



NORTH DAKOTA BOARD OF NURSING

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To: Bill Devlin, Chairman
 Administrative Rules Committee
 North Dakota Legislative Council

From: Constance B. Kalanek, Ph.D., RN
 Executive Director

Date: March 11, 2014

Re: Administrative Rules Published in the October 2012 Supplement, North Dakota
 Administrative Code

Thank you for the opportunity to address the administrative rules changes adopted by the North Dakota Board of Nursing.

The proposed amendment of the following Title 54 Board of Nursing:

- **Article 54-01 General Administration**
- **Article 54-02 Nurse Licensure**
- **Article 54-03.2 Standards for Nursing Education Programs**
- **Article 54-04.1 Nursing Education Loans**
- **Article 54-05 Standards of Practice**
- **Article 54-07 Unlicensed Assistive Person**
- **Article 54-09 Workplace Impairment Program - Repeal**

See attached summary of Board of Nursing Proposed Amendments.

The Administrative Rules Committee has asked for testimony related to the following questions:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

Yes. The rules resulted from HB 1091 Revisions to the Nurse Practices Act. Also a section was added under licensure for military spouses (HB 1246 NDCC Occupational and Professional Licensing 43-51-02).

2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.

No.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

BOARD DEVELOP RULES FOR BOARD ADOPTION

- I. Developed in conjunction with the North Dakota Center for Nursing Leadership Team
- II. BOARD ADOPT RULES FOR PUBLIC HEARING
 - **November 21, 2013**
- III. PUBLICATION OF NOTICE

Published in each county newspaper: **Mail to North Dakota Newspaper Association on November 27, 2013. Publish once in each official County newspaper before December 15, 2013. At least 20 days must elapse between publication of the notice and the date of the hearing.**

 - Contents of full notice:
 - purpose of rules
 - * time and place for oral hearing
 - * regulatory impact
 - * location to review text
 - * address for written testimony
 - * phone number for requesting copy/regulatory analysis
 - * Closing date for consideration of testimony
 - * Full Notice and copy of the proposed rules filed with Legislative Council - **Mail by November 27, 2013.**
 - * Regulatory analysis if requested or if impact in excess of \$50,000.00. Board policy: prepare for all rule-making.
- IV. PUBLIC HEARING - Twenty days must lapse between last date published in newspapers and date of first hearing – hearing date- **January 16, 2014 at 1:30 PM in the ND Board of Nursing Board Room.**
- VII. Allow 10 days after last public hearing for public comment period - **January 16, 2014 through January 29, 2014.**
- VI. BOARD ACTION - INITIALLY ADOPT RULES SUBJECT TO AG OPINION

Record of consideration of all testimony - oral and written prior to final adoption, amendment, or repeal **Board Meeting January 16, 2014**
- VII. ATTORNEY GENERAL OPINION AS TO LEGALITY OF RULES

Submit to AG after board adopts rules **on January 16, 2014.**

 - AG may not approve rule as to legality when merely repeats statute

- AG may not approve rules as to legality where rules exceeds statutory authority
- AG may suggest any revision or rewording

VIII. FINAL ADOPTION OF THE RULE BY BOARD – January 16, 2014.

IX. FILE RULES WITH OFFICE LEGISLATIVE COUNCIL

* Adopted rules and AG opinion must be filed with Legislative Council by Feb 1, 2014.

X. APPEAR BEFORE THE ADMINISTRATIVE RULES COMMITTEE - March 11, 2014.

Prepare & present testimony in response to Legislative Council questions.

IX. RULES FORCE AND EFFECT OF LAW

Rules become effective April 1, 2014.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.

NORTH DAKOTA BOARD OF NURSING HEARING SUMMARY

January 16, 1:30 PM at the North Dakota Board of Nursing, 919 south 7th Street, Suite 504, Bismarck, North Dakota, 58504-5881.

The proposed amendment of the following Title 54 Board of Nursing:

- Article 54-01 General Administration
- Article 54-02 Nurse Licensure
- Article 54-03.2 Standards for Nursing Education Programs
- Article 54-04.1 Nursing Education Loans
- Article 54-05 Standards of Practice
- Article 54-07 Unlicensed Assistive Person
- Article 54-09 Workplace Impairment Program - Repeal

SUMMARY of HEARING

HEARING	January 16, 2014
Signed attendance roster	14
Attended teleconference (2)	50
Oral testimony	1
Written testimony	14
Oral & Written Testimony	1
Web-stream locations	59
Nursing Organizations	1
Board Staff present	Constance B. Kalanek, RN; Karla Bitz, RN. Stacey Pfenning, RN Julie Schwan, ASC Brian Bergeson, Special Assistant Attorney General
Board Members Present	President – Julie Traynor, RN, Devils Lake Vice-President - Daniel Rustvang, RN, Grand Forks Treasurer – Clara Sue Price, Public Member, Minot Charlene Christianson, RN, Carrington Jane Christianson RN, Bismarck Janelle Holth, RN, Grand Forks Bonny Mayer, LPN, Minot Paula Schmalz APRN, Fargo

ARTICLE 54-01 GENERAL ADMINISTRATION.

CHAPTER 54-01-01 ORGANIZATION OF THE BOARD.

No Testimony related to proposed language.

Response: Retain the proposed language

CHAPTER 54-01-03 DEFINITIONS.

Comments supportive of the revised definitions related to nursing assessments.
Suggested revisions of advanced assessment, misappropriation of property, out of state program, professional boundary crossing, professional boundary violation, and temporary permit. Staff

recommended revisions to out of state nursing education program and developed a new definition for pre-licensure program per discussion at teleconference.

Response: The Board considered the suggested revisions for the definitions of advanced assessment, out-of-state nursing education program, professional-boundary crossing and professional boundary violation and supported addition of definition of pre-licensure program. Board accepted the suggested revisions. The definition for misappropriation of property and temporary permit were retained and the definition for pre-licensure program was added.

ARTICLE 54-02 NURSE LICENSURE

Testimony related to support the extension of the license for new applicants and non-disciplinary action for practice without license or registration. One individual proposed eliminating the term “unintentional” and another individual suggested substituting word "any" in place of "another” in Chapter 54-02-05-05 #3a. Suggested revisions for 54-02-07-01.1. Grounds for discipline. Board Counsel suggested use of jurisdiction instead of “state, territory, or country.

Response: Supported the removal of the term “unintentional” and modified the proposed language for Chapter 54-02-05-05 #3a. and for 54-02-07-01.1. Grounds for discipline.

ARTICLE 54-03.2 STANDARDS FOR NURSING EDUCATION PROGRAMS

Testimony related to the educational requirement for doctoral program faculty and preceptors.

Response: Add the proposed language “current”, added grandfathering language for preparation of doctoral faculty and add #4- “Other circumstances as approved by the board”. The academically unqualified faculty would be eligible for section 54-03.2-04-08. Employment of academically unqualified faculty. Unqualified faculty has the opportunity to participate in the 54-03.2-04-08.1 Faculty Development Program.

ARTICLE 54-04.1 NURSING EDUCATION LOANS

No testimony.

Response: Retain the proposed language.

ARTICLE 54-05 STANDARDS OF PRACTICE

Testimony supportive of addition of delegation into the standards of practice for RN and LPN. Discussion regarding Section 54-05-03.1-11 Prescriptive authority renewal- indicated the desire to have the continuing education more inclusive of the many elements of patient care rather than only pharmacologic managements.

Response: Retain the proposed language. Comment regarding broadening 15 contact hours in pharmacotherapy to allow for other topics. Noted that APRN CE requires 15 contact

hours for pharmacotherapy and LPN and RN requires twelve contact hours. Discussed considering increasing the contact hours to 20 with 15 being pharmacotherapy. Staff noted that there are national efforts to include mandatory CE regarding pain management and scheduled medications.

ARTICLE 54-07 UNLICENSED ASSISTIVE PERSON

No Testimony

Response: Retain the proposed language.

ARTICLE 54-09 WORKPLACE IMPAIRMENT PROGRAM – REPEAL

No Testimony.

Response: Repeal article.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

The approximate cost of the rule promulgation process was:

\$AG Review – \$1159.76.

Newspaper Publications – \$1737.00= Total - \$2896.76.

The hearing was held during a regularly scheduled board meeting so no additional per diem was paid out to Board Members.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

See attached Board of Nursing Proposed Amendments.

7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.

Not required

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

Not required.

9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.

The effect of the proposed rules related to licensure may have an effect a decrease in revenue of approximately \$55,000 for FY2014-2015.

10. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.

The board did not issue a regulatory analysis or an economic impact statement.

Constance B. Kalanek, RN, Executive Director
North Dakota Board of Nursing
919 South Seventh Street, Suite 504

NDAC TITLE 54

ND BOARD OF NURSING PROPOSED AMENDMENTS

Article/Chapter/ Section	Title	Purpose of Amendment
Article 54-01 General Administration	CHAPTER 54-01-01 ORGANIZATION OF BOARD	<ul style="list-style-type: none"> • Consistent with Nurse Practices Act Revisions. Board Membership - Five members are registered nurses, one member is an advanced practice registered nurse, two are licensed practical nurses, and one is a public member.
	CHAPTER 54-01-03 DEFINITIONS	<ul style="list-style-type: none"> • Definitions updated to meet the recommendations of the Atkinson & Atkinson LLC Audit, Uniform Licensure Requirements and revisions to the NDCC Nurse Practices Act 43-12.1. Twenty-nine definitions new, enhanced or deleted.
Article 54-02 Nurse Licensure	Chapter 54-02-01 Licensure by examination	<ul style="list-style-type: none"> • Added provisions to reflect current electronic process for the licensure examination. • Replaced verbiage to reflect current terminology, i.e. use term international versus foreign. • Used the term candidate to describe applicant.
	Chapter 54-02-05 Renewal of License	<ul style="list-style-type: none"> • Updated title to reflect content • Initial applicants to receive license expiring on December 31 of the following year rather than initial. • Clarification language. • Updated language to be consistent with definitions.
	Chapter 54-02-06 License by endorsement	<ul style="list-style-type: none"> • Clarifying language – added the term jurisdiction and Criminal History Record Check language. • Added a new section for military spouses, HB 1246. (NDCC 43-51-11.1)
	Chapter 54-02-05 Disciplinary Action	<ul style="list-style-type: none"> • Updated behaviors that may indicate professional misconduct. • Individual records obtained by board are exempt. • Evaluations of individual nurses must be submitted directly to board from evaluator. • Further defined dismissal of a Potential Violation Report;

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		<ul style="list-style-type: none"> • Emergency Suspension – issued by Disciplinary Review Panel & is for 5 years or until retracted, modified or superseded by final disciplinary action of the Board or upon agreement between Respondent and the Board. • Replaced reapplication & reissuance with reinstatement to be consistent with definitions. • Paper license no longer issued so marking of encumbered license occurs electronically. • Failure to initiate or renew licensure or registration - non-disciplinary and associated fees, courses etc. • Applicants for initial or renewal must report felony offenses.
	Chapter 54-02-10 RN & LPN Nurse Licensure Compact	<ul style="list-style-type: none"> • Extended the time a nurse can practice on a license after declaration of primary state of residence from 30 days to 90 days.
Article 54-03.2 Standards for Nursing Education Programs	CHAPTER 54-03.2-01 General Provisions	<ul style="list-style-type: none"> • Inserted term education after nursing throughout this article. • Inserted “clinically” qualified to requirements for faculty.
	CHAPTER 54-03.2-02 Organization and Administration	<ul style="list-style-type: none"> • Added “national” accreditation. • Clarifying language.
	CHAPTER 54-03.2-03 Nurse Administrator	<ul style="list-style-type: none"> • Specified the requirements for administrator with master’s degrees not in nursing education for practical or associate degrees. • Specified the requirements for administrator of programs leading to a baccalaureate, master’s or doctoral degree. • All administrators must have an active unencumbered license.
	CHAPTER 54-03.2-04 Faculty	<ul style="list-style-type: none"> • Specified the requirements for faculty with master’s degrees not in nursing education for practical or associate degrees. • Specified the requirements for faculty of programs leading to a baccalaureate, master’s or doctoral degree.

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ND BOARD OF NURSING PROPOSED AMENDMENTS

		<ul style="list-style-type: none"> • Added Nurse Licensure Compact language. • All faculty must have an active unencumbered license.
	CHAPTER 54-03.2-05 Students	<ul style="list-style-type: none"> • Policies must include background checks.
	CHAPTER 54-03.2-06 Curriculum	<ul style="list-style-type: none"> • Added terminology for to include clinical judgment and skills in clinical management consistent with standards of practice. • Added recognition process for out of state programs.
	CHAPTER 54-03.2-07 Nursing Education Program Approval	<ul style="list-style-type: none"> • Inserted term "status". • Decreased notification time for scheduling a survey. • Removed repetitive language.
	CHAPTER 54-03.2-08 New Nursing Education Programs	<ul style="list-style-type: none"> • Added language to allow the board to continue initial approval. • Added clarifying language.
	CHAPTER 54-03.2-09 Closure Of A Nursing Education Program	<ul style="list-style-type: none"> • Specified verbiage for closure of a program and requirements to be met.
	CHAPTER 54-03.2-10 Innovation In Nursing Education	<ul style="list-style-type: none"> • Inserted term education after nursing throughout.
Article 54-04.1 Nursing Education Loans	CHAPTER 54-04.1-01 Nursing Education Loan Program	<ul style="list-style-type: none"> • Applicants do not have an option for one year renewal, dated language.
	Chapter 54-04.1-02 Qualifications	<ul style="list-style-type: none"> • Added "national" accreditation.
	54-04.1-04-03. Termination of employment	<ul style="list-style-type: none"> • Revised the interest rate language.

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	CHAPTER 54-04.1-05 Monetary Repayment	<ul style="list-style-type: none"> Eliminate the requirement to have the payment made by the fifth day of the month. Monthly payment required.
Article 54-05 Standards of Practice	CHAPTER 54-05-01 Standards Of Practice For Licensed Practical Nurses	<ul style="list-style-type: none"> Repealed four sections and added three sections to update the language from the National Council State Board of Nursing Model Rules and the Uniform Licensure Requirements and process of delegation. New sections relate to professional accountability, scope of practice, responsibility to organize, manage and supervise the practice of nursing. Included delegation in this chapter.
	CHAPTER 54-05-02 Standards Of Practice For Registered Nurses	<ul style="list-style-type: none"> Repealed four sections and added four sections to update the language from the National Council State Board of Nursing Model Rules and the Uniform Licensure Requirements and process of delegation. New sections relate to professional accountability, scope of practice, advocate for the client, responsibility to organize, manage and supervise the practice of nursing. Included delegation in this chapter.
	CHAPTER 54-05-03.1 Advanced Practice Registered Nurse	<ul style="list-style-type: none"> Added language in section 02 & 03.1 to be consistent with the Nurse Practices Act. Eliminated the notification of change in scope of practice. Scope must be consistent with education and certification. Prescriptive authority will be issued when all requirements are met. Notification requirement removed- use electronic verification. Deleted nurse clinician – no longer an APRN role
	CHAPTER 54-05-04 Standards For Delegation	<ul style="list-style-type: none"> Repealed

NDACTITLE 54

ND BOARD OF NURSING PROPOSED AMENDMENTS

Article 54-07 Unlicensed Assistive Person	CHAPTER 54-07-01 General Provisions	<ul style="list-style-type: none"> Added Section 05 on Consumer directed service providers. Moved from repealed chapter entitled Standards for Delegation.
	CHAPTER 54-07-02 Unlicensed Assistive Person Registry	<ul style="list-style-type: none"> Clarifying language for registration process. Added a category for registration of nursing students. Temporary permit issued for 90 days.
	CHAPTER 54-07-02.1 Criminal History Record Checks For Registration	<ul style="list-style-type: none"> Updated for Medication III registration.
	CHAPTER 54-07-03.1 Unlicensed Assistive Competence	<ul style="list-style-type: none"> Revised title to read "Role of the Unlicensed Assistive Person and Technician. Removed specific competency since the applicants must have a verification of education or training. Added a new section of standards for the Unlicensed Assistive Person/Technician and delegation process from the National Council State Board of Nursing Model Rules.
	CHAPTER 54-07-05 Medication Administration By A Medication Assistant III	<ul style="list-style-type: none"> Added clarifying language for Medication III. Clarified requirements for the Medication III including supervision requirements. Added acute care setting. Routes and types of medication administration that can be delegated. Added a definition of medical assistant student. Listed credentialing organizations acceptable to the board. Expanded list of medication routes that are allowed for Medication III.
Article 54-09 Workplace Impairment Program - Repeal		<ul style="list-style-type: none"> Repeal.

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ND BOARD OF NURSING PROPOSED AMENDMENTS**