either by the American occupational therapy association or the American physical therapy association or be approved by the board."

Auth: Sec. 37-24-202, MCA; IMP, Sec. 37-24-105, 37-24-106, MCA

REASON: This rule serves to define the forms of continuing education that would be acceptable to the Board as education programs in the use of modalities. Sections 37-24-

105 and 37-24-106, MCA, provide the Board with the authority to determine appropriate educational programs. The Board believes these programs are appropriate in such education.

"IV STANDARDS OF PRACTICE (1) The board adopts by reference the American occupational therapy association's standards of practice, dated March 1992. A copy of these standards is available from the office of the board of occupational therapy practice."

Auth: Sec. 37-24-202, MCA; IMP, Sec. 37-24-105 and 37-24-106, MCA

3. Interested 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 Occupational Therapy Practice, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., February 24, 1994.

4. Robert P. Verdon, staff attorney, has been designated to preside over and conduct the hearing.

BOARD OF OCCUPATIONAL THERAPY
PRACTICE
LYNN DAVIS, CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining	)	OF 8.36.601 REQUIREMENTS,
to continuing education,	)	8.36.701 APPROVED COURSES
approved courses and examina-	)	AND EXAMINATIONS, 8.36.702
tions, new licenses and	)	NEW LICENSEES AND 8.36.801
therapeutic pharmaceutical	)	THERAPEUTIC PHARMACEUTICAL
agents	)	AGENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 26, 1994, the Board of Optometry proposes to amend the above-stated rule.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.36.601 REQUIREMENTS (1) As stated in section 37-10-308, MCA, beginning June 1, 1971, each licensed optometrist ~~in active practice in the state of Montana~~ shall be required to attend not less than 12 hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the board of ~~optometrists~~ optometry as a prerequisite for his license renewal.

(a) through (3) will remain the same.

(4) After attendance at an approved continuing education program, the optometrist shall submit a completed continuing education report form.

(5) will remain the same."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-308, MCA

REASON: This amendment is required to bring the rule into compliance with legislation passed in 1993 requiring that all licensed optometrists, not just those in active practice in Montana, need to obtain continuing education on an annual basis.

"8.36.701 APPROVED COURSES AND EXAMINATIONS (1) will remain the same.

(2) That a certificate of competency for the use of topical ~~ophthalmological~~ ophthalmological diagnostic agents be issued to those optometrists who have taken the course and passed the required examination.

(a) and (b) will remain the same."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-304, MCA

REASON: This amendment is proposed in order to correct the spelling of the term "ophthalmological."

"8.36.702 NEW LICENSEES (1) That all new optometrists applying for licensure in this state shall have satisfied the board of ~~optometrists~~ optometry that their studies in ocular

~~pharmacological~~ pharmacological agents are equivalent to the course offered by the university of California.

(a) On the recommendation of the board of ~~optometrists~~ optometry, these individuals will be granted a certificate by the board of medical examiners."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-304, MCA

REASON: This amendment corrects the name of the agency to the board of optometry and makes the name of the agency consistent with 1993 legislation. It also corrects the spelling of pharmacological.

"9.36.801 THERAPEUTIC PHARMACEUTICAL AGENTS (1) through (1)(c) will remain the same.

(2) Optometrists will be held to the same standard of care as physicians who treat anterior segment eye disease with topical pharmaceutical agents."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-304, MCA

REASON: This amendment is proposed to provide the practitioners with knowledge of the degree of care that is expected to be provided. This amendment is proposed in lieu of a previous proposal that would have held optometrists to the same standards as physicians. The Board withdrew that proposed amendment and suggested this wording because this language permits the optometrist, based on his own experience, education, and knowledge to become familiar with standard and to use such a standard. This language is also preferable because it does not delegate to physicians the ability to create standards for non-physicians such as optometrists.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Optometry, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., February 24, 1994.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Optometry, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., February 24, 1994.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in

the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 24 based on the 242 licensees in Montana.

BOARD OF OPTOMETRY
PAUL L. KATHREIN, O.D.,
PRESIDENT

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of a rule pertaining) THE PROPOSED AMENDMENT OF
to definitions) 8.59.402 DEFINITIONS

TO: All Interested Persons:

1. On March 3, 1994, at 10:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.59.402. DEFINITIONS (1) through (3) will remain the same.

(4) The board defines "pulse oximetry" as a diagnostic procedure that may be performed only by a licensed respiratory care practitioner, pursuant to the orders of a physician; or other licensed health care professional."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-101, 37-28-102, MCA

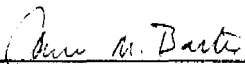
REASON: The Board is proposing this amendment to require a license as a respiratory care therapist or other health care professional to perform pulse oximetry based on section 37-18-102, MCA, which defines respiratory care therapy as administration of diagnostic and therapeutic agents and observation and monitoring of a patient's signs. The pulse oximeter is a device used for these purposes. As such, the Board feels that one must be licensed as a respiratory care therapist under 37-28-201, MCA, or be licensed in another health care profession to use pulse oximetry.

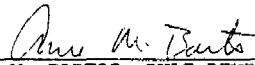
3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Respiratory Care Practitioners, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than the time of hearing on March 3, 1994.

4. Robert P. Verdon, attorney, has been designated to preside over and conduct the hearing.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
RICH LUNDY, PRESIDENT

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of a new rule for the) THE PROPOSED ADOPTION OF A
administration of the 1994) NEW RULE PERTAINING TO THE
Treasure State Endowment (TSEP)) 1994 TREASURE STATE
Program) ENDOWMENT PROGRAM

TO: All Interested Persons:

1. On February 16, 1994, at 2:30 p.m., a public hearing will be held in the large downstairs conference room at the Department of Commerce Building, 1424 Ninth Avenue, Helena, Montana, to consider the adoption by reference of rules governing the administration of the 1994 Treasure State Endowment (TSEP) Program.

2. The proposed new rule will read as follows:

"I. INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE TREASURE STATE ENDOWMENT PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Treasure State Endowment Program 1994 Application Guidelines published by it as rules for the administration of the TSEP.

(2) The rules incorporated by reference in (1) above, relate to the following:

- (a) definitions of terms,
- (b) amount of TSEP funds available in FY 1996 and 1997,
- (c) eligible applicants,
- (d) application scoring system and ranking criteria,
- (e) forms of financial assistance available under TSEP,
- (f) general requirements for TSEP applications,
- (g) application review process, and
- (h) program administration.

(3) Copies of the regulations adopted by reference in subsection (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: Sec. 90-6-710, MCA; IMP, Sec. 90-6-710, MCA

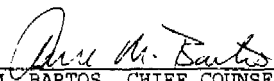
3. It is reasonably necessary to adopt this rule because section 90-6-710(4), MCA, requires the Department to adopt rules to implement the program.


4. Interested 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 Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, to be received no later than 5:00 p.m., February 24, 1994.

5. Richard M. Weddle, attorney, has been designated to preside over and conduct the hearing.

LOCAL GOVERNMENT ASSISTANCE
DIVISION

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of a new rule for the) THE PROPOSED ADOPTION OF A
administration of the 1994) NEW RULE PERTAINING TO THE
Federal Community Development) ADMINISTRATION OF THE 1994
Block Grant Program) FEDERAL COMMUNITY DEVELOP-
) MENT BLOCK GRANT (CDBG)
) PROGRAM

TO: All Interested Persons:

1. On February 16, 1994, at 2:30 p.m., a public hearing will be held in the large downstairs conference room at the Department of Commerce Building, 1424 Ninth Avenue, Helena, Montana, to consider the adoption by reference of rules governing the administration of the 1994 Federal Community Development Block Grant (CDBG) program.

2. The proposed new rule will read as follows:

"I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1994 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 1994 Application Guidelines and the Montana Community Development Block Grant Program, 1994 Grant Administration Manual published by it as rules for the administration of the 1994 CDBG program.

(2) The rules incorporated by reference in (1) above, relate to the following:

- (a) the policies governing the program,
- (b) requirements for applicants,
- (c) procedures for evaluating applications,
- (d) procedures for local project start up,
- (e) environmental review of project activities,
- (f) procurement of goods and services,
- (g) financial management,
- (h) protection of civil rights,
- (i) fair labor standards,
- (j) acquisition of property and relocation of persons displaced thereby,

(k) administrative considerations specific to public facilities, housing rehabilitation and neighborhood revitalization, and economic development projects,

- (l) project audits,
 - (m) public relations, and
 - (n) project monitoring.
- (3) Copies of the regulations adopted by reference in subsection (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

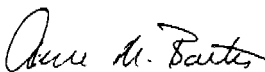
Auth: Sec. 90-1-103, MCA; IME, Sec. 90-1-103, MCA


3. It is reasonably necessary to adopt the rule because the federal regulations governing the states' administration of the 1994 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program.

4. Interested 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 Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, to be received no later than 5:00 p.m., February 24, 1994.

5. Richard M. Weddle, attorney, has been designated to preside over and conduct the hearing.

LOCAL GOVERNMENT ASSISTANCE
DIVISION

BY: 
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING ON
of Rule I, and the amendment)	PROPOSED ADOPTION OF RULE I,
of Rules 11.14.226, 11.14.301,)	AND AMENDMENT OF RULES
11.14.401, and 11.14.609)	11.14.226, 11.14.301,
pertaining to day care)	11.14.401, AND 11.14.609
facilities and legally)	PERTAINING TO DAY CARE
unregistered providers)	FACILITIES AND LEGALLY
participating in day care)	UNREGISTERED PROVIDERS
benefits' programs.)	PARTICIPATING IN DAY CARE
)	BENEFITS' PROGRAMS

TO: All Interested Persons.

1. On February 18, 1994, at 1:30 p.m., a public hearing will be held in the second floor conference room of the Department of Family Services, 48 North Last Chance Gulch, Helena, Montana, to consider the adoption of Rule I, and the amendment of Rules 11.14.226, 11.14.301, 11.14.401, and 11.14.609 pertaining to day care facilities and legally unregistered providers participating in day care benefits' programs.

2. The rules as proposed to be adopted or amended read as follows:

1. PERSONS AFFECTED BY DEPARTMENT RECORDS (1) A person, organization or day care facility prohibited or restricted from providing supplemental parental care based on findings in department records may contest the prohibition or restriction by requesting amendment of department records pursuant to ARM 11.5.609.

(2) A person whose presence in a day care facility is prohibited or restricted based on findings in department records may contest the prohibition or restriction as provided in subsection (1).

(3) A legally unregistered provider prohibited or restricted from participation in day care benefits' program(s) based on findings in department records may contest the prohibition or restriction as provided in subsection (1).

(4) A person prohibited or restricted from the home of a legally unregistered provider participating or applying to participate in a day care benefits' program(s) may contest the prohibition or restriction as provided in subsection (1).

(5) Any amendment of findings arising from proceedings authorized under this rule may be limited to the particular prohibition or restriction leading to the request for amendment.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704; 52-2-731, MCA.

REASON: Current rules covering day care facilities may prohibit

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2-1/27/94

or restrict individuals from providing care, being present in the facility, or from having contact with children in the facility, based on findings contained in department records substantiating abuse or neglect of children. Failure to comply with the restriction/prohibition may result in adverse action against the facility's license or registration, or denial of application for licensure or registration. Similarly, rules setting out requirements for participating in department benefits' programs may condition participation of legally unregistered providers upon restriction or prohibition from the home of persons named as perpetrators in records substantiating abuse or neglect of children.

There has been confusion as to whether and how individuals so affected may contest the department's determination restricting or prohibiting them from the home or facility. Rule I addresses this problem by proposing that the record substantiating abuse or neglect be contested pursuant to the existing procedure for amending department records substantiating child abuse or neglect set out in ARM 11.5.609. The department also intends that prohibitions or restrictions based on department records substantiating neglect or abuse of elderly or developmentally disabled persons be subject to the amendment procedure under ARM 11.5.609, through Rule I. As detailed in amendments in this rule-making, the department proposes restricting or prohibiting from homes and facilities persons named as perpetrators in records substantiating abuse or neglect of elderly or developmentally disabled persons.

11.14.226 DAY CARE CENTERS, STAFFING REQUIREMENTS

Subsections (1) through (3) remain the same.

(4) The provider must assure that members of the staff are physically, mentally and emotionally competent to care for children and free from communicable disease.

(a) The provider shall maintain written records regarding each employee which includes:

(i) a record of training and experience; and
(ii) three references from persons unrelated to the employee attesting to the employee's character and suitability for the job.

(b) Each employee staff member, aide, volunteer or other person having direct contact with the children in the center must meet the requirements set forth in ARM 11.14.301 (3) and (4) (a) through (d). The provider is responsible for assuring that the employees persons covered by this subsection have met these requirements before being hired having direct contact with the children in the center. Aides and volunteers lacking the experience with children required by ARM 11.14.301 (3) may obtain such experience through provision of supervised care in the center.

Subsections (5) through (8) remain the same.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704; 52-2-735, MCA.

REASON: The requirements in ARM 11.14.301(3) through (4)(d) concern the qualifications of persons who are supervising or are otherwise in contact with the children in group homes. The current version of ARM 11.14.226 imposes these requirements on employees of day care centers. Use of the term "employee" is both over-inclusive and under-inclusive in regard to the individuals who should be covered by the requirements. For example, a cook who is an employee of a center but who has no contact with the children, must nevertheless have experience in the care and supervision of children through imposition of the requirement contained ARM 11.14.301(3). On the other hand, a volunteer who is not an "employee", and who is regularly in contact with the children, is not required to have experience. Replacing the term with the terms underscored in the proposal will aid in proper application of the requirements from ARM 11.14.301. The language added to replace "employee" is taken from the existing version of subsection (5) of ARM 11.14.226.

Aides and volunteers may acquire the experience with children imposed through reference to ARM 11.14.301(3) "on the job" as long as the initial contact with the children is supervised by a staff person.

11.14.301. GROUP DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS Subsections (1) through (3) remain the same.

(4) The providers and all persons responsible for children in the group day care home shall possess good character, and be physically, mentally and emotionally competent to care for children and free from communicable disease. The provider and all caregivers shall comply with tuberculosis testing requirements set out in ARM 16.28.1005, and the immunization requirements of ARM 11.14.316. Unless an exception is granted by the regional administrator. No provider, caregiver or other person present in the home while the children are in care shall:

(a) have been convicted or adjudicated of a crime involving harm to children or physical or sexual violence against any person. Any provider, caregiver or other person charged with a crime involving children or physical or sexual violence and awaiting trial may not provide care or be present in the home pending the outcome of the trial;

(b) be currently diagnosed or receiving therapy or medication for a ~~serious~~ mental illness which might create a risk to children in care. ~~Serious~~ Mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request a provider, caregiver or other person to obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe such a ~~serious~~ mental illness exists;

(c) be chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the provider, caregiver or other person to obtain an evaluation at his or her own expense if there is

reasonable cause to believe chemical dependence exists; or
(d) have been named as a perpetrator in a substantiated report of child abuse or neglect, or been named as a perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Developmentally Disabled Abuse Prevention Act, or of a person protected by a similar law in another jurisdiction.

Subsections (5) through (10) remain the same.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704; 52-2-723; 52-2-713, MCA.

REASON: Section 52-2-723(1)(a), MCA, mandates that minimum standards for day care centers include a requirement that the license applicant, his employees, and all persons who will come in direct contact with the children be of good character. A good character requirement inserted in ARM 11.14.301 will apply to persons in day care centers as a result of the imposition of the requirements of ARM 11.14.301(3) and (4) by reference in ARM 11.14.226. Therefore, Section 52-2-723(1)(a) is implemented by this change.

Similarly, in regard to registered group and family day care homes, applicable standards may pertain to the character of persons responsible for the welfare of the children. See Section 52-2-731, MCA. Therefore, this statute is also implemented by the change mandating that group home staff possess good character.

The proposed changes also prohibit or restrict the presence of individuals named as perpetrators in department records substantiating abuse or neglect upon a person protected under the Montana Elder and Developmentally Disabled Abuse Prevention Act, or similar law from another jurisdiction. Persons who have demonstrated an inability to refrain from abusing or neglecting an elderly person or a developmentally disabled person, (the class of individuals protected under the Act), pose a risk to children in a day care facility, and therefore the rule should be changed to allow for their mandated exclusion.

The provision affecting those convicted of a crime involving harm to children or physical or sexual violence is clarified. Language added at the end of the subsection is intended to ensure that the rule is interpreted to cover any person guilty of a violent or sexual crime, whether the victim is an adult or a child. The term "adjudicated" is added to cover juvenile offenders who may be subject to exclusion from the home or facility as a result of their offenses. The changes to subsection (4) also include insertion of language allowing the regional administrator to grant exceptions to the exclusion requirements on crimes, abuse and neglect, mental illness, and chemical dependency. Mental illness is changed by deleting the adjective serious so that even where an illness is not "serious", if the presence of the person suffering from the illness may pose a risk to children in care, that person may be excluded.

Finally, language has been added to require TB testing and immunization documentation for persons responsible for providing care in the facility. Currently, only the provider must be tested for TB. The rule should include other caregivers who pose a similar risk for transmitting the disease to children in care. Similarly, while the current version requires all caregivers to be free from communicable disease, there is no immunization requirement. The imposition of immunization of caregivers is necessary to reduce the risk of transmission of disease to children.

11.14.401. FAMILY DAY CARE HOMES. PROVIDER RESPONSIBILITIES AND QUALIFICATIONS Subsections (1) through (3) remain the same.

(4) The provider and all persons responsible for children in the day care home shall possess good character, and be physically, mentally and emotionally competent to care for children and free from communicable disease. The provider and all caregivers shall comply with tuberculosis testing requirements set out in ARM 16.28.1005, and the immunization requirements of ARM 11.14.414. Unless an exception is granted by the regional administrator, who provider, caregiver or other person present in the home while the children are in care shall:

(a) have been convicted or adjudicated of a crime involving children or physical or sexual violence against any person. Any provider, caregiver or other person charged with a crime involving children or physical or sexual violence and awaiting trial may not provide care or be present in the home pending the outcome of the trial;

(b) be currently diagnosed or receiving therapy or medication for a ~~serious~~ mental illness which might create a risk to children in care. ~~Serious~~ ~~mental~~ illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request a provider, caregiver or other person to obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe such a ~~serious~~ mental illness exists;

(c) be chemically dependent upon drugs or alcohol. Chemical dependency on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the provider, caregiver or other person to obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependency exists; or

(d) have been named as a perpetrator in a substantiated report of child abuse or neglect, or been named as a perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Developmentally Disabled Abuse Prevention Act, or of a person protected by a similar law in another jurisdiction.

Subsections (5) through (10) remain the same.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704; 52-2-721, MCA.

REASON: See reason section for changes proposed herein in regard to ARM 11.14.301. The reasons for the changes to ARM 11.14.401, covering staff and others in family day care homes, are the same.

11.14.609 LEGALLY UNREGISTERED PROVIDERS; BLOCK GRANT REGISTRATION AND CERTIFICATION REQUIREMENTS Subsection (1) remains the same.

(2) In addition to completing all required application forms for registration and certification under this subchapter, and absent an exception granted by the regional administrator, applicants for certification to provide child day care as legally unregistered providers must truthfully attest in writing that he or she:

(a) has not been named as the perpetrator in a report substantiating abuse or neglect of a child, or been named as a perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Developmentally Disabled Abuse Prevention Act or of a person protected by a similar law in another jurisdiction;

(b) has not been convicted or adjudicated of a crime involving harm to children, including but not limited to physical or sexual harm to children or physical or sexual violence against any person; or

(c) is not facing a pending criminal charge involving harm to children, including but not limited to physical or sexual harm to children or physical or sexual violence against any person;

(d) is not currently diagnosed or receiving therapy or medication for a mental illness which might create a risk to children in care. Mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request an applicant to obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe such a mental illness exists; or

(e) is not chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the provider to obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists.

(3) Unless an exception is granted by the regional administrator, ~~The~~ provider applicant proposing to provide care outside the home of the parent(s) must also truthfully attest in writing that, to the best information and belief of the applicant, no member of the applicant's household, and no person coming in contact with children for whom the provider applicant proposes to provide child day care under this subchapter:

(a) has been named as the perpetrator in a report substantiating abuse or neglect of a child, or been named as a perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Developmentally Disabled Abuse Prevention Act;

(b) has been convicted or adjudicated of a crime involving harm to children, including but not limited to physical or sexual

harm to children, or physical or sexual violence against any person;

(c) is facing a pending criminal charge involving harm to children, including but not limited to physical or sexual harm to children, or physical or sexual violence against any person;

(d) is currently diagnosed or receiving therapy or medication for a mental illness which might create a risk to children in care. Mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request a provider, caregiver or other person to obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe such a mental illness exists; or

(e) is chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the household member or other person in contact with the children to obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists.

Subsections (4) through (7) remain the same.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-704, 52-2-713, MCA.

REASON: The reasons for the changes to ARM 11.14.609 covering attestations for legally unregistered providers and other persons in the home are substantially the same as the reasons set out for the amendments to ARM 11.14.301.

Additional amendments also add to the attestations which must be given by the affected individuals. The department intends to increase protection for children in legally unregistered settings by adding the provisions. The provider, their household members, and those in contact with the children must attest that they are not currently suffering from mental illness which may pose a risk to children, and that they are not currently chemically dependent. Requests for evaluations on these issues are triggered by reasonable cause to believe a problem exists.

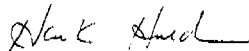
Under the changes providers must also attest that no person convicted or adjudicated of a violent crime or a sex offense against any person is present in the home. The reason section following the ARM 11.14.301 sets out the rationale for this change.

3. Interested persons may submit their data, views or arguments to the proposed amendment either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than February 25, 1994.

4. The Office of Legal Affairs, Department of Family

Services, has been designated to preside over and conduct the hearing.

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, January 14, 1994.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PROPOSED
of rules relating to motorist	)	AMENDMENT OF RULES
information signs	)	18.7.302, 18.7.303,
	)	18.7.306, 18.7.309,
	)	18.7.320, AND
	)	18.7.331
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On March 31, 1994, the Department of Transportation proposes to amend the following rules: 18.7.302, 18.7.303, 18.7.306, 18.7.309, 18.7.320, and 18.7.331.

2. The rules as proposed to be amended provide as follows (new material underlined, deleted matter interlined):

18.7.302. DEFINITIONS

Subsections (1) through (16) remain the same.

(17) "Urban area" means the developed area inside and outside the corporate limits of a municipality with a population of ~~4,500~~ 15,000 or more as shown in the most recent official census.

AUTH: 60-5-503, MCA; IMP: 60-5-513, MCA

REASON: The proposed amendment is intended to allow more qualified business, tourist or recreational activities to participate in the tourist oriented directional sign program and provide improved directional service to the traveling public.

18.7.303 BUSINESS ELIGIBILITY FOR SPECIFIC INFORMATION SIGNS (1) In order to be a qualified business, a business must provide one or more of the following services: gas, food, lodging, or camping. Priority shall be given to businesses within the applicable three-mile increment which are in continuous operation for 12 months per year.

(2) A business must meet the following requirements:

(a) Gas-diesel vehicle service stations shall:

(i) Provide fuel, oil, water, and air;

(ii) Provide restroom facilities and drinking water;

(iii) Provide a telephone available for public use;

(iv) Be in continuous operation at least ~~16~~ 12 hours per day, seven days per week; and

(v) May qualify for the additional words "auto repair" on the business sign provided qualified personnel are available to perform minor auto repair and tire repair at least 8 hours per day, five days per week.

(b) Food and restaurant facilities shall:

(i) Be approved or licensed as required by the state agency or political entity having jurisdiction-;

(ii) Be in continuous operation for at least 10 hours per day, seven days per week-; ~~Priority shall be given to restaurants within the applicable three-mile increment which are in continuous operation for 10 hours per day, seven days per week, to serve three meals per day and which open no later than 8:00 a.m.-~~

(iii) Provide restroom facilities-; and

(iv) Provide a telephone available for public use.

(c) Lodging, motel, and hotel facilities shall:

(i) Be approved or licensed as required by the state agency or political entity having jurisdiction-;

(ii) Provide a telephone available for public use-; and

(iii) Provide adequate sleeping accommodations.

(d) Camping and campground facilities shall:

(i) Be approved or licensed by the state agency or the political entity having jurisdiction-;

(ii) Provide modern sanitary facilities and drinking water-; and

(iii) Provide adequate camping and parking spaces.

(3) If available spaces for any of the above service categories are not fully utilized by businesses strictly meeting the corresponding criteria, the department may at its discretion, permit other businesses in the same service category meeting the majority of the criteria to utilize the otherwise unused spaces. Such businesses' right to utilize spaces shall be reevaluated on an annual basis. Should the demand by businesses fully meeting the criteria increase, the "all service" businesses shall be given priority when considering annual renewal of contracts.

AUTH: 60-5-503, MCA; IMP: 60-5-522, MCA

REASON: The amendment is proposed to allow for improved information to the traveling public and allow more businesses in rural areas to participate in the specific information sign program.

18.7.306 SPECIFIC INFORMATION SIGN DESIGN AND ORDER

Subsection (1) remains the same.

(2) ~~Only six~~ ^{Only six} business signs for gas, and four each for food, lodging, and camping will be available in each direction of travel at any interchange on an interstate highway.

Subsections (3) through (4) remain the same.

AUTH: 60-5-503, MCA; IMP: 60-5-512, MCA

REASON: The amendment is proposed to be consistent with amendments made by the 1993 Legislature to section 60-5-512(2), MCA.

18.7.309 BUSINESS SIGNS

Subsection (1) remains the same.

(2) Any message which advertises rather than identifies a business is prohibited. On "GAS" business signs, the word

"diesel," "propane," or a department approved symbol for diesel or propane may be included on the business sign.

Subsections (3) through (6) remain the same.

AUTH: 60-5-503, MCA; IMP: 60-5-512, MCA

REASON: The amendment is proposed to allow for improved information to the traveling public and allow more businesses in rural areas to participate in the specific information sign program.

18.7.320 TOURIST-ORIENTED DIRECTIONAL SIGNS - GENERAL

(1) Tourist-oriented directional signs may ~~only~~ be erected within a rural area.

(2) Tourist-oriented directional signs may ~~not~~ be erected within the corporate limits of a town with a population of less than ~~1,500~~ 15,000 persons ~~without~~ the written consent of the local government, if required by local government ordinance or regulation.

(3) Tourist-oriented directional signs may not be erected for an activity visible from a point on the primary highway 300 feet from the next intersection, the primary highway. ~~For the purpose of this section, "visible" means the activity or its on-premise sign can be clearly seen from a location on the highway which is greater than or equal to the estimated stopping sight distance from the approach or turn-off for the activity. The following chart shall be used to determine estimated stopping sight distances.~~

Posted speed limit (in miles per hour)	Estimated stopping sight distance (in feet)
25	150
30	200
35	250
40	325
45	400
50	475
55	550

~~(4) An activity or site will not qualify for a tourist-oriented directional sign if the activity or site is identified by an off right-of-way directional sign that is within one mile of the intersection on the same route and is facing the same direction as the proposed tourist-oriented directional sign or where the activity is identified by a department directional sign that is within the right-of-way.~~

Subsection (5) remains the same and is renumbered as subsection (4).

AUTH: 60-5-503, MCA; IMP: 60-5-521, MCA

REASON: The proposed amendment is intended to allow more qualified business, tourist or recreational activities to participate in the tourist oriented directional sign program and provide improved directional service to the traveling public.

18.7.331 LEASE AGREEMENTS

Subsections (1) through (7) remain the same.

(8) Non "all-service" agreements shall be evaluated on an annual basis as provided for in 18.7.303(3)ARM.

AUTH: 60-5-503, MCA; IMP: 60-5-514, MCA

REASON: The proposed amendment is intended to allow for evaluations of the non-all service agreements allowed by ARM 18.7.303(3).

4. Interested persons may present their data, views or arguments concerning the proposed amendment and/or repeal in writing to Nick Rotering, Acting Chief Counsel, Montana Department of Transportation, Legal Services, P.O. Box 201001, Helena, Montana 59620-1001. Any comments must be received no later than 5 p.m., March 16, 1994.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Nick Rotering, Acting Chief Counsel, Montana Department of Transportation, Legal Services, P.O. Box 201001, Helena, Montana 59620-1001. A written request for hearing must be received no later than 5 p.m., March 16, 1994.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 persons based on an estimate of the number of businesses and other qualifying activities that may benefit by participation in the program.

MONTANA DEPARTMENT OF TRANSPORTATION

By: Marvin Dye

MARVIN DYE, Director

Lyle Manley
Lyle Manley, Rule Reviewer

Certified to the Secretary of State January 12, 1994.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of rule 23.5.101	)	AMENDMENT OF RULE
pertaining to the state	)	23.5.101 CONCERNING
adoption of federal hazardous	)	THE STATE ADOPTION
materials regulations	)	OF FEDERAL HAZARDOUS
	)	MATERIALS REGULATIONS
	)	- NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On February 28, 1994, the Department of Justice proposes to amend Rule 23.5.101 concerning the state adoption of federal hazardous materials regulations. Notice of a public hearing concerning this proposed amendment was originally published on July 15, 1993 at page 1469 of the 1993 Montana Administrative Register, Issue No. 13. A public hearing was held on August 18, 1993. No comments or testimony were received in regard to this proposed amendment. A notice of adoption concerning this amendment was not filed within the time requirements of MCA § 2-4-305(7), therefore this notice of proposed amendment is again being published. No public hearing is being contemplated because of the hearing previously held on August 18, 1993.

2. The proposed amendment will read as follows:

23.5.101 TRANSPORTATION OF HAZARDOUS MATERIALS

(1) ~~Transportation of hazardous materials in regard to all motor carriers, railroads, pipelines or utilities under the jurisdiction of this department and hereby adopted by the various federal departments and agencies including department of transportation, interstate commerce commission, federal power commission, and the federal communication commission. All commercial motor vehicles as defined in section 61-1-134, MCA, and subject to regulation by the department under section 44-1-1005, MCA, shall comply with and the department does hereby adopt, by reference, the following federal regulations of the department of transportation which concern the transportation of hazardous materials. The regulations adopted by reference are 49 C.F.R. Part 107, 49 C.F.R. Part 171, 49 C.F.R. Part 172, 49 C.F.R. Part 173, 49 C.F.R. Part 177, 49 C.F.R. Part 178, and 49 C.F.R. Part 180. These rules~~ The regulations adopted may be found in the Code of Federal Regulations, Title 49, chapter I-7, subchapters B and C (1992), updated through the effective date of this rule; they may be obtained from the Superintendent of

Documents, U.S. Government Printing Office, Washington, D.C. 20402.

AUTH: 44-1-1005(1), MCA

IMP: 44-1-1005(1), MCA

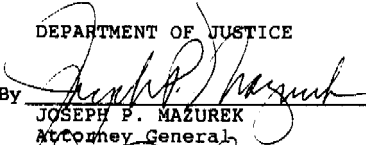
3. Amendment of this rule is necessary because the current version of the rule was originally written under the authority of the Public Service Commission. The current rule adopts all federal rules and regulations concerning hazardous materials that apply to motor carriers, railroads, pipelines and utilities. In 1985, motor carrier safety regulation was transferred from the Public Service Commission to the Department of Justice. This rule has never been amended to reflect the jurisdiction of the Department of Justice, which concerns only motor carriers, other commercial motor vehicles and motor vehicles which transport hazardous materials. In addition, the federal rules relating to hazardous materials and motor vehicles have been substantially changed since 1985. The new federal rules must be formally adopted under the provisions of MCA § 2-4-307(3).

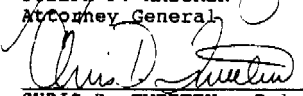
4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Larry Barton, Montana Highway Patrol, Scott Hart Building, 303 North Roberts, Helena, Montana 59620-1422. Such written comments must be received no later than February 24, 1994.

5. If the agency receives requests for a public hearing on the proposed amendments, repeal, and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the administrative code committee of the legislature; from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be approximately 3,400 persons based on the fact that approximately 34,000 persons are currently licensed by the state of Montana to operate commercial motor vehicles.

DEPARTMENT OF JUSTICE

By


JOSEPH P. MAZUREK
Attorney General


CHRIS D. TWEETEN Rule Reviewer

Certified to the Secretary of State this 14th day of January, 1994.

2-1/27/94

MAR Notice No. 23-5-34

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of the rule related) PROPOSED AMENDMENT OF ARM
to the applicability of rules) 24.29.1416, APPLICABILITY OF
and statutes in workers') DATE OF INJURY, DATE OF
compensation matters) SERVICE

TO ALL INTERESTED PERSONS:

1. On February 18, 1994, at 11:00 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of ARM 24.29.1416, related to the applicability of the date of injury and date of service to rules and statutes for workers' compensation purposes.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., February 14, 1994, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TDD (406) 444-5549; fax (406) 444-4140.

2. On September 3, 1993, the Department of Labor and Industry held a public hearing on proposed amendments to ARM 24.29.1416, pursuant to MAR Notice No. 24-29-44. The notice for that public hearing was published at pages 1876 through 1877 of the Montana Administrative Register, Issue No. 15 (1993). Following the public comment period, the Department decided not to amend the rule at that time.

3. The Department considered the public comments made in September 1993 when drafting the amendments proposed in this notice, and has endeavored to address the concerns raised by those comments. The Department of Labor and Industry proposes to amend the rule as follows: (new matter underlined, deleted matter interlined)

24.29.1416 APPLICABILITY OF DATE OF INJURY, DATE OF SERVICE
~~(1) Sections of the Workers' Compensation and Occupational Disease Acts and the Administrative Rules of Montana relating to medical payments or medical benefits, including section 39-71-704(1)(c), MCA, and ARM 24.29.1409, apply only to claims for which the date of injury is on or after the effective date of the section in question, except that for all pharmacy services rendered on or after July 1, 1991, an insurer is liable only for the purchase of generic name drugs~~

~~according to the provisions of section 39-71-704(1), MCA, regardless of the date of injury.~~

(2) The amounts of the following types of payments are determined according to the specific department rates in effect on the date the medical service is provided, regardless of the date of injury:

(a) medical fees; and

(b) hospital charges, ~~travel reimbursements for mileage, meals, and lodging, generic name drugs. The rate for a specific generic name drug is the price customarily charged by the pharmacist for that drug.~~

(2) The reimbursement rate for prescription drugs is based upon the rate in effect on the date the drug is dispensed. The rate for a specific generic name drug is the average wholesale price of that drug plus a reasonable dispensing fee established by the insurer. If the generic drug is unavailable and the pharmacist so certifies under 39-71-727, MCA, the reimbursement rate is the average wholesale price of the brand-name drug plus the dispensing fee.

(3) Department rates (fee schedules) do not apply to preferred providers or managed care organizations to the extent that they are rendering services or providing goods to workers who are covered by insurers with which they have a contract.
AUTH: Sec. 39-71-203, MCA IMP: Secs. 39-71-704, 39-71-727, and 39-71-1102, MCA

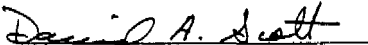
REASON: This rule is being amended to be consistent with the new medical service rules and fee schedules that were adopted effective April 1, 1993. The proposed amendments will coordinate the various provisions of the rules that have been made date-of-injury specific. The amendments also clarify that there is not a separate fee schedule for the cost of prescription drugs. Recent enactments by the 1993 Legislature (Ch. 628, L. 1993) provide that the fee schedules do not apply to preferred providers or to managed care organizations, and the rule is being amended to reflect that change as well.


4. Interested 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:

Dennis Zeller, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., February 25, 1994.

5. The Hearing Unit of the Legal Services Division of the Department has been designated to preside over and conduct the hearing.


David A. Scott
Rule Reviewer


Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: January 14, 1994.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules related to) PROPOSED AMENDMENT OF ARM
utilization and medical fee) 24.29.1513, 24.29.1536,
schedules for workers') 24.29.1541, 24.29.1551,
compensation matters) 24.29.1561, 24.29.1566,
) 24.29.1571 and 24.29.1581

TO ALL INTERESTED PERSONS:

1. On February 18, 1994, at 11:30 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of rules related to utilization and medical fees schedules for workers' compensation matters.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., February 14, 1994, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TDD (406) 444-5549; fax (406) 444-4140.

2. The Department of Labor and Industry proposes to amend the rules as follows: (new matter underlined, deleted matter interlined)

24.29.1513 DOCUMENTATION REQUIREMENTS (1) When a treating physician, emergency room or similar urgent care facility sees the claimant for the first time (related to the claim), the provider must furnish to the insurer the initial report and treatment bill ~~on the appropriate first report of treatment form~~ within 7 business days of the visit. Although the department has pre-printed forms for the first report of treatment available, an insurer and provider may agree to use any other form or format for reporting the first treatment.

(2) through (6) will remain the same.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

24.29.1536 CONVERSION FACTORS - METHODOLOGY

(1) Conversion factors shall be established annually by the department beginning January 1, 1994, by increasing the conversion factors from the preceding year by the percentage increase in the state's average weekly wage. If for any year the state's average weekly wage does not increase, the rates will be held at the existing level until there is a net increase in the state's average weekly wage.

(2) will remain the same.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

24.29.1541 ACUPUNCTURE FEES (1) and (2) will remain the same.

(3) The conversion factor used depends on the date the service was rendered:

(a) Effective April 1, 1993, the conversion factor for acupuncture specialty area services is \$3.77.

(b) Effective January 1, 1994, and each year annually thereafter, the conversion factor will increase in the manner specified by ARM 24.29.1536.

(4) will remain the same.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

24.29.1551 DENTAL SPECIALTY AREA FEES (1) and (2) will remain the same.

(3) The conversion factor used depends on the date the service was rendered:

(a) Effective April 1, 1993, the conversion factor for dental specialty area services, procedure codes D0110 through D9960 is \$7.27.

(b) Effective January 1, 1994, and each year annually thereafter, the conversion factor will increase in the manner specified by ARM 24.29.1536.

(4) Effective April 1, 1993, the following schedule of procedure codes, with the associated description and unit values, are recognized for the dental service areas:

Procedure Code	Description	Unit Value
(a) through (g)	will remain the same.	
(h) D2740	Crown--porcelain/ceramic substrate	45.8
D2750	Crown-- <u>single restoration only--</u> porcelain fused to high noble metal	42.3
D2751	Crown-- <u>single restoration only--</u> porcelain fused to predominantly base metal	44.1
D2752	Crown-- <u>single restoration only--</u> porcelain fused to noble metal	45.7
D2790	Crown--full cast high noble metal	41.4
(i) through (k)	will remain the same.	
(l) D3310	<u>Endodontic treatment--one canal</u> (excluding final restoration)	20.0
D3320	<u>Endodontic treatment--two canals</u> (excluding final restoration)	26.7
D3330	<u>Endodontic treatment--three canals</u> (excluding final restoration)	27.6
(m)	will remain the same.	
(n) D5110	Complete upper <u>dentures</u>	52.9

D5120	Complete lower <u>dentures</u>	67.5
(o) through (r)	will remain the same.	
(s) D6750	<u>Bridge retainers--crown--</u> porcelain fused to high noble metal	38.9
D6751	<u>Bridge retainers--crown--</u> porcelain fused to predominantly base metal	37.0
D6752	<u>Bridge retainers--crown--</u> porcelain fused to noble metal	41.1
(t) D7110	Single tooth <u>extraction</u>	4.7
D7120	Each additional tooth <u>extraction</u>	4.1
(u) through (z)	will remain the same.	

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

24.29.1561. PHYSICIAN FEES -- MEDICINE (1) and (2) will remain the same.

(3) The conversion factor used depends on the date the service was rendered:

(a) Effective April 1, 1993, the conversion factor for each medical specialty area service performed by a doctor of medicine, doctor of osteopathy, and doctor of podiatry are as follows:

	Specialty Area	Procedure Codes	Conversion Factor
(i)	Medicine	90000 - 99999	\$ 3.77
(ii)	Surgery	10000 - 69999	80.55
(iii)	Radiology	70000 - 79999	
	(Professional or Total Component)		15.59
(iv)	Pathology	80000 - 89999	13.50

(b) Effective January 1, 1994, and each year annually thereafter, the conversion factor will increase in the manner specified by ARM 24.29.1536.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

24.29.1566. PHYSICIAN FEES -- ANESTHESIA SPECIALTY AREA

(1) and (2) will remain the same.

(3) The conversion factor used depends on the date the service was rendered:

(a) Effective April 1, 1993, the conversion factor for anesthesia specialty area services, is \$28.97.

(b) Effective January 1, 1994, and each year annually thereafter, the conversion factor will increase in the manner specified by ARM 24.29.1536.

(4) and (5) will remain the same.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

24.29.1571. CHIROPRACTIC FEES (1) and (2) will remain the same.

(3) The conversion factor used depends on the date the service was rendered:

(a) Effective April 1, 1993, the conversion factor for services, other than diagnostic x-rays, performed by a doctor of chiropractic within the scope of practice is \$3.77.

(b) Effective April 1, 1993, the conversion factor for diagnostic x-rays is \$15.59.

(c) Effective January 1, 1994, and each year annually thereafter, the conversion factors will increase in the manner specified by ARM 24.29.1536.

(4) through (8) will remain the same.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

24.29.1581 PROVIDER FEES -- OCCUPATIONAL AND PHYSICAL THERAPY SPECIALTY AREA (1) and (2) will remain the same.

(3) The conversion factor used depends on the date the service was rendered:

(a) Effective April 1, 1993, the conversion factor for occupational therapists and physical therapists is \$5.87.

(b) Effective January 1, 1994, and each year annually thereafter, the conversion factor will increase in the manner specified by ARM 24.29.1536.

(4) through (7) will remain the same.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

Rationale: The amendment proposed for ARM 24.29.1513 is reasonably necessary to allow insurers and medical providers flexibility by permitting them to use more efficient means of transmitting the initial medical information concerning on-the-job injuries. The amendment will allow parties to use computer generated forms or electronic data transfers, rather than requiring the use of pre-printed, Department furnished forms.

Section 39-71-704 (4), MCA provides that fees may not increase by more than the increase in the state's average weekly wage. These amendments are reasonably necessary to clarify that the fee increase methodology provided by ARM 24.29.1536 will automatically be applied to the fee schedules each year. The amendments to ARM 24.29.1536 clarify that only if there is a net increase in the state's average weekly wage will the conversion factors increase. The amendments to the fee schedule rules provide an additional cross-reference to ARM 24.29.1536.

In addition, ARM 24.29.1551 (4) has amendments proposed to clarify the procedure code descriptions. The amendments are reasonably necessary to clarify and more fully explain which services that are being furnished. For example, the procedure codes D2750 and D6750 have now been differentiated by the proposed amendments. Because unit values are not being amended, the fees for dental services will remain the same.

3. Interested 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:

Dennis Zeiler, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., February 25, 1994.

4. The Hearing Unit of the Legal Services Division of the Department has been designated to preside over and conduct the hearing.



David A. Scott
Rule Reviewer



Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: January 14, 1994.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT OF ARM
amendment of ARM	)	2.21.224, 2.21.227,
2.21.224, 2.21.227,	)	2.21.230, 2.21.232, and
2.21.230, 2.21.232,	)	2.21.234 RELATING TO ANNU-
and 2.21.234 relating to	)	AL VACATION LEAVE
annual vacation leave)	

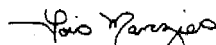
TO: All Interested Persons.

1. On December 9, 1993, the Department of Administration published notice of the proposed amendment to ARM 2.2.224, 2.21.227, 2.21.230, 2.21.232, and 2.21.234 pertaining to annual vacation leave at page 2861 of the 1993 Montana Administrative Register, issue number 23.

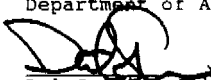
2. The agency has amended the rules with the following changes: the subsection earmarks in all MCA cites were removed.

3. No comments were received.

by



Lois Menzies, Director
Department of Administration



Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State January 14, 1994.

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to continu-) 8.36.602 APPROVED PROGRAMS
ing education) OR COURSES

TO: All Interested Persons:

1. On October 14, 1993, the Board of Optometry published a notice of proposed amendment of the above-stated rule at page 2294, 1993 Montana Administrative Register, issue number 19.
2. The Board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF OPTOMETRY
PAUL L. KATHREIN, O.D.

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to thera-	)	8.36.801 THERAPEUTIC
peutic pharmaceutical agents	)	PHARMACEUTICAL AGENTS AND
and approved drugs	)	8.36.804 APPROVED DRUGS

TO: All Interested Persons:

1. On October 28, 1993, the Board of Optometry published a notice of proposed amendment of the above-stated rules at page 2485, 1993 Montana Administrative Register, issue number 20.

2. The Board has amended ARM 8.36.804 exactly as proposed. The Board has amended ARM 8.36.801 as proposed but with the following change:

"8.36.801 THERAPEUTIC PHARMACEUTICAL AGENTS (1) through (1)(c) will remain the same as proposed.

~~(2) Optometrists will be held to the same medical and legal standards of care as medical doctors."~~

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-304, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses thereto follow:

ARM 8.36.804

COMMENT: Sue Weingartner, representative of the Montana Optometric Association, spoke in favor of the proposed amendment.

RESPONSE: The Board appreciates the comment and has adopted the amendment as proposed.

ARM 8.36.801

COMMENT: Michael H. Simons, O.D., of Missoula, questioned the amendment that would hold optometrists to the same medical and legal standards as those to which a physician is held. He said that in litigation such proves to be the case but questioned whether the statement should be placed into regulation.

RESPONSE: The Board withdrew the proposed amendment and voted to offer another proposed amendment for comment by the public.

COMMENT: Douglas Safley, O.D., of Havre, urged the Board not to adopt the proposed amendment since holding the optometrist to the medical standards imposed on physicians would mean the Board would be surrendering part of its rulemaking prerogative to the medical community. Dr. Safley inquired as to what these standards would be, where they could be found and whether the specific standards should be published by the Board.

RESPONSE: The Board accepted the comment of Dr. Safley and chose to withdraw the proposed amendment.

BOARD OF OPTOMETRY
PAUL L. KATHREIN, O.D.

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of rules pertaining to)	AND ADOPTION OF RULES
outfitter operations plans and)	PERTAINING TO THE
conduct of outfitters and)	OUTFITTING AND GUIDING
guides, and the proposed)	INDUSTRY
adoption of a rule pertaining)	
to unprofessional conduct)	

TO: All Interested Persons:

1. On September 16, 1993, the Board of Outfitters published a notice of public hearing on the proposed amendment and adoption of rules pertaining to the outfitting and guiding industry. The hearing was held on October 8, 1993, at 9:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, Helena, MT. The notice was published at page 2070, MAR #17.

2. The Board has amended ARM 8.39.504, 8.39.701 and 8.39.702 exactly as proposed. The Board has adopted new rule I (8.39.708) as proposed but with the following changes:

"I MISCONDUCT Misconduct, for purposes of defining subsection (9) of section 37-47-341, MCA, is determined by the board to mean conduct of either a licensed outfitter or licensed professional guide which fails to conform to the accepted standards of the outfitting and guiding profession and which could jeopardize the health, safety and welfare of the public, and shall include the following:

- (1) and (2) will remain the same as proposed.
- ~~(3) use of the set aside license for purposes of a drop camp in which the outfitter does not provide personal outfitting and/or guiding services to the client;~~
- ~~(4) failure to adequately provide for a client's safety;~~
- ~~(5) assault or abuse of a client;~~
- (6) through (8) will remain the same as proposed but will be renumbered (3) through (5).
- ~~(9) delegation of functions to a guide that are restricted to the practice of an outfitter;~~
- ~~(10) failure to provide adequate supervision of a guide;~~
- (11) through (13) will remain the same as proposed but will be renumbered (6) through (8).
- ~~(14) pleading guilty to or having been found guilty of a crime that relates adversely to the licensee's practice of outfitting or to the ability of the licensee to practice outfitting;~~
- (15) through (17) will remain the same as proposed but will be renumbered (9) through (11)
- ~~(18) failure to report to the board facts known to the licensed individual regarding the unlicensed or otherwise illegal practice of outfitting or guiding in the state of Montana;"~~

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-341, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses thereto follow:

ARM 8.39.504

COMMENT: M.O.G.A. supports the rule change as proposed.

RESPONSE: The Board acknowledges the comment.

COMMENT: Arthur Schallenberger, a licensed outfitter, opposed the change in this rule. Mr. Schallenberger suggests that the board could manipulate the rules to harm an individual with which a board member disagrees.

RESPONSE: The Board does not intend to abuse the purpose of the rule to further individual interests. The Board will enforce the rule uniformly and fairly.

ARM 8.39.702

COMMENT: M.O.G.A. supports the rule change as proposed.

RESPONSE: The board acknowledges the comment.

COMMENT: Arthur Schallenberger, a licensed outfitter, opposed the change in this rule. Mr. Schallenberger states that inflation, tax increases, insurance rates, and other costs make it impossible to uphold an agreement made a year or more in advance of the actual rendering of service. Mr. Schallenberger suggests that the outfitter is in the best position to determine if the rate should be changed.

RESPONSE: The board disagrees with Mr. Schallenberger, and believes that once an outfitter takes a fee from a client for a service, that the client is entitled to the service at the fee promised, unless the client consents to a change in such fee.

ARM 8.39.708

COMMENT: M.O.G.A. suggests that section (2) duplicates rules already in place in the conduct rules for outfitters.

RESPONSE: The Board believes that section (2) adds language and requirements that are not currently addressed in the conduct rules. The section will remain as originally proposed.

COMMENT: M.O.G.A. suggests that section (3) duplicates rules already in place in the conduct rules for outfitters. Arthur Schallenberger, a licensed outfitter, suggests that section (3) is too vague to be enforced and should be struck or better defined.

RESPONSE: The board has considered the comments and has decided to strike section (3) from the misconduct rule.

COMMENT: F.O.A.M. suggests that section (4) lacks necessary specifics, and should be struck until some clearer standards are set in this regard.

RESPONSE: The Board has considered the comment, and has decided to strike section (4) from the misconduct rule.

COMMENT: M.O.G.A. suggests that section (5) duplicates rules already in place in the conduct rules for outfitters.

RESPONSE: The Board has considered the comment, and has decided to strike section (5) from the misconduct rule.

COMMENT: Arthur Schallenberger, a licensed outfitter, suggests that section (6) could be misused by a complainant with a friend on the board.

RESPONSE: The Board has no plans to enforce the rule in any inappropriate manner. Section (6) will remain as originally proposed.

COMMENT: M.O.G.A. suggests that section (7) could be better placed at existing 8.39.503.

RESPONSE: The Board believes that section (7) is placed appropriately in the misconduct rules. Section (7) will remain as originally proposed.

COMMENT: M.O.G.A. suggests that section (8) could be better placed at existing 8.39.502.

RESPONSE: The Board believes that section (8) is placed appropriately in the misconduct rules. Section (8) will remain as originally proposed.

COMMENT: M.O.G.A. suggests that section (9) could be better placed at existing 8.39.515. F.O.A.M. suggest that section (9) should be struck until the board completes a handbook for outfitters and guides giving clear guidance on what tasks may be undertaken by a guide and those that may not.

RESPONSE: The Board has considered the comments, and has decided to strike section (9) from the misconduct rule.

COMMENT: M.O.G.A. and F.O.A.M. suggest that section (10) is ambiguous and should be struck.

RESPONSE: The Board has considered the comments, and has decided to strike section (10) from the misconduct rule.

COMMENT: F.O.A.M. and Arthur Schallenberger, a licensed outfitter, suggests that section (14) is vague and should be struck.

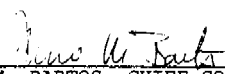
RESPONSE: The Board has considered the comments, and has decided to strike section (14) from the misconduct rule.

COMMENT: F.O.A.M. and Arthur Schallenberger, a licensed outfitter, suggest that section (18) is a tattletale provision that should never be adopted.

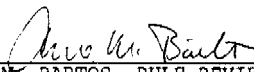
RESPONSE: The Board has considered the comments, and has decided to strike section (18) from the misconduct rule.

BOARD OF OUTFITTERS
IRVING L. "MAX" CHASE, CHAIRMAN

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to examina-	)	8.42.402 EXAMINATIONS,
tions, fees, temporary license	)	8.42.403 FEES, 8.42.405
and licensure by endorsement	)	TEMPORARY LICENSES, AND
	)	8.42.406 LICENSURE BY
	)	ENDORSEMENT

TO: All Interested Persons:

1. On November 10, 1993, the Board of Physical Therapy Examiners published a notice of proposed amendment of the above-stated rules at page 2587, 1993 Montana Administrative Register, issue number 21.

2. The Board has amended ARM 8.42.403, 8.42.405 and 8.42.406 exactly as proposed. The Board has amended ARM 8.42.402 as proposed, but with the following change:

"8.42.402 EXAMINATIONS (1) will remain the same as proposed.

(2) ~~The examination will be offered in February, July and November of each year.~~ Exact examination dates will be established by the current testing service as the national uniform testing date. Applicants must have their applications in the board office at least 45 days prior to the examination date.

(3) through (6) will remain the same as proposed."

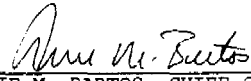
Auth: Sec. 37-1-131, 37-11-201, MCA; IMP, Sec. 37-11-303, 37-11-304, MCA

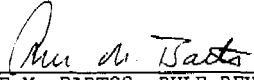
3. The above change was suggested by a board member because he felt the new language proposed in the second sentence of subsection (2) in the original notice clarified the examination dates.

4. No comments or testimony were received.

BOARD OF PHYSICAL THERAPY
EXAMINERS
THOMAS MEAGHER, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to defini-) 8.59.402 DEFINITIONS
tions)

TO: All Interested Persons:

1. On October 28, 1993, the Board of Respiratory Care Practitioners published a notice of public hearing on the proposed amendment of the above-stated rule at page 2487, 1993 Montana Administrative Register, issue number 20. The hearing was held on December 1, 1993, at 9:00 a.m. in the conference room of the Professional and Occupational Licensing Bureau, Helena, Montana.

2. The Board has amended ARM 8.59.402 exactly as proposed. The Board has vacated a proposed new rule published in the original notice based on comments that it was too liberal in allowing unlicensed persons to perform a procedure that should be reserved to therapists.

3. The Board received no comments and adopted the amendment to ARM 8.59.402 even though it withdrew the proposed rule that had been referenced in the rationale for this amendment. The amendment remains valid since it merely removes the language that permits the use of clinical supervision over students or temporary permit holders, which duplicates language in statutes.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
RICH LUNDY, PRESIDENT

BY:

Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE BANKING AND FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF A NEW
of a new rule pertaining to) RULE PERTAINING TO CORPORATE
corporate credit unions) CREDIT UNIONS

TO: All Interested Persons:

1. On July 29, 1993, the Banking and Financial Institutions Division (as of October 1, 1993) published a notice of public hearing at page 1599, 1993 Montana Administrative Register, issue number 14, on the proposed adoption of a rule pertaining to corporate credit unions. A public hearing was held on August 20, 1993, in Helena, Montana.

2. The hearing on the proposed new rule was continued to October 22, 1993. A notice of this continuation was published September 30, 1993, at page 2198, 1993 Montana Administrative Register, issue number 18.

3. The Banking and Financial Institutions Division has adopted the rule as proposed but with the following changes:

"8.80.404 CORPORATE CREDIT UNIONS (1) In the context of a voting representative and conflicts of interest IN THE CONTEXT OF A CONFLICT OF INTEREST that may arise relating to a director, committee member, officer, agent or employees' PERSONAL pecuniary interests, the following definitions apply:

(a) "Determination" means those actions pertaining to the discovery of pertinent circumstances, the analyses of those circumstances, the process of reporting and presenting the matters to others, or any participation in the decision making process, relating to a director, committee member, officer, agent, or employee's pecuniary interests. These pecuniary interests may be personal, or related to organizations the director, committee member, officer, agent, or employee directly or indirectly PERSONALLY owns or controls; or where the director, committee member, officer, agent, or employee exerts an otherwise controlling influence over such an organization.

(b) (i) "Material" means, for the purposes of this section, an item FOR PURPOSES OF 12 CFR 704.12(c)(1) FOR SITUATIONS REGARDING PERSONAL RECUSAL, WHOSE LANGUAGE IS INCORPORATED BY REFERENCE AS PART OF THIS RULE; AND THOSE THAT INCLUDE REGULATORY REPORTING, AND THE INTEGRITY OF FINANCIAL STATEMENTS PRODUCED BY THE CORPORATE CREDIT UNION, AN ITEM IS "MATERIAL" that has an impact upon report form National Credit Union Administration 5300, or that is greater than or equal to \$5,000. A copy of report form National Credit Union Administration 5300 may be obtained from the Department of Commerce, ~~Financial~~ BANKING AND FINANCIAL INSTITUTIONS Division, Room 50, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana 59620, at cost plus postage and handling.

(ii) FOR THE PURPOSE OF 12 CFR 704.12(c)(2)(3)(4) & (5), WHOSE LANGUAGE IS INCORPORATED AS PART OF THIS RULE.

"MATERIAL" SHALL MEAN AN AMOUNT THAT EXCEEDS 5 PERCENT OF THE CORPORATE CREDIT UNION'S CAPITAL.

(c) The ~~financial~~ BANKING AND FINANCIAL INSTITUTIONS division of the department of commerce adopts and incorporates by reference the National Credit Union Administration's Rules and Regulations in Title 12, part 704, SECTION 12(c) of the Code of Federal Regulations, ~~section 12(c)~~.

(2) and (2)(a) will remain the same as proposed.

(b) Corporate credit unions must adopt flexible capital goals, objectives, and strategies that include a budgetary process. The ~~financial~~ BANKING AND FINANCIAL INSTITUTIONS division of the department of commerce adopts and incorporates by reference the National Credit Union Administration's Rules and Regulations in Title 12, part 704, SECTION 5 of the Code of Federal Regulations, ~~section 5~~.

(c) The corporate reserve requirements of 12 CFR 704.11 are incorporated for use as minimum standards for the purpose of this section. This includes, but is not limited to, those provisions pertaining to risk-weighted assets, and the components of risk-weighted capital. The ~~financial~~ BANKING AND FINANCIAL INSTITUTIONS division of the department of commerce adopts and incorporates by reference the National Credit Union Administration's Rules and Regulations in Title 12, part 704 of the Code of Federal Regulations, appendices "A", "B", and "C" of 12 CFR 704. These appendices address risk weights and risk categories, off balance sheet risk weighting, and investments, respectively.

(d) will remain the same as proposed.

(e) A corporate credit union shall develop written loan policies which address origination, underwriting, and administration of loans to credit unions, members that are not credit unions, and credit unions that are not members of the corporate credit union. The ~~financial~~ BANKING AND FINANCIAL INSTITUTIONS division of the department of commerce adopts and incorporates by reference the National Credit Union Administration's Rules and Regulations in Title 12, part 704, SECTION 7 of the Code of Federal Regulations, ~~section 7~~.

(f) The board of directors of a corporate credit union shall adopt an investment policy that will meet the needs of the corporate credit union. The policy will address risk diversification, funds management, approved investment vehicles, approval of broker/dealers, identification and authorizations for the credit union's investment officer(s) and/or its investment committee, and procedures for review and monitoring of performance. Investments permitted by this section shall generally include the issues of those agencies and government sponsored corporations and enterprises listed in the NCUA's Rules and Regulations at 12 CFR 704, Appendix "C". The ~~financial~~ BANKING AND FINANCIAL INSTITUTIONS division of the department of commerce adopts and incorporates by reference the National Credit Union Administration's Rules and Regulations in Title 12, part 704, SECTION 6(b)(2) of the Code of Federal Regulations, ~~section 6(b)(2)~~.

(g) The investment in credit union service organizations shall be limited in the aggregate to 15% of a corporate credit union's capital. Such investments shall be further

conditioned and limited by the provisions contained in 12 CFR 704.6(b)(1). The ~~financial~~ BANKING AND FINANCIAL INSTITUTIONS division of the department of commerce adopts and incorporates by reference the National Credit Union Administration's Rules and Regulations in Title 12, part 704, SECTION 6(b)(1) of the Code of Federal Regulations, ~~section 6(b)(1)~~.

(h) through (i)(I) will remain the same as proposed.

(i) A corporate credit union will be permitted to borrow up to a multiple of ten times its capital, or up to fifty percent of its shares and capital, whichever is greater. The ~~financial~~ BANKING AND FINANCIAL INSTITUTIONS division of the department of commerce adopts and incorporates by reference the National Credit Union Administration's Rules and Regulations in Title 12, part 704, SECTION 8 of the Code of Federal Regulations, ~~section 8~~.

(j)(i) The expanded rights and powers listed in section 32-3-804, MCA, are deemed to include those provisions of 12 CFR 704.6 (investments), 12 CFR 704.7 (lending), 12 CFR 704.8 (borrowing), 12 CFR 704.9 (services), and 12 CFR 704.12 (membership). The ~~financial~~ BANKING AND FINANCIAL INSTITUTIONS division of the department of commerce adopts and incorporates by reference the National Credit Union Administration's Rules and Regulations in Title 12, part 704, SECTIONS 6, 7, 8, 9 AND 12 of the Code of Federal Regulations, ~~section 6, 7, 8, 9 and 12~~.

(ii) The ~~financial~~ BANKING AND FINANCIAL INSTITUTIONS division of the department of commerce adopts and incorporates by reference the following National Credit Union Administration's Rules: 12 CFR 704.1 (regarding authorities), 12 CFR 704.2 (certain definitions WHICH DOES NOT INCLUDE THE DEFINITION OF "MATERIAL" DEFINED HEREIN), 12 CFR 704.5 (capital goals, objectives and strategies), 12 CFR 704.9 (services), 12 CFR 704.10 (fixed assets), 12 CFR 704.11 (corporate reserves), 12 CFR 704.12 (representation), 12 CFR 704.13 (annual audit), and 12 CFR 704.14 (contracts and written agreements).

(3) A copy of the National Credit Union Administration's Rules and Regulations may be obtained from the ~~financial~~ BANKING AND FINANCIAL INSTITUTIONS Division, Department of Commerce, Room 50, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana 59620."

Auth: Sec. 32-3-803, 32-3-804, MCA; IMP, Sec. 32-3-801, 32-3-802, 32-3-803, 32-3-804, MCA

4. The Banking and Financial Institutions Division has thoroughly considered all comments and testimony received. Those comments and the Division's responses thereto follow:

COMMENT: Commenter stated that the term "voting representative" apparently referred to members of the board of directors or committee members, officers, agents, or employees of the corporate credit union. Commenter did not believe the term properly differentiates a board member, officer, employee, etc., from a voting representative of a member credit union. It was recommended that the words "voting

representative" be deleted from section (1) to create better understanding from the rule.

RESPONSE: The Department concurs. The phrase "voting representative" is deleted from the proposed rule. For additional clarity, the phrase "... pecuniary interests, ..." is modified to read "... personal pecuniary interests, ..." in section (1). In section (1)(a), the phrase "... owns or controls; ..." is modified to read "... personally owns or controls; ..." and the phrase "... an organization ..." is modified to read "... such an organization."

COMMENT: Commenter stated that the word "material" used in the proposed rule was important, and cited its use in the National Credit Union Administration's Rules and Regulations in Title 12, part 704 of the Code of Federal Regulations. In particular, commenter referenced 12 CFR 704.5, (Capital Goals, Objectives and Strategies); and 12 CFR 704.12 (Representation), and its subsection (c)(2) (Recusal Provision), relating to a voting representative's recusal responsibilities, and "... the determination of any matter material in amount ...". Commenter's concerns were as follows:

1. A restrictive interpretation of "material" would impair the ability of the corporate credit union's interlocking directorate and committee members from functioning and making good use of its resources.
2. That the recusal provision of 12 CFR 704.12(c) triggers recusal of an interlocking director, committee member, officer, agent or employee when a decision involves any personal pecuniary interest; and that the definition of "material" relates only to recusal involving interlocking directorships.
3. That the definition of "material" in the proposal appears to affect almost every decision made by the corporate credit union.

RESPONSE: The Department has reviewed the definition of "material". As part of this process, certain discussions were conducted with the National Credit Union Administration's Office of General Counsel, in order to clarify NCUA's rationale, and the tenor and spirit it wished for 12 CFR 704. The Department concludes that for the integrity of financial statements produced by the corporate credit union, or for situations regarding personal recusal, as in 12 CFR 704.12(c)(1); the definition of "material" shall be that described at section (1)(b)(ii) of this rule. For the purpose of 12 CFR 704.12(c)(2)(3)(4) & (5), whose language has been incorporated as part of this rule, "material" shall mean an amount that exceeds 5 percent of the corporate credit union's capital.

COMMENT: A comment was received that identified an error in the lettering of certain provisions of the proposed rule.

RESPONSE: The Banking and Financial Institutions Division would like to note that roman numeral (i) listed under subsection (h) is a definition of "correspondent

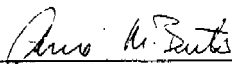
services" referred to in subsection (h). Subsection (i), listed under subsection (h)(i)(I), is correctly assigned as subsection (i) according to the Model Rules under Title 1 of the Administrative Rules of Montana.


COMMENT: A commenter requested that, in the course of the process, the corporate credit union proposal, aka "V CORPORATE CREDIT UNIONS", be codified in Title 8, chapter 80, subchapter 4 of the Administrative Rules of Montana.

RESPONSE: The Department concurs. This rule will appear beginning on page 404 of that section.

BANKING AND FINANCIAL
INSTITUTIONS DIVISION
DON HUTCHINSON, COMMISSIONER OF
BANKING AND FINANCIAL
INSTITUTIONS

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA


In the matter of the	)	NOTICE OF AMENDMENT OF
amendment of Accreditation	)	ARM 10.60.101 BOARD OF
and Special Education	)	PUBLIC EDUCATION POLICY
	)	STATEMENT, 10.60.102 DUE
	)	PROCESS IN SERVICES,
	)	10.60.103 IDENTIFICATION
	)	OF CHILDREN WITH DISABIL-
	)	ITIES, 10.55.802
	)	OPPORTUNITY AND EDUCATIONAL
	)	EQUITY, 10.55.805 SPECIAL
	)	EDUCATION, 10.55.2002
	)	STUDENT RECORDS, 10.55.2003
	)	SPECIAL EDUCATION RECORDS

To: All Interested Persons

1. On October 14, 1993, the Board of Public Education published notice of proposed amendments concerning ARM 10.60.101 Board of Public Education Policy Statement, 10.60.102 Due Process in Services, 10.60.103 Identification of Children with Disabilities, 10.55.802 Opportunity and Educational Equity, 10.55.805 Special Education, 10.55.2002 Student Records, and 10.55.2003 Special Education Records on page 2326 of the Montana Administrative Register, issue number 19.

2. The board has amended the rules as proposed.

3. The board proposed these amendments to the rules to reflect the federal changes in law with the enactment of the Individual Disabilities Education Act and state statutes 20-7-401 and 20-7-402 MCA.


WAYNE BUCHANAN,
Executive Secretary
Board of Public Education

Certified to the Secretary of State January 14, 1994.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

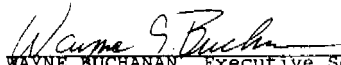
In the matter of the	)	NOTICE OF AMENDMENT OF
amendment of General	)	ARM 10.66.101 REQUIREMENTS
Educational Development	)	WHICH MUST BE MET IN ORDER TO
	)	RECEIVE HIGH SCHOOL EQUIVALENCY
	)	CERTIFICATES, 10.66.102 WAIVER
	)	OF AGE REQUIREMENT, 10.66.103
	)	METHOD OF APPLYING, 10.66.104
	)	FEES, 10.66.105 WAITING PERIOD
	)	FOR RETESTING, 10.66.106
	)	ISSUANCE OF EQUIVALENCY
	)	CERTIFICATES, 10.66.107 OFFICIAL
	)	TRANSCRIPTS, 10.66.108 OFFICIAL
	)	GED TEST CENTERS, 10.66.109
	)	DEFINITIONS

To: All Interested Persons

1. On November 10, 1993, the Board of Public Education published a notice of proposed amendments to ARM 10.66.101 Requirements which must be met in order to receive High School Equivalency Certificates, 10.66.102 Waiver of Age Requirement, 10.66.103 Method of Applying, 10.66.104 Fees, 10.66.105 Waiting Period for Retesting, 10.66.106 Issuance of Equivalency Certificates and adopt new rules 10.66.107 Official Transcripts, 10.66.108 Official GED Test Centers and 10.66.109 Definitions on page 2593 of the Montana Administrative Register, issue number 21.

2. The board has amended and adopted the new rules as proposed.

3. The board proposed these amendments to the rules to update the board's rules on GED testing regulations, making them more accommodating to persons needing access to the GED program, and to implement recommendations of the American Council on Education, GED Testing Service. Also, to reflect the current fees for the program that the student will incur.


WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State 1/14/94.

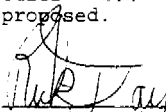
BEFORE THE BOARD OF PARDONS
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF ADOPTION OF
revision of the Rules) REVISION OF RULES (ARM
of the Board of Pardons) Title 20, Chapter 25)

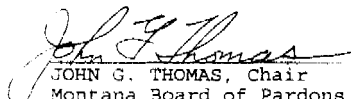
TO: ALL INTERESTED PARTIES

1. On October 28, 1993, the Board of Pardons published a Notice of Proposed revision to its rules now published at pages 20-251 through 20-266 of the Administrative Rules of Montana, at page 2495, 1993 MAR issue No. 20.


2. The Board of Pardons has adopted the revision of its rules with minor editorial changes but substantially as proposed.



RICK DAY, Director
Department of Corrections
and Human Services



JOHN G. THOMAS, Chair
Montana Board of Pardons



DAVID L. OHLER
Rule Reviewer

Certified to the Secretary of State January 16th, 1994.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION OF
adoption of NEW RULE I	)	A NEW RULE RELATING
relating to the issuance	)	TO THE ISSUANCE OF A
of a seasonal commercial	)	SEASONAL COMMERCIAL
driver's license	)	DRIVER'S LICENSE

TO: All Interested Persons

1. On July 29, 1993, the Department of Justice published notice of the proposed adoption of new rule I relating to the issuance of a seasonal commercial driver's license at page 1610 of the 1993 Montana Administrative Register, issue number 14.

2. The agency has adopted the new rule with the following changes:

NEW RULE I 23.3.523 SEASONAL CDL

(1) to (2)(c) remain the same.

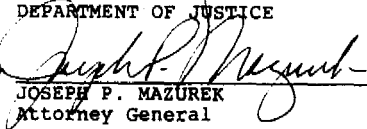
(d) Seasonal CDL holders may not drive vehicles carrying any placarded quantities of hazardous materials, except for diesel fuel in quantities of 1,000 gallons or less transported only in vehicles with a total capacity of 1,000 gallons or less; liquid fertilizers (i.e. plant nutrients) in vehicles or implements of husbandry with total capacities of 3,000 gallons or less; and solid fertilizers (i.e., solid plant nutrients) that are not transported with any organic substance. (2)(e) to (5) remain the same.


3. Comments were received at the public hearing held on September 2, 1993, concerning this proposed rule from Pam Langley, Executive Director of the Montana agricultural Business Association, Curt Laingen, Safety Director, Montana Motor Carriers Association and Larry Barton, Program Officer, Motor Vehicle Inspection Bureau, Montana Highway Patrol. Pam Langley asked the Department to consider a flexible 180-day time period that would allow the holder of a seasonal CDL to operate during the 180-day time period of their choice. The Department has not changed the proposed rule to reflect such a scheme because it believes enforcement of the 180-day time period would be highly impractical without the identification in the rule of a single allowable 180-day period. The Department has adopted the 180-day time period originally suggested by the Montana Agricultural Business Association. Curt Laingen asked the Department to drop the proposed adoption because applicants will not undergo a written knowledge test prior to licensing or, alternatively, to limit the transportation of 1,000 gallons of diesel fuel to

vehicles having a capacity of 1,000 gallons or less and to amend the wording concerning the authorized area of operation. The Department has decided not to abandon the rulemaking effort as it believes sufficient safety requirements are reflected in the rule to substitute for the traditional safety-based requirement of written knowledge testing. The Department has amended the proposed rule to limit the transportation of diesel fuel to vehicles with capacities of 1,000 gallons or less because it believes that transportation of 1,000 gallons or less of diesel fuel in tanks substantially larger than 1,000 gallons constitutes a safety hazard for those driving such tanks and for the general motoring public. The Department has not changed the proposed rule in regard to the authorized area of operation because it believes the proposed language is necessary to allow for service to farms within a 150-mile radius of the place of business that may require travel of more than 150 miles due to road locations and indirect routes. Finally, Larry Barton also asked the Department to limit the transportation of 1,000 gallons of diesel fuel to vehicles having a capacity of 1,000 gallons or less based on safety and enforcement concerns and the Department has made such a change.

DEPARTMENT OF JUSTICE

By


JOSEPH P. MAZUREK
Attorney General


CHRIS D. TWEETEN

Rule Reviewer

Certified to the Secretary of State this 14th day of January, 1994

2-1/27/94

Montana Administrative Register

VOLUME NO. 45

OPINION NO. 21

COAL - Applicability of criminal penalties for ten-hour shifts;
HOURS OF WORK - Applicability of criminal penalties for ten-hour shifts;
LABOR RELATIONS - Applicability of criminal penalties for ten-hour shifts;
LABOR RELATIONS - Appropriateness of attorney general's opinion construing collective bargaining agreement;
STATUTES - Repeal by implication;
MONTANA CODE ANNOTATED - Title 39, chapter 3, part 4; sections 2-15-501(6), 39-4-104;
MONTANA CONSTITUTION OF 1889 - Article XVIII, section 4;
MONTANA CONSTITUTION OF 1972 - Article XII, section 2;
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 35 (1981), 38 Op. Att'y Gen. No. 83 (1980), 37 Op. Att'y Gen. No. 16 (1977).

HELD: A company engaged in the strip mining of coal is not subject to criminal prosecution under Mont. Code Ann. § 39-4-104 for scheduling its employees to a workweek consisting of four ten-hour days.

December 30, 1993

Ms. Christine Cooke
Big Horn County Attorney
Drawer H
Hardin, MT 59034

Dear Ms. Cooke:

You have requested my opinion on a question which I have phrased as follows:

Is a company engaged in the strip mining of coal subject to criminal prosecution under Mont. Code Ann. § 39-4-104 for scheduling its employees to a workweek consisting of four ten-hour days?

The Decker Coal Company ["Decker"] operates a strip mine for the extraction of coal in Big Horn County. Its mining employees are represented by the United Mine Workers of America ["UMW"]. The union and management have entered into a collective bargaining agreement which contains the following provision:

Eight (8) consecutive hours, exclusive of a thirty (30) minute lunch period . . . will constitute a regular work day for all employees covered by this agreement.

. . . .

Montana Administrative Register

2-1/27/94

At its discretion, the company may schedule employees to work four (4) consecutive days of ten (10) hours per day.

Contract Between United Mine Workers of America and Decker Coal Company Effective September 30, 1991 to January 1, 1995, § V (C) [hereafter "Contract"].

Pursuant to this provision, Decker has elected to adopt a workweek consisting of four ten-hour days for its mining employees. UMW objects to this practice, citing another provision of the collective bargaining agreement which states:

Nothing in this agreement shall be construed to require either party to this Agreement to act in violation of any state or federal law and in the event any such condition arises, it is agreed that this Agreement shall be modified in respect to either or both parties to the extent necessary to comply with the law. In the event any portion of this Agreement is held to be invalid, it shall not affect the validity of any other portion of this Agreement, which shall remain in full force and effect.

Contract, § IX. UMW relies on Mont. Code Ann. § 39-4-104, which provides in pertinent part:

(2) A period of not more than 8 hours will constitute a day's labor of all employees working in strip mining, except in cases of emergencies for the protection of life or property when the same is in danger.

(3) Any person, company, corporation, or lessee of the same who shall violate the provisions of this section shall upon conviction be punished by a fine of not less than \$50 or more than \$600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment. Each and every day that such person, company, corporation, or lessee may continue to violate the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

You inquire whether the criminal penalties provided by the statute may be imposed against Decker for the work schedule it has adopted.

Montana's 1889 Constitution contained a clause providing that eight hours constitutes a normal workday for underground miners. Mont. Const. art. XVIII, § 4 (1889). The Constitution was amended in 1936 to make the eight-hour day applicable to "all industries, occupations, undertakings and employments, except

farming and stock raising." The 1972 Constitution contains a similar provision, found in article XII, section 2.

In the early part of this century, the legislature implemented the original constitutional provision by enactment of a number of statutes establishing eight hours as a day's work in various employments and providing in several cases a criminal penalty for violations. Mont. Code Ann. § 39-4-104 is one such statute. In construing one of the earliest incarnations of the eight-hour-day statutes, the Montana Supreme Court held that the criminal penalties applied both to the employer who assigned the workers to a work shift of more than eight hours and to the employees who worked the longer shift. State v. Livingston Concrete Bldg. & Mfg. Co., 34 Mont. 570, 577-78, 81 P. 980, 982 (1906); cf. Waller v. Engelke, 227 Mont. 470, 480, 741 P.2d 385, 392 (1987) (criminal penalty for violation of eight-hour day by employee not applicable in light of modern labor law).

Several prior Attorney General's Opinions have addressed the issue of the continued efficacy of criminal penalties for violations of various eight-hour-day statutes. Recent opinions have concluded that the criminal penalties enacted in the early part of this century for violation of the eight-hour-day laws have been repealed by implication from the later enactment of wage and hour protection laws requiring premium pay for overtime hours worked. In 38 Op. Att'y Gen. No. 83 at 288 (1980), Attorney General Greely held that the eight-hour-day provision applicable to state and local governments did not preclude a local government from scheduling law enforcement officers, with the officers' consent, to a workweek consisting of four ten-hour days, relying on decisions of the Montana Supreme Court recognizing that employees could work more than eight hours in a day and be compensated for the extra hours under the applicable overtime laws, state and federal. Glick v. Department of Institutions, 162 Mont. 82, 509 P.2d 1 (1973); Butte Miner's Union v. Anaconda Copper Mining Co., 112 Mont. 418, 118 P.2d 148 (1941).

Attorney General Greely explained this ruling further in 39 Op. Att'y Gen. No. 35 at 138 (1981), holding that the criminal penalties for work in excess of eight hours in a day had been repealed by implication by later statutes providing premium pay for overtime worked. His analysis bears repeating in response to your question:

The Legislature has enacted several statutes dealing with wages and hours. Such statutes are in pari materia with the eight hour day statutes, and all must therefore be read together. State ex rel. McHale v. Ayers, 111 Mont. 1, 5, 105 P.2d 686 (1940). Title 39, chapter 3, part 4, MCA, is Montana's version of the [federal Fair Labor Standards Act]. Like the eight-hour day provision of section 39-4-107, MCA, its purpose is to promote the general well-being of the

worker. 1971 Mont. Laws, ch. 417, § 1. It provides that workers are entitled to additional compensation when employed in a work week of more than forty hours. § 39-3-405, MCA. Since a statutory work week is forty hours, § 39-3-405, MCA, the overtime statute is obviously inconsistent with the criminal penalties provided in section 39-4-107, MCA. It is ridiculous to suggest that the Legislature intended to prohibit a person, on pain of criminal penalty, from exceeding eight hours of work per day or forty hours of work per week, as section 39-4-107, MCA, provides, while at the same time providing that employee with a premium in the form of one and one-half times his usual rate of compensation for overtime hours. The provisions relate to the same subject matter and they support the same objective, but they simply cannot be reconciled. While repeals by implication are not favored, . . . I cannot escape the conclusion that by its later enactment of the overtime provision in section 39-3-405, MCA, the Legislature has implicitly repealed the earlier criminal penalties for overtime work in Title 39, chapter 4.

39 Op. Att'y Gen. No. 35 at 140-41.

The criminal penalties for overtime work are vestiges of an earlier era of labor management relations. The Montana Supreme Court has recognized this shift in emphasis, noting in dicta that in light of modern labor relations law, violations of the eight-hour-day law by employees would not be deemed to be so serious a matter as to merit criminal prosecution of the employees. Waller v. Engelke, 227 Mont. 470, 480, 741 P.2d 385, 392 (1987), overruling Melville v. Butte-Balaclava Copper Co., 47 Mont. 1, 130 P. 441 (1913). The modern view, expressed in the Fair Labor Standards Act and the Montana Minimum Wage and Overtime Compensation Law, Mont. Code Ann. tit. 39, ch. 3, pt. 4, is that hours worked in excess of eight in a day or forty in a week are not criminally proscribed, but are in appropriate cases to be compensated through premium pay at rates in excess of those paid for the normal work period. This does not mean, as some have suggested, that hours worked in excess of eight in a day entitle the employee to premium pay. Attorney General Greeley rejected this view in 37 Op. Att'y Gen. No. 16 at 66 (1977), and his opinion is clearly correct under Montana law.

Several interested parties have suggested that I overrule or modify the earlier opinions. While I believe the conclusions expressed in the opinions are sound, the issue is a difficult one and the result is hardly free from doubt. However, even if I were not convinced of the soundness of the opinions, I would be reluctant to overrule an opinion which turned on issues of statutory construction and which touches, as this one does, matters in which others have likely acted in reliance upon the earlier opinion. Employers and employees in Montana have been

arranging their work schedules in reliance on these opinions for more than ten years. The legislature has met several times since these opinions were issued and has taken no action to change their effect. To the contrary, the first regular legislative session after the issuance of 39 Op. Att'y Gen. No. 35 (1981) produced two amendments to the statute involved which in effect codified the holdings of Attorney General Greely's opinion. One of these amendments repealed the criminal penalty in Mont. Code Ann. § 39-4-107 in its entirety. 1983 Mont. Laws, ch. 640. If the legislature had disagreed with Attorney General Greely and felt that the criminal penalties were an important facet of the State's labor relations policy, the logical move would have been to reenact the penalties, not to repeal them.

A decision to issue an Attorney General's Opinion reversing an established prior interpretation of these statutes at this time would create substantial uncertainty in this area and would probably lead to litigation. The legislature retains the power to act in this area. If it disagrees with this opinion, it can reenact the criminal penalties. If it does make changes in the law, it can protect existing employment relations through provisions for delayed effective dates or provisions for retroactive application. I lack the same flexibility in the issuance of opinions. Moreover, the employees affected by the work schedules at the Decker mine retain the option of filing a grievance seeking an interpretation of the collective bargaining agreement which would protect them from ten-hour shifts, as I explain below. I therefore concur in the prior opinion by Attorney General Greely holding that the criminal penalties for hours worked in excess of eight in any day have been repealed by implication by the adoption of Montana's overtime compensation laws.

Various interested parties have corresponded with this office with reference to your opinion request. Some of them have suggested that I should issue an opinion on the issue of whether the provision of the Contract allowing Decker to schedule a workweek consisting of four ten-hour days has been overcome by the contract provision that the Contract cannot be read to require a party to violate state or federal law. I must decline to do so for two reasons.

Initially, Mont. Code Ann. § 2-15-501(6) defines my authority to issue opinions with reference to questions posed by certain state and local officials relating to the authority of their respective offices. Your opinion request does not ask my opinion on the interplay between these provisions of the collective bargaining agreement. You have asked only that I give an opinion on the question answered above relating to the continued vitality of the criminal penalty found in Mont. Code Ann. § 39-4-104. It has been the practice of this office, consistent with Mont. Code Ann. § 2-15-501(6), to confine opinions to the questions presented by the requesting party, and to any issues fairly contained therein, and to decline to

address other issues which are not presented by the requesting party. I believe this is an appropriate practice, and it leads me to decline the invitation to address issues which you have not raised.

A second reason also leads to this conclusion. The employment relationship between Decker and its mining employees is governed by a collective bargaining agreement negotiated pursuant to the federal labor laws which govern employees employed in businesses engaged in interstate commerce. The Contract contains a clause subjecting disputes as to the interpretation of the Contract to a grievance process culminating in binding arbitration. The Contract provides, in pertinent part:

Should any difference arise between the Union and the Company regarding application or interpretation of the provisions of this Agreement, . . . an earnest effort shall be made to settle such difference, in the following manner:

[The agreement then describes a three-step internal grievance procedure, culminating in referral of the dispute to the Union District President and a representative of the Company.]

(E) Fifth, in the event such difference shall not be resolved within ten (10) days after being referred to the parties in step three, the matter shall be referred, at the option of either party, to an arbitrator, as provided in (F) below.

(F) [The agreement then provides a method of selection of an arbitrator.] Thereafter, the difference arising as to the application or interpretation of the Agreement shall be submitted to the arbitrator and the parties shall proceed with the arbitration in a prompt and diligent manner. The arbitrator's decision shall be final and binding on both parties.

The arbitrator shall have no power to add to, delete, modify or change any of the provisions of this agreement.

Contract, § IV.

Where parties have entered into a collective bargaining agreement under which they agree to submit issues of contract interpretation to grievance and arbitration, the grievance procedure must be followed, and the issues cannot be addressed in the first instance in another forum. Allis Chalmers Corp. v. Lueck, 471 U.S. 202, 219-20 (1985). The question of whether a ten-hour shift is authorized by the Contract, in light of the above-quoted contract language, is largely a matter of

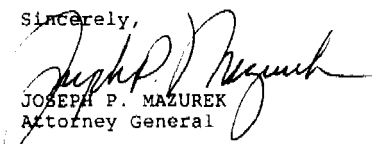
interpretation of the collective bargaining agreement. Cf. Barrantine v. Arkansas-Best Freight System, Inc., 450 U.S. 728 (1981) (wage claim under FLSA not subject to grievance and arbitration). Like the employer and union in Lueck, Decker and UMW have agreed to submit differences as to the interpretation of the Contract to a grievance procedure culminating in binding arbitration at the instance of either party. Since the parties to the Contract have agreed to this method of resolving disputes as to the interpretation of the Contract, it would not be appropriate, and in fact would be inconsistent with federal labor law, for me to issue a purportedly binding opinion construing the contract.

It is my opinion, in light of the earlier Attorney General's Opinions on the subject, that establishment of a work schedule consisting of four ten-hour days does not subject Decker to criminal prosecution under Mont. Code Ann. § 39-4-104. The legislature would be well advised to revisit this area and clarify the laws dealing with hours of work and overtime to eliminate the conflicting provisions highlighted in the several opinions in this area.

THEREFORE, IT IS MY OPINION:

A company engaged in the strip mining of coal is not subject to criminal prosecution under Mont. Code Ann. § 39-4-104 for scheduling its employees to a workweek consisting of four ten-hour days.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/cdt/brf

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition)	
for declaratory ruling on the	)	NOTICE OF PETITION FOR
artificial rupture of membranes by	)	DECLARATORY RULING
registered professional nurses)	
under physician order)	

1. On February 18, 1993, at 8:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Arcade Building, Lower Level, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on artificial rupture of membranes by registered professional nurses under physician order.

2. The petitioner is:

Nancy Greer, RN
Birthing Center Manager
Kalispell Regional Hospital
310 Sunnyview Lane
Kalispell, Montana 59901

3. The Petitioner represents the delivering physicians and OB registered nurses at Kalispell Regional Hospital. The Petitioner contends that the artificial rupturing of membranes during a woman's labor is within the scope of practice of a registered professional nurse when done upon written order from the attending physician.

4. The rule(s)/statute(s) as to which Petitioner requests a ruling is/are as follows:

Section 37-8-102(5), MCA "Practice of Nursing"
Section 37-8-103(2), MCA "Exemptions"
ARM section 8.32.1404(4), (5)
ARM section 8.32.1403(4)(a)(i)(iv) ARM

5. The question presented for declaratory ruling by the agency is whether it is within the registered professional nurses' practice to artificially rupture the membrane during a woman's labor when done upon written order from the attending physician.

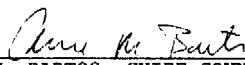
6. The Petitioner has indicated that she believes that a Montana State Board of Nursing ruling that would sanction qualified registered professional nurses to artificially rupture the membrane during a woman's labor, when done upon written order from the attending physician, would ensure the safety of the patient to as great an extent as if the physician performs the procedure him or herself.

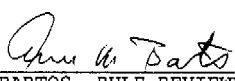
7. The Petitioner notes the following to be interested parties:

All delivering physicians and registered nurses
Kalispell Regional Hospital Obstetric Department
Kalispell Regional Hospital
310 Sunnyview Lane
Kalispell, Montana 59901

The Board also notes that other hospitals, physicians,
and registered nurses may be similarly affected.

BOARD OF NURSING

By: 
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 14, 1994.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition) DECLARATORY RULING
for declaratory ruling on)
licensed practical nurses)
taking telephone and verbal)
orders)

1. On May 14, 1992, the Board of Nursing published a notice of Petition for Declaratory Ruling at page 1062, 1992 Montana Administrative Register, issue number 9, regarding the Petition for Declaratory Ruling on the authority of licensed practical nurses taking telephone and verbal orders.

2. The Board of Nursing received public comment and considered the Petition on the following dates, in their regular meetings of the Board, and during meetings of the LPN Issues Subcommittee:

May 28, 1992	July 16, 1992
October 23, 1992	November 12, 1992
February 5, 1993	February 25, 1993
April 12, 1993	May 20, 1993
July 19, 1993	July 29, 1993
November 2, 1993	November 4, 1993

3. The facts upon which this ruling are made are as follows: The Petitioner is an association of licensed practical nurses practicing in the state of Montana. In the course of their practice, some of the members of the association are or may be requested to receive and transcribe telephone orders from physicians, dentists, osteopaths or podiatrists. An informal opinion of the Board dated November 21, 1985 indicated that such activities are beyond the scope of practice of a licensed practical nurse. The members of the Association believe that informal statement is in error and that such activities are within the scope of practice of a licensed practical nurse. The Petitioner seeks to have that position reversed in this formal petition for declaratory ruling.

4. The question presented for declaratory ruling is whether the receiving of physician orders by telephone or verbally is within the scope of practice of the licensed practical nurse as defined by Section 37-8-102(3)(b) MCA.

5. The Petitioner contends that licensed practical nurses receiving telephone and verbal orders are performing within their scope of practice.

RULING

6. The Board of Nursing agrees. Section 37-8-102(3)(b) MCA defines the "practice of practical nursing" to include performance of services requiring basic knowledge of "nursing procedures". In addition, a licensed practical nurse is to utilize "standardized procedures" in carrying out tasks, and is to perform his or her tasks under the "supervision of a registered professional nurse, or a physician, dentist, osteopath, or podiatrist authorized to prescribe medications.

7. The Board notes that various administrative rules provide clarification of the method under which the receiving of telephone and verbal orders shall be undertaken by a licensed practical nurse.

8. ARM section 8.32.1406(3)(d), and (4)(a)&(b) provide general support for the Board's interpretation, and provide an appropriate standard for the licensed practical nurse to follow in undertaking the task of receiving telephone and verbal orders. Section 3 requires the licensed practical nurse to communicate nursing interventions and responses to care to appropriate members of the health team. Section 4 requires that the licensed practical nurse document and communicate data to appropriate members of the health team, and to contribute to modifications in care based upon the evaluation.

9. ARM section 8.32.415 provides definitions of two of the terms found in the definition of a licensed practical nurse in section 37-8-102(3)(b). Section 2 of ARM 8.32.415 defines "standardized procedures" as "routinely executed nursing actions for which there is an established level of knowledge and skill." Thus, the Board finds that a licensed practical nurse may receive telephone and verbal orders only if the setting in which the licensed practical nurse is practicing has established, by written policy, a level of knowledge and skill for undertaking the task.

10. Section 3 of ARM 8.32.415 defines "supervision" as "provision of guidance by a qualified nurse or a person specified in 37-8-102, MCA, for the accomplishment of a nursing task or activity with initial direction of the task or activity and periodic inspection of the actual act of accomplishing the task or activity." Thus, the Board finds that a licensed practical nurse may receive telephone and verbal orders only if under the guidance of a qualified individual as provided herein. Further, the licensed practical nurse must be provided with periodic inspection of the act of receiving telephone and verbal orders to continue the practice.

11. The Board notes that, under ARM section 8.32.1407(2), a licensed practical nurse is to "accept responsibility for individual nursing actions and "competence". The Board has defined the term "competence" at ARM section 8.32.1401(2), as "performing skillfully and

proficiently the functions that are within the role of the licensee; and demonstrating the interrelationship of essential knowledge, judgment and skills. Further, under Section (5) of ARM 8.32.1407, a licensed nurse is to "obtain instruction and supervision as necessary when implementing nursing techniques and practices."

12. The Board finds that these sections require the licensed practical nurse to take individual responsibility for his or her ability to safely undertake the task of receiving telephone and verbal orders, and to refrain from undertaking the task until he or she has obtained adequate instruction and supervision.

13. To summarize, a licensed practical nurse who is specifically and adequately educated and trained for the role and acts under the supervision of a registered nurse, physician, dentist, osteopath, or podiatrist, subject to standardized procedures, is practicing within the scope of practice for a licensed practical nurse when receiving telephone and verbal orders.

14. Any interested parties may request judicial review of this declaratory ruling by filing a petition for judicial review in the District Court of the State of Montana in and for Lewis and Clark County within thirty (30) days of this ruling pursuant to Section 2-4-501 and 2-4-702 MCA.

DATED this 4th day of January, 1994.

BOARD OF NURSING

By: Nancy Heyer

NANCY HEYER, RN CNA

PRESIDENT

MONTANA BOARD OF NURSING

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the Estate of) DECLARATORY RULING
Edward F. Abbott, Montana)
licensed dentist, deceased, for)
a declaratory ruling on the)
applicability of Mont. Code)
Ann. Section 37-4-101(2)(b),)
37-4-321 & 37-4-327 to the)
Estate)

Introduction

1. The Board of Dentistry received a petition for declaratory ruling from Shirley Ruth Abbott, personal representative of the Estate of Edward F. Abbott, and her attorney Timothy J. Wylder regarding whether the estate of a duly licensed dentist, since deceased, has the authority to hire a dentist to manage the dental practice and perform licensed functions in the practice pending the sale of the practice.

2. On October 14, 1993, the Board of Dentistry published a Notice of Petition for Declaratory Ruling setting forth the facts and issues presented and establishing a hearing date of November 19, 1993. The Notice was published in the 1993 Montana Administrative Register, Issue No. 19, page 2442.

3. On November 19, 1993, the Board of Dentistry held a hearing concerning this petition; at that hearing the Board considered the petition itself along with a letter from Roger K. Newman, D.D.S., and his wife, Margaret E. Newman, of Columbia Falls. The Newmans, in a letter dated November 16, 1993, stated their support of the petition brought forth by Mrs. Abbott.

Question Presented

4. The petitioner requested a ruling on whether the estate of a duly licensed dentist may maintain the practice of the dentist after his or her death for a reasonable time pending the sale of the practice by hiring a licensed dentist to perform all procedures and functions requiring a licensed dentist, without violating section 37-4-101(2), MCA.

Facts Presented

5. Edward F. Abbott, DDS, was a dentist duly licensed to practice in Montana, and was the proprietor of a practice located in Great Falls, Montana.

6. Dr. Abbott died in the summer of 1993. By Order and Letters of Appointment dated September 7, 1993, Shirley Ruth Abbott was named as personal representative of the estate of Dr. Abbott.

7. Shirley Ruth Abbott is not licensed as a dentist and is not qualified to be licensed as a dentist under section 37-4-101, et seq., MCA.

Applicable Law

8. Petitioner seeks a ruling allowing her, as a matter of administering the estate of Dr. Abbott in the regular course under the Montana Uniform Probate Code, be allowed to hire licensed dentists to manage the practice and perform all licensed functions pending the sale of the practice.

9. The statutes applicable to such a request are found in Section 37-4-101(2)'s definition of the practice of dentistry. That subsection of statute reads as follows:

37-4-101. Definitions -- practice of dentistry.

(2) A person is "practicing dentistry" under this chapter if he:

* * * * *

(b) is a manager, proprietor, operator, or conductor of a place where dental operation, oral surgery, or dental services are performed;

Section 37-4-103, MCA, establishes certain exemptions from the requirement for licensure as a dentist. Those not needing a license are physicians; dentists of the military or public health service; dentists licensed in other states making clinical demonstrations; faculty members of approved dental schools; denturists and dental laboratory technicians working under the orders of a dentist.

There is no provision exempting the estate of deceased dentists such that they may employ dentists.

Summary of Comments

10. Petitioner stated that hiring a dentist by the estate would be needed to insure that the estate gains full value for good will and going concern at the time the practice is finally sold. Because it may take several months to settle the estate, petitioner asserted, that the inability to hire a dentist to keep the practice going and assure patients of continued service at the practice site would diminish the value of the professional practice.

11. Petitioner further argued that the Uniform Probate Code requires the personal representative to protect and preserve the property of the estate, which may not be possible if a dentist may not be hired to manage the clinic.

12. Petitioner moreover stated that dentists were allowed to work in hospitals, and that because the dentists do not own these hospitals that, by correlation, dentists should be allowed to work in clinics owned by non-dentists.

13. Roger Newman, DDS, and Margaret Newman, a dental hygienist, in Columbia Falls, wrote the Board on November 16, 1993. They suggested that the law was unreasonable in expecting the widow/widower to make sudden decisions about sale of the professional practice during a time of grieving and transition.

14. The Newmans also argued that substantial value could be lost if a practice must sit idle while the surviving spouse waits until graduation time to try to attract dental school graduates.

15. The Newmans also noted that in many dental practices, a wife may work for the husband-dentist as his dental hygienist. Upon the husband-dentist's death, unless the practice is allowed to remain open with a hired dentist managing the practice, the widow also is unemployed.

16. The Newmans suggest it is possible to hire one or several dentists to work two to three days a week and maintain the value of the practice. They then state: "Finally we offer a recommendation. Dental practices should only be managed by a surviving spouse or designated offspring. Those dentists hired should be individual dentists. Surviving spouses should not be able to employ HMO's clinics, hospitals, etc to continue the private practice."

Declaratory Ruling

1. The practice of dentistry, by statutory definition, includes being the "... manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed" There is no exemption or exception allowing the personal representative of the estate of a deceased dentist to assume this function.

2. Dentists are allowed to practice in hospital settings, pursuant to section 37-4-515, MCA.

3. To allow the personal representative of the estate of a dentist to hire dentists to perform licensed functions and manage the dental office pending sale of the clinic would be contrary to law. The Board considered the various comments and suggested that practitioners may wish to consider:

- * incorporating with other dentists as a professional corporation. Section 35-4-311 provides specifically for accountings and buy-outs upon the death of a shareholder in a professional corporation;

- * if the individual chooses not to incorporate as a professional corporation, the individual may wish to make a will in which he names another dentist or other dentists as his personal representatives. Then, upon his death, an individual qualified to practice dentistry, is in place to keep the practice operating;

* in the case of this particular petitioner, the Board suggested that she may wish to consider replacing or substituting a dentist for her as personal representative;

* the non-dentist who finds himself or herself acting as personal representative of the estate could sell the practice by contract for deed. This form of disposition of a dental practice was approved by the Washington State Supreme Court in Prichard v. Conway, 234 P.2d 872 (Wash. 1951), in a case in which that court construed a law similar to Montana's;

* lastly, the Board suggested that the petitioner may wish to sell the practice to a licensed dentist so that he or she, in turn, could hire such dentists as he or she needs to keep the practice operating.

4. Any interested parties may request judicial review of this declaratory ruling by filing a petition for judicial review in a District Court of the State of Montana within thirty (30) days of publication of this ruling pursuant to sections 2-4-501 and 2-4-702 MCA.

DATED this 6th day of January, 1994.

BOARD OF DENTISTRY

BY: 

SCOTT ERLER, D.D.S., PRESIDENT

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has 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. In addition, the Committee 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 or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

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
Subject
Matter | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
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 which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1993. This table includes those rules adopted during the period October 1, 1993 through December 31, 1993 and any proposed rule action that is 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, 1993, this table and the table of contents of this issue of the MAR.

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BOARD APPOINTEES AND VACANCIES

House Bill 424, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of HB 424 was that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments made in December, 1993, are published. Vacancies scheduled to appear from February 1, 1994, through April 30, 1994, are also listed, as are current recent vacancies due to resignations or other reasons.

Individuals interested in serving on a new board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of January 4, 1994.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES: DECEMBER, 1993

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Agricultural Land Valuation Advisory Committee Mr. Don Steinbeisser Governor Sidney Qualifications (if required): public member		(Revenue) Stienbasser	12/3/1993 1/1/1995
American Indian Monument Tribal Circle of Flags Mr. Michael Olinger Governor Helena Qualifications (if required): represents Department of Administration		(Education) Blanton	12/3/1993 0/0/0
Dr. Stanley Wilmoth Helena Qualifications (if required): represents Montana Historical Society	Governor	Schwab	12/3/1993 0/0/0
Board of Hail Insurance (Agriculture) Ms. Rebecca McCabe Governor Ekalaka Qualifications (if required): public member	Governor	Christman	12/3/1993 4/18/1996
Board of Plumbers (Commerce) Mr. Terry Campbell Governor Helena Qualifications (if required): represents Department of Health	Governor	Wells	12/6/1993 7/1/1995
Board of Science and Technology Development (Commerce) Mr. Loren Smith Governor Great Falls Qualifications (if required): public sector representative	Governor	Thompson	12/17/1993 1/1/1997

BOARD AND COUNCIL APPOINTEES: DECEMBER, 1993

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Burial Preservation Board (Commerce)			
Ms. Karen Atkinson	Governor	Lefthand	12/8/1993
Pablo			8/22/1995
Qualifications (if required): represents Salish Kootenai Tribe			
Mr. Carl Fourstar	Governor	reappointed	12/8/1993
Poplar			8/22/1995
Qualifications (if required): represents Assiniboine Tribe			
Mr. Dale Herbort	Governor	Foor	12/8/1993
Helena			8/22/1995
Qualifications (if required): represents Montana Historic Preservation Office			
Ms. Charline Smith	Governor	reappointed	12/8/1993
East Missoula			8/22/1995
Qualifications (if required): physical anthropologist			
Mr. Jay Stovall	Governor	reappointed	12/8/1993
Billings			8/22/1995
Qualifications (if required): public member			
Mr. William Tallbull	Governor	reappointed	12/8/1993
Buzby			8/22/1995
Qualifications (if required): represents Northern Cheyenne Tribe			
Mr. Clarence Wagner	Governor	reappointed	12/8/1993
Browning			8/22/1995
Qualifications (if required): represents Blackfeet Tribe			
Capitol Restoration Commission (Administration)			
Ms. Marilyn Miller	Speaker	not listed	12/20/1993
Helena			12/20/1997
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES: DECEMBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Community Services Advisory Council (Governor)			
Ms. Candace Bowman	Governor	not listed	12/17/1993
Lewistown			7/1/1995
Qualifications (if required):	public member		
Mr. Peyton Terry	Governor	not listed	12/17/1993
Glasgow			7/1/1995
Qualifications (if required):	public member		
Montana Historical Society Board of Trustees (Education)			
Ms. Marjorie W. King	Governor	Fisher	12/13/1993
Winnett			7/1/1994
Qualifications (if required):	public member		
Reserved Water Rights Compact Commission (Natural Resources)			
Ms. Tara DePuy	Governor	Brooke	12/20/1993
Livingston			6/1/1995
Qualifications (if required):	governor's appointment		
Tourism Advisory Council (Commerce)			
Mr. David Hemion	Governor	Hickel	12/17/1993
Helena			7/1/1995
Qualifications (if required):	represents Montana Chamber of Commerce		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects (Commerce) Mr. Eric W. Hefty, Missoula Qualifications (if required): registered architect	Governor	3/27/1994
Board of Dentistry (Commerce) Dr. Wayne Hansen, Billings Qualifications (if required): licensed dentist	Governor	3/29/1994
Board of Outfitters (Commerce) Mr. Irving "Max" Chase, Emigrant Qualifications (if required): licensed outfitter from District 2	Governor	4/9/1994
Mr. Dan J. Ekstrom, Clinton Qualifications (if required): licensed outfitter from District 1	Governor	4/9/1994
Board of Professional Engineers and Land Surveyors (Commerce) Mr. Paul M. Dana, Billings Qualifications (if required): public member	Governor	3/31/1994
Board of Public Education (Education) Mr. Thomas A. Thompson, Browning Qualifications (if required): none specified	Governor	2/1/1994
Board of Regents of Higher Education (Education) Ms. L. Colleen Conroy, Hardin Qualifications (if required): Republican residing in the Eastern District	Governor	2/1/1994
Building Codes Advisory Council (Commerce) Mr. John Allen, Helena Qualifications (if required): none specified	Director	3/31/1994
Mr. Don Cape, Belgrade Qualifications (if required): none specified	Director	3/31/1994

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

Board/current position holder	Appointed by	Term end
Building Codes Advisory Council (Commerce) cont.		
Ms. Linda Cockhill, Helena	Director	3/31/1994
Qualifications (if required): none specified		
Mr. Lee Ebeling, Great Falls	Director	3/31/1994
Qualifications (if required): none specified		
Mr. Richard Grover, Missoula	Director	3/31/1994
Qualifications (if required): none specified		
Mr. Craig Kerzman, Kalispell	Director	3/31/1994
Qualifications (if required): none specified		
Mr. John Palquist, Helena	Director	3/31/1994
Qualifications (if required): none specified		
Mr. Robert Ross, Kalispell	Director	3/31/1994
Qualifications (if required): none specified		
Ms. Mitzi Schwab, Helena	Director	3/31/1994
Qualifications (if required): none specified		
Mr. Bruce Suenram, Helena	Director	3/31/1994
Qualifications (if required): none specified		
Mr. Stan Todd, Big Timber	Director	3/31/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Finance Advisory Council (Administration) Rep. Francis Bardanoue, Harlem Qualifications (if required): represents Montana Legislature	Governor	4/6/1994
Mr. Marvin Dye, Helena Qualifications (if required): none specified	Director	4/5/1994
Sen. Delwyn Gage, Cut Bank Qualifications (if required): represents Montana Legislature	Governor	4/6/1994
Mr. Leo Giacometto, Helena Qualifications (if required): none specified	Director	4/5/1994
Mr. James M. Kaze, Havre Qualifications (if required): none specified	Director	4/5/1994
Mr. David Lewis, Helena Qualifications (if required): none specified	Director	4/5/1994
Dr. Amos R. Little, Jr., Helena Qualifications (if required): represents Health Facilities Authority	Governor	4/6/1994
Mr. William Mathers, Miles City Qualifications (if required): none specified	Governor	4/6/1994
Ms. Lois A. Menzies, Helena Qualifications (if required): none specified	Director	4/5/1994
Mr. Jon D. Noel, Helena Qualifications (if required): none specified	Director	4/5/1994
Mr. Robert J. Robinson, Helena Qualifications (if required): none specified	Director	4/5/1994

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Finance Advisory Council (Administration) cont.		
Mr. Mark Simonich, Woodbridge	Director	4/5/1994
Qualifications (if required): none specified		
Mr. Bob Thomas, Stevensville	Director	4/5/1994
Qualifications (if required): none specified		
Mr. Warren Vaughan, Billings	Governor	4/6/1994
Qualifications (if required): represents Board of Investments		
Council on Physical Fitness and Sports (Governor)		
Ms. Mary Kay Bennett, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Don Byers, Great Falls	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Pat Dodson, Missoula	Governor	4/17/1994
Qualifications (if required): none specified		
Ms. Jeri Lou Donne, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Dr. Jack Halseth, Great Falls	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Dick Harte, Bozeman	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. John Kinna, Bozeman	Governor	4/17/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Council on Physical Fitness and Sports (Governor) cont.		
Mr. Joe Kusek, Billings	Governor	4/17/1994
Qualifications (if required): none specified		
Ms. Heather Lewis, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Tim Love, Townsend	Governor	4/17/1994
Qualifications (if required): none specified		
Ms. Judy Martz, Butte	Governor	4/17/1994
Qualifications (if required): none specified		
Dr. Alex McNeill, Bozeman	Governor	4/17/1994
Qualifications (if required): none specified		
Ms. Marilyn Miller, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Bob Moon, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Arnie Olsen, Butte	Governor	4/17/1994
Qualifications (if required): none specified		
Dr. Arnold Olsen, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Tom Osborne, Billings	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Hal Rawson, Helena	Governor	4/17/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Council on Physical Fitness and Sports (Governor) cont.		
Mr. Spencer Sartorius, Helena Qualifications (if required): none specified	Governor	4/17/1994
Ms. Kari Swenson, Winter Park Qualifications (if required): none specified	Governor	4/17/1994
Mr. Jim Turner, Helena Qualifications (if required): none specified	Governor	4/17/1994
Mr. Manuel White, Helena Qualifications (if required): none specified	Governor	4/17/1994
Mr. Joe Wren, Butte Qualifications (if required): none specified	Governor	4/17/1994
Employment of People with Disabilities Advisory Council (Social and Rehabilitation Services)		
Mr. Lowell Bartels, Helena Qualifications (if required): none specified	Governor	2/2/1994
Mr. Scott Birkenbuel, Bozeman Qualifications (if required): none specified	Governor	2/2/1994
Mr. James A. Edgcomb, Helena Qualifications (if required): none specified	Governor	2/2/1994
Mr. Ron Garbarino, Butte Qualifications (if required): none specified	Governor	2/2/1994
Mr. Gary Garlock, Billings Qualifications (if required): none specified	Governor	2/2/1994

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Employment of People with Disabilities Advisory Council (Social and Rehabilitation Services) cont.		
Ms. Judy Harris, Helena	Governor	2/2/1994
Qualifications (if required): none specified		
Mr. William F. Heinecke, Belgrade	Governor	2/2/1994
Qualifications (if required): none specified		
Mr. Richard James, Bozeman	Governor	2/2/1994
Qualifications (if required): none specified		
Ms. Sherry James, Great Falls	Governor	2/2/1994
Qualifications (if required): none specified		
Mr. Wade Johnston, Missoula	Governor	2/2/1994
Qualifications (if required): none specified		
Mr. Robert Lemieux, Great Falls	Governor	2/2/1994
Qualifications (if required): none specified		
Mr. Joel Mathews, Helena	Governor	2/2/1994
Qualifications (if required): none specified		
Mr. Ron McDonald, Helena	Governor	2/2/1994
Qualifications (if required): none specified		
Mr. Tom Rolfe, Helena	Governor	2/2/1994
Qualifications (if required): none specified		
Mr. John Shea, Anaconda	Governor	2/2/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Employment of People with Disabilities Advisory Council (Social and Rehabilitation Services) cont.		
Ms. Linda Valentine, Billings	Governor	2/2/1994
Qualifications (if required): none specified		
Mr. James Whealon, Helena	Governor	2/2/1994
Qualifications (if required): none specified		
Mr. James Wheat, Helena	Governor	2/2/1994
Qualifications (if required): none specified		
Executive Bd of MT College of Mineral Science & Technology (University System)	Governor	4/18/1994
Mr. Creighton Barry, Butte		
Qualifications (if required): none specified		
Executive Board of Eastern Montana College (University System)	Governor	4/18/1994
Ms. Carol J. Willis, Billings		
Qualifications (if required): none specified		
Executive Board of Montana State University (University System)	Governor	4/18/1994
Mr. Richard J. Morgan, Belgrade		
Qualifications (if required): none specified		
Executive Board of Northern Montana College (University System)	Governor	4/18/1994
Ms. Debbie Leeds, Havre		
Qualifications (if required): none specified		
Executive Board of University of Montana (University System)	Governor	4/18/1994
Mr. Leonard Landa, Missoula		
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Executive Board of Western Montana College (University System) Mr. Joe Womack, Dillon Qualifications (if required): none specified	Governor	4/18/1994
Family Services Advisory Council (Family Services) Ms. Judy Garrity, Helena Qualifications (if required): none specified	Governor	4/15/1994
Sen. Thomas F. Keating, Billings Qualifications (if required): legislator on Human Services & Aging Joint Subcommittee	Governor	4/15/1994
Ms. Jani McCall, Billings Qualifications (if required): represents interests of youth & family treatment providers	Governor	4/15/1994
Ms. Melissa Parker Stilger, Havre Qualifications (if required): Native American	Governor	4/15/1994
Ms. Barbara Sample, Billings Qualifications (if required): none specified	Governor	4/15/1994
Low-Income Energy Programs Advisory Council (Social and Rehabilitation Services) Ms. Olga F. Erickson, Fort Benton Qualifications (if required): none specified	Director	3/1/1994
Ms. Kathleen M. Fleury, Helena Qualifications (if required): none specified	Director	3/1/1994
Mr. Van C. Jamison, Helena Qualifications (if required): none specified	Director	3/1/1994
Mr. Dale Mahugh, Butte Qualifications (if required): none specified	Director	3/1/1994

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Low-Income Energy Programs Advisory Council (Social and Rehabilitation Services) cont.		
Mr. Jim Morton, Missoula	Director	3/1/1994
Qualifications (if required): none specified		
Mr. James Nolan, Helena	Director	3/1/1994
Qualifications (if required): none specified		
Ms. Myrna Omholt-Mason, Helena	Director	3/1/1994
Qualifications (if required): none specified		
Ms. Kate Whitney, Helena	Director	3/1/1994
Qualifications (if required): none specified		
Montana Science and Technology Advisory Council (Commerce)		
Dr. John Brower, Butte	Governor	2/24/1994
Qualifications (if required): none specified		
Mr. Ernest "Sonny" Butts, Miles City	Governor	2/24/1994
Qualifications (if required): none specified		
Professor Walter Hill, Missoula	Governor	2/24/1994
Qualifications (if required): none specified		
Mr. Robert E. Ivy, Hamilton	Governor	2/24/1994
Qualifications (if required): none specified		
Mr. Hartwig Moeller, Great Falls	Governor	2/24/1994
Qualifications (if required): none specified		
Mr. James Orser, Billings	Governor	2/24/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Science and Technology Advisory Council Mr. Richard K. Quisenberry, Wilmington Qualifications (if required): none specified	(Commerce) cont. Governor	2/24/1994
Mr. Carl E. Russell, Helena Qualifications (if required): none specified	Governor	2/24/1994
Mr. Clarence Speer, Bozeman Qualifications (if required): none specified	Governor	2/24/1994
Mr. David Toppen, Helena Qualifications (if required): none specified	Governor	2/24/1994
Mr. Ken S. Walker, Boise Qualifications (if required): none specified	Governor	2/24/1994
Public Employees Retirement Board (Administration) Ms. Eleanor D. Pratt, Glasgow Qualifications (if required): member Public Employees' Retirement System	Governor	4/1/1994
Mr. Terry Teichrow, Helena Qualifications (if required): active public employee	Governor	4/1/1994
State Compensation Mutual Insurance Fund (Administration) Mr. James A. Brouelette, Stevensville Qualifications (if required): private for profit representative	Governor	4/28/1994
Ms. Sandra D. Reiter, Billings Qualifications (if required): private for profit representative	Governor	4/28/1994

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice)		
Ms. Gail Cleveland, Great Falls	Governor	4/15/1994
Qualifications (if required): none specified		
Mr. Al Davis, Helena		
Qualifications (if required): none specified	Governor	4/15/1994
Mr. Gordon Eldridge, Billings		
Qualifications (if required): none specified	Governor	4/15/1994
Mr. Kelly Ferriter, Helena		
Qualifications (if required): none specified	Governor	4/15/1994
Ms. Susan Good, Great Falls		
Qualifications (if required): none specified	Governor	4/15/1994
Mr. Tony Harbaugh, Miles City		
Qualifications (if required): none specified	Governor	4/15/1994
Ms. Randi Mae Hood, Helena		
Qualifications (if required): none specified	Governor	4/15/1994
Ms. Nicole K. Johnson, Helena		
Qualifications (if required): none specified	Governor	4/15/1994
Rep. Royal Johnson, Billings		
Qualifications (if required): none specified	Governor	4/15/1994
Mr. Ted O. Lympus, Kalispell		
Qualifications (if required): none specified	Governor	4/15/1994
Ms. Joan-Nell Macfadden, Great Falls		
Qualifications (if required): none specified	Governor	4/15/1994

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1994 through April 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Youth Justice Council (Justice) cont. Ms. Chris Negus, Helena Qualifications (if required): none specified</p>	Governor	4/15/1994
<p>Mr. Steve P. Nelsen, Bozeman Qualifications (if required): none specified</p>	Governor	4/15/1994
<p>Mr. Garry Rafter, Hobson Qualifications (if required): none specified</p>	Governor	4/15/1994
<p>Ms. Sally Stansberry, Missoula Qualifications (if required): none specified</p>	Governor	4/15/1994
<p>Ms. Margaret Stuart, Helena Qualifications (if required): none specified</p>	Governor	4/15/1994
<p>Mr. Don Wetzel, Harlem Qualifications (if required): none specified</p>	Governor	4/15/1994