

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
AND THE BOARD OF MEDICAL EXAMINERS  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.101.413 renewal dates,	)	REPEAL, AND ADOPTION
24.156.601, 24.156.603, 24.156.605,	)	
24.156.615, 24.156.617, 24.156.618,	)	
and 24.156.628 medical examiners-	)	
licensure, 24.156.802 through	)	
24.156.807, 24.156.809, and	)	
24.156.810 telemedicine,	)	
24.156.1002, 24.156.1004, and	)	
24.156.1006 podiatry, 24.156.1301,	)	
24.156.1302, 24.156.1305,	)	
24.156.1306, and 24.156.1308	)	
nutrition practice, 24.156.1402,	)	
24.156.1411, and 24.156.1413	)	
acupuncture, 24.156.1618 through	)	
24.156.1620, 24.156.1622,	)	
24.156.1623, and 24.156.1626	)	
physician assistant-scope of practice,	)	
the repeal of 24.156.610 reciprocity,	)	
and the adoption of NEW RULE I	)	
pertaining to board report obligations	)	

TO: All Concerned Persons

1. On December 10, 2009, the Department of Labor and Industry (department) and the Board of Medical Examiners (board) published MAR notice no. 24-156-73 regarding the public hearing on the proposed amendment, repeal, and adoption of the above-stated rules, at page 2340 of the 2009 Montana Administrative Register, issue no. 23.

2. On January 5, 2010, a public hearing was held on the proposed amendment, repeal, and adoption of the above-stated rules in Helena. Numerous comments were received by the January 13, 2010, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENTS 1 THROUGH 4 PERTAIN TO ARM 24.156.615:

COMMENT 1: Several commenters stated that it is unfair to force retired physicians who maintain licensure solely to write prescriptions for family members to go inactive and/or take the SPEX examination. The commenters were concerned that after devoting their careers to medicine these doctors would be penalized and asked how

writing prescriptions for cough syrup or osteoporosis medication for family members would harm the public.

RESPONSE 1: Noting that the board's position paper on writing prescriptions for family members is posted on the board's web site, the board is not amending ARM 24.156.615(4) and (5) at this time.

COMMENT 2: Two commenters suggested striking "in this state" from ARM 24.156.615(4), stating that being out of active practice in any state or jurisdiction should be the standard.

RESPONSE 2: The board appreciates all comments made during the rulemaking process. Following consideration of all comments, the board is not amending ARM 24.156.615(4) and (5) at this time.

COMMENT 3: Two commenters asked whether retired physicians may write prescriptions and whether maintaining continuing medical education (CME) is sufficient for renewing as an active licensee.

RESPONSE 3: The board recommends reading the board's position paper on prescribing for family members on its web site and notes that CME is not a requirement for license renewal in Montana.

COMMENT 4: One commenter opposed the proposed language in ARM 24.156.615(5), and suggested alternate language regarding retired physicians with no intention to actively engage in the practice of medicine.

RESPONSE 4: The board appreciates all comments made during the rulemaking process. Following consideration of all comments, the board is not amending ARM 24.156.615(5) at this time.

COMMENTS 5 THROUGH 7 PERTAIN TO ARM 24.156.617:

COMMENT 5: Several commenters opposed the amendments to ARM 24.156.617, stating that requiring the Special Purpose Examination (SPEX) for physicians who have not maintained an active Montana license for more than two years is difficult, outdated, and useless, and that maintaining CME or having proof of current board certification is a better indicator of competency.

RESPONSE 5: The board is considering the trend towards continued competency and board recertification. Following consideration of all comments, the board is not amending ARM 24.156.617(3)(a) at this time.

COMMENT 6: Two individuals stated that requiring the SPEX examination would drive away physician applicants from Montana and urged the board to look to Nevada's competency-based requirements, and California, which has a fee-free volunteer license that can be reactivated by paying the active license fee.

RESPONSE 6: The board appreciates all comments made during the rulemaking process and acknowledges that the Federation of State Medical Boards (FSMB) is exploring continued competency. Following consideration of all comments, the board is not amending ARM 24.156.617(3)(a) at this time.

COMMENT 7: Two commenters urged the board to require the SPEX examination only to reactivate a license on inactive status for more than two years, as set forth in ARM 24.156.618, but not to maintain an inactive license.

RESPONSE 7: The board agrees that the SPEX was intended in the event of reactivation, not for maintenance of an inactive license. Following consideration of all comments, the board is not amending ARM 24.156.617(3)(a) at this time.

COMMENT 8: A few commenters supported the proposed amendments to the physician assistant rules in ARM 24.156.1622 and 24.156.1623.

RESPONSE 8: The board appreciates all comments received during the rulemaking process.

COMMENT 9: A few commenters asserted that the current rules on both supervision and chart review are working well and should not be changed. One person questioned whether the commenter should be "up in arms" regarding the physician assistant amendments proposed at ARM 24.156.1622 and 24.156.1623.

RESPONSE 9: The board appreciates all comments made during the rulemaking process.

COMMENTS 10 THROUGH 15 PERTAIN TO ARM 24.156.1622:

COMMENT 10: Numerous commenters opposed the amendments to ARM 24.156.1622, to require physician assistants (PAs) gain a year of experience in either an emergency room or rural acute care prior to practicing in these settings. The commenters stated that proposed amendments to this rule go beyond ensuring that PAs practice consistent with training and experience, would prohibit all PAs not currently working in an ER or rural acute care setting from ever doing so, and would force Montana PAs out of state for the required training. The commenters also stated that PAs work in ERs in all 50 states and the District of Columbia and that this amendment is unprecedented and a setback.

RESPONSE 10: The board is aware of differences in practice in frontier areas in Montana and seeks to protect the public by ensuring the PAs are adequately trained to provide ER care in rural Montana. Following consideration of all comments, the board decided to not amend this rule at this time.

COMMENT 11: Two commenters opposed the year experience requirement and described their early training in clinics and emergency rooms shadowing physicians

and mid-level practitioners. The commenters asserted that doctors, advanced practice registered nurses, and others are available for consultations and to train PAs in these settings.

RESPONSE 11: The board appreciates all comments made in the rulemaking process. Following consideration of all comments, the board decided to not amend ARM 24.156.1622 at this time.

COMMENT 12: Several commenters opposed the amendment to ARM 24.156.1622, saying it would be an inaccessible barrier to ER and rural care in rural Montana. The commenters also asserted the experience requirement would be a disservice to Montanans who would have to dial 911 instead of going to a facility staffed by a PA.

RESPONSE 12: The board appreciates all comments made in the rulemaking process. Following consideration of all comments, the board decided to not amend ARM 24.156.1622 at this time.

COMMENT 13: Four commenters stated that they would never have been hired in rural clinics if they had needed the year of experience and stated that there is nothing magical about a year's experience, since it can be so different. The commenters also described the back-up they had in their first year as proof that PAs can function as new grads.

RESPONSE 13: The board appreciates all comments made in the rulemaking process. Following consideration of all comments, the board decided to not amend ARM 24.156.1622 at this time.

COMMENT 14: Several commenters asserted that recruitment of PAs will become even more difficult with the experience requirement and that the amendment will adversely affect the placement of PAs in locum tenens and moonlighting positions.

RESPONSE 14: The board appreciates all comments made in the rulemaking process. Following consideration of all comments, the board decided to not amend ARM 24.156.1622 at this time.

COMMENT 15: A commenter from a facility with a small number of PAs described how nurses are trained in that facility and asked the board to consult with rural hospitals before amending this rule.

RESPONSE 15: The board appreciates all comments made in the rulemaking process. Following consideration of all comments, the board decided to not amend ARM 24.156.1622 at this time.

COMMENTS 16 THROUGH 20 PERTAIN TO ARM 24.156.1623:

COMMENT 16: Several commenters opposed the amendment to ARM 24.156.1623 requiring that PAs have 100% chart review for the first three months following a new supervision agreement. The commenters stated that physician oversight and supervision is sufficient under the current rule and that the physician/PA team should determine if training and experience is adequate for the delegated medical services.

RESPONSE 16: The board appreciates all comments made in the rulemaking process. Following consideration of all comments, the board decided to not amend ARM 24.156.1623 at this time.

COMMENT 17: Three commenters stated that supervision should be individualized and that solo PAs can assure good patient outcomes with individualized supervision plans. The commenters asked the board to also consider practice setting and the sufficiency of training in the curricula of acute care and emergency medicine.

RESPONSE 17: The board appreciates all comments made in the rulemaking process. Following consideration of all comments, the board decided to not amend ARM 24.156.1623 at this time.

COMMENT 18: Numerous commenters opposed the amendments to ARM 24.156.1623, stating that 100% chart review is a dramatic departure from current requirements, would pose a hardship on physician-PA teams in Montana, that doctors would spend an inordinate amount of time signing charts, and experienced PAs would be treated like new graduates. The commenters asserted that physicians might reconsider utilizing PAs in their practices and health care may be harmed by this rigid restriction that strains practice oversight.

RESPONSE 18: The board appreciates all comments made in the rulemaking process. Following consideration of all comments, the board decided to not amend ARM 24.156.1623 at this time.

COMMENT 19: One commenter suggested requiring 100% chart review except when the agreement being replaced was in effect for a minimum of three months.

RESPONSE 19: The board appreciates all comments made in the rulemaking process. Following consideration of all comments, the board decided to not amend ARM 24.156.1623 at this time.

COMMENT 20: Several commenters opposed the 100% chart review requirement, stating that it would restrict access to rural health care. The commenters also noted the backwards nature of the requirement as the national trend is toward fewer restrictions on PAs in practice. A few commenters pointed out that PAs do not practice independently and are not thrust into practice in rural areas without adequate training, especially graduates of local training programs. One commenter noted that 60% of Rocky Mountain College's 2008 PA program graduates were successful in first-year rural settings and that 40% of rural care facilities utilize PAs, where between 20 and 25% are new graduates.

RESPONSE 20: The board appreciates all comments made in the rulemaking process. Following consideration of all comments, the board decided to not amend ARM 24.156.1623 at this time.

4. The board has amended ARM 24.101.413, 24.156.601, 24.156.603, 24.156.605, 24.156.618, 24.156.628, 24.156.802, 24.156.803, 24.156.804, 24.156.805, 24.156.806, 24.156.807, 24.156.809, 24.156.810, 24.156.1002, 24.156.1004, 24.156.1006, 24.156.1301, 24.156.1302, 24.156.1305, 24.156.1306, 24.156.1308, 24.156.1402, 24.156.1411, 24.156.1413, 24.156.1618, 24.156.1619, 24.156.1620, and 24.156.1626 exactly as proposed.

5. The board has amended ARM 24.156.615 and 24.156.617 with the following changes, stricken matter interlined, new matter underlined:

24.156.615 RENEWALS (1) through (3) remain as proposed.

(4) A physician with a permanent ~~an active~~ license ~~who is~~ not actively engaged in the practice of medicine in this state or absent from this state for a period of one or more ~~than two~~ years ~~and who does not choose to practice medicine in Montana,~~ may ~~not renew as an active licensee, but may~~ renew as an inactive licensee and pay the inactive fee listed in ARM 24.156.601.

(5) A physician with a permanent ~~an active~~ license ~~who is~~ not engaged in the practice of medicine and who has retired from practice may ~~not~~ renew this license as an ~~active licensee, but may renew as an~~ inactive-retired licensee and pay the fee listed in ARM 24.156.601. A retired license may not be reactivated. The individual must reapply for a new original license.

(6) remains as proposed.

24.156.617 LICENSE CATEGORIES (1) through (3) remain as proposed.

(a) To renew a license on inactive status, a physician must pay a fee prescribed by the board, and complete the renewal prior to the date set by ARM 24.101.413, ~~and, if the physician has not actively practiced for two years, pass the Special Purpose Exam (SPEX) given by the Federation of State Medical Boards.~~

(4) through (4)(b) remain as proposed.

6. The board did not amend ARM 24.156.1622 and 24.156.1623 as proposed.

7. The board has repealed ARM 24.156.610 exactly as proposed.

8. The board has adopted NEW RULE I (24.156.1309) exactly as proposed.

BOARD OF MEDICAL EXAMINERS  
DWIGHT THOMPSON, PA-C,  
CHAIRPERSON

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

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 3, 2010