

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

In the matter of the amendment of)
ARM 24.126.301 definitions,)
24.126.701 inactive status, and)
24.126.2103 and 24.126.2105)
continuing education)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 13, 2013, at 2:00 p.m., a public hearing will be held in room 471, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Chiropractors (board) no later than 5:00 p.m., on June 7, 2013, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdcchi@mt.gov.

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

24.126.301 DEFINITIONS (1) remains the same.

(2) "Diagnostic x-ray" as used in 37-12-104, MCA, shall mean any recognized form of diagnostic imaging, including, but not limited to, x-ray, CAT scan, and MRI.

(3) through (5) remain the same.

(6) "Physiotherapy" as used in 37-12-104, MCA, shall mean any service, when performed, ~~or ordered to be performed,~~ by any licensee, employing for therapeutic effects, physiological measures, activities, and devices for preventive and therapeutic purposes, physiological agents, including, but not limited to, mechanical devices, heat, air, light, water, electricity, sound, exercise, rehabilitative procedures, massage, and mobilization, when performed for the purpose of diagnosis, evaluation, treatment, and instruction of the human body to detect, assess, correct, alleviate, prevent, and limit physical disability, injury, body malfunction, pain, mental condition by the aforementioned agents, or any other procedure taught in chiropractic colleges for the purpose of preventing, correcting, or alleviating a physiological or mental disability or condition.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA

IMP: 37-1-131, 37-12-104, 37-12-201, MCA

REASON: The board determined it is reasonably necessary to amend this rule to remain within the scope of the statutes implemented through this rule. In 1990, when the definitions of physiotherapy and diagnostic x-ray were adopted, the reasonable necessity statement indicated the rule was proposed "at the request of the insurance industry for an interpretation to assist in reviews of chiropractic claims." The reasonable necessity further stated that the rule was advisory only and therefore lacked the force of law. The board is amending this rule to strike from the definition of "physiotherapy" the perceived ability of a licensed chiropractor to delegate licensed duties to unlicensed personnel. The board concluded that there exists no statutory provision allowing for this delegation of licensed duties and further notes that such an expansion of the practice of chiropractic would require a statutory change.

The board notes that although adjective or interpretive rules are required under 2-4-308, MCA, to include a statement within the historical notations that the rule is advisory only, but may be a correct interpretation of the law, the statement was only made in the original reasonable necessity and never reprinted in the historical notations of the rule.

24.126.701 INACTIVE STATUS AND CONVERSION TO ACTIVE STATUS

(1) A licensed chiropractor who wishes to retain a license, but who will not be practicing chiropractic in Montana, may obtain an inactive status license upon submission of an application. An individual licensed on inactive status may not practice chiropractic in Montana during the period in which the licensee remains on inactive status.

(2) and (a) remain the same.

(b) proof of completion of ~~42~~ 13 hours of approved continuing education in the year preceding activation.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA

IMP: 37-1-131, 37-1-319, MCA

REASON: In MAR 24-126-32, the board amended ARM 24.126.2103 and 24.126.2105 to require that licensees obtain an additional hour of continuing education (CE) in professional boundaries or ethics each renewal period. This change became effective February 28, 2012. The board inadvertently missed making the change in this rule and is amending it now to align with the current requirements.

24.126.2103 CONTINUING EDUCATION REQUIREMENTS (1) Beginning with the 2012 renewal, every licensee shall affirm that they have completed a minimum of 13 hours of board-approved continuing education during each renewal period as defined in ARM 24.101.413. All active licensees shall affirm on all subsequent renewal applications that they have attended and successfully completed a minimum of 13 hours of board-approved continuing education in the year period preceding the application for renewal.

(a) Of the 13 hours, no more than two hours can be in the subject area of philosophy and/or practice management. In addition, the board will require each licensee to demonstrate successful completion of a professional boundary and ethics continuing education course.

(b) Of the 13 hours, one hour must be obtained in professional boundaries or ethics. The board will only grant credit for a maximum of one hour in professional boundaries or ethics.

(2) New licensees to the state of Montana have from the date of their original licensure in Montana until the end of their first renewal year period to complete their first 13 hours of continuing education, and shall affirm on their second renewal application that they have attended and successfully completed a minimum of 13 hours of board-approved continuing education during that period.

(2) remains the same, but is renumbered (3).

~~(3)~~ (4) An annual random audit of 40 ten percent of active licensees will be conducted to verify compliance of the continuing education requirements.

~~(4)~~ (5) Clock hours of continuing education cannot be accumulated and carried over from one renewal year period to the next renewal year period.

(5) and (6) remain the same, but are renumbered (6) and (7).

~~(7)~~ (8) Any licensee seeking a hardship waiver from their continuing education requirements shall apply to the board, in writing, as soon as possible after the hardship is identified and prior to the close of licensure for that year period. Specific details of the hardship must be included. The board must make a finding that a hardship exists. The waiver may be absolute or conditional.

AUTH: 37-1-319, 37-12-201, MCA

IMP: 37-1-141, 37-1-306, 37-1-319, MCA

REASON: The board is amending this rule to clarify that all new licensees have a full renewal period in which to complete the required continuing education (CE) and do not need to report their CE until the second time they renew, regardless of when they originally become licensed. The board receives questions on new licensee CE constantly, and is changing "year" to "period" to address the perceived confusion. The rule is further amended, reorganized, and renumbered to comply with ARM formatting and punctuation requirements.

24.126.2105 APPROVED CONTINUING EDUCATION (1) and (2) remain the same.

(3) ~~All licensees~~ Licensees can receive two credits for each chiropractic board meeting or regional/national meeting attended in person.

(4) ~~All Licensees~~ can receive a maximum of six credits per year for Internet/online courses, and such courses must meet the same guidelines for continuing education approval in ARM 24.126.2103 and this rule.

(5) and (6) remain the same.

AUTH: 37-1-319, 37-12-201, MCA

IMP: 37-1-141, 37-1-306, 37-1-319, MCA

REASON: The board is amending (3) to allow licensed Montana chiropractors to receive a limited number of hours toward their continuing education (CE) requirement by attending national or regional chiropractic meetings. The board determined that these meetings, like the board's regular meetings, offer relevant educational material, and that licensees should be able to earn up to two credits for attending these meetings in person.

The board determined it is reasonably necessary to amend (4) and specify that licensees may only receive a maximum of six credits toward their annual CE requirement for online or Internet courses. The board acknowledges that online courses can provide good quality professional education, but concluded that it is to the licensees' and public's benefit for licensees to obtain the majority of the required CE through active, in-person courses.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdcchi@mt.gov, and must be received no later than 5:00 p.m., June 21, 2013.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's web site at www.chiropractor.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person who wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdcchi@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

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

BOARD OF CHIROPRACTORS
SCOTT HANSING, D.C., PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 13, 2013