



NORTH DAKOTA BOARD OF NURSING

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ND LEGISLATIVE MANAGEMENT ADMINISTRATIVE RULES COMMITTEE

March 5, 2024

ND Board of Nursing Proposed Rules

Chair Pyle and members of the Administrative Rules Committee (ARC). I am Stacey Pfenning, the Executive Director of the ND Board of Nursing (NDBON). I am here to describe the procedures followed by the NDBON in adopting the rules published in the April 2024 supplement of the ND Administrative Code pages 225-236. The amendments to Title 54, which regulate the practice of nursing, include the following chapters:

- **Chapter 54-01-03-01 Definitions** (pp. 225-230)
- **Chapter 54-02-01 Licensure by Examination** (pp. 231-232)
- **Chapter 54-02-06 License by Endorsement** (pp. 233-234)
- **Chapter 54-10 Alternative to Discipline Program** (pp. 235-236)

The following address the questions requested by the ARC:

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

Chapter 54-10 Alternative to Discipline Program and related additions to **54-01-03-01 Definitions** addressed the Nurse Practices Act changes enacted with SB 2114 during the 68th Legislative Session. The remainder of the proposed rules were not directed by statutory changes.

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.

Upon AG Review for Legality of **Chapter 54-02-06 License by Endorsement**, the following was directed: repeal of **54-02-06-03.1 Military Spouses-Licensure** and **54-02-06-03.2 Military Spouses-Temporary Permit** as they are superseded by the Federal Portability of Professional Licenses and Certificates for Servicemembers and their spouses (SCRA) effective January 2023 (appendix A). Per AG review, the SCRA also supersedes ND Century Code **43-51-11.1 Military Spouses and Military Members-Licensure**.

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.

Attachment B describes the rule promulgation timeline and processes completed as outlined in the 2023 Office of Attorney General Administrative Rules Manual. The NDBON considered stakeholder input, national standards, and current nursing licensure and practice environments to draft the Title 54 amendments.

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.

The ND Nurses Association hosted two stakeholder forums in addition to the NDBON public hearing held October 26, 2023. Public comments were requested between July 28 and November 10, 2023. There was no testimony given for the proposed rules during the open forums, hearings, and open comment period. In addition, testimony provided during the 68th Legislative Session supported SB 2114 which mandates the ATD. Table 1 provides details related to meetings and hearings.

Table 1

MEETINGS/STAKEHOLDERS	
NDNA hosted stakeholder open forums September 19 and October 11, 2023 at noon CT	<ul style="list-style-type: none"> Stakeholder meetings published on NDBON website and social media; ND Nurses Association website and social media; and public noticed as open meetings. No testimony or request received related to proposed rules.
Stakeholders Input	<ul style="list-style-type: none"> ND Nurses Association-hosted open forums and provided ATD testimony during 68th session. ND Center for Nursing-reports and updates provided to CFN and board of directors throughout 68th session and rule promulgation. Reports given at each Legislative Call which included participation from NDNA, NDCFN, ND Nurse Practitioner Association, and other nurse stakeholders and entities.
Sanford Conference Call for education and to answer questions on October 24, 2023	<ul style="list-style-type: none"> W. Kopp of Sanford Health Bismarck submitted inquiries October 23 requesting background on rules and anticipated impact on employers. Participants: NDBON Directors, W. Kopp and representatives of Sanford Health human resources. Answered questions related to credentials evaluations and ATD in relation to hiring. No testimony or requests related to the proposed rules.
Testimony	<ul style="list-style-type: none"> None received
Stakeholders/Nursing Organizations	<ul style="list-style-type: none"> ND Nurses Association, ND Center for Nursing, ND Nurse Practitioner Association, ND Association of Nurse Anesthetist provided testimony in support of SB 2114 during the 68th legislative session.
PUBLIC HEARING SUMMARY-OCTOBER 26, 2023 -1:00 PM CT (virtual and onsite)	
Attendance Roster	<ul style="list-style-type: none"> No testimony or comments during hearing
Board Staff present	<ul style="list-style-type: none"> Executive Director: Dr. Pfenning; Associate Director for Education: Dr. Buchholz; Associate Director for Compliance: Hanson; Associate Director for Practice: Lund; Associate Director for Operations: Martin; Administrative Services and Licensing Director: Bentz

Board Members Present	<ul style="list-style-type: none"> President: Dr. Buettner, APRN member; Vice President: Johnston, LPN member; Treasurer: Dr. Hammer, RN member; Froehlich, Public member; Friestad, LPN member; Krank, RN member; Pazdernik, RN member; Seamands, RN member; Vetter, RN member
November 10, 2023	<ul style="list-style-type: none"> End of public and open comment period. No testimony or comments received during this comment period.

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 regular NDBON meeting (no additional per diem costs).

Attorney General Review: \$1, 022.86

Newspaper Publications: \$2, 542.96

Total: \$3, 565.82 (not including staff or SAAG time/expense)

6. An explanation of the subject matter of rules and the reasons for adopting those rules.
- **Pages 225-230, Chapter 54-01-03-01 Definitions-** addresses new definitions related to the Alternative to Discipline program.
 - **Pages 231-232, Chapter 54-02-01 Licensure by Examination:** updates historical language and provides clear concise language about the requirement of a credentials evaluation for internationally educated applicants by examination. A credentials evaluation verifies an education program is comparable to nursing education in the U.S. and detects fraud and ensures that unqualified people do not practice nursing. Increased global mobility and the growing need for nurses in the workforce has significantly increased the number of international applicants. Clarifying information assists to eliminate ambiguity and increases licensing efficiency. The updates do not result in procedural change for the regulated community.
 - **Page 233, Chapter 54-02-06 License by Endorsement:** provides consistency by adding clear concise language about the requirement of a credentials evaluation for internationally educated applicants by endorsement. A credentials evaluation verifies an education program is comparable to nursing education in the U.S. and detects fraud and ensures that unqualified people don't practice nursing. Increased global mobility and the growing need for nurses in the workforce has significantly increased the number of international applicants. Clarifying information assists to eliminate ambiguity and increases licensing efficiency. The updates do not result in procedural change for the regulated community.
 - **Page 234, 54-02-06-03.1 and 54-02-06-03.2:** repeals license process information related to military spouses as these processes are superseded by recently enacted federal mandates.
 - **Pages 235-236, Chapter 54-10 Alternative to Discipline Program-** provides parameters for the newly developed ATD program as mandated in SB 2114 of the 68th Legislative Session (43-12.1-08-p; <https://ndlegis.gov/cencode/t43c12-1.pdf>). The ATD is an accountability-based program that ensures that a nurse utilizes available community resources to maintain recovery with chemical dependency or mental health concerns that could potentially impact their nursing practice. Because the program is non-disciplinary and exempt, participation in the program is not reported to agencies such as Nursys, National Practitioner Data Bank, and Office of

Inspector General so the nurse can typically continue their employment during participation. The program is available to nurses whose conditions or actions have not impacted their nursing practice and any risk to the public is low.

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.

Regulatory analysis not requested or 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.

Non-applicable.

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 impact anticipated.

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

Non-applicable.

11. None of the rules were adopted as emergency rules.

The rules as published in the April 2024 Supplement were approved for legality by the AG on January 26, 2024 (see appendix C).

Thank you for your consideration of these rules,



Dr. Stacey Pfenning DNP APRN FNP FAANP
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Attachment A
SCRA Federal Recent Provisions



Portability of Professional Licenses and Certificates for Servicemembers and Their Spouses

The Department of Justice's Servicemembers and Veterans Initiative (SVI) is committed to protecting those who serve and their families. The Civil Rights Division enforces the Servicemembers Civil Relief Act (SCRA), which provides servicemembers and their dependents with certain civil protections related to military service.

New SCRA Amendment

In January 2023, Congress added a new provision to the SCRA that allows servicemembers and their spouses to use their professional licenses and certificates when they relocate due to military orders, in certain circumstances.



To Qualify for Professional License Portability under the SCRA, You Must:

1. Have moved to a location outside the jurisdiction of the licensing authority that issued the covered license or certificate because of orders for military service.
2. Provide a copy of the military orders to the licensing authority in the new jurisdiction.
3. Have actively used the license or certificate during the two years immediately preceding the move.
4. Remain in good standing with:
 - a. the licensing authority that issued the covered license or certificate; and
 - b. every other licensing authority that issued a license or certificate valid for a similar scope of practice and in the discipline applied for in the new jurisdiction.
5. Submit to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

If these five criteria are met, the servicemember's or spouse's covered license or certificate **shall be considered valid** at a similar scope of practice and in the discipline applied for in the new jurisdiction for the duration of the military orders.

Attachment B Rule Promulgation Timeline and Process

BOARD DEVELOPS RULES FOR BOARD ADOPTION

- October 2022- NDBON approved proposed addition of an Alternative to Discipline Program (ATD) to the N.D.C.C. Duties of the Board (43-12.1-08 (2)); and directed staff and SAAG to pre-file with legislative council for the 2023 legislative session.
- October 2022- NDBON directed staff and SAAG to explore rules to clarify requirements related to independent credentials review for application for licensure by endorsements (chapter 54-02-06) and license by examination (chapter 54-02-01); and provide draft to the Board for consideration at the January regular meeting.
- March 2023- Governor Burgum signed SB 2114 enacting the amendments to the Nurse Practices Act 43-12.1-02 and 43-12.1-08 relating to the establishment of an ATD program for nurses.
- April 2023- NDBON approved draft rule revisions related to independent credentials review for international educated applicants and military spouses; and to align the promulgation with the upcoming ATD draft rules:
 - Revisions: Sections 54-02-01-07. Transcript; 54-02-06-01. Application and fee; and 54-02-06-03.1. Military spouses – Licensure; and
 - Repeal: Section 54-02-01-09. Internationally educated applicants.
- April 2023- NDBON directed the ATD Committee, SAAG, and staff to explore and draft initial rules for the ATD program to meet the enacted change in sections 43-12.1-02 (2) and 43-12.1-08 (p) during the 68th Legislative Assembly; and draft rules to be considered at the regular July meeting.
- July 27, 2023- NDBON approved the draft rules to create Chapter 54-10 Alternative to Discipline as recommended by ATD Committee, SAAG, and staff; and to provide public hearing for proposed addition of NDAC 54-10 Alternative to Discipline; revised 54-02-01 and 54-02-06 related to nurse licensure; and additions to 54-02-03-01 definitions related to ATD.
- August 23, 2023- Submitted letter, proposed rules, and full & abbreviated public notices to Liz Fordahl, Legislative Council (LC). Received confirmation email from Liz August 24, 2023 stating the proposed changes and notices were posted to the LC website.
- August 23, 2023- Sent public notice announcement to adcoordinator@ndna.com for newspaper publication of notice.
- September 25, 2023- Received the sworn affidavit of publication from ND Newspaper Association. Publications from all county newspapers and dates submitted. Dates ranged from August 29-September 4, 2023.
- September 18 & October 11, 2023-Collaborated with ND Nurses Association and Center for Nursing to hold public/open comments on the rules. Meetings were public noticed with rules (Table 1).
- October 23, 2023- Received email from W. Kopp of Bismarck Sanford Health with inquiries related to impact of credentials evaluations on licensing and questions about the ATD program. Meeting held with NDBON Directors, W. Kopp and Sanford Health HR representative, Bismarck.
- October 26, 2023- NDBON Public hearing held at 1pm CT (virtual and Board conference room). Hearing was public notices and printed in ND Nurse Connection; on NDBON social media; and published in each county newspaper by September 4th.

BOARD ADOPTS RULES FOR PUBLIC HEARING

- NDBON SAAG reviewed rules for legality throughout promulgation (Simonson and Bergeson).
- July 27, 2023-NDBON approved draft rules and scheduled public hearing for October 26 at 1 pm CT.

PUBLICATION OF NOTICE

- Published in each county newspaper (20 days elapsed between publication of the notice and date of the hearing):
 - Publication request sent to North Dakota Newspaper Association August 23 (Liz Prather: adcoordinator@ndna.com).
 - Published once in each official County newspaper with latest date September 4.
 - NDBON reviewed the NDNA affidavit and copies of each publication (received September 25).
 - October 26, 2023-Public hearing during convened NDBON meeting.
- Contents of full public notice included: purpose of rules; time and place for public hearing; location to review text; address for written testimony; phone number for requesting copy/regulatory analysis (also on website); closing date for consideration of testimony.
- August 23-full public notice and copy of proposed rules filed with LC after the NDBON approved draft and date of public hearing. Fordahl confirmed email August 24.
- Regulatory analysis if requested or if impact in excess of \$50,000.00 (will not exceed 50,000). No analysis requested; impact not anticipated to be in excess of \$50,000.

PUBLIC HEARING

- Twenty days elapsed between the last date published in newspapers and the first date of public hearing. Allowed 10 days after the last public hearing for public comment.
 - Public notice: published in newspapers, website, and social media between August 28 and September 4, 2023.
 - Public hearing noticed for October 26, 2023 at 1 pm CT during convened NDBON meeting.
 - Stakeholder meeting webinars hosted by ND Nurses Association, CFN, and NDBON staff September 18 & October 11 at 12pm CT.
- Public comment open 10 days after last public hearing: comments accepted through November 10, 2023. No comments received.

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.
 - NDBON meeting October 26, 2023- final draft for action.
 - NDBON initially adopts rules subject to no substantial testimony through November 10, 2023 and then pending AG review for legality.
 - Draft rules submitted to AG November 10, 2023, no written/oral comment received.

ATTORNEY GENERAL OPINION AS TO LEGALITY OF RULES

- November 10, 2023-submission to AG after closing of comment period.

- SAAG Simonson collaborated with AAG A. Hicks on non-substantive edits (spacing, lines, numbering); necessary adjustments to the rules related to military and military spouse (per AAG the rules are superseded by SCRA Federal licensure portability effective January 2023 and directed to repeal); changing of the term “confidential” to “exempt” in ATD rules to align with the N.D.C.C.; and exclusion of proposed definition #55 “Nursing Assistance Program” as this is a brand name and not used in the rules.
- The adjusted rules were presented to the NDBON for approval January 25, 2024 and approved. Approval/motion of revised rules sent to AAG Hicks.
- January 26, 2024, received the AG approval letter providing for legality of rules.

FINAL ADOPTING OF THE RULES BY BOARD

- January 25, 2024 (Regular Board Meeting)-Board approved adjusted rules as directed by the AG review for legality.
- Approval motion sent to AG office (AAG Hicks) on January 25, 2024.
- AG Opinion letter received January 26, 2024.

FILE RULES WITH OFFICE LEGISLATIVE

- January 26, 2024- Filed adopted rules and AG opinion with LC. Placed on agenda for March ARC meeting.

Appendix C
AG Opinion



Drew H. Wrigley
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
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OPINION

January 26, 2024

Stacy Pfenning, DNP APRN RNP FAANP
Executive Director
North Dakota Board of Nursing
919 S 7th Street, Suite 504
Bismarck, ND 58504-5881

Dear Dr. Pfenning:

The Office of Attorney General has examined the proposed amendments to N.D. Admin. Code tit. 54 concerning An Alternative To Discipline Program For Nurses and Nurse Licensure, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was not prepared, 4) a small entity regulatory analysis and an economic impact statement were not prepared because the agency is exempt from this requirement, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Drew H. Wrigley
Attorney General

copy Liz Fordahl, Legislative Council