



NORTH DAKOTA BOARD OF NURSING

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Web Site Address: www.ndbon.org

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

From: Stacey Pfenning DNP APRN FNP
ND Board of Nursing Executive Director

Date: September 13, 2016

Re: Administrative Rules Published in the October 2016 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:

- **Chapter 54-01-03 Definitions**
- **Section 54-05-03.1-10 Authority to Prescribe**

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 1149 which mandated licensing Boards to develop rules for utilization of the ND Prescription Drug Monitoring Program

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.

I. BOARD DEVELOPS RULES FOR BOARD ADOPTION

- Developed in conjunction with the North Dakota Center for Nursing, ND Nurse Practitioner Association, ND Association of Nurse Anesthetist, ND Board of Pharmacy, ND Board of Medicine, and ND Board of Dental Examiners.
- Individual discussions/meetings with ND Board of Pharmacy, ND Board of Medicine, ND Board of Dental Examiners, and ND Optometric Association.
- Invited nurse prescriber stakeholders to review and provide feedback-teleconference held November 10, 2015 at 4pm. Attendance and feedback included ND Nurse Practitioner Association and ND Association of Nurse Anesthetist, and Board of Nursing Directors.
- Open meeting with stakeholders for feedback December 21 and 22, 2015. Attendance included ND Center for Nursing, ND Nurses Association, and Board of Nursing Directors.

II. BOARD ADOPTS RULES FOR PUBLIC HEARING

- November 19, 2015, Board approved rules for public hearing to occur January 21, 2016.
- Legal counsel reviewed-12/8/15 with non-substantial language recommendations
- 12/9/15 delivered to Legislative Council and submitted to NDNPA.
- 12/9/15 discussed adding diversion to definitions during hearing period, as it did come up in a discipline case. Legal counsel and directors agreed.

III. PUBLICATION OF NOTICE

- Published in each county newspaper- 20 days elapsed between notice publication and date of the hearing:
 - Mailed to North Dakota Newspaper Association December 9, 2015 (Colleen P. at collenp@ndna.com).
 - Published once in each official County newspaper before December 21, 2015. The Board in receipt of copies of each publication.
- 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 proposed rules filed with Legislative Council (LC) after Board approved draft and date of public hearing-Capitol Building on 2nd floor. Hand delivered 12/9/2015. Verified LC receipt- VRichter.
- Regulatory analysis if requested or if impact in excess of \$50,000.00 (will not exceed 50,000). Board policy: prepare for all rule-making.

IV. PUBLIC HEARING

- Twenty days between last date published in newspaper and first date of public hearing. Allowed 10 days after last public hearing for public comment.
 - Public notice published prior to December 21, 2015.
 - Public hearing held January 21, 2016 during convened Board meeting.
- Public comment accepted through February 4, 2016.

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 March 10, 2016- Finally adopted.
 - Draft sent to AG office after meeting

VII. ATTORNEY GENERAL OPINION AS TO LEGALITY OF RULES

- Submitted to AG after Board adopted rules March 10th 2016
- AG approved as the legality of rules on April 25, 2016.

VIII. FINAL ADOPTING OF THE RULES BY BOARD

- March 10, 2016-would bring back to Board if needed per AG recommendation.
- Sent finally adopted rules to each representative named on the bill.

IX. FILE RULES WITH OFFICE LEGISLATIVE COUNCIL-vrichter@nd.gov

- May 4, 2016-Adopted rules and AG opinion filed with LC. Vonette stated that committee accepts submissions by the first of the month prior to meeting.

X. APPEAR BEFORE THE ADMINISTRATIVE RULES COMMITTEE

- Notified Administrative Rules Committee of Board adoption of rules.
- Placed on agenda for September 13, 2016 ARC meeting.
- Prepared testimony in response to LC questions.

XI. RULES FORCE AND EFFECT OF LAW

- Rules potentially become effective October 2016 (after appearing before Administrative Rules Committee)

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
TESTIMONY AND HEARING SUMMARY
Prescription Drug Monitoring Program Rules Promulgation

January 21, 2016 1:30 PM at the North Dakota Board of Nursing, 919 south 7th Street, Suite 504, Bismarck, North Dakota, 58504-5881. Open comment December 21, 2015 through February 4, 2016.

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

- Chapter 54-01-03 Definitions
- Section 54-05-03.1-10 Authority to Prescribe

TESTIMONY	AUGUST 2015-FEBRUARY 2016
Stakeholders Input	<ul style="list-style-type: none"> • ND Center for Nursing: Patricia Moulton, Executive Director • ND Association of Nurse Anesthetist: Lauri Senn, President • ND Board of Pharmacy: Mark Hardy, Executive Director • ND Board of Medicine: Duane Houdek, Executive Director • ND Nurse Practitioner Association: Cheryl Rising, Legislative Liaison • ND Board of Dental Examiners: Rita Sommers, Executive Director • ND Optometric Association: Nancy Kopp, President
Public noticed teleconferences (2): December 21 & 22, 2015.	<ul style="list-style-type: none"> • ND Nurses Association: Carmen Bryhn, Director of State Affairs • ND Center for Nursing: Patricia Moulton, Executive Director • ND Board of Nursing Directors: Stacey Pfenning, Tammy Buchholz, Melissa Hanson, Patricia Hill
Oral testimony	<ul style="list-style-type: none"> • Telephone testimony per Lucy Johnson, APRN, Sanford in Fargo
Written testimony	<ul style="list-style-type: none"> • Cheryl Rising APRN, FNP • Brian Bergeson Attorney • Kathryn Cameron & staff-Fargo Sanford Health • Kristin Roers-ND Nurses Association
Nursing Organizations	<ul style="list-style-type: none"> • Center for Nursing • Nurses Association • Nurse Practitioner Association • Association of Nurse Anesthetist

SUMMARY of HEARING

HEARING	January 16, 2014
Signed attendance roster	<ul style="list-style-type: none"> • None
Web-stream locations	<ul style="list-style-type: none"> • Web-stream announced on website for NDBON rule hearing for January 21, 2016
Board Staff present	<ul style="list-style-type: none"> • Associate Director for Education: Tammy Buchholz • Associate Director for Discipline: Melissa Hanson • Assistant Director for Practice & Discipline: Patricia Hill • Executive Director: Dr. Stacey Pfenning
Board Members Present	<ul style="list-style-type: none"> • Daniel Rustvang, President • Jane Christianson, Vice President • Janelle Holth • Michael Hammer • Mary Beth Johnson

	<ul style="list-style-type: none"> • Paula Schmalz • Bonny Mayer • Wendi Johnston • Clara Sue Price
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SUMMARY OF COMMENTS

The Board held two teleconferences to review the proposed revisions. Approximately 5-6 individuals attended the teleconferences. The NDNA and 3 APRNs from Fargo provided written comments. There were no public hearing presentations. Overall, testimony was in support of the proposed rules and use of the PDMP. However, concerns from 2 testimonies surrounded the 6 month PDMP report checks on clients receiving chronic treatment with controlled substances. This was thought to be labor intensive. Suggestions to change the 6 months to 1 year was offered. See attached copies all of the testimony.

Chapter 54-01-03 Definitions

Testimony: Brian Bergeson and NDBON Directors discussed addition of diversion definition 12/9/15. The definition inquiry occurred during a Discipline Review Panel meeting.

Responses: 12/9/15-Directors explored definition in statute and other Boards. Will add for review of final rules by Board in March.

Board Response: Board accepted NDBON Director's and SAAG recommendations reflected in proposed rules March 10, 2016.

Section 54-05-03.1-10 Authority to Prescribe

Testimony: 12/7/15 Brian Bergeson suggests non-substantive language changes.

Responses: Directors reviewed 12/8/15 and accepted the non-substantive language changes. Will be presented in final rules presentation in March.

Board Response: Board accepted SAAG recommendations reflected in proposed rules March 10, 2016.

Testimony: 02/03/2016 Sanford Health APRNs.

"We (Sanford Behavioral Health APRNs) are in favor with promoting increased use of the ND PDMP. We are concerned the proposed requirements are too stringent and will require a large amount of time from providers, nursing staff and systems to implement. The proposed regulations do not take into consideration clients who are stable and show no signs of abuse or diversion.

Key points and questions:

- *What is the percentage of APRNs who are signed up for the ND PDMP? (the Sanford Behavioral Health APRNs are 100% signed up)?*
- *We recommend setting guidelines rather than regulations*
- *Has there been consideration of including pharmacists in the process?*
- *Highly recommend coordinating with the ND medical board and implementing similar guidelines*
- *How do emergency rooms, walk in clinics handle this?*

Please keep us updated on this issue. kathryn.cameron@sanfordhealth.org"

Responses: Directors reviewed and responded with informational correspondence. Executive Director had telephone discussion with Lucy Johnson, NP. Board discussed during convened meeting March 10, 2016.

"Hello Lucy,

Thank you for telephone discussion in February addressing the submitted testimony related to the ND BON PDMP rules. Here is a synopsis of what we discussed. Please feel free to share with your group.

The NDBON collaborated with the ND Board of Medicine, Board of Dental Examiners, Optometry, and Board of Pharmacy. The original collaborative draft was individualized to each licensing Board. The ND Nurse Anesthetist, ND Center for Nursing, ND Nurses, and ND Nurse Practitioner Associations, and several nurse prescribers in various settings contributed to the nursing rules. The nursing board held 2 open, noticed meetings and 1 open public forum.

The goal of the ND Board of Nursing is to meet the requirements of the HB 1149 (attached) which passed during the 64th legislative assembly, charging the licensing Boards with setting PDMP utilization rules. I have attached the Board of Pharmacy rules which have already been approved and the Board of Dental Examiners to assist with perspective.

The rules are a minimum expectation, which requires the prescriber to look at the PDMP report (not change practice). However, there will need to be systems placed to accommodate the requirements, as all Boards have very similar minimal requirements for looking at reports. Many clinics assign delegates to retrieve the reports. There is also work on incorporating into EHRs.

These comments will be taken to the Board for the March meeting.

Thank you for the thoughtful submissions,”

Board Response: Board discussed considerations related to inquiry. Many of the considerations required providing education to the stakeholders, which was provided in email and teleconference. The concern regarding 6 month PDMP checks vs. 12 months was discussed further. After consideration and discussion, the NDBON felt that the safest for the patients and community would be the 6 month PDMP checks.

Testimony: 2/4/16 Brian Bergeson suggests non-substantive language changes.

Also, this email correspondence from NDNA membership:

“Here are a few questions that were posed to me from some NDNA members that I wanted to ensure were considered as the proposed rules are drafted and brought forward. I know a lot of work has gone into them already, so thank you for your consideration of our questions.

- *Is there any flexibility regarding the controlled substances schedules? Having schedule IV and V would require monitoring for common prescriptions like Ambien and Lunesta.*
- *Most concerns centered around every 6-month provision (labor intensive) – will the PDMP system remind providers to complete this? What will be the penalty if you miss one? This seems to be a large burden to place on busy providers.*
- *How does this proposal take into consideration chronic pain patients who are stable with their medication regimen?*
- *Do we risk primary care providers being reluctant to accept patients on stimulants or other controlled substances due to the increased workload with these patients?*
- *How does the board of pharmacy and pharmacists interact with this process?*

Thank you for your consideration of our questions and comments. Feel free to contact me for any further information.

*Kristin Roers, MS, RN
Vice President of Government Relations
North Dakota Nurses Association
advocacy@ndna.org “*

Responses: Directors reviewed and responded with informational correspondence.

“Hello Kristin,

The NDBON collaborated with the ND Board of Medicine, Board of Dental Examiners, Optometry, and Board of Pharmacy. The original collaborative draft was individualized to each licensing Board. The ND Nurse Anesthetist, ND Center for Nursing, ND Nurses, and ND Nurse Practitioner Associations, and several nurse prescribers in various settings contributed to the nursing rules. The nursing board held 2 open, noticed meetings and 1 open public forum.

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

Attorney General Review:

Newspaper Publications:

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

Rules adopted per HB 1149 mandate. See attached 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.

No fiscal effect anticipation.

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.

Thank you for your consideration of these rules,



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North Dakota Board of Nursing
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